

THE UNIVERSITY OF HULL

Custom, Law and Representation:
a study of the factors in Hegel's
pre-systematic theory of political
civilisation.

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by

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'Are we to embark on a whole lot of market regulations and the like? ... Good men need no orders. They will find out easily enough what legislation is in general necessary ... if God enables them to preserve the laws we have already described. ... Otherwise they will spend their whole time making and correcting detailed regulations ... under the illusion that they are reforming society ... You mean that they will lead lives like invalids who are too vicious to give up their unhealthy habits'

- Plato, The Republic, 425.

'Public Law is what has respect to the condition of things Roman; private law is what has respect to the utility of individuals'.

- Ulpian, De iustitia et iure, Digest I, paragraph 2.

'So long as one has not in his power reform and the withdrawal of reforms attempted and found to be harmful, one would do well to be content to remain the same in the midst of all such variations the consequences of which can be surveyed and reckoned, and simply to stop up the sources of abuse ... So long as everything remains in the old condition, so long as the people does not know its law, so long is no community available; so long is the power of the bureaucracy not limited, so long will popular election serve only to bring about the utter destruction of our constitution'

- Hegel, The Wuerttembergsschrift.

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Notes

Abstract

The thesis of this study first took shape in response to G. A. Kelly's argument that Hegel sought to adapt the classical metaphor, 'second nature', so that it should stand not for custom (Sitte), but for the deliberate yet, equally with custom, natural devotion of the individual to his community, which depends not on inclination, but upon a sense of duty ^{*}. Duty is ethical life (Sittlichkeit) in the active voice of law, second nature become self-conscious. Hegel's mature equation of ethical activity (Sittlichkeit) with duty was prefigured in his earliest work, from which it is clear that, in the relationship between custom and law and in the manner in which they prevail, he saw the heart of the problem how civilisation might be preserved in the cinematic world brought about by the advance of culture and industry, that of which custom is made and unmade, in the modern world with increasing irregularity.

The object of this study is to show that Hegel believed custom to be capable of prevailing in two modes. That which he preferred, for the sake of the maintenance of the integrity or wholeness of a people, is shown to be the mode of active, lively and intelligent performance. This mode of custom (Sitte), and of the ethical activity (Sittlichkeit) which is law, is ethical (sittlich), inasmuch as only by such performance may a people be expected to maintain itself as an integral and immortal whole. It is argued that only in this mode may a people remain civilised, which means the same as ever-anew become civilised, in the face of novel circumstances whose effect might otherwise be conducive to barbarity.

^{*} G. A. Kelly Idealism, Politics and History, p. 290.

Barbarity is the condition in which the members of a people are not disposed to have regard for the public good but to look only to their private advantage or utility. Hegel is shown to believe that such advantage is of no ultimate interest to a people, since interest is truly added to its existence only when a people lives and acts together as a law-bound whole.

The mode which Hegel contemned is argued to be that which renders the people which it afflicts quite incapable of civilised adaptation to changing circumstances. It is the mode of passive, deadly or unintelligent observance of what is customary or legal. This mode is habitual rather than ethical, inasmuch as those whose behaviour exhibits the capacity of custom and law to depart from their proper dedication, as expressions of the ethics (Sitten) of the people (ethon), to the interest of its public life and activity, behave in ignorance of the consequences. They know not what they do, so that they may not in strictness be said to act at all and are all the more at the mercy of unhappy events and vicious men.

Knowledge of the consequences of social activity for the political community which sustains it is shown to depend, in Hegel's view, upon knowledge of the law. In particular, it is shown to depend upon everyone to keep to what he knows to be his place within a system of stations, their rights and their duties. Hegel's abiding belief was that only on that condition may political community, which he valued above all, coexist with social differences, of whose customary plurality he strongly approved.

The dispositional dimensions in which these modes subsist are argued to be the present (die gegenwaertige), a term often used by Hegel, as well as variants of it (such as die vorhandene), to signify intention towards that which is sensibly accessible and sensuously satisfactory. The term absent, not quite used by Hegel

but alone capable of comprehending the meaning of various substantives such as image (Bild) and epithets like invisible (unsichtbar), whose common significance is that of some thing or affair whose existence is contingent upon its being the object of intention towards that which is accessible and satisfactory only to intelligence, is used in antithesis to the term present. Community is shown to be an affair which, in Hegel's view, has to be thought into effective existence, setting aside appetite for that, the present, which, no sooner than it is, is not. The absence of the intelligible, unlike the presence of the merely sensible, commands fondness of fancy and heart, where it makes its abiding dwelling place, dispelling indifference and habituation to what is to hand. Enlightened with the torch of law, public relationships are woven into an intelligible text, whose warp is station and weft is duty, that may be worn not like an ill-fitting, outlived habit but like a custom-made and long-serving costume.

The public relationships of political community are shown to have an affinity with the personal relationship between man and God, in that in the State as in God there may be supposed to inhere something transcending human consciousness of what it is to act, some kind of action whose independence of finite conditions imparts, to the citizen who has knowledge of it, joy such as he would have had he immediate experience of it, the joy of participation in an immortal affair in which social differences are deprived of political effect. Political cultures are contrasted in which the need for this knowledge and vicarious experience is, on the one hand, satisfied perversely by a Being with which man can have nothing to do, and is, on the other, well met.

The achievement and maintenance of political community in spite of circumstantial social difference and change, which feat is

change in the truest sense, of self-adaptation in the face of adversity, is required if men are not to endure passive lives as creatures of helpless habit, but to comport themselves like men of virtue, with whose costume the law in which they put their faith clads them. Yet such change, if men are truly to bear it, must, though to be sure it may not be merely inhabited, be somewhat habitable.

Change can no more be civilised if it requires of the citizen the total dedication of his activity to purely intelligible absence than if it happens haphazardly in response to the passionate impulses of merely sensible presence, no more if it is coercive from without than permissive from within. Its cause must come from this side of the present as well as yon side, must be of it or by it as well as from it.

Civilised change, which is essentially the maintenance of the harmony between the spontaneous habitat of custom, or civil culture, and the regular environment of law, or civic enlightenment, a harmony that depends upon common knowledge of station to resist disruption by those ignorant of the good of living and acting together as a whole made up of technically specific but ethically general parts, ultimately requires cooperation, communication or convergence between those who apprehend what is right in the dimension of presence and those who apprehend it in the dimension of absence. Due must be given to the values, sensible and intelligible, of each, the unenlightened and the enlightened, the present-minded proprietor and the absent-minded altruist, if change is to be endurable. The unenlightened especially must feel that they get liberty in matters of opinion in exchange for their constraint or, better, self-restraint, in matters of earnest. Unless these many can endure its limitation of the public effect of their appetites, law itself cannot endure.

To the end that it may endure, the law, the intelligible articulation of the absent idea of community, must be made congenial to the customs, the civil and political culture, of men of whom it would be too much to expect that they should utterly eschew their sensible view of right.

If that can be done, change in their dispositions is effected that appears to be change wrought by themselves. It is a work of genius to persuade a people that none other than its members themselves have made the changes essential to its maintenance. The organisation given to the work of persuasion that the action of the community is none other than, or at least resembles, what individuals would do had they but judgment and power must differ in the modern world from its natural occurrence in the ancient world, in that it cannot immediately, but only by representation, involve the participation of the citizen.

In Hegel's view, the system of monarchical-cum-representative authority is best fitted for this job of persuasion, for it assures the people that, as well as decisive in favour of the absent interest of community, decisions of the sovereign will be careful of the present interests of individual and corporate members of civil society. As well as absolutely independent of the mandate of any one member, wherefore none of its acts is partial to any present thing, whose presence would, if so, manifestly be at the expense of another, the sovereign's power is kept from gratuitous interference in the affairs of civil society.

While this is the system of a status mixtus, it is such not by virtue of division of eccentric powers, each of which would be designed to place external constraint upon others supposed to have an inclination partially and gratuitously to meddle in such affairs, to the detriment of civilian independence, but by virtue of a concentric distribution of maiestas, whose advantage is that

sovereignty is not compromised either by external trammels or by the inward partiality of its constituent moments which would make such trammels necessary. Sovereignty is rather distributed to circles of political authority, each in itself more or less representative of political unity and social plurality, both having the same centre, which consists in their equal subordination to the law of the land.

It is shown that Hegel was of the opinion, peculiar to a German tradition of reflection on the idea of the status mixtus, that any solution to the tension between present and absent minded views of what is right that distributes sovereignty otherwise than within a unitary public authority, or rather divides it, is a derogation from public law in favour of private utility. Through a system of representative government (supposed by Hegel to be rooted in German customs, as well as formally reflective of customary social polycentricity) whose presupposition is that at the same time as its legal power is absolutely sovereign and independent, its scope is limited and does not extend to the regulation of the whole of customary variety, a people whose members are themselves active comes to regard itself as an agent proper. By the regular constitution of one aspect of its customary heritage, the German people, it is shown, were held to have the capacity to recover their former integrity, lost because of the inherent incompetence of custom to conserve itself or its source, to adapt itself in the face of circumstantial vicissitudes. Through the representation of the people, knowing what it intends or wills itself to be, could be recovered the sense of community prevalent among primitive Germans. Change in that direction would be reflexive, rather than a transitive process, which would entail coercion, towards an utterly new order.

Only change that is reflexive in the sense that its object

does not in the process become so utterly other than it was that there must come a point where it ceases to be identical with the subject - which, to be such, must remain innerly the same - was regarded by Hegel as a genuine process of modernisation.

Modernisation was equated by him with the civilisation of a lawless notion of freedom whose inherent integrity, under the disharmonious circumstances of modern economic society, was increasingly inept to withstand perverse exploitation. Modernisation, then, is nothing but the civilisation of a customary disposition to live and act in harmony with others, its adaptation so that it remains essentially the same, and so has changed in the face of new circumstances by which it would otherwise be changed.

While it will be made clear that Hegel was no revolutionary, even at any point in his youth, it will become equally evident that he was likewise no backward looking utopian. He looked for the restoration neither of the content of old German ways, let alone Greek, nor of their form, but regarded the past of both Germany and Greece as furnishing only concrete models, in need of reshaping, of how the whole might appear to the intelligence and imagination of its members. To the rebuilding of a like model some customs would be serviceable and some would not, but in either case they could not be used just as the revolutionary, whether his utopia is located in the past or the future, would like.

Just as Hegel is argued to be no advocate of coercive revolution, but rather of the civilisation of the present that is to hand, so it will be clear that he was not a German susceptible to the tyranny of Greece. It is to be hoped that the archaeological method of this study, which consists in the interpretation of his theological essays, usually held to show Hegel to have had a period of sympathy with an aspiration radically to change

Europeans into neo-Hellenes, in the light of a period whose outlook is generally accepted to be nearly as conservative as any in his life, will give the lie to the view that Hegel was ever other than a conservative believer in the value of harmonious mediation of political community and social difference, by means of a civilised, legally articulate political and social order of duties and their stations. The same method, it is hoped, will, as it achieves the assimilation of the Jugendschriften to the Verfassungsschriften and other works whose point of view approaches that of Hegel's maturity, likewise disclose the much neglected human touch of the constitutional writings, whose delicacy in this respect is surely a much greater achievement than that of the early theological writings, the subject matter of which appealed so much more readily to 18th century German sensibility than did that of the Verfassungsschriften.

List of Abbreviations

ASP	-	Das aelteste Systemprogramm des deutschen Idealismus
DS	-	Die Differenzschrift
DzHE	-	Dokumente zu Hegels Entwicklung
ES	-	Die Entstehungsschrift
GCS	-	'Der Geist des Christentums und sein Schicksal'
JSN	-	Die Jugendschriften
LJ	-	'Das Leben Jesu'
NRS	-	Die Naturrechtsschrift
PCR	-	'Die Positivitaet der christlichen Religion'
SdR	-	Sollte das Resultat
SdpR	-	Sollte das politische Resultat
VSN	-	Die Verfassungsschriften
WBS	-	Die Wuerttembergschrift
WSS	-	Die Widerspruchsschrift

Chapter One

Introduction: Notes towards the definition of Civilisation

'Let his Absolute, like a four walled house, be put up decently'
(Louis MacNeice, Ode)

1. A decision for practical philosophy

There is no better point at which to begin an account of Hegel's development up to the time when he laid aside his work on religious and constitutional matters in order to pursue the elaboration of his philosophical system, than the famous letter which he wrote to F. W. J. Schelling in November 1800, about two years before the completion of his manuscript on the constitution of the Holy Roman Empire, one of the *Verfassungsschriften* (VSN),¹ and less than two months after the revision of the introduction to the essay on 'The Positivity of the Christian Religion, one of his so-called *theologische Jugendschriften* (JSN)².

In this letter is to be found evidence, if not that Hegel was in two minds as to what he wanted to do with the second half of his life, then at least that he was troubled by the difficulty of deciding to what he should devote his attention in the immediate future. On the one hand, he had begun to contemplate the task of elaborating a philosophical system. Quite apart from any question of his personal inclination to do so, this was a professional imperative for anyone who wished to join the charmed circle of teachers of philosophy in the University of Jena. On the other hand, he still had to bring to a satisfactory conclusion, which he had just accomplished in the case of his reflections on Judaic religious and political culture, the work to which he had committed himself on the constitutional problems of contemporary Germany.

Before he would venture into the "literary hurly-burly of Jena" ³ he wished to sojourn in some other place where he could enjoy good beer and the company of a few literary acquaintances. It had occurred to him that Bamberg would suit him, the more so because Schelling, who had just spent about six months there, could give him the benefit of his local knowledge concerning accommodation and could introduce him to congenial company. Erfurt or Eisenach would do as well but in any case he would prefer a catholic to a protestant city, for he wanted for once "to see the former religion at close quarters" ⁴.

Assuming that Hegel was being quite frank, rather than that he was covertly soliciting a professional favour of him to whom he had neglected to write for over four years, we may infer from this express preference that his immediate interest was to inform himself more fully upon the constitutional problem, endemic in Germany, of the implication of confessional affairs in political matters. If that was the case we may take it that, when he told Schelling that he found himself at last in a position to leave behind his former relationships, to spend a while in an independent position and to devote his time, free of pedagogic commitments, to work and studies already begun (angefangenen Arbeiten und Studien) ⁵, he had in mind the continuation of his studies of German constitutional history.

It might be thought that by "work and studies already begun" Hegel meant, or perhaps intended Schelling to understand that he meant, research which, according to another source, he had undertaken into the philosophy of Fichte. For according to the Brockhaus'sches Konversationslexicon of 1827 ⁶, Hegel is reported to have said, what corresponds with his statement to Schelling concerning the availability to him of new found independence, that a bequest from his father, who had died on the 14th January 1799, provided him the means in 1801 "to go to Jena in order there to elaborate the Idea of Philosophy, which had taken shape in him after the study of Fichte's Wissenschaftslehre in particular". If that is indeed what

he meant in his letter to Schelling, it is hard to see why he should have wished, even temporarily, to avoid the hurly-burly of Jena. It is even harder to see how removal to a catholic city could have been thought by him to serve the purpose of elaborating the Idea of Philosophy. Hence we may conclude that on November 2nd, 1800 at any rate, Hegel was more interested in what he self-deprecatingly called a baser sphere ⁷ than that described by Schelling's theoretical efforts, than in the service done in Jena to the speculative needs of mankind. That he actually went straight to Jena in January 1801 does not falsify the assumption that constitutional problems continued to attract him more strongly than any other. It shows only that he ceased to think there was any conflict between his main interest, positively established as such by his earlier domiciliary intentions but actually and ultimately independent of them, and life in Jena. As it happened Hegel busied himself during his first six months in Jena exclusively, excepting one trivial item ⁸, with constitutional matters.

Only thereafter, between July 1801 and November 1802, did Hegel deliver himself of a spate of philosophical articles, properly speaking critical rather than systematic, promising rather than beginning to articulate the systematic structure of his mature philosophy. He then returned to his manuscript on the German Constitution. Indeed, as we shall see with reference to the first and last of these articles, "The Difference between the Philosophical Systems of Fichte and Schelling", the Differenzschrift (DS) ⁹, and "On the Scientific Ways of Treating Natural Law", the Naturrechtsschrift (NRS) ¹⁰, Hegel can hardly be said to have departed at all from his pre-eminent interest, which was not, the title of the first article notwithstanding, systematic philosophy.

It is in the light of these facts that we must appraise his almost defiant declaration in the letter to his meteorically successful friend;

"I have watched your great public career with admiration and

pleasure; forgive me if I do not speak humbly of it or pay deference to you; I avail myself of the formula, that I hope we will become friends again. In my scientific development, which began with the subordinate needs of men, I was bound for philosophy and the ideal of my youth had to take reflective form, to turn into a System; I now wonder, while I am still occupied with it, what way back to intervention in the life of men is to be found"¹¹. That Hegel beat a hasty retreat to a more obsequious attitude, flattering Schelling's understanding of men for its purity, as being "wholehearted and without vanity"; that he credited his old friend, rather dishonestly, with having recognized and seen the value of his own "disinterested efforts, even if their sphere were baser" ¹² than that described by the Wunderkind, cannot disguise the fact that it was his hope to meet Schelling as an equal, from the advantage of mastery of an understanding of human affairs which would make Schelling eat humble pie, as he had on a previous occasion to which we shall shortly have reason to advert ¹³.

This advantage could best be gained by reversion to interests with a pragmatic bent, to what was known in Hegel's day as *Gelartheit* or practical wisdom, as opposed to *Gelehrtheit* or theoretical scholarship. For it was in this kind of knowledge that the literati of Jena were deficient. Their want of practical wisdom is perhaps best expressed by the following pronouncement of Schelling on momentous events of 1799, 1800 and 1801:

"Bonaparte might become First Consul ... conquer Marengo, win the Left Bank at Luneville, conclude a Concordat with the Pope ... I feel nothing of this. Before our philosophy, before the Absolute everything is as nothing" ¹⁴.

This cavalier attitude to him whom Hegel later called the world spirit on horseback doubtless came as no surprise to Hegel, who had long felt the sting of Schelling's indifference to his mundane interests and frustration at his friend's misunderstanding of them as trivial compared to the elaboration of a systematic philosophy.

This misunderstanding is documented in their correspondence of 1795. In his letter ¹⁵ of the 4th February 1795 Schelling had misunderstood Hegel's remark, made in a letter ¹⁶ written at the end of January, that the influence of philosophy upon the times could only be achieved, that those whom Schelling called 'the masses' ¹⁷ could only be apprised of the premisses as well as of the results of the Kantian philosophy, by 'communication and social work' ¹⁸ (gesellschaftliches Arbeit). Hegel's emphasis was upon Kant's 'results' and their application to the correction of current ideas and generally useful concepts. He was not really interested in re-thinking the process by which those results had been achieved.

Although Schelling had implored Hegel to essay the realization 'in the sensuous world' of the 'dissolution of the last veil, the last philosophical-superstitious spider's web of privileged philosophers' ¹⁹; though he conceded Hegel's judgment of Reinhold's 'Attempt at a new theory of human imagination' ²⁰ that its significance was limited to the sphere of 'theoretical reason', and Fichte's 'Critique of All Revelation' ²¹, that it was dogmatic and scholastic in its deductive method: yet his abomination of personality in the face of the Absolute showed him to have missed completely the meaning for Hegel of the communication and social effect of practical philosophy and the importance for him of consideration for the needs of merely conditioned human beings. For Schelling was prepared to envisage, in order to the achievement of freedom for the Absolute Ego unconditioned by anything objective, what he called 'demolition of finitude ... demolition of our personality' ²², a process opposite to that which we shall see it was Hegel's intention to promote, namely the erection of a dwelling place for free men. This would have an inestimable practical advantage over Schelling's Absolute, which did not differ significantly from Fichte's Ego in this respect, which Hegel would later make the object of his sharpest criticism, that, as Schelling put the matter in his letter, the hoped for 'transition into the absolute sphere of Being ... is not possible in

all eternity' ²³. Freedom was to be the object of an asymptotic quest. But for Hegel, freedom was to be sought in the meantime.

To this incomprehension Hegel could only reply in exasperation that, to be sure 'an esoteric philosophy there will always be - the idea of God as the Absolute Ego will belong there' ²⁴. He continued to urge the availability of Kant's results as a basis for a 'revolution in the thought - system of all Germany ... which will proceed from principles which are to hand and need only be universally worked out and applied to all previous knowledge' ²⁵. Besides a scientific revolution, Hegel also expected that Kant's conclusions would be the basis for the realization of the 'dignity of man' and the recognition of his 'capacity for freedom' ²⁶. The question which troubled him however was why these conclusions had come so late upon the scene. He was in no doubt that, when he should get round to reading Fichte's *Wissenschaftslehre*, he would find an expression of them ²⁷. But he appears to have been more interested in the political causes of the fact that they had not prevailed earlier than in the philosophical reasons behind their current exposition by the likes of Fichte. In his letter of January 1795 to Schelling he had recorded, perhaps with a trace of irony, how Hölderlin had written to him of Fichte, inspired with a view of him as a 'Titan who fights for humanity and whose sphere of influence will certainly not be confined within the walls of the auditorium' ²⁸. At any rate, Hegel himself made no comment on the likely effect either of Fichte's 'Reclamation of Freedom of Thought from the Princes of Europe', which Schelling had recommended to him ²⁹, or of his 'Lectures' on the Vocation of the Scholar, extolled to him by Hölderlin ³⁰. What interested him, after all, were not the 'great intentions' of Fichte, nor perhaps the readiness of Hölderlin to give credit for these, but the circumstances of contemporary Germany that conspired to inoculate its body politic against such intentions.

Hegel identified as such circumstances the fact that religion and politics had 'acted out the same pretence: the former has taught what despotism wanted, contempt of the human race, its incapability

of any goodness, of being something in its own right. With the spread of ideas as to what should be, the indolence of the sedate people, eternally accepting everything as it is, will disappear' ³¹. It should be noted that it is above all an attitude to "what is" rather than necessarily "everything as it is" in which Hegel sought change. His declamation might seem to provide grounds for imputing to Hegel a positive attitude to the brand of Sollenpolitik which he would later condemn in Fichte. But it needs to be emphasized that Hegel made elevation of the hearts of men, to the point where they would have learnt to sacrifice themselves and what, in August 1795, he described to Schelling as their 'cosy system of indolence' ³², conditional upon the spread of concepts 'quite other' (the words are Schelling's, 21-7-1795 ³³) than those of Schelling and Fichte. Schelling admitted to Hegel, protesting that he was not feigning the feeling of having been confounded by Hegel's criticisms, that the arguments of his work could be communicated only to 'everyone who feels the same ... My main mistake was that I did not know men, that I have expected too much of their good intentions ... of their talent for intuition' ³⁴.

The conceptual basis of Hegel's Sollenpolitik, which did not take revolution to be available at the drop of a philosophical hat, and did not need to be instructed that 'the revolution which must be effected by philosophy is still far off', provided it an orientation to Realpolitik. Hegel's views concerning what ought to be were never fashioned in blissful ignorance or despite of what is, particularly what is the condition or the disposition of men's hearts. Hegel's concepts were indeed 'quite other' than those of the philosophy of the Absolute Ego which, upon Anstoss with the conditioned world of the ordinary man, could not but come to grief. He had specified his concepts for Schelling's benefit as the definite and limited ideas 'of the Fatherland, of its constitution etc.' ³⁵. Could these be made to animate the hearts of the indolent people, Hegel believed that a political revolution might be

accomplished: 'I believe', he wrote, 'that there is no better sign of the times than this, that humanity will present itself to itself as worthy of respect; it is a proof that the halo is disappearing from the heads of the oppressors and gods of the earth. Philosophers demonstrate this dignity; the peoples will learn to feel it and will not, humbled in the dust, ask for, but will themselves take, themselves appropriate, their Rights' ³⁶.

There is doubtless a touch of enthusiasm about Hegel's Sollénpolitik, but it is clearly nowhere near as detached from an appreciation of the real obstacles to effecting a revolution in the hearts of men as that of Schelling and Fichte. In his letter to Schelling of August 1795, with a view to comforting him in his despair, Hegel delivered a homily, with apologies for its triteness, on the fate of all systems of those men whose spirit 'hastens in advance of the beliefs and prejudices of their time'. He expressed, too, pity for Fichte: 'beerglasses and patriotic swords have withstood the power of his spirit' ³⁷. Between the lines there seems to hover the thought: Nothing else is to be expected by those who detach themselves from their times.

Hegel was clearly aware that Schelling, despite his mea culpa ³⁸, had not yet grasped what was the purpose of the communication and social effect which he wanted to achieve for the concepts of the fatherland and its constitution. Schelling had written of his hopes, 'which the activity and the enlightened disposition of the new duke (Ludwig Eugen) inspires in us. The despotism of our philosophical half-men will, as I hope, be dealt a great blow by this change. It is inconceivable how much that moral despotism has damaged: had it lasted another year it would have repressed freedom of thought in our fatherland more thoroughly than any political despotism could have done. Ignorance, superstition and fanaticism had by degrees assumed the mask of morality and - what is more dangerous still - the mask of enlightenment ...

