

Right and Duty in Hegel – Restrictions of Freedom?

Klaus Vieweg

Abstract: Two mutually linked ends stand at the forefront of this article: firstly, and mainly, this ought to be a contribution to the contentual sharpening of the understanding of freedom with Hegelian arguments. In particular, it is a matter of determining in a precise way the relationship between freedom and arbitrariness. Can one speak philosophically of a justified *restriction (Einschränkung)* of freedom? What is to be done, secondly, is to concisely indicate Hegel's concept of freedom and right, *the belonging together of right and duty*.

What remains crucial here is that this right of reason and the duty inseparably linked to it represent *no limitation of freedom*. The doctrine of right is an immanent doctrine of duty. There is no right without duty and vice versa. Hegel: A human being has rights insofar as he has duties, and duties insofar as he rights. The duty is a restriction not on freedom, but only on arbitrariness. Duty is the winning of *affirmative* freedom. Right and duty *restrict the arbitrariness* as abstract, formal freedom.

Keywords: Right, duty, freedom, arbitrariness, limitation of arbitrariness

The word *freedom* is on everybody's lips. In Germany, one invokes it as well as the constitution. But one hears complaints about the 'restrictions of freedom' in view of the pandemic regulations also in other countries. Some even mobilize dreadful comparisons to dictatorships and to the Hitlerian Enabling Act. The dominant public discourse on freedom is cause for a philosophical consideration, since being *familiar (das Kennen)* with the word freedom is nowhere near the cognition (*das Erkennen*) of what freedom signifies. Two mutually linked ends stand at the forefront of this article: firstly, and mainly, this ought to be a contribution to the contentual sharpening of the understanding of freedom with Hegelian arguments.¹ In particular, it is a matter of determining in a precise way the relationship between freedom and arbitrariness. Can one speak philosophically of a justified *restriction (Einschränkung)* of freedom? What is to be done, secondly, is to concisely indicate Hegel's concept of freedom and right, *the belonging together of right and duty*, as a philosophy background for the German constitution, especially regarding §1. Rational right, this will be the thesis, can be conceived of as existence of the free will, not as its limitations.

Beforehand, some passages on the neuralgic distinction of freedom and freedom of choice (arbitrariness): Kant speaks of free arbitrariness as capacity "arbitrarily do as we like".² In Nurnberg, Hegel notes: "If in ordinary life we speak of freedom, then we commonly understand it as

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1 For this, also Vieweg 2012 and. Vieweg 2020.

2 Kant 1907, p. 213. On Kant's and Hegels views, Krijnen's instructive article: Krijnen 2018.

arbitrariness or as relative freedom from me to do or not do something.”³ The opinion dominates that freedom “is the ability to do what we please.”⁴ Freedom is in this view identified with the possible choice of variants of the action, with a choosing of possibilities. Such statements Hegel takes to be an entire lack of education of thought, a superficial understanding, which today experiences an unimagined boom. “Caprice [*Willkür*], of course, is often equally called ‘freedom’; but caprice is only non-rational freedom, choice and self-determination issuing not from the rationality of the will.”⁵ Freedom appears as a state, in which we can do whatever we want – but *what* we want, this is precisely question.⁶ With this reduction of freedom to arbitrariness, all ‘limitations of arbitrariness, of the supposed freedom are (dis)qualified as coercion, restriction, interference or repression. “It is the common view that one is limited in one’s freedom through the state, through the law.”⁷ This must be shown to be itself a highly limited, narrow(-minded) conception.

The General Structure of the Free Will

In a first step, this will be substantiated by spelling out the three fundamental paragraphs 5 to 7 of the Hegelian *Philosophy of Right* as well as its introduction and by uncovering the logical foundations of the concept of the free will.⁸ Only thereby an appropriate interpretation of Hegel’s concept of freedom can be worked out. The whole argumentation rests, according to Hegel, “on the logical spirit” as it has been developed in the *Science of Logic*.⁹ Here a broad spectrum of lessons from the *Logic* comes into play, from indeterminacy and determinacy, infinity and finitude, reflection and understanding, universality, particularity and individuality, end, immanent negation to limit and ought-to-be (*Sollen*). We will examine Hegel’s conception of the *foundations* of freedom, of the foundational determination (‘substance’) of the will from the the specific perspective of the discourse on restriction – in Hegel’s words: “*Restriction*, – egregious mistake.”¹⁰

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3 Hegel 1970a, p. 226. Translation, F.R.

4 Hegel 2008, p. 38.

5 Hegel 1975, p. 98

6 Cf. Henrich, D. (1983), p. 64.

7 Hoppe, H. (2005), p. 43.

8 Cf. on this extensively Vieweg, K. (2012), 57-96.

9 Hegel 2008, p. 4f.

10 Hegel 1996, p. 82.

§5 makes explicit the moment ALPHA, the pure indeterminacy, in which every *restriction* seems dissolves, the *limitless* infinity of absolute abstraction or universality – the pure thought of the I. Thinking and willing are not opposed to one another as two peculiar faculties. ALPHA is only *one* side of the framing of the will, the absolute possibility, to disregard any determination. No content can here be taken as a 'limit', but anything determinate or particular of the will appears to be a restriction – the particularity is supposedly in the first universality extinguished.' ALPHA represents an indispensable moment of freedom. But the deficit of the understanding consists in inadmissibly elevating this necessary element to be "the sole and supreme one."¹¹ The reduction of the free will to this is what Hegel describes as position of negative or empty freedom, of the freedom of the understanding.

Logically speaking, this is an attempted exclusion of particularity from the content of willing, the assertion of an incompatibility between the alleged pure universality with particularity, which appears which seems to be absorbed and to have vanished in the abstract universal. But this empty universality as indeterminacy is itself already the other of "what it does *not* mean to be" – notably something *finite, one-sided, restricted*: "The indeterminate is itself the determinate, because it is opposed to the determinate."¹² The universal is thereby *in advance, not as only supervening later*, posited as the particular. I negate all limits and am thereby limited myself, *one-sided*, merely *one* of *two* sides. Logically, the moment BETA, the particularity, already lies within the moment ALPHA. The first word of §6 expresses this: *At the same time (Ebenso)*, the I is something particular, something determinate, something positing a determinate content with its willing. BETA is not added. This second moment is already contained in the first and only a positing of what the first has been in itself. ALPHA is as the first not the true infinity and universality, but also only something determinate. Because it claims the abstraction from all determinacy, it does not remain without determinacy. To be as something abstract, indeterminate is just what is its *singular* determinateness and therefore its defectiveness – "this abstraction is the *limit (Schranke)*."¹³

The moment BETA, the particularity, does come to the fore as limitation of the dimension of the will described with ALPHA, as negation of the first. It now seems as if the will relinquishes its freedom therein.¹⁴ The understanding or else the reflection often takes the allegedly indeterminate, unlimited to be more admirable, as the highest,

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11 Hegel 2008, p. 30.

12 Henrich 1983, p. 60; also Hoppe 2005, p. 44.

13 Hegel 1996, p. 54.

14 Cf. Hoppe 2005, p. 44.

as freedom itself.¹⁵ But the transition from ALPHA to BETA is not simply the path of limiting something unlimited, but BETA also sublates “the previous limit”, namely the abstract universality. Thereby one exactly “exchanges one limit with another.”¹⁶ Hegel’s summary is: ALPHA and BETA, the indeterminate as well as the determinate, the infinite as well as the finite are limitations, one-sidednessess. We are dealing with the “going over and across of one limit (but only) to another.”¹⁷ Both elements are only two indispensable, yet inaccessible sides of the determination of the free will. Their *two-someness* (*Zwei-heit*), their dualism must therefore be overcome, universality and particularity must be brought to one-ness / unity (*Ein-heit*), i.e. must be logically ‘joined (*zusammengeschlossen*)’ together. “The first two moments – that the will can abstract from everything and that it is *also* determined... are readily admitted” – but the third, the logical speculative tying together the understanding declines.¹⁸ The particularization is often interpreted as an ‘addition’, thus not logically rigorously derived. The understanding operates abstract and disjunctively, remains within the dualism of the two sides. Therefore, the indeterminate and determine will persist as one-sided. The logical derivation, the joining together of ALPHA and BETA can only succeed insofar as the third element GAMMA is already present in ALPHA and BETA – the immanent negativity. Hegel gives in § 7 a decisive hint to the logic of the concept in the *Science of the Logic*, to the logical structure of universality, particularity, and individuality.