The demand was not for learned but merely for morally credulous theologians and philosophers who make the irrational rational and disregard history' ³⁹. Schelling's concern in this letter of July 1795 was clearly with the threat of 'moral despotism' to the freedom of thought in the University above all. Hegel was well aware that what troubled Schelling was the criterion - 'character' rather than 'knowledge and talents' - of appointment to the college of Tutors. Not only did he take a broader view of the problem of freedom of thought than Schelling, but also, he showed himself much less indulgent towards the 'enlightened disposition' of Ludwig Eugen, just as he had reserved judgment on the 'great intentions' of Fichte to reclaim that freedom.

Political despotism was regarded by Schelling as innocuous by comparison with the moral despotism of the pseudo-Kantians whose academic ascendancy he so deplored. Indeed he welcomed enlightened political despotism in the hope that it would humiliate these 'philosophical half-men' ⁴⁰. Hegel, on the other hand, regarded this not as an improvement in 'our present condition' but as a danger: 'I have recognized in your description', he wrote, charitably refraining from pointing out to Schelling that he had failed to recognize it, 'the spirit which the above governments threaten to introduce' ⁴¹. Hegel's view was that political despotism, be its disposition ever so enlightened, was an extended species of moral despotism rather than a remedy for it. This spirit was 'grounded in hypocrisy and cowardice (a consequence of Despotism) and is even in turn the father of hypocrisy - the spirit which must become prevalent in every public constitution which has the chimerical conceit to want thoroughly to examine the heart and entrails and to take virtue and piety as the criterion of the estimation of merit and the distribution of offices. I feel most ardently the

deplorability of such a condition where the state wants to descend into the holy deeps of morality and to regulate them; it is deplorable even if the state means well, and infinitely more sad still when hypocrites get hold of judicial office, which must happen even if, in the beginning, it were from good intentions' ⁴². Here, in nuce, are stated the grounds of Hegel's hostility to enlightened despotism, and no less, to the policy of the Jacobins. He had already, in a letter to Schelling of Christmas Eve 1794, intimated his general agreement with Oelsner, the principal correspondent on French affairs of Archenholz's Minerva, whom Hegel met in Switzerland and praised as 'a young man whom one can see has worked a great deal'. On this occasion he had written to Schelling: 'Did you know that Carrier has been guillotined? Do you still read French newspapers? - If I remember aright, somebody told me they were banned in Württemberg. This process is very important and has revealed the total infamy of the Robespierrists' ⁴³. To have to regulate mens' hearts and dispositions is to attest that all changes which it has been attempted to produce in their way of life have been in vain.

Similar considerations later, if not already, inclined Hegel towards hostility to the Prussian machine-state and to the coercive politics of Fichte's works on natural law ⁴⁴. The Jacobins, the Prussian bureaucracy, the Dukes of Württemberg and Fichte had in common the 'chimerical conceit', articulated in the case of the last named as the prerogative of the Absolute Ego to ride roughshod over the constraints of the conditioned Non-Ego, to police the conscience of the individual ⁴⁵. Such a conceit betokened, in Hegel's view, the fact that communication and 'social work' had been neglected in the vain hope that good intentions and a talent for the intuition of what ought to be would transcend the self-interest upon which, according to Hegel, the spirit of all

despotic constitutions had 'grounded its Kingdom' 46.

We may say, then, by way of summary of this provisional outline of Hegel's practical outlook, that insofar as he expounded the dignity and rights of man, he was an advocate of Sollenpolitik, or of the view that what ought to be must prevail over what is. To that extent he may be considered to be sympathetic to the ends of the French Revolution. Yet it must be emphasized that his disapproval of Jacobin means to the regulation of moral dispositions distinguishes Hegel as one who believed that political and social change is not merely vain but vicious if the hearts and dispositions of men are not prepared in advance to eschew self-interest. Otherwise what they ought to do, the change which they ought to make, must be beyond their power and must devolve upon another. Because ought implies can, Hegel's Sollenpolitik is directed above all to the end of providing that men's dispositions are so fit that whatever they ought to do their laws enable but do not force them to do. As we shall see, Hegel regarded what men ought to do as a matter for determination according to the Sitten - a term which connotes the customary and legal ethics of a people rather than a universal morality - of their fatherland and its constitution. It is a Sollenpolitik which it is inappropriate to regard as revolutionary for, as we shall see, the implication of revolution is in Hegel's view such a radical wrench from custom that those amongst whom it is introduced cannot but feel that they are passive rather than active in its achievement. It is a major objective of this thesis to prove that the young Hegel, no less than the old, was cautious, not to say suspicious, of radical change. To this end it will be shown, particularly in this and the next chapter, that the sympathies of Hegel's early writings lie decidedly, notwithstanding the consensus in favour of the contrary view which has prevailed since the 1930's, with that kind of polity

which places considerable but always intelligible constraints upon social and political change. It will be made clear, for example, that the import of his reflections upon the genius of ancient Greece is not at all of a kind which may be thought to have been inspired by a romantic yearning - conventionally regarded as characteristic of youthful aesthetes devoted to singing the praises of the French Revolution - for the recovery of values supposedly extant in an Attic eutopia. They rather signify his interest in the problem of how best may political life be arranged so that the activity of individuals, on the one hand, and, on the other, of the community, appears not to be in competition, which would give rise to the injustice that either try to be unlike what it is.

2. Gelartheit and the terms of change within measure.

Hegel was not, of course, being simply contrary when he decided in 1800 that as far as he was concerned the 'reflective form', namely the Infinite or the Absolute, the systematic version of the ideal of his youth, which we may provisionally specify as one of harmony (not greatly different from Schiller's ideal of the 'harmony of a completely accomplished civilization' ⁴⁷) between objective social station and subjective sense of duty, had for the time being to be neglected, though it would not entirely cease to occupy him, in favour of less exalted interests. Nor was it a sense of inadequacy in the face of Schelling's systematic achievements, though such a motive is certainly detectable in his letter, that inclined him to undertake historical and sociological investigations of what he called, in the revised introduction to *The Positivity of the Christian Religion*, a presupposed need of human nature 'to recognize a Being who

transcends our consciousness of human agency'⁴⁸, instead of a 'metaphysical treatment of the relationship between the finite and the infinite'⁴⁹. Quite apart from Schelling's cavalier attitude to matters closely touching human happiness and its contrast with Hegel's view of the same issues ⁵⁰, Hegel had from the beginning of his scientific development evinced a long standing devotion to Gelartheit in preference to Gelehrtheit.

Once we have examined the impact of this outlook on Hegel the student, we shall be in a position to identify that in the JSN which, quite regardless of system, Hegel had elaborated as the expression of the ideal of his youth and was to incorporate into the VSN as their conceptual foundation. This is the chief interest of this study: to demonstrate the basis of the VSN in the JSN and thus to show that though the former fall far short of a philosophy of law they are much more than the Gelegenheits-schrift for which they have often been mistaken but are rather an attempt to explain long-standing German constitutional problems in terms of categories first devised for the purpose of criticizing judaic religious culture and Christian ecclesiastical practices.

That Hegel should have thought such an attempt to be worthwhile will come as no surprise to whoever attends closely to the import of the letter to Schelling. Reflection on the constitutional problems of Germany was to be Hegel's way back to intervention in the life of men. As such it was to be the means to the recovery of the ideal of his youth from premature systematization and probable dissipation of its analytic utility in respect of human affairs, a quality confessedly absent from Schelling's literal Absolute, which Hegel would later liken to a 'night in which all cows are black' ⁵¹. It was perhaps against the seductive monovalence of this Absolute, its sheer attractive

density, that Hegel wished first to 'strengthen himself' in Bamberg.⁵² and perhaps it was to the fortification of his ideal in analytic encounter with concrete problems that is due the ultimately more down-to-earth character of the eventual system. Hegel's mature Absolute, in contrast to Fichte's and Schelling's, is designed and fit for human habitation.

But what is more to the point, our present purpose being to explain the relation of the JSN to the VSN, Hegel's attempt should come as no surprise to whoever is familiar with the facts of another crisis of decision than that of 1800 - albeit decision not of his own making - which Hegel had undergone about ten years earlier. For when he was twenty, Hegel had been determined to abandon the study of theology in order to take up the study of law. He was frustrated in this design by his father, who had a heavy financial interest in the state-aided higher education of his son, which was only available to students ostensibly training for Christian ministry. But it is clear from the theological writings to which he knuckled down that Hegel continued to be strongly inclined to direct his studies towards the discovery of the significance of any historical matter for his understanding of the idea of law. That being the case, it is easy to see that the conceptual structure of the JSN could readily be exploited in the VSN.

Let us examine briefly the question, what, apart from his growing impatience with the repetitive course of instruction in the theological faculty of the University of Tuebingen⁵³, were Hegel's positive motives, what first induced him to regard the vocation of jurisprudence as the calling best adapted to 'intervention in the life of men'? It has been argued by Harris that it was Hegel's desire, as it was his friend Hoelderlin's, to emulate the Stuttgart poet and lawyer G. F. Staeudlin, who

was in turn a follower of 'the great champion and martyr of liberty and enlightenment in Wuerttemberg, the poet Daniel Schubart' ⁵⁴. But the admitted anachronisms involved in this argument should incline us to look for another who may have been a model for the young Hegel. Such another was most probably Johann Jakob Moser, the jurisconsult whom Duke Karl Eugen of Wuerttemberg had imprisoned from 1759 - 1764 on charges of sedition and who subsequently railed against the Duke's regime for its suspension in 1771 of the old Landtag. In one of the earliest extant pieces of Hegel's juvenilia, he wrote of Moser, 'our great patriot' who died in 1785, when Hegel was fifteen years old, that he had written more books than it is possible to read in a lifetime ⁵⁵. Hegel eventually came to adopt a rather more critical attitude to the constitution of the Holy Roman Empire than that struck by Moser ⁵⁶. Yet he seems to have sympathized not only with Moser's doughty resistance to enlightened despotism but to have identified with him as a particular exponent of a more general outlook, that of *Gelartheit*, which pervaded his work and lay behind his hostility, shared by Hegel, to the rationalism of Pufendorf for instance ⁵⁷.

Moser had learnt the ideal of *Gelartheit* from Christian Thomasius who first distinguished it from *Gelehrtheit*, as being more concerned with the social effect of knowledge and the education of worthy citizens than with formal criteria of truth and the learning of scholars ⁵⁸. There is to be found in Hegel's juvenilia express and clearly approving reference to the ideal of philosophical *Gelartheit*. 'Practical philosophy', he wrote down from an encyclopaedic work that he was reading in March 1787, 'relates to the outward and inner happiness of men' and in general 'shows how the free actions of men must be linked, through the will, to the good and how man can attain the highest

good and temporal happiness' 59.

Hegel did not, to be sure, mention Thomasius by name. But it is scarcely to be doubted, even though he was, at the age of sixteen, receiving this outlook only at second hand ⁶⁰, that Hegel was aware, as he recorded his various definitions of politics ('the theory of the happiness of whole states or civil societies') and of policy science (that part of politics which concerns 'the care of all kinds of private need, all that which does not pertain merely to the security of life and property') ⁶¹, that in this beginning of his scientific development in the 'needs of men', he was heavily indebted to a tradition in the study of public law which extended at least as far back as Thomasius' attempt to inspire legal scholarship with the ideal of Gelartheit.

Nor is it to be doubted that the chief critical significance of this ideal was certainly not lost upon the young Hegel. That lay in the fact that, because it involved attention to the social environment of knowledge, and the bearing of that environment upon both the manner in which 'truths', notably those of natural law, are apprehended and the forms in which they are put into practice, in short, because its measure of truth was rhetorical rather than exclusively rational ⁶², the ideal of Gelartheit contributed significantly to the awareness of the importance of the specification of universal public law in accordance with local and historical circumstances. Hegel carefully noted what had been maintained since Thomasius and sympathisers such as Justus Henning Boehmer and Heinrich Christian von Senkenberg (both of whom Hegel mentioned in relation to the study of particular german law, public and private ⁶³) had insisted upon it: namely the principle that as well as natural or universal public law, which defines in the abstract, as rational principles, the reciprocal duties and obligations of the citizen and ruler, theoretical and practical account

had to be taken of the 'particular public law of free states ... based on particular laws and contracts between the subjects and rulers. The most important sources of German particular public law are the old customs, the so-called imperial tradition, the Golden Bull, the public peace (Landsfriede), the imperial partition, the caesarian election, the peace of Westphalia' ⁶⁴.

We shall see in the fourth and fifth chapters how Hegel came to deepen his understanding of the peculiarity and individuality of customary sources of public law and to object to the prejudice in favour of the rationality of Roman law. This he was to do under the influence of a less eclectic practical-cum-scientific ideal than that of *Gelartheit*: *ratio status*. But it was surely *Gelartheit* which served him as a source of youthful inspiration when, aged sixteen, he wrote that there existed for him a 'natural philosophy which knows nothing of tedious and extensive enquiries; in order to discover the first springs of truth, it uses no method, it takes its material as it appears and reflects upon it purely at the discretion of healthy reason (*Vernunft*). One could call it worldly wisdom ... Man learns this wisdom purely through experience and worldly intercourse if he observes with fit sagacity everything which comes before him' ⁶⁵. Even in 1802, when he had joined more sophisticated company, Hegel was ready to give himself out as a doctor of this worldly wisdom ⁶⁶.

It may be said, then, that Hegel first encountered the science of jurisprudence, and concerned himself with the relationship between knowledge of this kind and political practice, as a sympathiser with the anti-rationalistic trend of the German Enlightenment towards emphasis upon rhetorical validity rather than rational truth, that is upon the 'truths' by which a society lives and expresses its peculiar character rather than upon those which its learned strata represent to it as the eternal truths by

which it ought to live, deviation from which is reproved as if it were from the order of nature. His sympathy for that trend is still more evident from the fact that about one week after he had made his notes from Sulzer, Hegel drew upon another luminary of the German Enlightenment, Christian Garve, for further reinforcement of his favourable opinion of Gelartheit and of the idea that validity resides elsewhere than that which is claimed to be eternal truth.

It may be that it was from Garve that Hegel first learned to be doubtful of the compatibility between system-building and effective intervention in the lives of men. For in Garve's Examination of the Faculties ⁶⁷, from which Hegel copied out a long extract in March 1787, there occurs a critique of the abstract method of the kind of philosopher for whom 'mathematics is a true touchstone' of certain and coherent truth ⁶⁸. This method, which Garve called Raisonement ⁶⁹, had produced 'the system-builder, the limited art-critic and the one-sided moralist' ⁷⁰. To it Garve opposed not a method but a gift for the imaginative or 'rapid survey' of 'human' or 'social' life and for sympathy with its relations of time and place ⁷¹. Hegel went even further, exaggerating Garve's sympathetic treatment of this 'practical understanding' ⁷² by endowing it with a destiny 'to apply the sciences to human life and to the real advantages of society' ⁷³. This 'destiny' or 'vocation for Praxis' ⁷⁴, as Garve put it, could not be fulfilled by one-sided moralists whose commitment to abstract principles of rationality forbids the sympathy with the pathological or doxalogical circumstances and relations of time and place, with custom and sentiment, in the absence of which the application of the sciences to, their enlightenment of, human and social life, cannot take place, except by coercive attempts 'to show man his business and his vocation' ⁷⁵.

We shall see in chapters three and five how Hegel, first in 1799 and then in 1801, elaborated the rudiments of the view, available to him in Garve's work, that enlightenment, indeed change in general, if it is to be thoroughgoing and not liable to be rejected as an alien transplant by the body onto which it is to be grafted, must accord with the present propensities of that body. This view was to be the foundation of his critique of the political rationalism of Fichte which has been aptly described by Kelly as a creed of coercive chiliasm ⁷⁶. Fichte's conception of political change, based on the assumption that 'unreason can never become reason', a dictum which Kelly calls a 'mythopoeic expression of rationalism' ⁷⁷, involves, as Hegel was to argue in 1801, the recommendation that change be effected by a 'community of rational beings' ⁷⁸ guided by the imperative of a one-sided Absolute, to be 'extraneously' ⁷⁹ imposed upon the contemptibly limited or merely 'present' world ⁸⁰ of the 'community of sensible beings' ⁸¹.

If license be given to resort to the terms of the poem cited at the beginning of this chapter we may say that Hegel, at the age of sixteen, was beginning to build, without any inkling that this would be the cause for which he would some day fight as a David against Fichte's Goliath, the opposite of the constructions of 'one-sided moralists'. He was beginning to build a 'four-walled' Absolute, 'decently put up' with a view to its being valid for and habitable by him whom Hegel, in a fragment of his own composition written at the age of fifteen, had called the 'common man', him whose enlightenment had always been rather of a worldly and temporal than of an otherworldly and sempiternal kind, him whose 'temporal advantages, temporal fortune' or happiness must be taken into account by the would-be practical scholar ⁸².

To say that Hegel was, very early in his career, hostile to rationalistic conceptions of change and enlightenment is not to

say that, any more than his mentors of the German Enlightenment, he absolutely preferred custom and opinion to change and truth. Rather he held that truth and opinion often coexist inextricably and that, accordingly, the protagonist of enlightenment or change should be considerate of the customary environment into which it is to be introduced, lest he destroy what is valid for the sake of what is true but invalid. As he put the matter in an essay which he wrote just two weeks before his seventeenth birthday and almost seventeen months after he had written that the enlightenment of the common man is not abstract but takes the shape of his religious and technological occupations ⁸³, he had been convinced by the endeavour of the Greeks and Romans (men who 'shared just the same faculties as ourselves') to fashion enlightened and sublime conceptions of God; of the 'difficulty of attaining pure truth undistorted by errors' ⁸⁴. Hegel was prepared to allow that the religious ideas and common opinions, especially of the Greeks, though they may be considered in modern times 'to be falsehoods, are perhaps truths' ⁸⁵. At the very least they served as strong curbs upon the passions against which 'the grounds of reason and a purer religion are not effective enough' ⁸⁶. They may not seem rational but they were actual or effective (wirksam).

Between his writing of this essay and of his excerpts from Sulzer and Garve, Hegel encountered an essay by Moses Mendelssohn on the question, What is Enlightenment? ⁸⁷. This article confirmed Hegel in view that, as we may put it, the reformer ought not to throw out the ethical or customary baby with the doxalogical bathwater, not destroy the truths by which a people lives for the sake of those by which it ought to live. So did a section which Hegel excerpted from Friedrich Nicolai's Description of a Journey through Germany and Switzerland wherein Hegel noted the argument that 'Culture (Kultur) and Enlightenment (Aufklaerung) are both

powerful sources of the well being of a nation; both must work together in proper relation to one another, in proper relation with the prevailing mass of activity and national cast of mind. Failing this their effect will be neither sure nor durable' 88.

It is interesting that in another section of this work from which Hegel took a brief extract, Nicolai, on the important question how culture and enlightenment might be assured a 'durable influence', rather than be rejected as a transplant alien to and contemptuous of the environment into which it is imported, argued that this would be facilitated not through enlightened despotism but through a middle-class which, so long as it is 'not obliged to worry about the most necessary requirements of the body, ... will and can think and be active. To put them in this position is the highest art of a King and certainly advances the welfare of a nation more than any direct orders or commands' 89.

Prescinding, for the time being, from the matter of the widespread preference amongst the leading lights of the German Enlightenment for change in accordance with the independent activity of the 'middle class of the people' rather than with the extraneous mandates of a political or transcendental master, a preference which, as we have seen 90, was to be a cause of disagreement between Hegel and Schelling, let us examine the more elaborate statement of the general view that change must be considerate of custom, and the more thorough analysis of the conditions or terms of change, Culture and Enlightenment, of which Hegel took note from Mendelssohn's article.

Mendelssohn had argued, according to Hegel's record, that if he 'may not propagate certain useful and humane truths without tearing down the principles of religion and morality to which man is accustomed, the virtue loving Aufklaerer will act with prudence and discretion and prefer to tolerate prejudice than to drive out the truth so fast entwined with it' 91. In order to understand

how Mendelssohn came to this conclusion, in which is implicit the idea that truth is a quality of subjective validity that may adhere to what falls short of objective truth, it is necessary to examine what he intended by his advocacy of an alternative to the eradication of customary prejudice.

His intention was that there should obtain a harmony between Culture and Enlightenment, which he distinguished as the two factors in civilization (Bildung). Civilization as a whole he defined as the product of 'men's industry and efforts to improve their social condition' ⁹². Failing harmony between Culture and Enlightenment the civilized (gebildete) nation can not be preserved from the danger which presents itself to peoples which have come, through civilization, to the peak of happiness, beyond which they cannot ascend ⁹³. Should Enlightenment advance in disregard of Culture, national happiness will be sacrificed.

Culture has to do with practical matters. In objective terms it is 'goodness, refinement and beauty in handicrafts, arts and social ethics'. In subjective terms it is the 'skill, industry and aptitude' for handicrafts and arts, and 'inclinations, drives and custom' in social ethics ⁹⁴. Nations have more culture the more, throughout all social stations, the aptitudes, skills, opinions, drives, social ethics and customs of their members are in conformity with their calling in civil life ⁹⁵. But as well as his calling to a civil station, the individual has a human vocation. Besides cultural adjustment of his subjectivity to his calling as a member of society, civilization requires that the individual should not regard himself or be regarded as a citizen only but as a human being and that his subjectivity should accordingly be adjusted to that end.

In this case, Mendelssohn meant theoretical subjectivity which, unlike practical subjectivity, has a value out of relation to social life. The Enlightenment 'which interests man as man

(and) is universal without social distinction' ⁹⁶ is to Culture what theory is to praxis ⁹⁷. In objective terms, Enlightenment is 'rational knowledge' ⁹⁸. In subjective terms it is an 'aptitude for rational reflection on things human, with a view to measuring their importance for and influence on the vocation of man' ⁹⁹. The vocation of man is the goal according to which his subjectivity must be adjusted and to which his striving should be directed ¹⁰⁰. Nations have more enlightenment the greater is the body of their scientific knowledge, the greater is the amount of that knowledge related to the vocation of man in the first place and to his calling as a citizen in the second; and the more that knowledge is propagated throughout all estates rather than according to social calling ¹⁰¹.

Mendelssohn admitted, however, that in reality Culture and Enlightenment are not so detached as is implied by his remark that 'Man as man needs no culture but he needs enlightenment' ¹⁰². A nation's language, which achieves Enlightenment through the sciences and Culture through social intercourse, poetry and rhetoric, exemplifies their mutual penetration. It is because it is such a good exemplar that the 'language of a people is the best index of its civilization' in theoretical and practical matters ¹⁰³. It is to be stressed that language is merely an index of civilization and is not a means to its conservation. On the contrary, it is something the precarious perfection of which is dependent upon the freedom of social intercourse so prized by this devotee of Socrates, and, as we shall see below, apropos the encouragement afforded by the political practices of the republican state to free intercourse even with the lowest masses ¹⁰⁴, by Hegel.

Mendelssohn's view is that either constituent is actually dependent on the other or impresses its character on the other. For on the one hand, the adjustment of practical subjectivity to

• the requirements of social station and calling presupposes a minimum of objective and subjective enlightenment; while on the other hand, enlightenment is not entirely universal without social distinction but, as it relates to the citizen, 'changes according to station and calling' ¹⁰⁵. In fine, culture depends upon and compromises enlightenment. Ultimately, though Mendelssohn did bewail the misfortune of the state in which the vocation of man is not in harmony with the vocation of the citizen, where 'the Enlightenment which is indispensable to humanity cannot be propagated among all estates without putting the constitution in danger, or bringing it to the ground' ¹⁰⁶, he affirmed that 'Certain truths which are useful to man as man, can at the same time harm him as citizen' ¹⁰⁷. For if, thanks to the erosion, in the name of human enlightenment, not only of civil culture, that is of practical adjustment of subjectivity to the social station to which it is called, but also of civil enlightenment, which is the theoretical buttress of that practical adjustment, man were without the objective and subjective determinations of social calling, the constitution would 'cease to be' ¹⁰⁸.

To put the matter in plain language, it may be said that if man's sense of social place loses the support of a customary social ethic, whose strength is not a little dependent on laws which supply a theoretical means of knowing that place, its rights and its duties, then his nation and its constitution must perish. This is the likely consequence of preferring rationality to the subjective validity of customs or social ethics and their corresponding laws, of stations and their particular rather than universal duties and rights.

On the whole then, to the end that Enlightenment and Culture progress in step with one another, in which case they preserve each other from corruption, the former being restrained by the

latter from promoting hardness of heart, egoism, irreligion and anarchy, and the latter by the former from arrogance, hypocrisy, effiminacy, superstition and servility ¹⁰⁹, it is for the best that the social condition of a people should be harmonized with the vocation of man chiefly through indigenous practical faculties ¹¹⁰. These faculties, assuming a minimum of human enlightenment, consist not only of the skills and customs which constitute the subjective aspects of technology and social ethics but also of a measure, in the case of the latter, of legal articulation, i.e. of the 'civil enlightenment' which affords 'every individual according to his station and calling' theoretical insight, and the skills requisite for its acquisition ¹¹¹, into the 'duties and rights of every member' of society, including himself. It is in virtue of this immanent criterion for the adjustment of subjectivity to communal needs, not through subjection to the transeunt standards of an exogenous objective order, that a people may be advanced and maintained in civilization.