The universality is already immanently posited as particularity as well as the particularity is posited as universality; the will remains a) unlimited in its limitation, b) the universality is included in the particularity and c) the positive is tarrying with the negative.¹⁹ GAMMA as logical individuality fixates true self-determination – remaining *at one* with itself in its identity with itself, the universal, and positing itself as the negative of itself, as determinate, limited.²⁰ In this version of the freedom of the will ALPHA and BETA as indeterminacy and determinacy are moments of GAMMA, of the concrete concept of freedom.

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15 Hegel 2008, p. 29.

16 Hoppe 2005, p. 45.

17 Hegel 1996, p. 54.

18 Hegel 2008, p. 32.

19 Henrich 1983, p. 61.

20 Hegel 2008, p. 32f.

Formal Self-Activity and the Selection of Variants

The formal will, the will from the perspective of the understanding, remains within the paradigm of self-consciousness, i.e. in the dualism of the will as subjective positing of an end on the one side and on the other side the relation of it to a given, found object, the 'discovering of an outside world', that is not explicitly assigned to the essence of freedom – on the one side, the Kantian self-beginning of a state, on the other side the realm of causality.²¹ Hegel recalls in distance from the pattern of consciousness decidedly the new paradigm of *spirit* that is already at play here. We are in the sphere of (objective) spirit. The *mere* presupposing, the pure availability (*Vorfindlichkeit*) of the world without the unity with the creation or construction of this world, which is proper to the concept of *spirit*, would be one-sided.²² The free will has itself as an object, its determinations are the own, immanent determinations of the will. The content is "its particularization reflected *in itself*"²³, the unity of inner subjective end – in the shape of the *representing*, but not yet comprehensively thinking will – and the actualized end – the positing of the moments of the concept of freedom, the objectification of the determinations contained in it.²⁴ But the separation of being in itself and for itself that is present in the finite, leads the understanding to prefer the being in itself and to the reduction of freedom to a *capacity*, to the absolutization of *possibility* as supposedly pure indeterminacy. This standpoint of the understanding thus takes the relation to that, which is willed, to be only 'an application to a given matter', an application to something that does not belong to the kernel of freedom. Consequently, in the realization of a possibility lies the limitation of freedom. Again, here the abstraction of freedom comes to effect. Yet, the being in itself is as the allegedly unlimited, absolutely abstract itself limited, because 'it takes *two* to limit" – this is the repeated reminder of the two-someness, to the outlived thought pattern of consciousness, to the dualism of the understanding.

The initially indeterminate will is mine, but not immediately in the form of rationality. As individuality²⁵ it is conceived of as sublating the status of possibility, as resolving (*beschließender*), actual will. The resolve (*Entschluss*), the un-closing (*Ent-Schließen*) means the opening of the previously 'closed' to the multiplicity of the particular. It is the selection

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21 In more detail on this Krijnen 2018.

22 Cf. Hegel 2007 §§ 384 and 386, pp. 18ff.

23 Hegel 2008, p. 34.

24 Ibid.

25 Hegel 2008, p. 32.

of an option to be actualized, it is the possibility to determine oneself to this or to something else. It is the principled potential alternativity of willing, of doing. The possibility now advances to actuality. Yet, the chosen content does not need to be *per se rational*, not compulsorily a content of freedom. Such freedom of the will is according to this preliminary determination the freedom of choice, arbitrariness.

Hegel describes this stage as the formal self-activity, as the formal element of free self-determination. One selects, elects from the pool of possibilities one variant. It is an election (*Küren*) of the will, a content is chosen – the electors (*Kurfürsten*) elected (*küren*), selected a determinate candidate to be emperor. ‘I will because I will *this*’ – Wilhelm or Friedrich as emperor. With such a sovereign act I could also decide something else. In arbitrariness we get contingency in the shape of willing. The will is not determined by the concept of the will²⁶, it does not have itself as content. The latter is initially only found. With the equation of arbitrariness and freedom one would have to designate crime or terror as free action, since the respective agent has chosen it. Thus, it is only about the abstract *certainty* of the will of its freedom, not already about the free will in its full determinateness, which must rest not merely on certainty, but on *rational thinking*. In arbitrariness, Hegel sees the will as contradiction, a necessary but not sufficient moment of freedom.

Only the rationally determined will can be regarded as free will, due to the thinking unification of universality and particularity, the overcoming of the dualism of the moments ALPHA and BETA represented by the understanding, the overcoming of the reflecting will. Hegel insists on “thinking *asserting* itself in the will”²⁷, on *conceptual* thinking. Whoever here, at this neuralgic point of the conception of a philosophical understanding of freedom appeals not to this thinking, not to knowledge and science, but instead to other instances such as mere opinion, enthusiasm or feeling, “robs humanity of all truth, worth and dignity.”²⁸

In the later § 140, Hegel speaks “*of subjectivity that claims to be absolute*”²⁹, that merely only opinionates and assures. This pure dogmatism of opinions decidedly refuses examination and demonstration: the subjective conviction that one’s own discretion then counts as the unique cause for determining action. Instead of examined knowledge there is a “*transcending*”³⁰ (*überfliegende Eitelkeit*) of all objectivity resulting in the whateverism of presently dominating

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26 Ibid., p. 37f.

27 Ibid., p. 42.

28 Ibid.

29 Ibid., p. 138.

30 Ibid., p. 144.

relativism. With this goes along the discrediting and degradation of truth and science, the downgrading of philosophy to a game without obligations – here and now this holds, tomorrow something else and the day after again something else till St. never-never day. Everything untouchable, unbreakable, inalienable, unconditional, eternal is put under the suspicion of Metaphysics. We are dealing with the *arrogantia*, the selfishness (amour-propre), self-importance, arbitrariness in its complete unlimitedness, with a subjectivity which hones itself as the *sole* validity. “In the fire of vanity, everything else is burned.”³¹ Mein good heart, my good intention, the reasonability of my inner convictions ought to offer a total justification of the action. Now, if someone asserts the possibility of error, the answer is ‘to err is human’. Hegel sees dishonesty in this, since the relativity is praised as the highest and holiest and this is, however, in a second step rendered as trivial, accidental, or erroneous – “if I cannot know the truth, for then it is a matter of indifference *how* I think.”³² This understanding of tolerance presenting itself as diversity and openness in the sense of *indifference* of particular content³³ led to the fact that there could no longer be “any rational judgment of good and evil, honorable and shameful decisions.”³⁴ Reason and delusion then had the same rights – such a tolerance would be an exclusive one to the advantage of unreason.³⁵ Those who rely on the arbitrariness of mere discretion, instead of on tested knowledge, – each relative thing, every particularity as well as every time or every culture etc. etc. has its own truth – pay homage to the hip, fashionable, but self-refuting relativism and massively endanger the modern project of freedom.

The rational will, based on comprehending thought present a self-relation, the self-determination of the will: the free will which wills the free will.³⁶ The existence of the free will Hegel conceives categorically as *right*, freedom as idea, as its concept and the latter's realization. The determinations of the will are expressed as formations and stages of right, the conceived system of right as ‘realm of realized freedom’. What remains crucial here is that this right of reason and the duty inseparably linked to it represent *no limitation of freedom*. The doctrine of right is an immanent doctrine of duty. There is no right without duty and vice versa. Regarding ethical life as highest stage of right, Hegel remarks that the determinations of right correspond to binding duties of the actors. Therefore we do not

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31 Hoppe 2005, p. 142.