In short, Mendelssohn may be said to approve only of change that consists, on the one hand, in gradual objective social improvement effected casually in the course of spontaneous personal effort and industry ¹¹² and, on the other hand, of the adaptation of subjectivity, enabled by the expression of custom as law deliberately to address itself to the object of national happiness, in the face of the circumstantial and internal vicissitudes to which all living things, amongst which Mendelssohn includes societies of people ¹¹³, are subject.

In what is undoubtedly the most important of the essays of Hegel's schooldays, 'On some of the characteristic differences (of ancient from modern poets)', composed three weeks before his eighteenth birthday, there is to be found evidence of the confluence upon him of the work of Garve and Mendelssohn. From Garve's



'Observation of some differences in the works of the most ancient and modern writers, particularly the poets' ¹¹⁴ Hegel borrowed the substance of his argument ¹¹⁵.

Our present interest is confined to one point of correspondence between Garve's view and Hegel's, namely that the ancients got to know the duties of every station yet 'without having striven to do them' ¹¹⁶. In Hegel's essay there is to be found exactly the same proposition: 'Each got to know the duties of other stations than his own without, however, any intention of learning (to do) them'. This statement nestles like a cuckoo's egg in the midst of an argument to the effect that the ancients were impressed by the 'sensuous appearance of visible Nature' whereas the moderns are 'better instructed in the inner play of forces and, in general, know better (than the ancients) the causes of things' ¹¹⁷. To this Hegel attributed the fact that ancient literature was simple and accessible to the whole people, while modern writers are obliged either to vulgarize their ideas or to content themselves with an audience that shares their level of understanding.

The meaning of the above proposition becomes more transparent if we unpack it in terms of the argument which Hegel had assimilated from the work of Mendelssohn and Nicolai. To 'know the duties of other stations' is the corollary of 'civil enlightenment' or 'theoretical insight' on the part of the individual into the system of social stations by which he is related to others and to the whole. It is to have one's subjectivity adjusted by theoretical means, knowledge of the rights and duties of every member of society, to one's station in civil life and to its obligations. This is the buttress of civil culture, of the practical adjustment of subjectivity to station, whereby the individual is dissuaded from any intention to answer any calling

but that for which he is fitted. When civil enlightenment, that is, law cooperates with civil culture, that is, custom, there obtains, as there did in the ancient world, notwithstanding the fact that society was socially stratified and that legal and customary obligations varied according to social station, a healthy condition in which the wisdom of poets is available to everyone. For while there may be classes, the laws and constitution make their 'conceptions and culture' intelligible to one another. That this was not the case in Germany, where, on the contrary, the 'conceptions and culture of the classes are ... too distinct for a poet of our times to be understood and read by everyone' ¹¹⁸ is the reason why Klopstock, 'our great German epic poet has ... not been accessible to as many as would have been the case if our public relationships were Greek' ¹¹⁹.

Hegel clearly did not believe that the remedy for Germany's cultural fragmentation into a mass of 'common people' sustained by 'adventurous stories which are connected neither with our religious tradition nor with true history' and, on the other hand, 'polite society' entertained with 'brilliant and charming' ¹²⁰ imitations of classical literature, lay in the introduction of Greek customs and laws to Germany. He was surely sufficiently impressed by Garve's denial that the 'cast of mind of the ancients' ¹²¹ could be recovered to have thought this possible, let alone desirable. That would have involved, after all, the 'direct orders and commands' which Nicolai denied could exert 'durable influence' upon the 'activity and national cast of mind' of the Germans ¹²². Rather he looked for a solution of the kind suggested by Nicolai to what Hegel, clearly under his influence, called the excessive pre-occupation of all but the upper classes with the 'ever increasing needs and comforts of life' ¹²³.

That solution, it will be recalled, was that the middle class should be encouraged to 'think and be active' so that Enlightenment might 'spread from the middle to the lower classes

of the people', on condition that it too be 'not depressed by poverty, superstition, foulness and dull sensibility'. Likewise might Enlightenment then spread 'into the higher ranks' ¹²⁴.

On condition, of course, that it eschew a life of merely private or economic pre-occupation, a thinking and active middle class could arise to be the vehicle for the spread of transparency or intelligibility in public relationships so that all might genuinely know rather than merely inhabit their places in society. This would enable political community to be founded in spite or indeed on the basis of social difference and transform society into a whole, intelligible to all, of parts or callings to be performed by each. Not the direct orders and commands of enlightened despotism but another and higher art of kingship, providing a legal framework within which private men could regard themselves also as members of a public and taking account of their weight in the process of determining the extent to which change, if it is to endure or be endured, must accommodate the prevailing cast of activity and mind, was to advance this condition of civilization. ¹²⁵.

The idea of constitutional monarchy constrained by representative institutions to conform law to prevailing customs or culture was in 18th century Germany the equivalent, held of course in the utmost possible contempt by rationalists such as Pufendorf, of the classical idea of the status mixtus conservative of the customs of the ancient republic ¹²⁶. It was possibly from Garve, whom Rosenkranz named as Hegel's first mentor in ethics ¹²⁷, that Hegel learnt to esteem not only constitutional monarchy over political and transcendent despotism alike but also the more general ideal of the 'state of law' ¹²⁸ which held sway among the peoples of republican Greece and Rome. At any rate, if it was not from Garve that Hegel first learnt the virtues of this ideal, it was probably from him whom Garve presented as its chief classical

exponent: Cicero.

Apart from the fact that Hegel is known, at the age of sixteen, to have spent at least seven hours a week studying Cicero¹²⁹ and to have made excerpts from Garve's translation of Adam Ferguson's Principles of Moral Philosophy, as well as from Garve's Remarks and Essays on Cicero's Book of Duties, it is reported by Rosenkranz that, at the age of fourteen, the budding philosopher chose to take from Cicero the following definition of the state: 'councils and groups of men associated by law'¹³⁰. It is highly likely that when he came to study Garve, Hegel was impressed by his use of Cicero to illuminate Ferguson's moral philosophy, and particularly his concept of 'public spirit'. The man of public spirit, Garve wrote, is one who has come to 'regard himself as part of a whole'¹³¹. And it was to law alone that, following Cicero, Garve and, for sure, Hegel, credited the capacity to afford men the theoretical insight, necessary to that end, that their practical activities alone could not supply.

It is no less likely, moreover, that when he encountered Mendelssohn's warning of the danger to the state in which civil enlightenment and culture do not co-operate, Hegel thought immediately of the purpose to which Cicero addressed law as a means: to arrest the cycle of decay to which living things succumb in which everything does not keep to its proper place or take up the place appropriate, in the face of changing circumstances, to the end of conserving the public good.

There is reason to suppose that, as early as when he was fourteen, Hegel had already arrived at a fairly sophisticated understanding of the problem of the relationship between change, its agents, its causes and its patients and that it was this precocious understanding which guided his reading of his mentors. For in his diary, at the beginning of July 1785 he wrote: 'For a long time I have pondered, what is pragmatic history; I have obtained today (but I do not know through whom) an idea of it,

albeit a fairly dim and partial one. A history is pragmatic, I believe, when one does not merely relate facts but also the character of a famous man, a whole nation, its morals, customs, religion etc; when one unfolds the distinctive changes and variations of these from other peoples', traces the ruin and the rise of great kingdoms, shows what consequences this or that event, or change of government, has had for the constitution of the nation, for its character etc., and so forth' ¹³².

From his contemporary interest in Cicero we may infer that Hegel was very probably interested in the treatment by Gibbon of the idea that Rome suffered the effects of an implacable cycle of decay; that he also had in mind Montesquieu's Considerations on the Causes of the Grandeur and Decadence of the Romans as a species of pragmatic history. It is scarcely credible, however, that he would have forgotten from whom he got his definition of 'pragmatic history', were it Gibbon or Montesquieu, Voltaire or Hume. Hegel may have arrived at his definition in the course of his reading one J. M. Schroek's Textbook of World History of which he had remarked in his diary, four days earlier, that 'no world history has yet pleased me better'. Schroek was said to have avoided 'the offence of collecting many names, ... (he) wisely leaves out the many Kings, wars ... and such like others ... best of all, he connects the realm of scholarship with history, similarly he takes care to refer to the situation of the scholars and of the sciences in general' ¹³³. Schroek's main virtues, as far as Hegel was concerned, were that he was interested in the historical role of practical scholars and did not care to be a 'collector' (Sammler) of insignificant data about kings, queens and 'all that'. This was in fact Schroek's own bugbear. In his Portraits and Biographies of Famous Scholars he praised as pragmatic that historian who sought out the 'origins and conjunctions of events'. This interest 'differentiates him from the dull collectors (Sammlern)' ¹³⁴

A more authoritative definition of pragmatic history than the 'dim', albeit quite representative, view of it available in Schroek is to be found in the work of J. C. Gatterer. That Hegel knew of him or his reputation cannot be established with any certainty from documents belonging to the period prior to 1802-03. It may be supposed that he did on the basis of his own insistence in the VSN that his task was to understand the system or spirit of events ('System der Begebenheiten' or Geist). For Gatterer had made concern with the Geist der Begebenheiten the trademark of the pragmatic historian, arguing that 'no event in the world is, so to speak, insular. All depend on one another, cause others, produce others, are caused, are produced, and again cause and produce. The events of the great and the lowly, of the individual man and all men. of private life and the big wide world ... all are involved in and bound up with one another' ¹³⁵.

We shall see that in the JSN, as well as in the VSN, Hegel followed the pragmatic method, explaining for instance the history of the Jewish people not in the simplistic and monocausal terms of the deeds and intentions of the great but according to the spirit which they represented; not in terms of battles and migrations, but according to the complex relations in whose context these took place, determined by Judaea's situation as a 'small country, by trade connections, and by the national unifications brought about by the Romans' ¹³⁶. It is not really important how long Hegel had been familiar, by the time he wrote these words, with the work of the foremost exponents of the pragmatic method, such as Gatterer, whose impact cannot be dated, or him with whom Gatterer co-operated in the translation and revision of the World History ¹³⁷, A. L. von Schloezer, from whose Political Journal Hegel made the first ever of the juvenile notes and studies that have come down to us ¹³⁸. What is important is

that, at the age of fourteen Hegel had already made clear to himself his interest in the peculiarity of national characters and constitutions, the circumstantial and inward causes of changes in them and their ascent and descent from the peak of national happiness. Like Gatterer and Schloezer, exponents of *Gelartheit* whose interest in the spirit or systematic conjunction of events sprang from their zeal to understand the relationship between political practice and constraints of the real world ¹³⁹, Hegel sought to understand the reciprocal action upon one another, the involvement and bond with one another, of custom and constitution. It was this quest that excited his interest in law as that upon which, as we are now in a position to see, he believed, like Cicero, depended a people's capacity to maintain its identity in the face of adversity.

There are throughout Hegel's juvenilia no express statements to the effect that the purpose of law is to provide a people a criterion whereby it can measure the impact upon its identity of changes not of its own making but due to external influences or to variations in the circumstances of its members; that it enables this because it is a determinate and authoritative statement of the ends to which the community is devoted or of the social organization which it requires, whether to those ends or as an end in itself, a statement according to which such influences and variations may be judged serviceable or derogatory; that as such a statement it provides the community the means, or the basis upon which, deliberately to consider either how to redress circumstances to conform to law, how to change law in order to accommodate circumstances, or both; and that in either case it is that which enables the community to change itself rather than merely be changed. It will become evident, however, that there is ample justification for the interpretation not only of Hegel's

VSN but of the trend of his earliest studies, particularly of Mendelssohn, as instinct with the idea that law is a means to the self-maintenance, in the face of changing circumstances, of the integrity of an ethical entity, a people, not in such a way that it remains simply what it was, but so that it becomes, by way of active response to events, what it intends to remain during and after their course: itself. For something to become what it intends to remain may seem an absurd conception, but it is not. For if that which would have been changed but for active response to circumstantial vicissitudes remains self-same in the face of them it may be said to have become what it would not otherwise have been. If its active response is to redress circumstances, it has become manifestly but is not simply what it was. It has performed, or acted in fidelity to, its essence. If its active response is deliberately to change its law it has become manifestly but is not simply other than what it was. For none other than what it was has reformed its essence.

Nothing less determinate and authoritative than the legal definition of the customary rights and duties of the occupants of all social stations can ensure that in the face of changing circumstances individuals and societies can so far change themselves, by performance or reform of their essence, as to escape the dangers present to those whose disposition is to respond to events habitually or mechanically, that is with intent to stay put just as they were; so far shed habit, as if it were, so to speak, an old snakeskin, in order to reveal one which though new is the same refreshed rather than abashed by experience, that custom may continue to hold out against corruption.

Hegel's conviction was that nothing can maintain itself which has no criterion by reference to which it can make changes necessary to the end of becoming the same as it intends to remain.

This conviction is the analytic consequence of the view shortly to be credited to him, that change is necessarily felt to be radical, and their part in it passive, by entities not taught to live according to law but which, because they live only according to habit, neither knowing nor thinking what they do, do not know either what they suffer or what is to be done about it. As Hegel was later to argue, a people that 'does not know its law' is like a flock of sheep that can be led at random by the nose¹⁴⁰. Their experience is amorphous. Unless what happens to any entity can be brought within or located without the compass of its definite criteria of identity it cannot see to what extent and in what respects it is liable to be changed and so can certainly not begin to rectify its suffering. Hence it must feel itself mechanically moved from one condition to another entirely incommensurable and as such opposite condition. It cannot but feel itself to be passive and can conceive of rectification of its suffering only as an exact restitution of its old condition. But though that might happen it is not deliberately done: the essence has not been performed.

It must be admitted that there is in his juvenilia no express support for this interpretation. But it may be derived from two sources of which we may consider the later first. In the essay on some of the characteristic differences of ancient (from modern poets) Hegel had made very clear his view that among the ancients there had survived long only those two forms of dramatic poetry, tragedy and comedy, which had acquired, in the course of their development away from the spontaneous festivities of the devotees of Bacchus and the smutty farces of peasants, strict formal qualities which prevented their degeneration into hybrid forms. Tragedy especially, whose connection with the ideas of distribution and retribution was not lost upon Hegel ('it got the name

from recompense') ¹⁴¹, had been given dramatic form by Aeschylus, 'the first to introduce two personae and to create a formal theatre instead of which had used to serve the shelter of branches' ¹⁴². There had followed the introduction of unity of place, a rule which was 'sacrificed only very seldom for the sake of greater beauty' ¹⁴³. Only the possession of regular formal criteria enabled Greek tragedy ultimately to attain its perfection in the form of the Chorus and to maintain this perfection.

An earlier source of confirmation for the interpretation given above than this essay of Hegel's eighteenth year, and a less technical, is to be found in a definition of which Hegel took note at the same time as he had selected Cicero's definition of the state. That definition was of change and it was taken from the modernized version of the Socratic dialogue, Phaedo, written by him in whom Hegel encountered a spirit kindred with Cicero in point of his belief in the cycle of decay and the arresting capacity of law: Moses Mendelssohn.

According to Mendelssohn 'a thing is said to have changed itself when, of two opposed determinations which can be said to belong to it, the one ceases and the other begins to be effective'. Hegel adapted this definition in a most significant respect. He wrote that it is rather the case that 'a thing is said to be changed when, of two opposed determinations which can belong to it, the one ceases and the other begins to be effective' ¹⁴⁴.

The implication of this revision is that it is improper to speak of a change in a thing from one condition to another exclusive of its predecessor as if the thing in question had changed itself. Reflexive change may by implication be defined as that which a thing performs in order to become what it intends to remain: itself and not a quite other thing. When a thing changes itself it is rather the case that it does so not with

a view to eradicating its former condition, for that would be self-contradictory, but to endowing that same 'determination' with a form better adapted to its continued affirmation under changed circumstances. This it does precisely in order that it should not be or feel itself to be the patient, as if it were an entity without freedom, of causes of change operative upon it from without or of circumstances that move it mechanically, but that it should be and feel itself to be an agent throughout its experience of events. For if the possible determination or condition to which it is converted, whether deliberately by another or inadvertently by its own default, is entirely other than and opposite to that to which it is used (what Hegel's mentors called the prevailing mode of activity or cast of mind) and in which it is accustomed to regard itself as an agent, it can in no wise regard its new determination as the effect of its own deed. Hence it was that Hegel did not allow that change is reflexive if it is from one determination to an incommensurable other. That is to say that reflexive change does not happen by other means or on an other basis than law, for change made in terms of law is precisely that which does not admit of the eruption of new determinations not amenable to commensuration with the old but seeks to adjust the new to the old and the old to the new.

In truth, Hegel's revision of Mendelssohn's definition, unless it was a thoughtless slip of the pen, was probably intended as a correction of a faulty expression of what the young philosopher may have known his elder's position to be, as it was expressed in the article, What is Enlightenment?, that had appeared thirty two months before Hegel made notes from it and nine months before he made his collection of definitions. It may be that Hegel, at the age of fourteen, already knew that

Mendelssohn believed that 'civil enlightenment' should articulate customary social ethics so that their particular practitioners might also have the theoretical insight that enables the maintenance of responsiveness to essential civil calling without which the constitution 'ceases to be', so that besides the idiocy of merely practical life devoted to the service of need and comfort, they might avail themselves of the public idiom of law. It may be that Hegel already, when he read his *Phaedo*, knew of Mendelssohn's preference that 'human enlightenment' should be subordinated to civil, to the end that valid constitutions should not entirely cease to be but rather change themselves, in order to endure, on the basis of the law already available to them.

That at any rate was the view which Mendelssohn expressed in the work which Hegel certainly did know by the age of fourteen, in which he found a view of change inveterately hostile to the imposition upon a people of 'determinations' utterly other than those to which it is accustomed.

As a schoolboy, Hegel was greatly exercised by the question so popular among seventeenth and eighteenth century rationalists as to why Socrates, with whom they identified as a paragon of enlightenment born ahead of his time, had on his deathbed offered sacrifice to Asclepius, the Greek god of healing. Contrary to those who believed that he was delirious with hemlock ¹⁴⁵ or, with Racine, that 'Plato had his teacher die as he had lived, with irony on his lips' ¹⁴⁶, Hegel held that Socrates had deliberately opted, in order not to offend the masses, to fall in with their customs (*Sitten*). His primary source for this opinion, apart from his schoolteachers, Professors Ofterdinger and Cless, was Mendelssohn's analysis of Socrates' character as a 'virtue living Aufklaerer'. In order fully to understand the import of Hegel's judgement of Socrates, of which a full statement

is available only from manuscripts dating from the period after he left university, where he wrote, apart from a rehash of his ideas on classical poetry ¹⁴⁷ a few sermons, some fragments and one important essay ¹⁴⁸, nothing that remains extant, it is necessary to essay a provisional analysis of what the idea of change, as communicated to him by the Aufklaerers with whom we have dealt so far, meant to the young philosopher.

We have seen that Hegel was inclined, because of his practical bent, to the study of law; that his mentors in this and related studies were prepared to prefer what is or can be valid for a particular cultural or customary environment to what is supposedly eternally true but cannot be made to count as such, either in theory or in practice, for the subjectivity of participants in any given system of social ethics. We have seen that they believed accordingly that the civilization of these ethics or customs must be worked up out of the 'inner powers' of any prevailing 'cast of mind' and must consist in making transparent, intelligible and a basis for community despite difference of the relationships between its 'inner constituents' rather than in their dismissal by one-sided rationalists as unintelligible and ridiculous. We have seen that they presupposed the systematic interdependence of custom and constitution in their confrontation with changing circumstances and looked more or less explicitly to the ideal formulated by Cicero of a state of law conservative of the customary condition of things Roman, of *rerum publicarum*, as the condition of the intelligent regard for and practical devotion to the whole, the condition of the public spirit without which ruin and decay must set into the life of a people and its constitution must cease to be. We have seen that they regarded the power of law, in short, as that without which a people cannot change itself but only be changed and held the articulation of custom into law to be the only desirable form of change or enlightenment, on the

grounds that no change can endure that cannot be endured by its patients. And we have seen that they suspected radical change to be unendurable by the individual and collective subjectivity of those to whom it happens because it cannot but appear to it as utterly opposite to the conditions under which it is accustomed to regard itself as active.

We shall see in the penultimate and final chapters how Hegel came to the conclusion, which accords with the view of change set out in the foregoing, that the processes of change set in train by revolutionary France and enlightened despotic Prussia alike were not qualified to be called durable ¹⁴⁹ and so could not be considered species of genuine modernization because they were utterly offensive to the customs of their peoples. For the time being, however, let us ignore the contradictory myths of the radical youth and the ageing reactionary, and attend to the view of change which earned Hegel the affectionate soubriquet: the 'Old Man' ¹⁵⁰.

3. Sinnesaenderung and the conservation of community.

Hegel was no believer in the possibility that a sense of subjectivity, of being at least a member of the collective author of changes of which one is individually a patient, a sense which as we shall see he credited to citizens of republican Greece and Rome ¹⁵¹ and which he thought might be afforded to the citizen of the modern representative-cum-monarchical state ¹⁵², could survive the blinding light of Pauline conversion from the pathetic manners of the 'old man' to the apathetic behaviour of the new in strict accordance with a law free of pathological incentives.

The kind of conversion in which he did believe inhered a promise that, rather than be negated, the subjectivity of practical,

sensible men would be enhanced and affirmed by its being made intelligent as well as sentient, is one which consists in the persuasion of the disposition of the citizen away from inclination to preserve the customary conditions of his own well-being at the cost to the community of its loss of the capacity to conserve the end with which those customary conditions were originally in harmony and to which they were dedicated, namely the well-being and happiness of the whole people. This is the negative aspect of change in disposition.

Its positive aspect consists in the conversion of the disposition of the citizen towards inclination to adjust his habitual or merely practical regard for custom so that the community may, rather than have to obliterate it, consecrate with the form of law that in custom or culture which remains, while men's individual efforts and industry introduce developments in social life, consistent with the well being of the whole people. Thereby can be maintained the traditional locus of identity of interest between the individual citizen and his polity: the customs with which the individual has grown up and become familiar as the sanctuary of his personal freedom can be respected by the public authority to the extent that they do not derogate from the public good as defined by the constitutional law which affords theoretical insight into their relation to the end of civilization, or to the extent that they can, if serviceable to that end, be enacted as law. In those cases, assuming a minimum of continuity in this process of adjustment of customary developments there is no danger of disaffection of the individual from the public authority to which, on the contrary, the advantage accrues that it can depend not only on the obedience but also on the affection of the individual. There exists, over and above this advantage, the benefit to the public that the force of law

attaches to customs advantageous to the whole people and hence that custom is not liable to be regarded as a convenient resort for private parties intent upon abuse of the public good for the sake of their private utility. It was a common complaint among Hegel's elders, which he too expressed in the VSN ¹⁵³, that was voiced by J. C. Gatterer: 'I live in a time when Germany, according to its laws, is supposed to be a constitutional monarchy but according to custom is a state where a powerful ruler can usurp the law when he wishes and devour a weaker state. Even a weak ruler - be he prince, duke or nobleman - is still strong enough to torment and expel ... people whom he calls his subjects' ¹⁵⁴. It was commonly held, in short, that law ought to command the affection due to the custom which it accommodates while custom ought to find protection in that accommodation from abuse. The disposition of the citizen would then be to follow custom but not from mere habit and to obey the law without grudge.

None of the change sought by Hegel and his contemporaries need involve substantive alteration of custom by law ¹⁵⁵, except in the sense that, once more assuming continuity, enactment as law is reserved to customs consistent with the happiness of the whole people and that customs inimical to public well being are, vis a vis others not so, relatively invalidated, though not necessarily prohibited, by virtue of their non-enactment. It should be noted that any custom, as such, is potentially inimical to public happiness. Whether it is or not depends on the spirit in which it is practised. If its practice is insisted upon under any and all circumstances, for its own sake or that of its practitioner, without intelligent regard for its relation to the end of national happiness, it is likely to cause social ills. Change must occur above all in the manner in which customs are observed so that they may, rather than be eradicated, persist

along with or in the form of law.

In what, then, consists the adjustment or conversion of the disposition of the citizen which makes this possible? The change to which Hegel attaches chief importance does not affect the substance of custom but rather the ethical subject himself. It involves aversion from habitual or mechanical observance of customary and statutory obligations alike. Such observance may preserve the good conscience of the individual or even the whole people but at the same time subvert the well being of the people by inhibiting its capacity, on the one hand, to change custom, or rather prevent from becoming such whatever is bad, and, on the other hand, to change law should the need for substantive change unfortunately arise. It involves conversion to what Hegel regards as their active, vital or lively performance of duty. Such performance Hegel calls ethical or (perhaps mindful of a pun on the German word for ethics and customs - Sitten - and on the root of the Greek word for ethics and people) sensitive to the customary life of the people, rather than moral or respectful of the unusual rules or maxims of universal legislation. Conversion to inclination to ignore mechanical rules for the sake of the life of the people, which may be reduced to a state of distress by scrupulous regard for rules and anxiety over their relative priorities ¹⁵⁶ is called by Hegel a 'change of disposition' (Sinnesaenderung). This term he borrowed from Kant ¹⁵⁷ but turned, as we shall see, to subversive effect.

Against the possible objection to this analysis, which is abstracted from all of Hegel's JSN, namely that it imputes to him an esteem of law as a sure preservative, given Sinnesaenderung, of ethically valuable customs and so contradicts the impression given by the frequency of an apparent equation by him of both custom and law with mechanism or habit, whether in the guise of Kantianism or Pharisaism, let it be provisionally defended on this

account: he used the concept of *Sinnesaenderung* to denote a change which is adverbial rather than substantive, in that it involves conversion from the habitual disposition, according to which customs and statutes are observed to the letter so that regardless of any ill consequences to the happiness of the whole the individual may in strict justice defend himself against reproaches on that score, to the ethical disposition, according to which customs and statutes are observed with regard to the spirit of their original dedication to and harmony with public well being. This shows him to have regarded neither custom nor law as necessarily habit forming or mechanical. Hegel, as we shall see ¹⁵⁸, never subscribed to Kant's prejudice against human law that it treats man merely as a phenomenon.

But before we proceed to the explanation of the JSN in terms of Hegel's appreciation of the need for the conversion of the disposition of individuals to agreement with the purpose of conserving things customary in their original condition of ethical vitality and from decline to a position of habitual mechanism, and of the need for public law appropriate to and conservative of that disposition and condition, we must explain the significance of Hegel's early 'Socratology' and indicate its pertinence to the understanding of his 'Christology'. We have to consider how each of these studies is in fact an implicit ethnology of law.

Not until Hegel had left university to become a family tutor in Bern did he make any extended effort to analyse Socrates' behaviour as a 'virtue loving Aufklaerer'. In the first manuscript in which he did so, Hegel argued that as an enlightener and as a reformer Socrates had to conform his art of instruction to the 'genius and manners' of his people ¹⁵⁹. Had he done otherwise than attempt to lead his contemporaries subtly to agreement with him, on the basis of their own experience, had he decided

upon the course (which would have been inconceivable for a Greek and have caused anyone to be made an object of derision who took it ¹⁶⁰) of preaching to the Greeks from the housetops, he would certainly not have attracted to but rather would have alienated from his cause men of action whose energies could be relied upon, in his absence, to promote Sinnesaenderung. He would have attracted instead, as did Jesus, only 'petty spirits' ¹⁶¹ quite unfit to change themselves let alone to promote change in others that would be felt as immanent rather than transeunt.

Socrates felt he could rely upon his method to effect reform and enlightenment that would be felt as immanent rather than transeunt change and as congenially corrective of rather than utterly opposed to custom, because custom in his world was already informed by public law. It was because he lived in a republican state whose public relationships were such that 'each citizen spoke freely with the others and ... polite urbanity was pretty well the lot of the lowest masses' ¹⁶² as well as of the 'great generals, statesmen and heroes of all kinds' with whom he had to do ¹⁶³ that Socrates did not feel inclined to impress a new shape or 'mould' upon the 'old man'. Whoever became his pupil remained his own master, 'each in his own speciality' ¹⁶⁴. Greek society, as Hegel had argued in 1788, was such that each could play his part and at the same time talk about the whole, the better that he might know what must be the relation of his particular skill to the good life of the whole. Socrates offered his contemporaries changes which simply afforded them greater self-knowledge, the ability to review what they were doing and what to do about what they suffered, and therewith temperance, the means to rededicate their specialized occupations, in which each was to remain his own master, to the service of the republic. No fisherman became his fisher of men: 'None had to abandon hearth and home. With each he began from his trade and guided him thence to the spirit... He developed out of the souls

of men concepts that lay therein and needed nothing more than a midwife' 165.

We witness in this manuscript the development by Hegel of the concept of political genius, the quality of one who is sufficiently attuned to the spirit of those whose reform he intends to gain their sympathy, yet sufficiently enlightened sternly to correct their 'world and its prejudices' 165a Socrates is the model for anyone who intends that his contemporaries should undergo a change of disposition which they may yet not feel to have been imposed upon them ab extra as if they had nothing to do with its achievement but all to suffer for it. It is of course analytic to the concept of Sinnesaenderung that it cannot be achieved if such offence is given to the disposition due for change that in order to vindicate its sense of the worth of its present existence, its activity and cast of mind, it must reject any prospect of change at all. It is of some interest to note that, on the back of his manuscript, Hegel excerpted passages from an article by W. G. Tennemann 165b on Socrates's purpose which sharply distinguished it from that of Plato, the prototypical builder of an uninhabitable Absolute, who had in view not the change of his contemporaries but 'the education of the human race in general, the perfection of ethics as science and the foundation of a philosophic legislation and constitution' 166. Socrates, on the contrary, was more interested in civil than in human enlightenment, more in the adjustment of laws and customs than in the foundation anew of the former without respect to the latter. Socrates had no interest in the casting of utterly new 'Mosaic tablets', nor in inscribing upon the hearts of his contemporaries an 'ordinem salutis' that departed substantially from their republican tradition 167.

What is truly remarkable about his manuscript on Socrates is that Hegel imported into its treatment of his political genius

terms which so resound with Machiavellian overtones that it can scarcely be doubted that he was, as early as 1794, heavily influenced by the thought of the florentine secretary. It may further be supposed that in his design of the concept of political genius, which in the VSN he was to present as that of one whose mission is to regenerate the law of the land ¹⁶⁸, he turned to the Machiavellian idea that the individual or institutional or statutory representative of virtue, by which is to be restored the virtue of the people corrupted by the incremental growth of 'inconveniences', must be adapted, if the republic is to 'remain the same whatever befalls', to the character of the materia to whose regeneration it is devoted ¹⁶⁹.

This idea, if it occurred to Hegel, may after all merely have confirmed what he had already learned from his mentors and from the work of the chief of the pragmatic historians, Montesquieu, by whose understanding of the relationship between custom and constitution Hegel had so early been impressed and which was itself instinct with the views of Machiavelli ¹⁷⁰. In any case, the presence of Machiavellian influence upon Hegel's conception of Socrates as a political genius intent upon encouraging his contemporaries to be active in the cause of reflexive change rather than passive, is quite unmistakeable in that passage where he wrote that Socrates was not interested in the education of heroes in 'martyrdom and suffering' but in heroes 'in action and in life' ¹⁷¹. It is also to be detected in another sketch of Socrates's character, likewise drawn in 1794, in which Hegel argued that the value of Socrates as a model for the political reformer consists in the fact that 'he fashioned his wisdom in the tumult of active life, in the battles where with danger to his life he saved his friend; he devoted his life to the improvement of his fellow citizen' ¹⁷². His example, unlike that of Christ, was

therefore not of the kind which incites 'great heroes in suffering, great exponents of martyrdom' ¹⁷³, the imitation of which virtues is, of necessity, conducive to behaviour that has about it 'something gauche, something that cannot hold its own against experience and progressive acquaintance with the world' ¹⁷⁴, something passive in the face of fortune. True virtue, in contrast to such behaviour, is that which, though it may need a model like Socrates, is something 'self-discovered, self-exerted' ¹⁷⁵. For its model, being human rather than divine, excites effort towards an ideal achievable by human means, whereas it is only by divine means, in which they are not active, that men suppose they can become Christ-like ¹⁷⁶.

If we attend to the context in which Hegel deployed this contrast between the kinds of behaviour to which men are incited whose models are Socrates and Christ, the manner of whose imitation he believed to be determined by the light in which their contemporary followers regarded them, we will attain a position from which it may be seen quite clearly that he meant to identify as the chief point of difference between the Greek and the Jew the fact that, unlike the former, the latter addressed himself to men whose customs, for want of enlightenment, had become so derogatory to the happiness of the whole that the law was not a living force in their hearts but an alien order to be observed grudgingly and only to the letter. Their law was not something adroit, something that can hold its own against experience, but a millstone. For the conversion of such men extra-ordinary incentives, intellectual and sentimental, such as miracles and the promise of personal immortality ¹⁷⁷, had been necessary. The supernatural aspects of Christ's teaching were needed

To storm the fancy of dreamers

Where the torch of law burns dim ¹⁷⁸.

It was just their want of regard for the law that made the Jewish people the medium through which was distorted the 'more or less pure sense' ¹⁷⁹ in which Christ advocated a life well pleasing to God into the basis of a superstitious system of ritual practices from which is entirely absent any semblance of self-discovered and exerted virtue.

Societies where such practices prevail stand in grave need of their correction by law to a greater extent than ought to be necessary in the relationship between law and custom: 'The history of all ages has shown how depraved is the constitution of such states or even classes ... where all natural relationships are perverted through these immoral religious Galimatthias. Even nowadays, history shows us the sad picture of states where these systems still prevail, e.g. in the Papal States, in Naples, where it is only the never quite destructible goodness of human nature... and only the force of the civil laws (which have to correct those principles in some measure in order that society can stick together in emergency) that prevent vices and evil inclinations from being the outcome of the doctrines which sustain them' ¹⁸⁰.

Hegel clearly regretted that any people should come to such a pass that law, the ultimate safeguard against social disintegration, should have to be called into play against matters of practical subjectivity, with which it should always be able to progress in harmony. Superstitious dogmas asserting the dependence of being well-pleasing to God upon the performance of 'certain practices ... or certain privations and disciplines of the body' and upon the profession of saving belief in Christ's virtue rather than the practice of virtue itself ¹⁸¹ had perverted practical subjectivity to the point at which it is supposed that through faith 'one can be exempt, get dispensation from the laws

of morality' ¹⁸² and through indulgences and asylum 'escape the arm of justice' ¹⁸³. That this had come to pass in modern times was due to its having been so in Judaea at the crucial time when was born the religion which came to be diffused throughout the Roman Empire.

Although Hegel's general objection to the practice of the Christian religion was that it had tended to discourage self-discovered and acquired virtue because its object had appeared to be blessedness in another life rather than supposedly unattainable virtue in this ¹⁸⁴, he was not hostile to the very idea of extra-mundane rewards and punishments. He believed indeed that it was quite natural and hence the cardinal point of all religions, because it is 'grounded in the need of practical reason to establish a connection between this and another life' ¹⁸⁵, a need which stems from the contingency in this life of the consequence of happiness upon virtue. But he believed no less that the idea was liable to abuse and that care must be taken that only a version of it compatible with morality (rather than one whose system of incentives and disincentives transfixes the human agent in a state, whether hopeful of salvation or desperate, of utter heteronomy) should be allowed to take place in the faith of a people ¹⁸⁶ and be maintained in that form which is in accordance with the needs of the whole.

If we now recur to the manuscript in which we first encountered Hegel's antithesis of Socrates and Christ, and of the cultural environments in which they were situated, we find there an indication of what Hegel considered a doctrine of the connection of this life with another which was rationally and morally acceptable ('true') yet culturally or ethically viable ('valid').

Socrates died like a Greek, with a sacrifice to the God of healing. He conceived his death, in his conversation with his

followers about immortality, as a release of his soul into a state of health. This state of health, one of elevation above the needs of the body which confine the citizen's regard to the part rather than the whole, was treated as having an analogue in the political life of the city (Socrates preferred death to ostracism precisely because the former would estrange him less from the laws of Athens, to which he would not be disloyal, than would the latter) in which like elevation is to be found. This is what Hegel meant by arguing that among Socrates and his companions immortality was a hope or postulate whose premisses their lives and very beings exhibited ¹⁸⁷. In the midst of life itself, Socrates, in contrast to Christ, who 'formed himself in advance and in solitude' ¹⁸⁸, already inhabited a state of intelligent regard for the whole without which, like this life in the absence of an 'after-life', the activities of practical subjectivity would be vacuous. Socrates and his followers had lived political lives. They were not 'mean spirits' who needed miracles and the incentive of immortality of the person, who did not have alive in themselves the premisses, namely the idea of 'virtue and the highest good', of a hope of immortality in which no 'mortal companion' figures. The hope of true immortality, not that of a 'corpse risen from the Grave' ¹⁸⁹, was not weak in them because, as we may suppose Hegel reasoned, the 'torch of law' ¹⁹⁰ burnt brightly in their fancy. It was in the city, and its law to which they daily rededicated their skills that they imagined their immortality consisted. Their imagination made it so.

As we shall see, Hegel was deeply impressed, probably first by Montesquieu, with the view that so heartily did the ancient republican citizen believe that his freedom was constituted by the laws of his community, the guarantee of the immortality of its identity and so of the security of his customs, that he was

ready to die for their sake, not looking for eternal life for his own individuality because his 'whole soul was in the republic; the republic survived him and there hovered before his mind only the thought of its immortality' ¹⁹¹. In this equation of immortality with citizenship resides the essence of Hegel's idea of self-wrought *Sinnesaenderung*, as that which makes no call upon supernatural aid but consists (thanks to the confidence of the citizen that in the activity of the community inheres the significance of his own) in active rather than passive or mechanical devotion of his practical subjectivity to the service of the whole, a whole made intelligible by the laws which he daily co-operates in 'manifesting and maintaining' ¹⁹². This is the very sense in which Hegel thought of change, for without vital devotion the community would always be liable to be changed inadvertently; and it is the sense in which he conceived of it as reflexive, as the deed of those to and through whom it happens, for except they perform it, it might as well not occur: if another perform it in spite of them, their practical interests persist regardless, rejecting the change that would revolutionize them but can do so, if at all, only momentarily.

It was the weakness in them of this disinterested 'postulate' of immortality, the dimness of their civil enlightenment, that made the Jewish people, unlike the Greek, susceptible to outward and inward revolutions not of their own making in the course of which they could only suffer and from which they could not but retreat on account of the offence which revolution must give to the men of habit among whom alone it occurs.

In a manuscript written immediately but one after the second of his antithetical sketches of Socrates and Jesus and immediately but one before the last which he drew in the period before he embarked on the writing of his more comprehensive essays, Hegel

argued that since the ideas, such as other-worldly reward and punishment, which are natural to all religions, make religion, because they are grounded in the needs of practical reason, so effective in the 'strengthening of the springs of ethical life'¹⁹³, religion is a legitimate object to be nurtured by 'the lawgiver and administrator of a state'¹⁹⁴. A right version of them may be envisaged by him to be fixed in the faith of a people¹⁹⁵, Hegel seems to have reasoned, precisely because religion belongs to that aspect of civilization, namely culture, which is deficient in inherent theoretical self-consciousness. Usually, the 'will of a nation for a determinate religion has already long since made itself clear before its government could fix its objects; a government can only make its purpose the reproduction, the maintenance, the perpetual renovation of knowledge of the same'. This, as Hegel had already learnt from Garve especially¹⁹⁶, presents a material limit to the action of the lawgiver but just because this part of culture is so spontaneous and haphazard the renovative and conservative function of the lawgiver is all the more essential.

For, as Hegel believed, it has to be asked whether the religion which was once appropriate to a people, if it stay put in the same form without response to completely changed circumstances, remains equally appropriate. The pragmatic question has to be posed of any given religion whether it was 'originally so constituted as to be able, with every change in form of government, every variation in enlightenment, to maintain its dignity, its usefulness as a public as well as a private religion?'¹⁹⁷. The people may have sloughed off or changed what was peculiar to the time of its origin. Or, as is generally the case in non-republican states 'where the people is seldom in a position itself to enquire, itself to choose but passively does

as it is instructed' ¹⁹⁸, those who have it in their power to direct religion may have had an interest in securing the form which they inherited from their forefathers and in passing it on unchanged (unchanged, that is, except in the all-important sense that everything about it has changed). In the latter case, it takes centuries before the whole nation realizes the need for change whose object is to stem further inadvertent changes. The trouble is, however, that a people used to passivity 'is usually satisfied with a thrust and soon lets the tiller be wrested from its hands again, making further progress and improvement impossible for centuries' ¹⁹⁹. The reform of such a people can only be fitful and involuntary. Precisely because it is so it tends to be radical and as such cannot but present a prospect frightful to those who would as well as those who would not undergo it. Hence it happened, Hegel argued in the last of the pieces in which he contrasted Socrates and Christ, that precisely because Christ launched a direct attack upon the 'morally destructive statutes of the Jews', upon their 'positivity', a concept which we shall soon have occasion to define, he could not but evoke a reactionary response from them. Unlike Socrates, who 'did not directly combat the mythology of his people', Christ made direct and subversive attacks on the positive religion of his people, a tactic which led back 'eo ipso to a positive religion' ²⁰⁰.

Hegel did not, of course, specify what constitutional means and 'particular institutions' ²⁰¹ he had in mind as those which would confer upon any religion the aptitude perpetually to renovate itself in order to mitigate the hazards to its identity, and to its relation of appropriateness or utility (Zweckmaessigkeit) to the people, of untoward changes in or about it. He went only so far as to suggest that the availability of means to that end diminishes in non-republican states for the reason, we may suppose,

that their peoples exhibit in general, and not only in religious matters, a passivity that does not dispose them to engage in the perpetual process of adjustment of culture and enlightenment ²⁰².

Two manuscripts, one dating from 1792 and one written in 1794 immediately after Hegel's first piece of extended Socratology, make clear what conditions he believed to be prejudicial to the possibility of reflexive change. He argued in the later of these manuscripts ²⁰³ that of the constitution, legislation and religion of any people it is religion that is the last to be divested of the 'childlike spirit' in which all three originate, the spirit according to which, as in a family, power is naively entrusted to a single man. It is in political matters that, as the feeling grows that their 'childlike trust' is being whimsically abused, the people first conceives of the idea of definite laws to limit the authority of its rulers. Hence we may infer that Hegel's belief was that unless a people has achieved that level of civilization where the rule of law prevails, its religion cannot but be one whose conception of the connection between this life and the next involves an idea of reward and punishment whose spirit is the opposite of the republican idea of immortality, the analogue of the idea of ready deference of the part to the needs of the whole, and depends upon an idea of God, as a mighty lord subject to 'inclinations, passions, even moods ... with whom ... one can ingratiate oneself' ²⁰⁴, opposite to the proper idea of God as a 'moral lawgiver' ²⁰⁵ to whom nothing but a good way of life is well-pleasing. A people that looks to its Gods as governors of the 'weather, floods, plagues and so forth' ²⁰⁶ is not one in which resides the sense of activity or subjectivity essential to reflexive change in religious and political matters alike, for its criterion of what it is determined to be is quite outside itself and is itself beyond measure: . it is determined to be

whatever takes the fancy of its transcendental or mundane masters.

We shall have occasion, in the third chapter, to see how arguments akin to Hegel's criticism of the Judaic conception of God as a jealous master have been taken, and that by theorists claiming methodological affinity with the mature Hegel, to the conclusion that peoples subscribing to such conceptions are incapable of representation. Though we may be sure that Hegel would have agreed with this view, we shall see that it does not follow as far as he is concerned that the God of a people which is representable, if it must have a God, can only be a 'Deist God' worshipped by a 'society without aspirations' ²⁰⁷, though it may be unstintingly admitted that a representable society can have no Gods that derogate from the constancy of law.

In the earlier manuscript Hegel had treated this childlike spirit, in its manifestation in Judaic law and religion alike, as one whose tendency was entirely towards passivity. The Jews did not at all regard their law as the intelligible expression of the unity in practice of the people, as the immortal measure according to which change is evaluated, but as a shibboleth which must cease to count upon the mishap of the destruction of the Temple, the merely visible representation of its validity. Their law was to depend upon what happens rather than to be that upon the basis of which active response is made to what happens. Thus, as Hegel noted from Moses Mendelssohn's Jerusalem, 'According to the rabbinical teachings, all punishments, in so far as they are purely national (i.e. matters of human law) had to cease to be right with the destruction of the Temple' ²⁰⁸. Without the reinforcement of theocratic authority, and the appearance of providential succour, the Jews had no faith in their laws. Not only were the Jewish people prepared to depend the maintenance of their law upon good hap but also they voluntarily ceded

its administration to a king to whom they submitted rather than be 'overburdened every moment' with the business of critical interpretation of the laws. Their response to the destruction of the second Temple was to allow the commonwealth to lapse and to demand of their prophets the institution of a perpetual monarchy. The Jewish people were less reluctant to put up with the 'frequent repression and exactions in great things' than they were to tolerate petty incursions upon their private lives ²⁰⁹. Their punctilious demand for private propriety in trifles was the obverse of the absence from their public relationships of a 'spirit of community, which sets aside the petty passions and knows action on behalf of the whole' ²¹⁰. This characteristic was a consequence of the collusion of religious and political despotism, which Hegel considered, as we shall see in the next chapter, to be a particular affliction of the children of Israel. Among a people whose conception of law is that it may be set aside according to the whims of God or nature, the sense of insecurity must be at such a pitch that a spirit of community, of regard for anything but sensible satisfaction, must be impossible to nurture. Among such a people, the due priority of law over all else, including religion, is inverted so that it is upon a jealous God rather than upon laws conservative of individual autonomy that its maintenance as a people depends.

Chapter Two

A Portrait of the 'Old Man' as a theologian

'Religion must help man to build his own little house, a home which he can call his own' (Hegel, the Tuebingen Essay, 1793)

1. Religion as an aid to political rejuvenation

We are now in a position to understand the import for Hegel's constitutional thought of the distinction which occurs for the first time in his own writings at the beginning of the manuscript from which we have just culled his critique of the passivity of the Jewish people in the matter of the maintenance, administration and interpretation of their laws. This distinction is of subjective from objective religion, a distinction which recurs in his subsequent theological essays as that of a religion for the man of decisive and sensitive wisdom, from the religion of the man of calculative Understanding ¹, that of a custom-built religion from one built according to plans devised without regard to the specification of fitness for habitation by the common man ², that of a public from a private religion ³, that of an accessible from an arcane religion ⁴, that of a religion whose object is to encourage men in joyful and gay devotion to the ethical whole without which life lacks significance from one whose effect is so to intimidate their intelligence and imagination that they conceive of God as an arbitrary judge with whom they must enter into a gloomy transaction whose terms of exchange are that the individual should suffer in this life in order to attain a blessedness for his own person redeemable in the next ⁵. In Hegel's most comprehensive terminology it is a distinction between a religion that

is and a religion that is not originally so constituted as to be capable of adaptation to changing circumstances, a religion that does not and a religion that does require that its doctrines and practices stay put in the midst of experience, a religion that 'acts negatively, so to speak' ⁷ and one that is positive.

As we have seen, that the religion of a people no longer bears in itself the traces of the childlike spirit of passivity in which it originates presupposes that neither the constitution of the people nor its legislation do so. The significance of Hegel's interest in the degree to which a religion may be considered subjective ⁸ is, therefore, that this is an index of the extent to which the political culture in which it is situated is capable of maintaining itself by other means than staying put. It has now to be shown that Hegel's view is that it is upon a people's legal articulation that depends the extent to which its religion shares this capacity. This is demonstrable from the 'Tuebingen Essay' of 1793.

In this essay, on the Leibnitian premiss, which Hegel's reading of Mendelssohn, Garve and Ferguson must have impressed upon him, that human sensibility is continuous and pregnant with reason ⁹, it is argued that the importance of religion consists in the fact that through its appeal to the heart men may be led to do good deeds to which the appeal of reason to the intellect is not always sufficient to incite them ¹⁰. A subjective religion is one which adapts the theological ideas of God and immortality to this end. It is a public religion in so far as it thereby influences the 'actions and mode of thinking' ¹¹ of a whole people, appealing to the sentiment of love in some men, or of fear in others ¹².

Hegel claimed that his concern was not to detail what theological doctrines appeal to what kind of heart, but to enquire

what institutions are needed for doctrine effectively to educate the disposition of coarse men away from self-interest, 'the pendulum whose swinging keeps their machine going' ¹³ and towards the 'gentler virtues of philanthropy' ¹⁴, the 'seed of beauty'. This 'seed of the finer feeling' or moral sensibility is said to be buried by Nature in every man ¹⁵. Subjective religion has to help in the process of performance of the essence of man by cultivating his nature rather than by mechanising it, by enacting its propensity for the 'gay fulfilment of human joys or ... the doing of great deeds' ¹⁶ rather than by distorting activity into an inhibited clockwork.

Significantly, Hegel did not yet answer his own enquiry as to how a religion must be so institutionally, rather than doctrinally, constituted that it is 'active negatively, so to speak', that it 'lets the soul express itself freely and openly and does not distort its longing for activity' or for the expression of human capacities in such a way as to preserve civility ¹⁷ without recourse to repression of practical subjectivity. The significance of this omission consists in the fact that Hegel was becoming increasingly aware that a religion cannot do this through its own independent institutions, which, nevertheless, he felt obliged to discuss. In fact, Hegel indulged for several pages in reflection upon the questions, concern with the first of which at least he had disclaimed, what kind of doctrines are inappropriate to a subjective religion? What kind of psychological faculties are involved by objective religion? and so on.