32 Hegel 2008, p. 147.

33 Hegel 1996, p. 282.

34 Hegel 2008, p. 145.

35 Ibid.

36 Hegel 2008, § 27.

constantly need the postscript “that ‘this determination is therefore a duty for human beings.’”³⁷ In the identity the universal and particular will in the will as individuality “*right* and *duty* coalesce, and... a human being has rights insofar as he has duties, and duties insofar as he rights.”³⁸ The duty is “a restriction not on freedom, but only on freedom in the abstract, i.e. on unfreedom. Duty is the... winning of *affirmative* freedom.”³⁹ Right and duty *restrict the arbitrariness* as abstract, formal freedom. In a rationally shaped right and its corresponding duty we have the liberation of the individual to substantial freedom. The perspective of negative freedom claims that through rights, duty, or the state freedom will be restricted. Insofar as the definition of right is grounded in the will of the *particular* individual, as it takes it as starting point, as *first* and as substantial element, the rational can certainly only be seen as *restricting* freedom. But Hegel emphasizes again that in the realm of right the *restrictions are sublated*. Rational right does *not* come with a restriction of freedom. The determinations of right are not negative, not restrictive against freedom. Freedom is present in right.

The apparently small difference between the freedom of choosing (freedom of choice, arbitrariness) and truly, reason-based freedom is getting a fundamental significance. Hegel sees in the rational laws and institutions instruments for the restriction of arbitrariness, of the narrow-minded will, but by no means restrictions of freedom.

The Medley of Arbitrariness

A particular threat to a modern concept of right arises from the ideology of market fundamentalism, especially from its reduction of freedom to the freedom of choice. The market as ‘*medley of arbitrariness*’, as system of “ethical life” being “split into its extremes and lost”⁴⁰, a community of necessity- and understanding, as sphere of all-sided dependence, is described as *free*. But its rational regulation and formation is the condition of its existence.⁴¹ This structure of the contingent and arbitrary rule of particularity, as space of the heteronomous and contingent cannot adequately regulate and administer itself, since it tends to self-harm and self-destruction. Similar to the understanding, the finite determinations in this structure of the understanding are unfounded and swaying and the edifice built on them collapses in on itself without rational regulations. The dominion of arbitrariness shaping the market comes into an infinite

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37 Ibid., p. 156.

38 Ibid., p. 161.

39 Ibid., p. 157.

40 Ibid., p. 182.

41 Cf. Stiglitz 2010; Vieweg 2012, pp. 269-344.

progress, into the bad infinity, the logical crux of the understanding. This leads to *immoderation*: arbitrariness, opinion, wealth, and poverty are immoderate.

The state, on the other hand, is reduced to institutions, he is supposed to limit free action through coercion. The protagonist of the pure doctrine of self-regulation and self-healing celebrate the market as the true grail of freedom. But obviously it is an arbitrary-contingent concatenation which should neither be demonized nor adulated. Even though, it is an important enabling condition of freedom, one can in no way attribute the characteristic *free* to the market. For decades, such an untenable distortion of freedom, linked with apologetic eulogies of the allegedly free market as well as the misinterpretations and discreditation of the state operated like a pandemic virus.

Determinate Rights and the Possible Collision of Rights

By continuing to determine the concept of right at the levels of abstract right, morality, and ethical life, a system of determinate, particular rights is unfolded - from the right to life to political rights. In this section, the attention will be directed to relevant links between the understanding of right by the constitutional thinker Hegel and the German constitution. The concept of human dignity, which is constitutive for this constitution, recurs to central ideas of the law of reason.⁴² Hegel is without any doubt one of the most outstanding representatives of this thinking. The “definition of the human being” as a free being can move in modern states to the “top of the code of law.”⁴³ In a commentary by the Federal Constitutional Court on §1 – “Human dignity shall be inviolable” – one reads, in a completely Hegelian sense: “The protection of human dignity is grounded in the idea of the human being as a spiritual-ethical being that is geared towards freely determining itself and developing.”⁴⁴

Also with regard to the discourse on limitations, a look into the German constitution is advisable. The particular rights can collide in specific situation in their effectiveness. The substantial rights of free expression and the freedom of the press (laws 4 and 5 of the constitution) have their limitations in the general laws. This means that I cannot say and publish everything in reference to my convenience, my discretion. Holocaust-denial or sedition are just no *free* expressions. The freedom of art and science is bound to the content of the constitution, especially to the unimpeachable, inviolable human dignity. Whoever denies it, cannot

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42 On this Gutmann 2010, p. 2.

43 Hegel, 1996, p. 33.

44 BVerfGE 45, 187, 227; BVerfGE133, 168, 197.

invoke the indicated right. Right 8 of the constitution, about the freedom of assembly, stands under the reservation that this right can be limited by the law. The rights to freedom of movement and inviolability of the home set out in the laws 11 and 13 of the constitution may be temporarily and appropriately restricted in case of necessary danger-prevention, such as the explicitly mentioned danger of epidemics.

A decisive principle of the Hegelian theory of personality is the right to live. "Everyone has a right to live and to physical integrity."⁴⁵ This command of inviolability or integrity of each individual person has the form of a prohibitory injunction, namely the prohibition to impair or injure this personality. "The freedom of the person is inviolable."⁴⁶ The *right to life* is a fundamental right, the violation of which affects all other rights and may restrict or exclude them. This mostly concerns *momentary, acute situations of exception, extreme emergencies*, in which the threat to life is serious, for example, through massive natural disasters, wars, pandemics or other global dangers to life. Here there are 'shifts in weighing' with regard to the overall structure of certain rights; there may be *temporary* and *adjusted, proportionate* limitations in the scope of otherwise normal rights, such as the right of assembly or the right to freedom of movement. In emergency situations such as floods, earthquakes or volcanic eruptions, precisely defined prohibitions on entering certain areas and regions serve to ensure the safety of citizens; the same applies in the event of leaks of toxic substances. For hospital infection wards, there have always been rules for protective clothing, for contact restrictions and certain prohibitions on visits, because of the need to avert danger. Limited quarantine regulations apply to infected persons, which are also enforced against the will of the persons involved.

The possible collision of rights, Hegel demonstrates by recourse to the petty larceny of food. When for example someone who acutely starving steals a bread, this is, according to Hegel, her right, "right – must have life."⁴⁷ If a human being in such an exceptional situation "can rescue his life by stealing a tiny part of someone else's property, this is no wrong. And it is not fairness, but determine right, *life is an absolute moment in the idea of freedom*."⁴⁸ A certain right, the property right, was violated, but this was done to claim a *higher* right. "Justified is the conservation of the good whose annihilation would signify the greater violation of right."⁴⁹ Shifts in the overall structure of particular rights are

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45 Fundamental law 2, 2.

46 Ibid. Yet, a law can determine cutbacks even here.

47 Hegel 1996, p. 241.

48 Hoppe 2005, p. 126.

49 Bockelmann, 1935, p. 22.

to be regulated in the constitutions and, with regard to pandemics and epidemics, in a special infection protection act, which represents a law of defense against dangers to life. In the case of pandemics, a collision of the right to life with, for example, with the right to freedom of movement or the right of assembly may occur. "Life has a right [*hat Recht*] against the strict right."⁵⁰ The protection of life is an irrevocable *human right* in the aforementioned universal sense of *justice*, the fundamental right to protection from injury, from disease, from the destruction of the natural foundations of life. "If life is lost, what is posited is lawlessness."⁵¹ People who exercise the right to demonstrate against the measures taken to contain the Corona pandemic do indeed (often without mentioning it) assert their right to life there as well. The state also has the duty to protect their integrity during these actions. Those involved expect as a matter of fact that they will not be beaten or shot at. Only if the people concerned endanger the health of others and even of their children, expose them to the danger of infection, to being shot at with viruses, do they destroy their own position, their own right, the right of others and the right in general. Robert Pippin provides an example of such a reversal of one's own claim: "Someone playing chess who moved the rook diagonally, and tried to justify his authority to do so that way. The point is not that he is violating that everyone can see in this ideal object, »Chess«, but that he is contradicting himself, his own agreement to play chess and all that commits him to. He is in effect »cancelling himself« out, nullifying his own agency in the pretence of agency."⁵²

In this context, Hegel follows Kant's theorem of the second coercion.⁵³ A first coercion remains illegitimate, it is cancelled as coercion by a second coercion, like a crime by punishment. Insofar as one claims rights, one must also measure them out to all others, has the duty to do so. Reasonable rules certainly force the first coercion, for instance the preceding unreasonableness. Examined knowledge should coerce mere opinions. Such reasonable, *second* coercion, however, is not to be seen repressively and not pejoratively. The first, illegal coercion is, according to Kant, "a hindrance or resistance to freedom", the coercion that is opposed to it, could be regarded as "resistance that counteracts the hindering" of freedom, from where the authority of coercing the first coercion arises.⁵⁴

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50 Hoppe 2005, p. 126.