But he returned before long, albeit in metaphor, to the problem of institutions, which, as we shall soon see, he regarded as dependent or ancillary, with the question, How can religion help man to 'build his own little house, a home which he can call his own ... ?' Arguing that he is a Buchstabenmensch ¹⁸ who

inhabits a system of knowledge of God, nature and human obligations which has been impressed upon him from without rather than built 'in and from his own personality' ¹⁹, Hegel conveyed by means of two metaphors the conditions upon which he believed can be set up a folk or public religion, accessible to others than the cosmopolitan and enlightened. The effect of such a religion is primarily negative, 'to give as little occasion as possible for cleaving to the letter and ceremonial observance' ²⁰ of the law of God and so to give as much scope as possible to the capacity of its adherents for reflexive change: such a religion must help man (its role is decidedly ancillary) to build a community that is either like a home which each has built for himself or one which he has inherited but knows as if he had built it. It must help him to put up a custom-built little house or a building dwelled in, rather than a scarcely inhabited palace ²¹.

Yet again, Hegel abandoned his institutional line of inquiry, contenting himself, as before ²², with an encomium on disinterested and altruistic action, Reason in the affectionate or pathological guise of love, its monadic analogue. He also expanded upon the view, to which we did not attend when it first occurred ²³, that objective religion is adapted for private purposes only, because the emphasis of the intellect, to which rather than to the heart it appeals, is upon the scrupulous observation of rules rather than upon the sensitivity of decision to what is ethical. As he had argued that the prudent cleverness of the understanding in the deposition of rules concerning how men ought to act produces 'at the moment of actual decision ... a tangled pattern of behaviour, a pattern of perpetual anxiety and inner conflict' ²⁴, so again he denied that the instruction which objective religion gives about cases of conflict of duties ²⁵ is any more fit than moral instruction to influence 'the way we make up our minds at

the moment of action'. Where it presumes to do so there arises 'an endless train of scruples ... which is absolutely opposed to the resolution and strength that is requisite for virtue' ²⁶, a gauche inflexibility which cannot hold out against progressive experience ²⁷.

The question then recurred to Hegel, How must folk-religion be constituted? But again he preferred, despite his disclaimer of any intention to investigate the doctrinal aspects of this question, to examine these and ceremonial rather than institutional aspects. Thrice, then, did he avoid this issue. It eventually took its place after his treatment of doctrinal and ceremonial matters. As for the doctrines of a public religion, Hegel argued that they must be 'grounded on universal reason' ²⁸, which is to say that they must not so contradict the understanding of natural phenomena to which their believers have attained as to oblige thinking men to controvert them. For in that case their defence would involve such refinement and nicety that they must lose the simplicity upon which depends their utility for purposes of practical guidance. They 'will play a much greater part in the formation of the spirit of a people, than if the commandments are piled high and artificially organised, and if precisely for that reason they require an ever increasing number of exceptions to be made' ²⁹. It is essential for like reasons, that is, to avoid liability to controversion, that the doctrines of a public religion aim 'to affect the spirit of the people only in great matters, partly directly and partly through the wonder of profoundly impressive ceremonies that are bound up with them' ³⁰. They must not involve religion in the operation of civil justice nor 'presume to become a code of private judgement' ³¹. For that, as well as the nicety and difficulty of enactment entailed by their incredibility, would give rise to too much 'strife about their interpretation'. This in turn would occasion the

establishment of an institutional authority which would by no means have the effect of liberating human impulses to free activity - required by Hegel of the institutions of a public religion ³² - but the contrary: it would enhance the satisfaction of the will to power of the priesthood ³³.

We get an idea of the kind of 'institutions' which Hegel had in mind from the section in which he argued that the doctrines of a public religion must appeal to 'fancy, heart, and sensibility' ³⁴. For, he argued, rather than depend upon the authority of revelation and the historicity of its claims, doctrine should appeal to the imagination of the faithful, which may otherwise venture upon notions which contradict its essence. It should enter a mythic and ceremonious channel. But care should always be taken that myths and ceremonies are not regarded, even by the vulgar, as the essential ideas and practices of the religion ³⁵. Nevertheless, it is Hegel's opinion, in which he agreed with Leibniz that ceremonies are 'likenesses of virtuous actions' ³⁶, that without ceremonies and the like 'a public religion is quite unthinkable' ³⁷. Devotional and sacrificial rites have only in the Christian church descended to the crass level of a shameless transaction with a God debased by the idea that his favour may be purchased ³⁸. But they can take the quite innocent form of, say, sacred music, song, folk-festivals and harvest celebrations, all of which 'enhance devotion' and give the devotee little opportunity to practise his religion with a mechanical, lifeless or habitual disposition ³⁹. The 'institutions' of a public religion are, as it were, ministries of fun.

From Hegel's argument that the doctrines of a public religion 'must be so constituted that all the needs of life, the public affairs of the State, are bound up with it' ⁴⁰, it emerges that the institutions which ensure that a religion should not have a

stultifying effect upon practical and theoretical subjectivity are in fact none other than the institutions of the State itself. For the festivals and ceremonies of which Hegel wrote so allusively in the section of the Tuebingen essay on 'fancy, heart and sensibility' turn out to be nothing other than 'public festivals' for which religion ought to furnish mere ring leaders ⁴¹. As well as these festive occasions, whose business is to promote joy and gaiety, courage and resolution ⁴², public religion should, if it is to affect the people, 'go along amicably with them everywhere - stand beside them in their business and the more earnest affairs of life' ⁴³.

It is plain that Hegel meant it to be understood, when he averred that public religion 'goes hand in hand with freedom' ⁴⁴, that it is the constitutional system whose institutions and practices lead the way and set the pace and that the positivity or non-positivity of religion depends upon whether it is the tendency of the political order to stay put or to be so constituted that it can assimilate advances in culture and enlightenment, of whose spontaneity and subjectivity it must be permissive, and can discourage that from entering into custom whose promotion of superstitious ideas of God and immortality, of 'adventurous roving of fancy', inclines the people to idiotic fear of persons rather than respect for law and to private - spiritedness in the pursuit of blessedness.

If it cannot, it must happen that the consequent passivity, selfishness and evasive contempt of the law, an evil disposition that cannot change itself and must repulse all attempts to change it, becomes the cause in return of increasing incapacity on the part of the whole to do anything about the disintegration which it suffers.

It is obvious that the simplicity which Hegel recommended

should obtain in the influence of religious doctrines upon action, in order that its vitality should as little as possible be inhibited while its resolution should nevertheless be induced to have regard for the 'rights of others' ⁴⁵, is nothing but an analogue of the harmony of culture and enlightenment, custom and law, and of the intelligibility of civilized public relationships, which was argued in the first chapter to be the chief intellectual legacy inherited by Hegel from his mentors.

It is extraordinary that even the longest commentaries on the Tuebingen Essay should have failed to take account of its significance for the development of Hegel's constitutional thought, to the extent that Hegel's latest biographer, H. S. Harris, can in all innocence speak, as if their status were equal, of 'the development of religious consciousness and ... of political consciousness at the same time' ⁴⁶. It is all the more extraordinary that no-one has yet brought to attention what Hegel obligingly makes so clear at the rather faltering end of the essay, by means of a pair of allegories which reinforce his metaphorical message that the communities which men inhabit must be custom-built while yet their habitation must be intelligent, so that of everything that has a place 'it is known and it can be told, in the words of Lessing's Nathan the Wise, 'how ... and why' it got there' ⁴⁷. Practical and theoretical subjectivity must go hand in hand.

In these allegories, having argued that it is 'in part the business of the public religion, in part of political relations' ⁴⁸ to form the spirit of the people (in matters, it will be remembered, only of great moment, so as not to invite disaffection of the individual from the laws) Hegel spoke on the one hand of 'Time', on the other hand of 'fortune', as the 'father' of the Genius or spirit of a people. By this relationship he meant to

signify the dependency of a people upon the contingent conditions of time and place for the satisfaction of their physical needs, the pursuit of which gives rise to manifold cultural relationships whose chief characteristic is their determination by blind fortune and unintelligent force ⁴⁹. By the second relationship which holds between the Genius of a people and another parent, the maternal relationship, it is evident that Hegel meant, since he spoke of the mother of Genius on the one hand as 'the politeia, the constitution', on the other as 'freedom', to convey the idea of the civil enlightenment of uncivilized force. For the father of Genius is Force ⁵⁰. This enlightenment is of a kind that need not repress culture for it is a process which is begun at birth ⁵¹ and is so constant that conflict can scarce arise between the constitution and her darling, whose whims she can therefore permit more often than repress ⁵². Here is a remarkable anticipation of the mythopoeic presentation, in Hegel's later lectures on the Philosophy of World History, of the idea that Law-constantly reviewed - puts a term to the Polybian cycle of decay to which irregular peoples are prone: 'it was first Chronos-Time-that ruled; the Golden Age, without moral products; what was produced - the offspring of that Chronos - was devoured by it. It was Jupiter - from whose head Minerva sprang ... that first put a constraint upon Time, and set a bound to its principle of decadence' ⁵³.

Finally, Hegel related the Genius of a people, in the one allegory to religion and in the other to fancy, as it were to a midwife, wet-nurse and nanny, all rolled into one, who educates her charge in all the fine arts, teaching him to adorn his relationship to 'the circumstances of the time' and the 'fetters' or 'brazen bond' of his needs with roses ... so that he could delight in these fetters as his own work, as a part of himself', just as the heir to an ancestral dwelling is helped by religion

to get to know his place, to be at home within his own walls and under his own roof no less than he is who builds his own little house ⁵⁴. The wet-nurse does her ancillary work, encouraging the soul of her charge to a joyous, gay and gracious 'consciousness of its power and its freedom' ⁵⁵, a consciousness which, once cognisant of the 'rights of others' ⁵⁶, contributes as well to the capacity of the whole as to that of the individual, to resist the vagaries of Time and fortune. That this is achieved is due to the fact that she works 'in harmony' with the Constitution ⁵⁷, co-operating to make the spirit of the people so confident in its own strength that, unlike the aged genius of the western world, it can without trepidation, without the timidity of a people that has not imbibed the spirit of the laws with the milk of its mother and wet-nurse ⁵⁸, 'fall ravenously', as Hegel had put it early in the Tuebingen Essay, 'upon anything new', working it into its constitution or rejecting it if it would put a yoke on its 'proud and free neck', the neck of a free republican such as Octavius opposed to caesarism past and future ⁵⁹. Here is the very opposite of the impotence of the 'ageing genius whose particular characteristic is its firm adherence to tradition in every respect, from which it gets its fetters like an old man with the gout, grumbling about it but unable ever to have done with it' ⁶⁰.

A knotty problem arises in connection with this characterisation and its implications for the interpretation of Hegel's youthful attitude to Rousseau. Much has been made of the secondary evidence furnished by C. P. Leutwein, a friend of Hegel at University, according to which Hegel believed Rousseau to be a thinker devoted to the breaking of all conventional 'fetters' ⁶¹. Yet in a manuscript collection of so-called 'Materials for a philosophy of subjective spirit', made between 1793 and 1794 ⁶²,

Hegel is to be found berating Rousseau as an exponent of an impotence (Ohnmacht) which stems from an introverts aversion of his soul from the unacceptable: 'He seeks not to receive it - the new - into usage and custom' ⁶³. Hegel appears to suggest that if only the lonely dreamer were willing to accept the direction of his soul by clear and intelligible criteria or measures of identity, that genus of which this study treats particular, as opposed to eternal, public laws as species, he would not need to adopt this defensive attitude to change, an attitude that precludes reflexive change on the part of individual and community alike. For it would enable the soul not merely to feel variations caused in itself, to the causes of which the natural reaction, as to a 'devil-you-don't-know', is aversion lest the changes be destructive of identity, but so clearly to 'perceive variations in affects' ⁶⁴, on the basis of an intelligible and definite criterion of identity, that considered evaluation of the service to or derogation from the integrity of the whole done by the 'new' may be made and deliberate action taken in response to it ⁶⁵.

It is by no means being suggested that Hegel was inclined to adjudge Rousseau to a deliberate exponent of the 'moral impotence and the feeling of being a machine' which he later argued to be that in general which is the basis of the possibility of a positive religion ⁶⁶. It seems highly probable, however, that Hegel faulted Rousseau for the ambiguity in his political philosophy with respect to the question upon what basis, other than the diametrically opposed alternatives of the withdrawal of the individual into solitude or the total alienation by the individual of his freedom to the sovereign, could response be made to what has been identified as the chief problem to which Rousseau proposed these alternative chimaeric patterns of order. Hegel was equally

exercised by the problems of 'complexity, mobility, immorality and pain of life (ironically called perfectibility)' which Kelly has convincingly argued to have motivated Rousseau ⁶⁷. But in Hegel's view neither the first chimaera, that of solitude, so characteristic of Rousseau, nor the second, that of intensely constraining social order, the other Rousseauan solution to which Fichte responded so warmly, was fit to furnish the citizen the sense of self-determination in the course and cause of change, the sense that changes in his disposition are reflexive rather than transitive, the sense without which custom and constitution must become estranged. Both solutions are too radical for there to be this sense of self-determination: the first is reactionary, self-determination only in the sense of stubborn arbitrariness in the face of the 'new'; the second is revolutionary, determination of the self to be entirely other than it has been, self-abnegation for the sake of the 'new' in despite of and contempt for the 'old'. Either solution proposes a course whose consequences are not at all measurable in terms of customary law, for their infinite yardsticks are Nature and the Absolute Ego.

Between these solutions, or their likes, Hegel proposed to steer a middle course. This is apparent from his first extended piece of Socratology to which let us return in concluding this section. For it was the temperance of Socrates that Hegel preferred, on the one hand to the excesses of a scrupulous Nathaniel or Diogenes, who, 'in order not to have to do violence to his heart, in order to spare himself a dilemma', totally estranges himself from the complex, mobile and 'involved relationships of civil life when the most decided integrity will often find itself in an ambivalent clash of duties e.g. frequently between justice and sympathy in particular, and between general principles of justice or at least of prescriptive rights' ⁶⁸, and

on the other to the excesses, practical in Pythagoras and theoretical in Plato ⁶⁹, whereby it was attempted absolutely to remould humanity, once and for all to harmonise the discord of civil relationships.

2. Exchange of present satisfaction for the joy of political immortality.

The relationship between individual and community, custom and law, spontaneity and regularity, which Hegel idealised as that which obtained in the Athens for which Socrates had fought, estrangement from whose laws he deemed tantamount to confinement to private personality and forfeit of the joy of immortality, may be expressed as a relationship of voluntary or ready exchange. The political principle to be described in Hegel's concept of reflexive change, promoted by the genius in his fellow citizens so that it may be exhibited by the community as a whole, may be stated as follows: change, in its aspect as the *Sinnesaenderung* which permits custom to be rescued from degeneration into self-serving habit and made compatible with a constitution which has respect to the conservation of custom in accord with its original end, as well as to its spontaneous enrichment, is essentially a matter of exchange between the individual and his community whereby the individual adapts himself to the demands of an ethical and intelligibly designed whole, which is absent in the sense that it does not exist for the majority of individuals as the immediate object of their activity. But while the individual accepts the negation by the community of his private habitat, admitting its greater intelligence of the means to enact the original end of custom than is available to his primarily practical subjectivity, so long as he is pre-occupied with the ever-increasing needs

and comforts of life, the community acknowledges that it must engage the affections of the citizen so that he feels as if he had something to do with its ethical life or activity. Hence it must allow him independence, leave him alone in his private habitat, so far as his satisfaction of its subordinate needs, which is present to him in the sense that it is the immediate object of his activity, or the habits that he regards as necessary, does not tend to derogate from the happiness of the whole.

There must, in short, be a political division of competence according to which, in order that the individual may continue to have the sense of his own activity, without which he cannot sympathise with but can only feel offended by the autonomy of the community in superordinate matters (those 'earnest affairs' ⁷⁰ which touch its very capacity to maintain its identity), he must be allowed to use in his own habitual way those things which are matters of opinion rather than of great moment ⁷¹ as far as the integrity, well-being and happiness of the whole is concerned. To grant such liberty to the individual at the same time as to suppose him to live in the complex and mobile midst of the involved relationships ⁷² of civil life was to show a confidence in the probability that men trusted by the state to live their own lives can yet learn the disposition to have regard for the needs of the whole and the rights of others ⁷³ that was foreign to the outlooks of such as Rousseau or Plato and, as Hegel was to discover, Fichte.

Hegel clearly regretted, as may be seen from one of the essays of 1794, parts of which we have already considered, the emergence of the 'great inequality of classes' which 'simplicity of ethics' ⁷⁴ had mitigated in republican Greece and Rome. There, especially in Athens, had prevailed political community in the company of social difference, thanks to which no class pretended,

as did the scribes and pharisees in Judaea, to be the exclusive interpreters of the national poets ⁷⁵, to be the 'keeper of myths' ⁷⁶. Rather there was easy intercourse, that was not however technical interference, between all classes, so that the sagas, the common historical civil and religious tradition of the whole people ⁷⁷, were the 'property of everyone in like measure' ⁷⁸. This common property was not liable to be appropriated by those to whom 'time and a manifold apparatus of knowledge' ⁷⁹ is available as a means to their attainment of a 'control over the public faith which can broaden itself until it becomes a very extensive (political) power or at least holds sway with regard to the doctrines of the public religion' ⁸⁰.

But Hegel's animus towards the erection of political upon social difference should not be taken to signify a Rousseauan yearning for Spartan solidarity or for the recovery of the 'uniformity of the earliest condition of mankind' ⁸¹, either by regressive reverie or progressive revolution. The genius of the childlike spirit, which, as we have seen ⁸², Hegel did not regard with unmixed approval, had given way to the pressures of individuality ⁸³ out of whose efforts and industry harmony, rather than uniformity, had to be derived if civilisation were to be maintained. Modern conditions could be made right for political community despite manifest and irrevocable social difference only if it were constitutionally provided that no elite could determine men's behaviour or convictions in matters of opinion, such as the doctrines of the public religion, but also in principle any such matter of cultural subjectivity, as if they were matters of earnest upon which the integrity and happiness of the community depends. In that case no social group could by its exclusive possession of certain technical skills gain a political advantage whereby to constrain the practical subjectivity of others.

Rather all skills would be devoted to the good of the whole. None would intemperately intrude upon the business of the whole. Only in that case, wherein public law maintains the conditions under which the state can be regarded equally by all as considerate of the present satisfaction of each rather than lose the regard for it of the majority because of its preference for the objects of the immediate activity of any particular social group, could be recovered the readiness of exchange between the individual and community, whereby the former makes concessions to but one absent or intelligible purpose and the latter to all present or sensible purposes, something like which Hegel supposed to obtain in the republics of the ancient world, where the state as well as all individuals minded its own business rather than that of any particular interest.

As we shall see in the due course of this chapter and beyond, Hegel's view was that in the post-classical world political exchange must take the form of a system of political representation whose purpose would be so to prevent the appropriation by any social group of control, through state action, of the subjectivity of others, that the deeds of the community, not appearing to be more attributable to any other particular social estate than to his own, would not appear to the individual as an offensive constraint upon his own activity. We shall see how there is implicit in Hegel's denial that representation is appropriate in matters of opinion, i.e. his denial that representative ecclesiastical institutions are appropriate to a subjective religion, the view that in matters of earnest men ought to be represented, for it is only thus that in the modern world they can feel themselves to be active not only in the sensible dimension of the present but, what is the condition of that feeling, also in the intelligible dimension of the absent by which their

practical subjectivity - aptitudes, skills, opinions, drives, social ethics and customs - has to some extent to be limited.

But before we deal with representation as a means to the re-appearance in the citizen's soul of the 'image of the state as a product of his own activity'⁸⁴, as the immortal animal⁸⁵ in which he might imaginatively locate the 'hope' or postulate of immortality⁸⁶, let us consider the cultural cause of its disappearance. That the sense of subjectivity was not utterly dead is evident from the penultimate of the pieces which Hegel wrote before he embarked upon the first of his major theological essays. There he wrote that it was first 'in more recent times, when men had recovered at least civil rights, those of property and its security' that 'activity has begun to express itself'⁸⁷.

In more recent times than the days of the Roman Empire, men had begun to recover the sense of activity that had then been so stifled, all the 'human life-powers' that had then been arrested by Roman imperial despotism. To the 'decay of every virtue, the oppression of the freedom and the rights of the Romans, the tyranny and ferocity of the kings; to the ruin of genius and all the fine arts and sciences, the Christian religion was not able to set up a dam - in order to give life again to the mortified courage and to every withered branch of national virtue and happiness - but was itself consumed by this universal plague, poisoned and, in this distorted form a material (resource of) despotism, caused the ruin of arts and sciences and (promoted) passive forbearance in the trampling under foot of every beautiful flower of humanity and freedom, advocated obedience towards despotism and the most ardent flattery of its most atrocious crimes'⁸⁸.

These were the consequences of the caesura by which the Roman emperors had put a term to the freedom of the ancient republican

world and in which Christianity had been implicated. But the causes of the disappearance of the ancient republican sense of activity lay deeper and Hegel held responsible for them the ethos of the Jewish people, to the passivity of which the unfortunate condition of the Romans only made them 'receptive' ⁸⁹. The miserable Romans clung to the 'hope of an imminent destruction of the world and the appearance of the Messiah, for the joy of one day burning their oppressors and seeing themselves rewarded made them receptive to the forgetfulness of the present world, where they had no interests and lived in hope of a better. This was a kind of avarice' ⁹⁰. Messianism was the cause which attracted the Romans to their decline. As we shall see, Hegel located the essence of Messianism in the yearning of Christ's disciples, representative in this respect of their ethnic environment, after the prospect of future compensation for present suffering. Future personal compensation is a commodity which the ancient republican did not look for, because he so devoted himself, his whole life through, to the purpose of his community that he found in its activity the imaginative semblance of his own. Because he was no patient, the present was the locus of his activity. He was no patient because his belief in the subsistence of his present world of sensible interests within the absent dimension of an intelligible cause immediately brought into existence the coherent integration of activities directed upon both present and absent objects, neither of which could be conceived to be negative of the other. His fancy that this was so made it a reality. His imaginative faith in the immortality of his state was what animated and maintained that immortal animal. For a believer in the Messiah, on the other hand, this sense of present participation in an absent cause, the sense of the state as the manifest

embodiment of his immortality, was not available. Because the present did not subsist for him in a dimension of intelligibility or absence it could not furnish him an intuition of permanence in the face of misfortune, except in the sensible shape of a future different from the present only in point of the moment of its occurrence, but the same as it in point of the evaluation of it in terms of sensible satisfaction. That is what Hegel meant when he spoke of messianic hopes as a 'kind of avarice' in contrast with the republican hope or vital postulate of immortality. The imperial Romans forgot or forsook the present for the sake of a present to come. Because of their structural identity as loci of sensible satisfaction these epochs could not coexist: one had to be sacrificed for the other. The future-mindedness of the Romans, like that of the Jews, was, as we shall see ⁹¹, just another-present-mindedness. The absent-mindedness of the ancient republican was, on the other hand, not a disposition towards an object that might negate, or compete as a like alternative with the sensible objects of his present-mindedness but an intelligent disposition which informed his sentient disposition with regard for a permanent whole beyond the transience of his particularity. His intelligent disposition lent to his present life a dimension of intentionality towards something absent in virtue of which, as not in virtue of something future, it could serve as other than merely the scene upon which is, or is to be, played out the passionate pursuit of personal satisfaction. It is to Hegel's critique of the passive ethos of the Jewish people, which he held responsible for the disappearance from the soul of the citizen of the sense of activity (and the semblance that his own inhered in that of the state) which had obtained in republican times, that we must now turn.

3. Clean habits, unclean hearts: 'Can these bones live again?'

(Ezekiel XXVII, 3)

Having examined the fragmentary and pregnant manuscripts of the period up to early 1795, we are now in a position to survey, more summarily because they are more complete and their meaning is more manifest, the theological essays of the period from May 9, 1795 to some time shortly after September 24, 1800, namely the 'Life of Jesus' ⁹², begun on the first date, 'The Positivity of the Christian Religion', to the revision of whose introduction Hegel returned on the later date, and the intermediate 'Spirit of Christianity and its Fate' ⁹⁴. In conformity with the archaeological procedure of this study let us depend our treatment of these three essays, which will observe a thematic rather than chronological order, from their terminus in 1800.

Towards the end of the revision of his introduction to the Positivity of the Christian Religion (PCR), by way of explaining the disparity between the ideas which Christ advanced and the outlook of the Jewish people, Hegel argued that Christ's difficulty consisted in the fact 'Jewish law had become so corrupt that a mass of evasions was devised as a means of getting round even its better elements' ⁹⁵. As we shall presently see Hegel argue, Christ's aim was to 'fulfill' the law. But since its light burned dim in the fancy of the Jews, he had, in order to do so, so violently to offend their customary ways, that they could do no other than reject him ⁹⁶.

Because so great a discrepancy had arisen between the 'better elements' of the law and the customs of the people, they regarded the law as a yoke. When Hegel, in the Positivity of the Christian Religion (PCR), proposed that the negative element in Christ's message consisted in 'freedom from the yoke of the law' ⁹⁷, it is to be understood that he meant that Christ's intention was to

free the Jews from their opinion of the law as a yoke. This will be made more evident when we come to consider in detail the concept of 'fulfillment' ⁹⁸. For the time being we have only to attend to the essence of Hegel's argument which is that to rekindle the torch of law would have involved, in the case of the Jewish people, nothing other than their persuasion from the view that the Kingdom of God is a Kingdom to come, a Kingdom of the future, to the view that it is rather a condition whose reality consists in imaginative faith in its having come: 'Jesus said to them of this Kingdom: It has come; it is now here; faith in it makes it real and everyone is a citizen of it' ⁹⁹.

The Jewish people, however, were not content to walk by faith but only by sight and devoted attention only to that in respect of which they might be passive rather than active, that which is sensible rather than intelligible, a datum rather than a factum. They could not believe in the absent. This same argument occurs in 'The Spirit of Christianity and its Fate' (GCS): 'Had the spark of life lain dormant in the Jews, he would have needed only a breath to kindle it into flame and burn up all their petty titles and claims. If, in their unrest and discontent with things as they were, they had been conscious of the need for a purer world, then the call of Jesus would have found belief and this belief would have immediately brought into existence the thing believed in' ¹⁰⁰. Their act of faith would have established a new world there and then, whose intelligible articulation and communication in words would have liberated them from the bondage that consists in being able only to feel the deficiency of the old and unable to conceive of its remedy except in terms of another more satisfactory sensation. But they had not the confidence for it and would rather remain 'self-satisfied in the pride of their servitude' than listen to Christ's message: 'Be ye changed,

for the Kingdom of God is nigh' 101.

But the most striking criticisms which Hegel made of Messianism occur in 'The Life of Jesus' (LJ). In this, the first of his theological essays, Hegel defined the vocation of John the Baptist, and of Christ by implication, as 'to make clear to his people a purpose higher than mere self-interest and better aspirations than the restoration of the former glory of the Kingdom of the Jews' 102. The Jewish people, whom Hegel called not a Volk but a Volksmenge or Landsleute, a multitude 103, signifying thereby their atomic disintegration, clung with great pride, an inert emotion unfit to maintain their unity, to their mere 'name and lineage which in their eyes was more glorious and precious than the unique value which ethical life or activity (Sittlichkeit) gives man' 104. John called mankind 'to show through practical deeds whether it had undergone Sinnesaenderung', and the Jews particularly to realize that they 'were in error to be complacent about their relation to God on account merely of their descent from Abraham' 105. Christ likewise called men to a 'change of disposition and to improvement; he sought to awaken them from their slumber and from their fruitless, inactive hope that a Messiah would soon appear to restore the glory of the Jewish religion and state. Do not wait for another, Jesus called upon them, lay your own hands to the task of your betterment' 106.

Even among Christ's disciples, despite frequent discouragement, there was entirely wanting, according to Hegel, an intelligent rather than sentient conception of the Kingdom of God. Hegel inferred from the controversy among them as to what rank was due to each when the Kingdom of God 'should one day appear' that they were 'still bound to the very sensuous ideas of a worldly kingdom of which Jewish minds were not yet free' 107. They harboured in their 'Jewish minds' the sanguine hope that

Jesus would soon 'step forth publicly as King and restore the glory of the Jewish state and its independence of the Romans and reward them, as his friends and assistants, with power and honour for what they had meanwhile gone without' ¹⁰⁸. After Christ's death, their avarice directed itself merely upon an other-worldly rather than mundane future.

In the revised introduction to the PCR and in the corresponding part of its original version, Hegel blamed upon what we may call the accident of authoritarian personality the fact that Christianity emerged as a 'positive' religion. That is one which contains 'concepts and information transcending understanding and reason and requiring feelings and actions which would not come naturally to men: the feelings are forcibly and mechanically stimulated, the actions are done to order or from obedience without any spontaneous interest' ¹⁰⁹. Rather than its content, however, 'it is upon its mode of authentication that turns the question whether it is or is not positive. Christianity was not positive *ab initio*, but in Christ's words and deeds was a purely moral religion in which feelings and actions were entirely autonomous. It was only the fact that Christ's disciples and contemporaries needed to be persuaded of its validity by interpretation of his teachings in accordance with 'their expectations of a Messiah, their representation of immortality under the symbol of resurrection' ¹¹⁰ and so on, sensible representations or signs of which Socrates' followers had no need ¹¹¹, that caused it to become positive. The authoritarian personality of the Jewish people obliged Christ to allow his identification as the Messiah and with the working of miracles ¹¹² in order to gain access to their hearts. Unlike the followers and contemporaries of Socrates', Christ's were 'distinguished neither as generals nor as profound statesmen', but were 'accustomed to a restricted

sphere of activity' uninformed by any political interest in the whole. From being fishermen, they became fishers of men whose lack of inherent spiritual energy inclined them to interpret Christ's teaching as mandatory doctrine and to insist upon its being kept intact throughout all experience ¹¹³.

The character of the disciples was representative of the cast of mind of the whole Jewish people. They had no vital respect for their law because they subjected themselves to it only through the compulsion of their fear of punishment and withdrawal of reward ¹¹⁴. In a remarkable critique of Jewish religious and political culture first written in 1795 and revised in 1800, there may be detected, in the first version, the slightest hints, and in the second, an elaborate statement of the relationships analysed above between the ideas of custom and law, and of the manner, habitual and mechanical or vital and sensitive to the well-being of the people, in which they are observed or enacted. In the earlier version Hegel asserted that the 'Jews were a nation who derived their legislation from the supreme wisdom on high and whose spirit was oppressed by a burden of statutory commandments which pedantically prescribed a rule for every casual action of daily life and gave the whole people the look of a monastic order' ¹¹⁵. The Jewish people, as we may surmise Hegel thought, bore their law like an uncomfortable habit rather than like a congenial text woven of words, of what 'lay undeveloped and unknown in their hearts' ¹¹⁶. They prided themselves on their 'mechanical slavery' and 'monkish preoccupation with petty, mechanical, spiritless and trivial usages' ¹¹⁷. They behaved without intelligence.

In the later version Hegel's opinion is expressed with like imagery but greater clarity. The Jews were said to have wished to maintain their own customs (Sitten) not by accommodating them to those of other peoples with whom their geographical situation,

trading connections and above all the Roman imperial conquest brought them into unavoidable contact, not by responding to change by changing themselves, their laws and their customs, but by clinging 'all the more obstinately to the statutory commands of their religion' and their legislation, derived directly from a jealous God, by 'slavish obedience to laws not made by themselves' 118. This response could not but fail to preserve them from the fatal decadence and dismemberment of their polity.

Hegel's view that law or custom mechanically observed rather than vitally enacted cannot hold out against progressive experience and changing circumstances, that a code of behaviour imitated without proper originality or followed to the letter gives rise to gauche and indecisive behaviour has already been encountered in his fragments and sketches. The same critique of this 'anxious scrupulosity, ... lacking altogether in courage, decision, strength and the other virtues which are the essential prerequisites of furthering the individual's and the state's well-being' 119, occurs in tandem with another description, in the earlier version of the PCR, of Christ's attempt, to which Christianity had preferred the opposite, 'to draw his people's attention to the spirit and disposition which had to vitalise their observance of their laws if they were to please God' 120. This, Christ's attempt to 'fulfill' the laws, was betrayed by a church-government which allowed the degeneration of their lively practice into yet another habitual routine 121.

The concept of the 'fulfillment' of the laws gets its most authoritative statement in the GCS and its most tangible presentation in opposition to the idea of mere habit in the LJ. In the former Hegel gave an account of the meaning of the attempted discovery to the Jewish people by Christ of the 'new kind of righteousness' through which their laws and customs must be kept.

The law would be 'fulfilled' by its being complemented in the ethical subject by an 'inclination so to act as the laws may command'. Its fulfillment (pleroma) would consist in a 'unification of inclination with the law, whereby the latter loses its form as law' ¹²². The form of such Mosaic laws as 'Thou shalt not kill' and 'Thou shalt not commit adultery', wherein the law appears as an objective command opposed to pathological subjectivity, a form which Hegel held to persist in Kant's maxims of universal legislation, would disappear in the convergent synthesis of the mere possibility of the objective idea of duty, a universal expressed as what ought to be, and the particular in whom the possibility is to be realized, the ethical subject. The fulfillment of the law would consist in that actuality, that which 'is', would become identical with the possibility of which it is the complement. The law and the ethical subject would be as one ¹²³.

In that case, law would be 'wholly superfluous'. Men would do what they ought for the love of it, because they were so inclined by the 'genius of reconcilability', which 'has in itself a so much richer, more living fullness, that so poor a thing as a law is nothing for it at all' ¹²⁴. Agreement with the spirit of laws against murder and adultery would be so lively that by comparison with the disinclination to murder and commit adultery their prohibition would appear to be the least effective factor ¹²⁵ in the enactment of that spirit. But Hegel certainly did not mean to disparage civil laws of the kind contained in the Decalogue. He interpreted Jesus to have intended 'not that laws disappear but that they must be kept through righteousness of a new kind' ¹²⁶. By arguing, moreover, that fulfillment consisted in an identification of law and inclination, an identification which Kant had denied could go beyond a mere 'correspondence of

inclination with the (moral) law' and from whose ultimate impossibility he had deduced that merely prohibitive laws would always have to be available to curb human animality ¹²⁷, Hegel clearly meant that civil laws could have a moral content, which they must lack if it be granted that the inclinations which they regulate are utterly devoid of inherent moral value. If this dualism between pathological actuality and moral possibility be broken down, then that between mere legality, as Kant would have it, and pure morality is likewise overcome. It was the law which is merely prohibitive, which Moses had to give to the Jewish people in that form 'because of the hardness of their hearts' ¹²⁸, that Christ sought to make superfluous. In the beginning, their hearts were not inclined against the vital or lively ethical spirit of love, the actuality which disposed each of them to resist 'any one of its many aspects which may wish to make itself the whole or rear its head against the whole' ¹²⁹.

Even penal law, the content of which is punishment of transgression against the whole, was conceivable for Hegel as a manifestation or 'modification' of love. For, he argued, the trespasser must be understood to unleash the inexorable fury of punishment upon himself ¹³⁰. But justice can be said to be satisfied only when the transgressor has sensed as injured in himself the very same life that he has injured in another, the life of the whole, the ethical life which he shares with his victim. If punishment arouses bad conscience in him, his feeling for the whole, and so the whole itself, may be said to be restored ¹³¹. He has become sensitive to the ethical life of the whole. Unless love, this 'sensing of a life similar to one's own' ¹³², be the spirit in which men enact the law, they are not virtuous who serve the law, but are 'positive men' who observe it only in respect of that to which they are obliged ¹³³. He is in general

not virtuous but positive who observes the law, be it the Moral Law or civil, with mechanical attention to fixed rules, rather than with sensitive regard for the exigencies of the 'whole of the given situation' ¹³⁴. For if he tries to apply to it the plurality of maxims or commands which clamour for his respect there must arise a conflict of duties which incapacitates him for action and reduces him to distraction. Any virtue can in that case become a vice ¹³⁵.

What is the whole of the given situation is a question that should be settled on the basis of love. This love should be no universal philanthropy however, but a 'philanthropy towards those with whom each one of us comes into contact' ¹³⁶. That is to say that it is an ethical principle, a contagious principle among those whose life is similar to each other's. The alternative to laws mechanically observed are laws enacted with sensitivity to the realisation of their purpose in changing situations, namely the preservation of the integrity of the people and its ethics. No one can be sensitive towards the life of others than those who share his customs and laws. As we shall see in subsequent chapters, the preservation of ethical vitality depends on a kind of neighbourliness.

The LJ is usually regarded as an experiment by Hegel in the attribution to Christ of a Kantian conception of morality, especially on account of its declaration that the rule of morality (*Sittlichkeit*) is: 'Act upon such a maxim as you can will to be regarded as a universal law among men as well as by yourself. This is the basic law of morality - the content of all laws and of the sacred books of all peoples' ¹³⁷. There occur in it two accounts of the concept of 'fulfillment' of the law, the first of which suggests agreement on Hegel's part with the Kantian idea that positive law and, a fortiori, custom is essentially devoid of

moral significance, but of which the second and more comprehensive, the version upon which the passages in the GCS are evidently based, shows Hegel to have doubted the Kantian equation of positive laws as such and in totowith mere legality. This doubt was of course the only possible consequence of his implicit acceptance of the presupposition of the idea of fulfillment: that the moral need not be confined to the sphere of 'possibility' but is susceptible of realization in the realm of what is.

In the first account, Hegel declared that Christ sought, 'through his example and doctrines, to banish the straitened spirit of Jewish superstition and national pride and to fulfill them with his spirit which prized virtue alone, that which is not bound up with a particular nation or positive institutions' 138. But from this cosmopolitan standpoint, which utterly contradicts the later view that love is an ethical principle of virtue, that is one the limits of whose scope are coextensive with those of the way of life of a people, Hegel very quickly retreated. He did not maintain a position that would have placed in doubt the very possibility that positive laws could at all have moral import and he did not persist in attributing to Christ a contempt for all laws but the moral. Thus did Hegel report the speech of Christ after he had delivered the Sermon on the Mount: 'Do not believe that I have come to preach the nullity of the laws: I am not come to do away with their binding force, but to make them whole, to breathe Spirit into these dead bones ... In order to make whole the complete system of laws, be you not content like the Pharisees and the Scribes among your people, to regard literal observation (Beobachtung des Buchstabens) as the sole object of human justice, but act in the spirit of the laws out of respect for duty' 139. The spirit of human laws need not be the spirit of mere legality, of merely mechanical observation. It can be

the spirit of their sensitive enactment out of love for the whole which they are designed to articulate, but are incompetent to preserve without it.

Hegel had already argued in the Tuebingen Essay, on the Leibnitian premiss of the continuity of the rational with the irrational, that 'even if it is a pathological principle of action, love is disinterested' and to that extent has 'something analogous to reason in it ... love finds itself in other men, puts itself outside its own existence and so to speak, lives, feels and acts in others' ¹⁴⁰. It does this by 'forgetting itself', the very deed which Garve, following Ferguson, had defined as the characteristic of the man of public spirit. It was the Leibnitian principle of universal continuity which underlay this general conception of the inherence of moral possibility, what ought to be, in pathological actuality, what is, in terms of which had originated the concept, whose coherence Kant had so strenuously ^{140a} denied, that the relation of actuality to possibility could be one of complementarity, a concept of which Mendelssohn, in whom Hegel had found a doughty champion of the potential moral content and worth of positive law, one who did not consign it entirely to the realm of phenomenal causality and banish it from the sphere of noumenal freedom, was one of the chief exponents when Hegel was a young man.

It is not to be denied that Hegel, though not a Kantian by conviction, was not prepared to go so far in giving credit to the capacity of human law for ethical fulfillment as was Mendelssohn. Hegel's aversion from the mechanical spirit in which the Jews observed their laws, maintaining, in accordance with divine commandment, that law, for instance, which required that they honour their fathers and mothers, as if it what it prohibited, the utterance of loveless words against them, exhausted its meaning, so that he

was reckoned 'a fool who does his father and mother any service' beyond this minimal requirement, amounted to a critique of a spirit that deems prohibition of certain actions to be permission of all others and to touch not at all the disposition underlying behaviour in accordance with the law. They may have ever such clean habits who eat nothing before they have washed thoroughly, who consecrate all crockery and furniture before their meals, but their hearts are unclean vessels of a disposition that would fain evade the law: 'soulless is their reverence' whose hearts harbour evil thoughts while they conform to the prescriptions of their forefathers. Doomed are the customs which are kept in this spirit ¹⁴².

In the GCS, Hegel dissented emphatically from Mendelssohn's view that there arose from the fact that Judaism was a system of mandatory actions the advantage that it did not presume to regulate opinion and belief ¹⁴³. It was not Hegel's view, as it was Mendelssohn's, that the question of the positivity of a religion turns only on the question whether its adherents are obliged to acknowledge as truths what are intended merely as mandates to act as if their content were true, to treat as propositions what are mere statements of law, such as 'There is one God' ¹⁴⁴. According to that criterion, Judaism could not be called positive, for it made no such demands. But according to Hegel's criterion, Judaism was positive. The question whether a religion is positive turns equally weightily on the question whether 'actions are done to order or from obedience without any spontaneous interest' ¹⁴⁵, whether deeds are freely done and not with the 'feeling of being a machine, albeit a thinking machine' ¹⁴⁶.

That this was so in the case of the Jewish people was the cause of the failure of Christ's attempt to 'fulfill' their laws. For there was left no more than the 'dead bones' of the law ¹⁴⁷.

The Word, in such circumstances, could scarcely be made Flesh. Hegel had, in the PCR, after his discussion of the failure of Christ to fulfill Jewish law and of its consequence, that the ecclesiastical laws of the Christian church stood in even greater need of fulfillment, conceded, to Mendelssohn's advantage, that Christian customs, too, had become mere habits and that what made this worse than the Jewish condition was that, moreover, the disposition as well as the behaviour of the Christian was subject to regulation ¹⁴⁸. Ultimately, however, he believed that the positivity of Judaism and Christianity consisted alike in the means which they used to ensure observance of religious duties: the mental terrorisation into a state of heteronomous 'helplessness, anxiety and self-distrust' ¹⁴⁹ of men who had become anomic, in whose heart 'the torch of law burns dim' ¹⁵⁰.

Before we consider the consequences for Christendom of Christ's failure, let us treat in depth of its causes in Judaic culture, of the reasons why, according to Hegel there had opened up the gulf between the laws and customs of the Jewish people and their disposition in the observance of them. These reasons are most comprehensively set out in the GCR and its preliminary drafts, in the context of which occurs his dissent from Mendelssohn's rather inconsistent deviation from his argument of 1784 that the happiness of any nation depends upon the progress in step of culture and enlightenment.

4. The passivity of the 'outlook upon the present' of the Children of Israel.

Hegel began his account of Judaic culture with speculations upon its general character, as disclosed in the myths, which pass into the traditions of a people, that indicate their attitude to

the forces of nature. The Jews, like the Greeks, described man's emergence from harmony with nature in terms of the myth of a universal Flood. The manner in which a people represents its 'divorce from nature' and the response which their mythical forefathers made to it is 'necessarily related to the origin of the state' ¹⁵¹. In a people deficient, unlike the Greeks, in free and joyful public relationships, there arise myths in which man is represented as having made peace with Nature as with something which he needs to use rather than with something whose friendship he enjoys: the peace made is a 'peace of need' (Frieden der Not) not a 'peace of love' (Frieden der Liebe) ¹⁵². Thus, Noah erected a God to which man ceded his autonomy in return for security from and use of the forces and resources of Nature; Nimrod, on the other hand, to the same end, erected a tower and a 'despotic tyranny' ¹⁵³ by whose means God, identified with Nature, was to be resisted. Whether its power was located in God against Nature or in man against God and Nature, there was in either case erected a monolith for the repression of the manifold of circumstances that could disrupt their accustomed condition of equilibrium ¹⁵⁴.

What is apparent in the cases of Noah and Nimrod is evident in the history of Abraham. Abraham alienated himself from all enduring connections with men (his father and family) places and States, to which relationships and circumstances, all too subject to change, all too manifold for him, he opposed the monolith of his God. His belief in this God was a faith in 'oneness amidst all change of the manifold of events!'. It afforded him security, the certainty of self-preservation throughout all experience of the events and manifold 'circumstances conflicting with it' ¹⁵⁵. To his God, a Being quite unlike the local deities of the Greeks in that He was quite beyond all measure, to a massive Providence

fit to match and resist with sheer force the likewise 'immeasurable plain' upon which he wandered and the 'infinite loft' above him ¹⁵⁶, Abraham abdicated what little power, which yet would have been his own and measurable, he might have had himself to maintain his identity in the face of manifold change ¹⁵⁷. Because there was no other possibility acceptable to him than utter subjugation of events and circumstances, no possibility, once he had opted for restlessness under the infinite and upon the immeasurable, of measured adjustment between himself and the manifold, changeful Nature which confronted him, 'he was unable himself to make this mastery actual' ¹⁵⁸. It was all or nothing for Abraham, an uncompromised issue of the confrontation between mutually exclusive totalities, unity and multiplicity, in which the former must remain intact. He could not be other than passive. Self-change was therefore inconceivable, while the idea of being changed by the manifold was of course anathema.

Abraham was therefore locked in a merely 'present' world to whose staying put he was absolutely committed: to have made any concession to the manifold would have been to countenance total revolution. Everything, even his idea of his posterity, he subsumed within his 'outlook upon the present' (Hinausblicken ueber das Gegenwaertige) ¹⁵⁹. The future must not threaten the present: Abraham deluded himself, therefore, into the belief that God could determine the future, present him 'realised the very whole of it' ¹⁶⁰. In return for the promise that the future would not disrupt his world, Abraham was prepared to go so far as to kill his son, a very element of what was to come that appeared to him as such as 'something not of his kind, as deranging the pure unity'. That in which some idea of immortality might have been available to him, he would readily annihilate, believing that it might deprive him of the security of his merely present world of sensible satisfaction,

might be 'disloyal to him' ¹⁶¹. The love through which he might have subtended the line of his present existence to encompass something absent was not what stayed his hand. It was the guarantee which his God gave him that the 'stability, the necessity, the eternity and certainty of his whole' was not dependent upon the merely particular, accidental and perishable thing that was Isaac ¹⁶².

Given this character, which Hegel held to be representative of the spirit of the Jewish people ¹⁶³, change, when it occurred as the transition from Abraham's pastoral life to settlement under a political form of existence, the State, did not happen 'gradually and spontaneously' ¹⁶⁴, but under the stress of 'accumulated circumstances, and by accident' ¹⁶⁵. From the captivity to which Joseph had introduced his people, Moses sought to liberate them. But because it was never articulate laws that had regulated their relationship to their circumstances but was at best, apart from the measureless Providence of the Lord to whom they were in sheer bondage, custom which had made an uneasy peace with some aspects of their condition, they had 'no complete or clear ideal ... that might oppose that condition' ¹⁶⁶. They had a vague feeling of deficiency, but only Moses could articulate an ideal in reflective terms. Yet in these terms he could not appeal to his people. He could not find a response to talk of oppression and freedom ¹⁶⁷, but only make use of the feeling among the people of its oppression and of a 'dim, pretty weak memory of another condition of their forefathers' in order to elicit a desire for independence and a belief, passive to be sure, in the possibility of exodus' ¹⁶⁸. Only Moses was active. A great thing was done for the Jews but they did not 'inaugurate it with great deeds of their own' ¹⁶⁹. They nearly all behaved passively during the exodus. The attempts of Moses to change their way of life, free them from the slavery

of inarticulate habit and to fix his ideal in their imagination were fruitless. The laws that he imposed upon them show 'that there lay in the spirit of his people a contrariness toward the whole, much that had to be subdued with force, much that had to be transformed into other customs. Their character always remained fickle, they were always and repeatedly disloyal to the state and only need led them back to it' ¹⁷⁰. Because their need was not for freedom but for security, they wanted to return to Egypt. Moses had to impose the law upon them as a yoke: 'A passive people giving laws to itself would have been a contradiction' ¹⁷¹.

Maintenance of their physical existence and security from want was all that this thoroughly passive people wanted ¹⁷². Apart from their sensible present, they looked to nothing absent but a future represented in terms of sensible satisfaction: a land flowing with milk and honey ¹⁷³. They had no idea of an intelligible whole in the maintenance and manifestation of which they could be active. Their law was the image of a 'physical force' by which they were cowed ¹⁷⁴, a theocratic command-structure which made no appeal to their intelligence but required only external conformity. Its keystone, the assertion that 'There is one God', was not the proposition of a truth to be freely examined but a mandate to be obeyed. The Jewish people were released from the business of thinking about their public relationships and so from the trouble of exodus from their private occupations, whether as 'mastered or masters'. They had no conception of an immortal whole: How could they, 'who never enjoyed any life or consciousness lifted above eating and drinking?' ¹⁷⁵. There being no citizen body, but only a host of private men, it followed 'that there could not be anything among the Jews resembling a constitutional law nor a legislative power determining

a constitutional law' 176.