51 Angehrn, Bondeli, Seelmann 2000, p. 61.

52 Pippin, 2008, p. 74.

53 Hegel 2008, p. 98f.

54 Kant 1991, p. 57.

Determining Right and Duty Further

Here, the unfolding of the determinations of the will in the form of a system of rights can only be touched upon in a few basic outlines. In § 486 of Hegel's *Encyclopedia*, right is again stated as the existence of free will, as the existence of all determinations of freedom; this also applies to duty. "That which is a right is also a duty, and what is a duty is also a right."⁵⁵ The relation of right and duty is then unfolded in the *Philosophy Right* in a gradation, from the step of correlation where it holds that "to a right on my part corresponds a duty in *someone else*" and vice versa.⁵⁶ Moral duty in me is in the sphere of morality at the same time a right of my subjective will. There is the difference of only inner determination of the will, of subjective duty against its reality, which constitutes the contingency and imperfection, the one-sidedness of the merely moral point of view. In the realm of ethical life, "duty and right return to one another and join together, ... through mediation."⁵⁷ This way of mediation, through which the duties of the actors come back to them as the exercise and enjoyment of rights, produces only the appearance of difference or 'asymmetry' of right and duty. But the value of both is the same regardless of the differences of design. Here are just a few examples: citizens have the right to good administration and guarantee of security by the state, which implies the duty to finance the institutions (e.g. tax duty); the right to health maintenance is accompanied by duty to health insurance; the right to exercise a profession contains the duty of professional training. An example of the interplay of right and duty is the fact of education in family and state as spheres of ethical life. Duties are *binding* relations, binding for the will of the subject in the sense of 'asserted', as well as in the sense of the binding together, the union. Article 6 of the German constitution formulates the care and upbringing of children as the right of parents and as the duty incumbent upon them. A fundamental principle lies in the rights of the children, the right to well-being, to upbringing and education, the right to be developed into self-determined human beings.⁵⁸ Children are free in themselves, thus not things or slaves; they have the right to be educated to become independent, free personalities. This process of education Hegel understands as the 'second birth of the children, their spiritual birth.'⁵⁹ The inherent capacity of the child to reason as a human being can be realized through upbringing and

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55 Hegel 2007, p. 218

56 Ebd.

57 Ebd.

58 Cf. the Convention on the Rights of the Child, agreed in 1989 by the UN, wherein the legal entitlements of children are recorded.

59 Hegel 2007, p. 230

education. The rights are connected with the duties of the children, the school duty, the duty on observance of the rules of the school, the acceptance of knowledge. The will of the child is still massively influenced by natural inclinations, the will is not yet the fully reasonable one, insofar as there is not yet sufficient insight whether an action is good or evil. Education is thus regarded as a *second, legitimate* coercion against the original constitution of the child's will, which must be seen and shaped not as a restriction of their freedom, but as a restriction of the arbitrariness of inclinations and mere pleasure, as a way to the *liberation* of their will, a way to gain independence and self-determination. This also includes the *coercion to the universal*, which is to be evaluated as not repressive. One basis is, for example, the *authority* of knowledge. For the education to an independent personality, the personality itself must be able to act *against* the authority of the given, to test the authority of the knowledge offered to it, otherwise no self-confident new subject of the will can emerge. The corresponding rights of the legal guardians are inseparably connected with their duties, the guarantee of the well-being, of upbringing and education. At the same time, limitations must be placed on the possible arbitrariness of the guardians. Children are not objects of oppression, violence, abuse. In these cases, the deprivation of parental authority can take place, as a second coercion against the inhuman first constraint of subjugation of the child.