The object of the laws of the Jewish people was not, as was the case in the Greek republics, to preserve freedom from incremental and accidental erosion by the variation of its original condition which tended to be produced by men's individual industry and effort. Their laws were not constitutional in this sense at all but were devoted to the nullification of freedom. There was thus a world of difference between the Mosaic prohibition of accumulation of property and the laws which Solon and Lycurgus gave against excessive inequality of wealth: the latter were designed to maintain the political equilibrium of the various social classes in the face of a spontaneous tendency towards the impoverishment of the lower. They placed marginal constraints upon freedom of choice. The Mosaic laws, however, represented a gross intrusion into private life: the Jews 'had no freedom and no rights, since they held their possessions on loan and not as property ... The Greeks were to be equal because all were free, self-subsistent, the Jews equal because all were incapable of self-subsistence' 177. Because the Jewish people looked only to the present and the present to come, and did not locate in their laws the absent ideal of freedom, there was no question for them of a political exchange of the present for the absent, of mundane gain for the advantage of the whole. And because there was no such exchange, the terms upon which their polity afforded them security were terms which allowed them no legitimate independence. Hence, of course, they evaded its laws 178.

The Jews then, were a host of several individuals, each of whom 'was excluded from active interest in the state; their political equality as subjects was the opposite of republican equality; it was only the equality of insignificance' 179. This, it will be remembered was the spirit which invaded the hearts of

the Romans under the caesarian imperium and only began to be dispelled in modern times with the recovery of rights of property and its security. This was not the passive security of the Jews, but something in which activity could express itself, something akin to the sense that the ancient republican enjoyed, that in a spirit of reciprocal exchange, both he and his community could be active at once without prejudice to the independence of each other ¹⁸⁰.

As Hegel had argued in the PCR, the Greeks and Romans, until the time of the Empire, 'obeyed laws laid down by themselves, obeyed men whom they had themselves appointed to office, waged wars on which they had themselves decided, gave their property, exhausted their passions and sacrificed their lives by thousands for an end which was their own. In public as in private and domestic life, every individual was a free man, one who lived by his own laws. The idea of his country or of his state was the invisible and higher reality for which he strove ... which he found manifested in the realities of his daily life or which he himself co-operated in manifesting and maintaining ... It could never or hardly ever have struck him to ask or beg for persistence or eternal life for his own individuality ... the republican's whole soul was in the republic; the republic survived him and there hovered before his mind the thought of its immortality' ¹⁸¹. In exchange for pride in the contribution of his activity to the immortality of the republic, the citizen was glad to give up much of what was of interest to him in the present world. The Jewish people, on the contrary, had no such concept of immortality because the present world was all that they had time for. Theirs was a condition analogous to that which supervened in Imperial Rome after the growth, for want of vigilant preservation of the laws, of extremes of wealth and political inequality. It had come about that the

virtue which Montesquieu held to be the principle of the republic had disappeared: 'The picture of the state as the product of his own activity disappeared from the citizen's soul. The care and oversight of the whole rested on the soul of one man or a few ... Each man's allotted part in the congeries which formed the whole was so inconsiderable in relation to the whole that the individual did not need to realise this relation or to keep it in view ... All activity and every purpose now had a bearing on something individual; activity was no longer for the sake of a whole or an ideal. Either everyone worked for himself or else he was compelled to work for some other individual' ¹⁸². So among the Jews, as we have seen, everyone was 'either mastered or masters' and none enjoyed any 'life or consciousness lifted above eating and drinking'.

This was the kind of political culture in which was grounded the vacillation of the Jewish people, after the death of their lawgiver, between independence and subjection to foreign powers ¹⁸³. It was the seedbed of the messianism, the looking to a future in which their sensible satisfaction would be restored with the glory of independent statehood, that prevailed during the life of Jesus and caused his message to be distorted. ¹⁸⁴ It remains to examine the consequences of these causes for political Christendom.

5. Representation: trust in the subordination of jealous sectarians, faith in the image of equal and active citizenship

Christ's task was to give the Jews a 'sense of their self-hood' ¹⁸⁵. But out of his call to autonomy, his contemporaries and their successors soon fashioned another system of 'slavish service of their Lord' ¹⁸⁶. We have now to address ourselves to

the question how Jewish heteronomy was transmitted to Christendom and the political systems by which it was assimilated. Hegel's explanation of this process, with which his revised introduction to the PCR marches, was completed to his satisfaction by April 1796. We take it up at the point at which he had just done with the contrast between the disciples of Jesus and the friends of Socrates.

The fact that Christ, in contrast to Socrates, fixed the number of his disciples at twelve, encouraged his followers to suppose that the doctrines which he conjured them to disseminate were of a kind to which is appropriate the same means of authoritative statement which is merited in the case of matters of political earnest. Such matters of opinion as religious or philosophical doctrine, however, whose content and spontaneous changes thereof are of public consequence only in so far as they demonstrably derogate from the obligations of the citizen to the state ¹⁸⁷, do not admit of legislative pronouncement upon the authority of a majority of a determinate number of men ¹⁸⁸. Representation in matters of opinion is inadmissible because, it is Hegel's view, 'it is absolutely contrary to the nature of opinion that an individual should subject it, something his own, to a majority vote' ¹⁸⁹. It is possible, indeed it is necessary, that in a political commonwealth determinate position should be given to the rights of the individual in person and property ¹⁹⁰, for these are matters where the cinematic and idiosyncratic nature of opinion would be improper. But since the church is not concerned with such matters, a system of representation, the quid pro quo of the individual's subjection of his will to the general will and his regard for the latter as his law ¹⁹¹, is entirely inappropriate to it. Quite apart from the question whether the conciliar organization of the Roman Catholic Church,

the principle of which was repudiated by the Evangelical Church in which 'everyone has the right to settle for himself what is his faith'¹⁹², is any longer representative in fact as well as in name, rather than a sheer bureaucracy closed to the slightest influence of the laity ¹⁹³, Hegel held that to give officials of the church 'authority to determine the faith of the congregation on their own judgement and to subject it to a majority vote' ¹⁹⁴ is to confer upon the ecclesiastical commonwealth the likeness of a state. It matters not at all whether its form is republican, monarchical or aristocratic, for all these kinds of representation are 'totally in contradiction to man's right not to subject his opinions to an alien authority' ¹⁹⁵.

Hegel considered it the mark of what he called a 'positive' sect (earlier defined as one which presumes to treat as morally culpable not just deviation from its own ethical principles, nor yet just attachment to fanciful, though morally neutral, popular beliefs, but failure to adhere to the former and renounce the latter on exactly the authoritative grounds specified as reasons to believe ¹⁹⁶) that each of its members is prepared to adopt the duty 'as in the social contract, of subjecting his private will to a majority vote' ¹⁹⁷, of obeying the statutes of the positive sect as if they were public laws, rather than the rules of a private society, of 'believing something and regarding it as true just because the society has commanded belief in it' ¹⁹⁸.

As far as Hegel was concerned, so long as this analogue of the condition of the Jewish people, among whom commands entirely took the place of truth, does not extend from such private societies to the whole state, positive sectarians should be left to their own 'expedient, appropriate and permissible' devices ¹⁹⁹. But positive sectarians, unlike philosophical sectarians, of whom the followers of Socrates are archetypical, have a propensity,

for they find a feeling of safety in numbers, for proselytic expansion ²⁰⁰. Thus the early Christians extended to the whole of the societies in which they found themselves characteristics which, once extended, could not but suffer the corruption brought upon them by their ceasing to be of the kind that is, in the sense that it may be repudiated without prejudice to their freedom and happiness, voluntarily adopted by its members. Such were the ideals of brotherhood, community of goods, equality and fraternisation in holy communion ²⁰¹.

The consequence of the expansion of their private society to co-extension with the whole of the peoples whom they proselytised was the final cause of the appropriation by the church of political practices quite inappropriate to the ends to which its original founder intended. For the church came to suppose that it had a right to invoke the authority of the state in the defence of matters of opinion upon which that authority ought not to be expended. Subscribing to the pragmatic arguments of Mendelssohn, rather than to the transcendentalist principle of Kant that morality and legality are ever twain, Hegel insisted that it is not the business of the state to oblige the individual to honour mankind as a whole or to aid associates of the same station and calling as his own ²⁰². If anyone does not wish, for instance, to be charitable or to cooperate with any private association, the power of the state may not be invoked. In particular, the state cannot penalise resignation or exclusion from any church by the withdrawal from the individual of his civil rights, for in that case the state must admit the existence of a 'status in statu' ²⁰³. This is the situation in the 'vast majority of countries, Catholic and Protestant alike', where the 'ecclesiastical state' (an instance of the 'status in statu', which, as we shall see, Hegel abominated as derogatory to the sovereignty of the

state proper ²⁰⁴) 'has made its rights prevail against the civil state; and in which no dissenter can obtain civil rights or enjoy that protection of the law in civil and criminal cases which a citizen enjoys. He cannot acquire real estate of any sort; he cannot hold any public office; he is even subject to differential treatment in the matter of taxation' ²⁰⁵.

Where the state has yielded its right even to confer citizenship, made conditional upon baptism in the prevailing faith ²⁰⁶, to protect the faith and property of 'any nondominant church' ²⁰⁷, to ensure the education of its future citizens so that they feel themselves to be no less free to resign from their childhood faith than they are to emigrate from their native country ²⁰⁸, there it is no wonder that the state also sacrifices, along with its sovereignty, the rights of its citizens in other than religious matters. Hegel insisted, as upon a general principle, that any corporation, to which category of private association he assigned all churches, exceeds its rights as a 'society within the state' ²⁰⁹ if, over and above its legitimate exclusion of anyone who does not conform to its rules ²¹⁰, its exclusion of non-conformists is tantamount to their excommunication from the right, which the state is obliged to protect, to follow any vocation, spiritual or mundane, upon which their subjective choice alights. Thus, if a corporation prevents a man from plying his chosen trade in the town where it operates a 'closed shop', he is excluded 'in effect from the whole community at the same time' ²¹¹.

In general, then, it is the duty of the state to enforce the obligation of its citizens and corporations to respect the right of other members of civil society ²¹² to remain other if they so choose. It is its duty not to permit its coercive power to be so appropriated by any member of civil society (the relationship of men to one another in which, Hegel maintained in accordance

with the views of the mentors of his youth, especially Mendelssohn, Garve and Ferguson ²¹³ none is in a position to impose, as if they were perfect obligations, duties to abstract entities such as humanity and corporations, whose assumption is quite voluntary) that its abstract rights come to be confused with the rights of the ethical totality of the people. As we shall see in the following chapters, it is upon the representative institutions and practices of the state proper that Hegel depended the preservation intact of its *ius majestatis* from adulteration by the *ius collegiale* of the church or, for that matter, of any other body whose incorporation proceeds, as Hegel clearly believed the foundation of the state does not ²¹⁴, from the free association by contract of individuals at equal liberty to dissociate ²¹⁵. It is in order to the preservation of this liberty that Hegel denied the representative and legislative authority of church councils and the legitimacy of the constraint which their doctrinal pronouncements place upon public policy. Only thus could be preserved the freedom in matters of custom and opinion by which the state must maintain the feeling of activity on the part of the individual without which the activity of the state must appear to him as that of another mere member of civil society. This freedom is the *quid pro quo* of the readiness with which present interests may be sacrificed for the sake of an absent purpose, distinct by definition from the present interest of any particular corporation. Freedom in matters of custom and opinion is the condition of its surrender in matters of law and earnest, a political exchange which is instrumented by means of a representative and legislative authority from whose rights against every member of civil society none other can be permitted to detract, whether by the erection of an alternative authority ²¹⁶ or by the emasculation of the rights of majesty by the rights of association, particularly of

ius publicum by ius ecclesiasticum ²¹⁷. Representation is the peculium of the state. Upon four conditions ²¹⁸ of its proper institution, namely that it is law rather than persons to whom the citizens are subject, that the representative authority is inferior to no principal, that its action is not interventionist and that it is compatible with the plurality of society, representative government ensures that the citizen of the modern state can enjoy something akin to the image, so vivid in the soul of the ancient republican 'of the state as a product of his own activities' ²¹⁹. It ensures that he can recover, with the civil rights to whose destruction the Judaeo-Christian tradition, because of its inveterate hostility to plurality and spontaneity in matters of custom and opinion, had made such a fatal contribution, the sense of activity which had prevailed in the ancient world ²²⁰.

Representation was not, of course, the means whereby the relation of exchange between the present and the absent had been instrumented in the ancient republic. There the 'image' of the state as a product of the citizen's own activity had far greater substance than it could have in the less intimate and more extensive states of the modern world where, of necessity, as we shall see in the next chapter, that image has, as it were, to be simulated: it has, we may say, to be made to consist in a formal rather than substantial sense of activity. That is vouchsafed to the individual by the state which ensures that, at least, the feeling of activity which the individual may enjoy is not subverted by the suspicion that the activity of the state and the force of law serve the interests of other members of society at the expense of his own. There must, at least, be a degree of such trust between the individual and the state.

As we shall see in the fifth chapter, Hegel regarded

representation as the institutional means to the recovery of the trust (fides) which he followed Tacitus, Montesquieu and the tradition of legal scholarship stemming from Hermann Conring²²¹ in believing to be the characteristic 'political' sentiment prevalent in the 'german forests'. The denizens of these forests, whose 'public relationships Hegel was later to describe in terms²²² almost identical to those in which he eulogised the republican Greeks and Romans (as free men who 'obeyed men whom they had themselves appointed to office, waged wars on which they had themselves decided, gave their property, exhausted their passions, and sacrificed their lives by thousands for an end which was their own'²²³), stood, as far as Hegel was concerned, for an ideal not essentially different from classical republicanism, except in point of the fact that it was not at all deserving of description as an ideal articulated in constitutional form. Yet it seemed to him that they, in whose public relationships representation originated, manifested the same readiness to sacrifice present interests for an absent ideal which was characteristic of the ancient republican. For as early as in one of the manuscripts of 1794 he had attributed to the primitive German tribesman, by implication, to be sure, but nonetheless undoubtedly, the same devotion to the immortality of his community, the same disregard for personal advantage in the present and the present to come, as he attributed expressly to the citizen of the ancient polis: 'The free republican, who ... expended his powers and life for his fatherland and did this from duty, did not rate his effort so highly that he could demand compensation for it ... he expected only because he was brave, to live in the company of heroes in Elysium or Valhalla, happier there than here only because he would be free from the troubles of frail humanity'²²⁴.

It was not the satisfaction of his mortal appetites in whose terms the primitive German, any more than the ancient republican, envisaged immortality. He was not a member of a 'people of the highest depravity' which 'leads a private life and ... needs assurances from God that it has a future life' ²²⁵, but of a living ethical whole made one and active by the faith in it of its members.

Here, then, existed for Hegel a bridge of sorts between the substantial and participatory republican form of political exchange between the present and the absent and the formal and representative version which it was the business of the modern state to articulate in a constitutional system as durable as, perhaps more so than, that of the ancient world. To put the matter crudely, the Germanic political culture which Hegel likened in some respects to the republican political culture of Greece, was at the same time the source from which stemmed the practice of representation.

The system of representation inherent in the 'german forests' was to be accorded by Hegel the dignity of a basis for the recovery of something like the readiness with which the ancient republican sacrificed his present interests for the absent idea of the state. But it could serve as such only on condition that it should not be compromised by a practice of representation tainted by the Judaeo-Christian view of the state as rightly subservient to the interests of a sect, that is, as a means to the imposition of conformity upon the subjectivity of all members of society in matters of mere opinion. Political representation must not be constrained by any pretence on the part of private associations, whose concern, by definition, is with matters of opinion, that their policy has the sanction of any truly representative authority. It was the positive sectarian spirit of the Christian religion, born of the avarice of its Jewish bearers for the security of their interests

and opinions, that had first subverted the autonomy of the state and its disinterested devotion to purposes quite absent in the sense that they are the object of the sensible interests of none in particular and so may be the intelligible object of all. The state had forfeited the trust of all its citizens that it was the product of their politically equal activity, rather than an instrument at the particular disposal of some, once it permitted religion to claim for its private doctrines and regulations the status of public laws. Just by virtue of this permission was the state deprived of a servant in the process whose object is such that it cannot be produced by commands from the state but, besides the imperceptible influence for virtue in the people of its own institutions, by the persuasive means available to a religion whose content appeals to the heart as well as to the head. That object is the creation among the people of trust in their political institutions, a 'disposition which gives birth to action in correspondence with the civil or the moral laws' ²²⁶. This disposition civil legislation cannot directly produce. It is something which the state must arouse by means and use of religion. The state forfeited the trust of the people as soon as it permitted religion to make of it a means to and servant of its present interests, for by that token the people could no longer trust that constitutional law rather than force ²²⁷ could be depended upon to arbitrate between the interests of private members of civil society. Once the nanny had usurped the authority of the mother, their charge could not but suspect that it had lost a wet-nurse from whom it might imbibe the wholesome milk of the feelings and images which are the diet of the free man and had gained a harsh school governess who would always inhibit his sense of activity ²²⁸. He could not but cease to trust that his concession of autonomy to the state in matters of earnest would be reciprocated by its

permission of his autonomy in matters of opinion. As we shall see in the final chapter, Hegel's view was that once a religion had so deviated from its proper purpose, that purpose could only be served by the representative institutions of the state itself, institutions to which he ultimately attached the significance of the object of a national cult ²²⁹. And although in the PCR, Hegel expressly declined to venture upon a discussion of the means to the creation of trust which are internal, rather than external to the constitution, it is clear that this matter, 'not here in question' ²³⁰, impressed its importance increasingly urgently upon his mind. For if religion makes itself unfit as a means to the promotion of the disposition thanks to which men's actions, their customs and culture, correspond with their laws, their civil and human enlightenment, resort must be had to an equivalent means to the end that law should dwell in the heart of every man as the intelligible expression, to which he readily and without grudge adjusts his everyday practical effort and industry, of the ethical life or activity of his people. We shall see in the next chapter how, for the first time with concentration upon the constitutional problems of the German Empire and its territories, Hegel began to seek in the political traditions of modern and aboriginal Europe the rudiments of a political condition of reciprocal trust between subject and sovereign that would approximate the relation of ready exchange that obtained in the ancient republican state between the individual and his community.

Chapter Three

Political Exchange and Communication

'When virtue vanishes from the republic, ambition enters hearts which are capable of it and greed masters everyone ... so that the state becomes everyone's booty and its strength now consists only in the power of a few citizens and the license of all alike' (Montesquieu, *The Spirit of the Laws* cited by Hegel, *The Philosophy of Right*, in his Remark to paragraph 273)

In 1821, having quoted the above passage, Hegel went on to comment that, besides the 'principe' of virtue, the political sentiment of the republic, and according to Montesquieu the 'passion' which makes it act, a 'form of rational law' is needed, for the sake of action whose 'power to resist disruption' is not liable to be compromised by passion. We shall see in this chapter how, in one of the most difficult documents of Hegel's early career, he appears to anticipate this denial of the power of anything but law 'to bestow on the powers of particularity, now become mature, both their positive and their negative rights' and to argue that, far from having to be destroyed by revolution, the legal forms of an old regime, a monarchy whose 'principe' is honour, may be adapted in the process of introducing the changes necessitated by its crisis of legitimacy. The nature of this adaptation is such that a new regime may come into existence which, though it retains a monarchical centre, may nevertheless be said to have among its 'principes' the virtue of its citizens' readiness to sacrifice themselves for the Idea of their fatherland. As Hegel was to argue in the *Philosophy of Right*, 'we must remove the misunderstanding of supposing that because the sentiment of virtue is the

substantial form of a democratic republic, it is evidently superfluous in monarchy ... and finally, we may not suppose that there is an opposition and an incompatibility between virtue and the legally determinate agency of a state whose organisation is fully articulated'. On the contrary, such agency, which puts a term to the public effect of the passions of ambition and greed is, in the 'mature social conditions' created in the modern world by the 'powers of particularity', that alone which is capable of effecting what we may call the virtual restoration of what cannot be recovered in substance. As we shall see, Hegel proposed the monarchical-cum-representative state as the means virtually or simulatively to restore the constitution of virtue, of readiness to exchange the satisfaction of present interests for the love, trust and joy of the absent Idea of the fatherland.

Out of the rent costume of honour Hegel hoped might be restored the likeness, made good by law, of the ancient substance of virtue. This was to be achieved by way of a sympathetic convergence of the few and the many who stand respectively, but too exclusively for the sake of community, for the values of presence and absence, both of which have, in Hegel's view, to be integrated in the cause of civilization. Let us turn now to his progressive development of these ideas one quarter of a century before their presentation in systematic form.

1. New Myths for Old

By the summer of 1796, Hegel had completed the main part of the PCR and that part (to which reference has already been made with respect to the section of it in which he accounted for the disappearance from the citizen's soul of the image of the state as a product of his own activity) in the first section of which he

complained bitterly of the destruction, by the positive sectarian spirit of the Judaeo-Christian tradition, of the heritage of primitive Germany. From this heritage he hoped might yet be salvaged for modern Europe a likeness of the readiness of political exchange that had obtained in ancient republican Greece and Rome.

Christianity, by virtue of the same spirit which had inclined it to claim for its opinions and regulations a universality that derogated from the sovereignty of those states with which it entered into intimate relationship, and from the impartiality of their laws, had, as Hegel put it, 'emptied Valhalla, felled the sacred groves, extirpated the national imagery as so much shameful superstition, as a devilish poison, and given us instead the imagery of a nation whose climate, laws, culture and interests are strange to us and whose history has no connection whatever with our own. A David or a Solomon lives in our popular imagination but our country's own heroes slumber in learned history books ...' ¹. All that in German history upon which might have been founded the freedom of its modern citizens, all that through which they might have been provided with a common stock of religious and political imagery that would have been the medium for the idiomatic articulation of an ethical community transcendent of social difference, was a matter of indifference to 'the authorities in church and state' ².

Hegel meant by the concept of 'national imagery' something bound up with all kinds of public festivals, national games, domestic institutions, foreign affairs, folk songs and festivals ³. Into it were distilled 'the culture and the laws of Athens', for instance ⁴, so that any dweller with her gates could not but have lively felt their force, so that she lived in the hearts of everyone regardless of social station. But, where Germany was in question, such imagery was so culturally exogenous and historically

ill-founded that the imagination of its people had to turn to myths that were superstitious or precious according as they appealed to the common people or the upper classes ⁵. It was because the culture of the several classes was accessible only to their own members that, apart from the deficiencies of religious imagery, the people of Germany, 'we who were never a nation' ⁶, were 'without any political imagery whatever' ⁷.

Hegel was quite emphatic that the 'project of restoring to a nation an imagery once lost was always doomed to failure' ⁸. However sympathetic he was to the idea that the religious and political mythology of a people ought to be 'home-grown' ⁹, it is clear that he set no store by the restoration of an old mythology originally cultivated amongst a people which had never, in strictness, constituted a nation, much less a state. We may suppose, on the basis of his remark to the effect that the Germans were never a nation, that Hegel was already thinking along the lines which he would pursue in the VSN: that the Germans, never quite organised as a state, would enjoy that form of political existence no sooner than they would cease to depend their political unity upon the grounds that they were originally a people and would ever be so by the grace of Providence ¹⁰.

Old mythology would not serve the German people in the modern world. They would have to have recourse to a new kind of mythology adapted, as that of 'Achaëa' was adapted under other circumstances, to the service of the state. Such a mythology would presuppose, Hegel implied in a passage evocative of the opening and closing passages of the VSN, that as a matter of fact there would have stepped forth someone who 'could be our Theseus, who founded a state and was its lawgiver' ¹¹. We shall see in the fourth chapter what Hegel thought would have to be the character of this mythical figure. It is sufficient for the time being to

emphasize that he would have to be a genius, as defined above, and that his business would be the creation of no other kind of expression of ethical life - neither art, nor religion, nor philosophy - than the state.

In May or June of 1796 Hegel had written vehemently of the political system of Germany as one in which, on the pretence of motivation by a religion in which they claimed to have an identity of interest with their subjects ¹², the princes had engulfed millions of Germans in wars, waged 'out of ambition or for their own independence', in which 'the people were only tools' ¹³. These wars were, as far as the people were concerned, not at all 'wars on which they themselves had decided' such as were the wars in which ancient republicans and primitive Germans ¹⁴ had staked their lives in thousands for an end that was their own. The states which engaged in them used their people as tools. They were the very opposite of that which the citizen could imagine to be the product of his own activity. They were states which, as we shall see in the course of this chapter, Hegel believed must be replaced by one whose action was so regulated by law, so constituted to preclude the misappropriation of its authority by private persons or sects, that the citizen could at least regard it as a semblance of a product of his own activities, as their shadow vicariously cast by the most real of all obstacles to the presumption of private persons and associations to impose their will upon others at the expense of their feeling of independent activity or free subjectivity ¹⁵.