Insofar as deniers of the Corona pandemic take their children to demonstrations where the rules for maintaining health are not observed, they are in breach of their duties, since they are knowingly endangering the children's health. In the state's action against such neglect of educational duties lies one of the state's institutional rights vis-à-vis those bound together in an educational community, the safeguarding of upbringing and education, for example by means of enforcing compulsory schooling as a second coercion against the possible arbitrariness of *parents and children*. At the same time, the state has the duty to organize and ensure adequate public-school education for *all* children, to guarantee the realization of the rights of children and parents - a criterion for a modern state. The guardians [*Erziehungsberechtigten*] could also be called (duty-)guardians [*Erziehungspflichtige*], and the school-age children [*Schulpflichtigen*] could also be called school-age beneficiaries [*Schulberechtigte*]. All these rights and duties in the educational process are about limiting arbitrariness, about enabling, and developing freedom, not about limiting it.

The State as Limitation of Freedom?

Views often encountered today imply that state laws and rules would restrict my free actions. The market fundamentalist slogan 'We need

less state' implies: 'We need less reason'. This remains dangerous for a political culture of freedom; it promotes a kind of disenchantment with the state and an opposition to it: the state appears as a legal restrainer of freedom, proceeding with repression. This can create a distancing and turning away of citizens from the task of sensibly shaping their community affairs. It is asserted that "everyone must *limit* her freedom in relation to the others and the state is the condition of this mutual limitation and the laws are these limitations."⁶⁰ But in such a claim freedom is reduced to contingent convenience and arbitrariness. But precisely the latter is to be limited. "The state is no limitation of freedom, through the limitation of the natural will man ought to be free."⁶¹ The state must thus be understood and organized as form of self-determination, in the shape of a self-given coercion to a second degree against the unacceptable first coercion of arbitrariness. To follow self-given and rational laws and to be in this other with myself is what makes the self-determination and the political freedom of the citizen. Hegel identifies in the state a coming-together that is justified in knowledge and reason, the citizens as rational subjects of the will are themselves the liveliness, activity, reality of the state, the state is their *universal* life. The state is for Hegel firstly *every citizen in its status as citizen*, in its being-citizen, its being-citizen.⁶² Secondly, the state is a formation of different institutions, that must guarantee the freedom of *all particular individuals*. Here emerges a complex, multi-connected web of mediated unities of rights and duties.

According to Hegel, it is infinitely important and the high art with regard to the formation of modern free statehood that the *duties of the state* and the *rights of the citizens* as well as the *rights of the state* and the *duties of the citizens* are appropriately determined, justified by thought and rationality.⁶³ The criterion for the *rationality* thereof lies in the warranty and guarantee of freedom of *all* particular individuals in the modern state, something that includes the justice and the combination of social and state of right, of natural and social sustainability. All existing states must be measured according to this.

Society and its political formation is the condition in which the right has its actuality; what has to be limited and sacrificed is just the arbitrariness and violence of the state of injustice. Despotic regimes

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60 Ibid.. § 539.

61 Hoppe 2005, p. 233.

62 Cf. On this Vieweg 2012, especially pp. 350-365.

63 Cf. Hegel 2008, p. 235.

and dictatorships limit freedom, such that we can talk enabling laws and *arbitrary domination*. The *rationaly* formed state that is founded upon the *right of reason* limits the mere convenience and arbitrariness, this is how it can count as a state of freedom. But if in the existing state the populist neglect of right and knowledge, the termination of democratic consensus is rampant, then we fall back into a *new form of the state of nature* – into a *bellum omnium contra omnes*, for example in the shape of civil wars. It is not right based on conceptual thought or the rationally formed state that limits or endangers freedom, but the neglect of knowledge and the reduction of freedom to arbitrariness. The thoughtless convenience and and discretion, the untested assuming and mere asserting can lead into the stupidocracy, into the dictatorship of unreason and the despotism of pseudo-education. As ‘vaccinations’ for the immunization against this virus stands reflection, knowledge and education at our disposition.

Translated by Frank Ruda

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