That Hegel may be interpreted to have thought of the modern Rechtsstaat, could it be founded in Germany, as the means by which his people could be vouchsafed a feeling, albeit one founded upon an appearance less substantial and more formal than that which obtained and was maintained in the soul of the ancient republican,

that the State serves as a trusty defence, an umbrella so to speak, put up against the endeavours of ambitious predators upon civil liberties, is an argument whose justification by an explicit statement of the meaning of law must await the treatment of the fragment to whose exegesis the next section is devoted. A preliminary affirmation of this argument may be made, however, upon the basis of what has come to be known as the Earliest System Programme of German Idealism (Aelteste System-Program des deutschen Idealismus or ASP)¹⁶ and to be commonly misunderstood as a manifesto for absolute freedom unlimited by any form of Spirit lower than aesthetic experience. A great burden of misunderstanding of the ASP, which it would be tedious to attribute to individual commentators, may be lifted simply by attending, as well as to what is written of the Platonic Idea of Beauty as that in which truth and goodness inhere, to what is implicit in the author's specification of the 'aesthetic expression' of 'the Ideas' as their 'mythological expression'.

In order to elicit the meaning of the author's claim that until 'we express the Ideas aesthetically i.e. mythologically, they have no interest for the people, and conversely until mythology is rational the philosopher must be ashamed of it'¹⁷, two assumptions have to be made. The first, whose vindication may be postponed until after the explanation of the function of mythology, is that, notwithstanding the rhetorical denial that there can be an Idea of the State, the ASP points to a resolution in favour of the Platonic view that the State is an object of freedom rather than the Kantian view that it is not. This resolution, as we shall see, is accomplished in the fragment mentioned above, in which the Rechtsstaat is held to be the object in pursuit of whose universality two diverse social groups can converge or draw close to one another, as neighbours, so to speak. Law is

that which ensures their unanimity in the conviction that the particularity, the special interest, of neither can prevail over that of the other. This is similar to the function attributed to mythology in the ASP.

The second assumption is that by mythology the author meant something related to law not by any means as an alternative but as its expression, aesthetic in the sense that it is that whereby law is sensibly rather than merely intellectually impressed upon the people. In this respect, the views of the author of the ASP obviously disclose their kinship with Plato's. It is for this reason that use has been made of the notion of the appearance in the soul of the citizen of the State as an image or semblance of the product of his own activity. In fact, of course, it is not. But it must seem to be such. The State is the work of another than his immediate self but in its activity the citizen must see deeds which he can regard as if they could be his own. The mythology which serves it must contain something like a myth of foundation to settle everyone in their station, in what the author says 'is peculiar to each'. But, further, there must be something like a myth of affiliation so that 'what is common to all' may be expressed in a palpable form of familiarity. The author, of course, makes no mention of minerals and mating-festivals, for in that extreme mythology would be offensive to practical subjectivity. But it is clear from the words which follow the sentence last cited that he agrees with Plato that unanimity, between as well as within classes, is the highest form of justice ¹⁸. For he went on:

'Thus in the end enlightened and unenlightened must clasp hands, mythology must become philosophical and the people rational; and philosophy must become mythological in order to make the philosophers sensible'. Then reigns eternal unity among us Then first may we expect equal development of all powers, of what

is peculiar to each and what is common to all. No power shall longer be repressed. Then reigns universal freedom and equality of spirits!' ¹⁹. The achievement of political community in the midst of social difference: this is the object that mythology has in common with law, the matter which the ASP and the fragment to which attention has been drawn treat, respectively, from the point of view of the sensible (mythology) and from that of the intelligible (law).

Before we proceed to the discussion of this fragment, the *Widerspruchsschrift* (WSS) ²⁰, we have to meet an objection, apart from the fact that Hegel's authorship of the ASP, and so its utility as an interpretative resource, may as well be denied as maintained ²¹, that may be raised concerning our first assumption.

On the basis of the author's declaration of his intention to prove, upon the postulate of the self 'as an absolutely free entity ... the free, self-conscious essence', in other words upon the premiss of the 'Idea of mankind', that this primary postulate or Idea 'gives us no Idea of the State, since the State is a mechanical thing, any more than it gives us an idea of a machine' ²², it has been supposed, by too many commentators to specify, that Hegel, all of a sudden, decided that the State is quite unfit to be regarded as an ethical entity. It certainly looks as if the author of the ASP was attempting, when he proposed as the definitive practical postulate the Idea of mankind as absolutely free and denied that the dignity of 'something that is an object of freedom' ²³, could be attributed to the State any more than to a machine, to outdo Kant in the strictness with which he denied that civil laws can advance morality. There appears to be basic agreement between the ASP and the view of Kant that the State is 'the mechanical product of the union of the people by coercive laws' ²⁴. Indeed we may say that the author seems to exceed Kant

inasmuch as he appears to regard the State not merely as machine-like, but as a very machine. For it is written that 'Only something that is an object of freedom is called an Idea. So we must (go even) beyond the State! - for every State must treat free men as cogs in a machine; and this it ought not to do; so it must cease' ²⁵.

Yet we have seen that Hegel believed in the validity of a distinction between the mechanical and the ethical state, expressed, only months before he is supposed to have written the ASP, in the antithesis between the state that is like a machine whose operative parts are mere 'cogs' ²⁶ (or whose people are mere 'tools' ²⁷) and the state that is imaginatively represented not at all as a mechanical product of coercion but rather of the citizens' own activity. Hegel clearly did not really believe that no state can do other than treat free men as cogs in a machine. This is evident from the remarks which, following the proposition that 'every state must treat free men as cogs', contradict its universality. Hegel was sufficiently a Kantian to believe that 'ought implies can'. When, therefore, he wrote that the state 'ought not' and 'must cease' so to treat men, he implicitly denied the Kantian view that the state cannot but be mechanical and that its laws cannot but be coercive, and so be deficient in moral content. On that view it would have made no sense to demand that the state cease to behave mechanically.

Hegel, then, was quite emphatically hostile to the Kantian view of the state as a device needed merely to curb human vice, and it was thanks to the fact that he repudiated this conception of the state as having only a coercive faculty that, as well as dissenting from Kant's relative indifference to the state, he rejected the opposite but cognate attitude of many of Kant's followers, who rebelliously considered the putative necessity that

the state behave mechanically to be grounds not to suffer it but to do away with it. This conclusion, that the ASP is not the unequivocal condemnation of the state for which it has commonly been taken is the same as that reached by Hans Maier who has argued convincingly, upon other grounds, that the ASP provides no basis for the verification of the 'oft-asserted dichotomy' between Hegel's view of the State in 1796 and that which is disclosed in his subsequent constitutional writings. Examining other contemporary views of the state, Maier has found an ambivalence even in the major work of such a redoubtable antagonist of the modern State as Schiller who, though he held that the State is 'always alien to the citizen because feeling is nowhere to be found in it', could nevertheless envisage the possibility that the same citizens might be 'friends-of-state' (Staatsfreunde) ²⁸. This ambivalence, manifest to some extent in the ASP, Hegel was to resolve in favour of the state.

To decry the state as a machine was not, we may conclude, necessarily to deny the potential of the relationship between the citizen and the state to be endowed with sympathy. On the contrary, to introduce the concept of the machine state was often a literary device for the evocation of its polar alternative, the state which encourages rather than repress its citizens sense of activity, the state by which 'no power shall longer be repressed'. This contrapuntal technique is to be found at work in, for example, a passage written by Schleiermacher that almost exactly echoes the conclusion of the ASP. In it is postulated 'a new, higher concept of the State which, eternally exalted beyond mere mechanism, should demand for itself all the innermost powers of men, but should also raise and extend these towards the supreme development of human existence' ²⁹. We have already seen Hegel use a similar technique in the PCR, where he drew an antithesis between the

machine-state and its republican predecessor, and between the political sentiments prevalent in each ³⁰. Since the availability of a certain 'image' of the state is what served there to distinguish the latter kind of state and political culture from the former, and since the concepts of imagery and myth are used in a contemporary section of the PCR and in the ASP, respectively, to signify the affective cement, so to speak, of the ancient polis, and that which in the modern world has to mitigate the appearance of mechanism, as opposed to independent activity on the part of both, in the relationship between state and citizen, we may be sure that the concept of a 'new mythology' has indeed the significance which we have attributed to it: namely, that it is meant to convey the idea of that through which the State may appear as if it were the product of the activity of its citizens, all being equal and free. For it has the same contrapuntal value in antithesis to the idea of the state which is the product of mechanical coercion of its subjects, all being unequal and repressed, as had the concept of the ethical State, the ancient republic of the PCR and other JSN. And further, its object is the same as that which, in the *Widerspruchsschrift* (WSS), Hegel was to depend upon the law which, in the so-called 'whole state', is equally available to all members of civil society ³¹: namely, eternal unity, universal freedom and equality of spirits or the sympathetic convergence or neighbourliness, as the WSS has it ³², of social groups, the 'enlightened' and 'unenlightened' of the ASP, both of which, despite the divergence of their practical cultures, have a common interest, did they but know it, in the restoration of a state which could appear to each as a virtual or simulative product of his own activity inasmuch as, in reality, it is neither the product nor the servant of the activity of anyone in particular.

This capacity was held by Hegel to be peculiar, in the modern world, to the representative-cum-monarchical constitution upon which, as we shall see, he conferred the dignity of maiestas ³³, sovereign over the rights of all private persons, individual and collective alike. It was this constitutional system with which, it will be argued with reference to the WSS, Hegel believed his times to be pregnant and which he believed, according to 'all the signs of the times' ³⁴, would be the issue of their laborious stresses. The times were ripe for constitutional reform.

2. The Wuerttembergschrift

In order with greater ease to understand the significance of the most difficult fragment among the VSN, the Widerspruchsschrift (WSS), in the progress of Hegel's views on custom, law and representation towards their specific development in relation to the problems of the German Empire as a whole, it is expedient to precede the analysis of the WSS with a treatment of an essay written in 1798. In this, the fragmentary essay 'On the recent domestic affairs of Wuerttemberg', here to be known as the Wuerttembergschrift (WBS) ³⁵, Hegel argued that it was 'high time for the people of Wuerttemberg to give up wobbling between fear and hope, and oscillating between expectation and disillusion' ³⁶. Despite the feeling, which shall be explained below ³⁷ as one of existential commitment to the limits of the present life led by the majority of his fellow citizens, despite the timid care of the bulk of the Swabian people lest personal or sectional advantage should be lost, 'when things were changing or when the past was being preserved' ³⁸, Hegel was confident that a 'picture of better and juster times was alive in the souls of men' ³⁹. Their feeling of longing, 'a sighing for purer and freer conditions' ⁴⁰,

needed only to have its heart-felt, but merely passive emotion of contrariness towards the present enacted ⁴¹. The time was ripe for 'men of nobler wishes and purer enthusiasm' ⁴² than were evident in the majority 'to focus their will, so far lacking a definite object, on those parts of the constitution which are based on injustice and to direct their energies to the necessary alteration of these parts' ⁴³.

It is clear from the introduction to his essay, which was but one intended contribution to a spate of pamphlets written by Hegel's contemporary Swabians with a view to influence the terms upon which was to be recalled the territorial Diet, suspended since 1770, that the proper reconstitution of the Estates' Assembly could alone, in Hegel's opinion, prevent the indeterminate dissipation of the energetic but inchoate yearning of the people for 'something different' ⁴⁴. That Hegel had obvious reservations about the tendency for the emotional urge of his people to pin its hopes 'to every event, to every glimmer, and even to violent actions' ⁴⁵ may well have been the reason why the anonymous reader to whom he referred the WBS for approval or criticism advised against its publication as likely to 'do us more harm than good' ⁴⁶. Hegel's views, as Rosenzweig has convincingly argued, were, so far as can be ascertained from that part of his manuscript which is extant and that part, extensively cited by Rudolf Haym ⁴⁷, which no longer survives, closer to those of the distinguished Goettingen historian of the pragmatic school, Thomas Spittler, than to those of the radicals, amongst whom H. S. Harris, for example, has attempted to identify like minds ⁴⁸. For like Spittler, whose conservative-reformist influence the Duke of Wuerttemberg imported into his Privy Council and whose advice, contained in a pamphlet of his own, was influential in shaping the terms upon which the territorial Diet was recalled ⁴⁹, Hegel was decidedly in favour only of the

alteration of such unjust 'parts' of the constitution as was 'necessary' to ensure that the 'fabric of the state' should not disintegrate ⁵⁰.

Terminology of the kind just cited, and the recurrence of Hegel's use of the metaphor of a dwelling place, contribute to the impression that the political change which he envisaged was reformist rather than revolutionary and that its main effect would take place in the dispositions of the citizenry. When he represented the state as a 'tottering edifice' in place of which 'something safe' ⁵¹ had to be produced, when he denied that 'institutions, constitutions and laws which no longer correspond to human manners, needs and opinions ... can subsist any longer' ⁵², when he repudiated attempts to manufacture confidence in those 'features and sections of a constitution' in which a people no longer has faith ⁵³, Hegel's meaning was clearly that reciprocal adjustment had to occur between laws and customs rather than that the doxalogical tendencies, among which are to be counted the 'meagre wishes' and 'petty cares' ⁵⁴ of his fellow Swabians, and indeed all Germans, for their own advantage, should furnish the measure of what should be allowed to come to pass. For opinion or custom in se is entirely without measure. The sole criterion upon which change must be evaluated, a criterion considerate of the need to maintain what is tenable no less than it desiderates the rending of an habitual fabric that is found, after calm examination, to be 'really untenable', is 'justice' ⁵⁵. This concept of justice (Peace! those who have attempted to interpret it as it occurs here and in Hegel's edition, also in 1798, of the 'Confidential Letters about the former constitutional relationship of Wadtland to the City of Bern' ⁵⁶, as if by 'justice' Hegel understood something quite at odds with custom ⁵⁷.) is simply that of a measure inherent in constitutional laws from

which the spirit of correspondence with custom, need and opinion has not flown and of a temperance prevalent in the disposition of men who 'care for the universal' 58.

It depends upon this measure, the objective aspect of the subjective disposition not excessively to consult personal interest, whether or not 'men will leave it to good luck to decide what is to be jettisoned and what retained, what is to stand and what to fall' 59. Without such an objective criterion, which Hegel manifestly believed serves conservative as well as, or not other than, reformist purposes, change is left to chance. The 'collapse of the old building' 60, rather than its careful restoration, is awaited quite passively. It is worth quoting in full the passage in which Hegel clinches this argument in terms which, it should not surprise the attentive reader of the foregoing account of the concepts of mythology and justice to learn, are borrowed directly from Plato's Republic 61:

'If a change is to happen, then something must be changed. So obvious a truth needs to be stated, because fear, which suffers, is distinguished from courage, which wills, by the fact that men driven by fear do feel and grant the necessity of a change, but, when a start is to be made, exhibit the weakness of wanting to retain everything they have, just as a spendthrift who is under the necessity of limiting his expenditure finds indispensable every article of his previous needs which he has been told to curtail, and so refuses to give up anything, until at last he is deprived of indispensable and dispensable alike. An example of such weakness a nation, or at least the Germans, may not afford. In the cool conviction that a change is necessary they should not now be afraid to examine everything in detail. What they find to be unjust, the victim of injustice must demand shall be removed and its unjust possessor must freely and willingly sacrifice' 62.

Reflexive change, we may say by way of summary, is possible only for men of temperance and moderation, who are not afflicted by the viciousness which cannot give up 'unhealthy habits' ⁶³.

Hegel required of his people a *Sinnesaenderung* that would restore the fabric of the state. Justice, he argued, begins at home:

'let every individual, every class, start of its own accord to weigh its position and its rights, before beginning to make demands on others and before trying to find the cause of the ill outside itself, and if it finds itself possessed of inequitable rights, let it strive to redress the balance in favour of others' ⁶⁴

Such a path, through which his people might change themselves, is to be preferred to revolution without the heart of man. From Rudolf Haym's publication of what remained of the WBS ⁶⁵ we learn that Hegel was hostile to radical experimentation with the ethical life of a people. 'So long', he maintained, 'as one has not in his power reform and the reversal of attempted reforms found to be harmful, one would do well to content himself to remain the same in the midst of all such changes the consequences of which can be surveyed and reckoned, and simply to stop up the sources of abuse' ⁶⁶. To remain self-same, to avoid changes whose consequences are incalculable the better to effect changes which conserve custom and law from abuse: This is the objective which Hegel set his people.

The abuse which Hegel had above all in mind consisted in the fact that, especially since the suspension of the territorial Diet, though not of its Select Committee, which perpetuated itself by cooption, the influence of the court bureaucracy had been augmented. For the Select Committee had renounced the right of the representatives of the estates (*Landschaft*) to participate in government (*Herrschaft*). This right of co-government, as Roland Mousnier has called it ⁶⁷, the means whereby, according to F. L. Carsten,

through their 'active participation in the work of the state the members of the Select Committee proved that the machinery of the Estates could be adapted to the needs of a more modern state, that the machinery worked efficiently and cheaply, that the creation of a large bureaucracy was not the only possible way of advance towards the modern state' ⁶⁸, Hegel believed had been virtually surrendered to the ducal bureaucracy. The governmental (herrschaftlich) function of the Estates, which had so long been promoted by their committees ⁶⁹, had since 1770 in Wuerttemberg been sacrificed by the Select Committee in return for the maintenance of hallowed corporate (genossenschaftlich) privileges. As we shall see in the fourth and fifth chapters, this was a problem which Hegel believed permitted subversive behaviour of the territorial Estates towards the Empire. The contribution of representative institutions to political modernization, a matter which we shall have occasion to deal with in the final chapter ⁷⁰, had been arrested, as witness the servility of the Select Committee to the Duke in financial matters ⁷¹. Hegel's view of the matter speaks for itself: 'The committee must have found it very convenient to contain men who speak and write for it and, if need be, even think for it. A great part of the membership of the committee ... let the difficulties of the country be attended to by providence or at the whim of the prince... Thus was the committee and with it the country led about by the nose by the officials - The committee itself was never arrogant. Its jurisconsults and advocates were. It was just lazy and thoughtlessly gave its name to all their machinations. It was they who led the committee into complacency towards the court ... It was they whom the court sought to win over, because it was certain to get what it wanted when it managed to draw the advocates and consults in the train of its interests. It was upon them that depended whether regard

should be had for the burdens and wishes of particular estates. It was they who had control over incoming documents and concealed their existence from the committee until it pleased them to bring matters before it⁷². Hegel complained angrily that, since 1770, it had become usual 'to regard the consults as an essential part of the territorial constitution' ⁷³. The 'monstrous officialdom'⁷⁴, made up of legal scribes coopted by the Select Committee, had attained complete independence of their principals, the Committee itself. For whereas, before the suspension of the Diet, the Committee could, with the authority of the Diet, dismiss its consults 'without demur', it had been possible since 1770 for the Duke to intercede on behalf of his fifth columnists ⁷⁵. Yet the status of the consults was small beer by comparison with the power of the advocates over the disposal of the Treasury. Not only had they the power that consists in control over what information concerning the mysterious 'operations of the secret chest' ⁷⁶ was brought before the representatives of the people, but also, Hegel suggested obliquely, they had the means to buy off opposition. For it is implicit in Hegel's statement that from the consults, who had nothing to do with the Treasury, 'the members of the committee had nothing to hope for the satisfaction of their self-interest' ⁷⁷, that he believed that from the advocates a great deal of graft was to be expected.

The remedy which Hegel proposed for this situation was, according to Haym's account, a thorough reform of the 'inherently defective representative system'. It is not certain how trustworthy is Haym's account at this point ⁷⁸. He probably exaggerated the severity of Hegel's criticism of the system. It may be that a 'nachmaerzlich' liberal of Haym's kind was so disappointed that the subject of his lectures 'failed' to come to a conclusion wholeheartedly in favour of the kind of system of representation sought

by the revolutionaries of 1848, that he might have imputed to Hegel premisses from which he did not start. Haym's wistful judgement of the WBS, that it is 'so exciting in its premisses and so unsatisfactory in its inconclusiveness' ⁷⁹, must be set aside, though its adherents have been legion, if Hegel's attitude to the old system of representation in Wuerttemberg is to be properly understood.

If we look to the title which Hegel himself originally proposed for the WBS, rather than to the quite uninformative alternative title proposed by some anonymous associate (On the recent domestic affairs of Wuerttemberg, especially on the inadequacy of the municipal constitution), we shall find a clue to the limits both of Hegel's critique of the old system and of his proposed reforms. If we appreciate the limits of the former for what they are, we shall not fall into the error of exaggerating those of the latter and of deducing from their alleged failure 'to cross the threshold from theory to practice' ⁸⁰ (which, being translated, means to satisfy the requirements of a critical outlook upon the old system of representation quite different from Hegel's) a general despair on his part of the viability of representative government. Hegel was certainly not 'vormaerzlich'. But it is quite clear from the WBS that his reformist outlook was conservative rather than liberal. This can be inferred from its original title: 'That the magistrates ought to be elected by the people' or rather, according to an amendment made by Hegel himself, 'by the citizens' ⁸¹.

By this proposition, Hegel certainly did not mean that the inhabitants of the towns of Wuerrtemberg, let alone the whole people, should directly elect their representatives. As we shall see below ⁸² with reference to the question of the composition of the Imperial Diet, Hegel's views on electoral rights do not admit of any such interpretation, though in the VSN he never actually

stated explicitly and in full what system of indirect election he would prefer. His meaning was simply that the members of the urban magistracy and rural mayoralty should acquire their dignity, which carried with it the right to be elected (passive Wahlrecht)⁸³ in turn as members of the territorial Diet, not, as of old, by cooption but by popular election. There is nothing in what remains of the WBS to suggest that Hegel believed that the right to elect magistrates should entail for its possessor a further right to elect (aktive Wahlrecht)⁸⁴ representatives of the cities and districts. On the contrary, his view was, as we have seen, that rights of any kind should be adjusted to functionally or homotechnically distinct social and political stations. Hence, we may suppose that it was his general view that no citizen might be a direct elector of his representatives as well as of his magistrates and that, rather his representatives should be elected by his magistrates, or some other intermediary, from their membership. Each should temperately keep his place in the electoral system. In a country which for centuries had had an hereditary monarchy, Hegel doubted, Haym reports, whether it would be advisable 'to give the choice of its representatives to an unenlightened heap accustomed to blind obedience and dependent upon the impressions of the moment'⁸⁵. Precisely the objection which Hegel was to raise against direct election in his Philosophy of Right⁸⁶, that it fails to overcome the disintegrated way of life of civil society, is expressed here in his doubt of the capacity of a mere heap of men to elect their representatives for reasons other than fear or present interest. As we shall shortly see with reference to the WSS, it is upon the impression of the law on the hearts of the unenlightened that depends their escape from the impressions of the moment and their convergence in common cause with the enlightened. That political community depends upon the sovereignty

of the law is a point made unambiguously in the WBS in tandem with the rather faltering views on electoral rights, from whose uncertainty Haym and others have inferred that, in 1798, Hegel was on the point of admitting, somehow in spite of himself ⁸⁷, the ill-adaptation of the Rechtsstaat and the historical fitness of the Machtstaat for survival in the modern world. On the contrary, Hegel was quite emphatic that 'so long as the people does not know its law, so long is no community available'. He went on 'so long as the power of officialdom is not limited, so long will popular election serve only to bring about the utter destruction of our constitution. The main thing would be to place the right of election in the hands of a body of enlightened and upright men independent of the court. But I cannot see from what mode of election one could expect such an assembly, even if one were ever so carefully to determine active and passive electoral rights' ⁸⁸. We must be content to deduce from the main objective set by Hegel, namely, the restoration of the truly essential parts of the territorial constitution, of the people's knowledge of its law, and therewith of its existence as a people rather than a mere multitude or heap, and from his fear that popular election would reinforce the unconstitutional influence of the ducal fifth column, what mode of election Hegel regarded as one from which might be expected the opposite of an assembly independent of the court.

Such a mode of election was that which the court had been attempting to promote, in the 18th century especially, namely, one in which control of the votes of those with the active right of election of representatives in the territorial diet would be extended from the active electorate itself, the magistracy, to the whole people. Hegel's view, so far as it can be reconstructed with certainty, appears to have been hostile to the ducal

practice, begun in the 1720's, of encouraging villagers, more susceptible to influence than town-dwellers, to presume their right to instruct the magistrates, or, after a decree of 1737 which transferred the active right to district assemblies (Amtsversaemmlungen), to instruct them in the matter of their election of representatives ⁸⁹. It looks from Hegel's original title as if, in keeping with his lifelong denial of the political capacity of the peasantry ⁹⁰, he wanted the advantage of their docility to the Duke to be kept out of political account. Only the citizens, in his view, should elect the magistrates from whom representatives were to be chosen by district assemblies of enlightened and upright men, likewise elected by the citizens.

Despite the complexity of the problem of electoral rights, it is clear that Hegel sought a durable solution to the political stresses of the late 18th century in some system that would allow the relatively unenlightened only a primary vote. Having been primarily elected by the same constituency, magistrates and district assemblymen would then exercise their rights. The former would have the passive right, to be elected as representatives, while the latter would have the active right, to elect them. Such a system would perform a careful act of mediation between the interests of the unenlightened and the disinterestedness of their representatives. This act Hegel was to treat philosophically in the WSS, as he had lyrically in the ASP.

3. The Widerspruchsschrift: the politics of neighbourhood

From the treatment in the foregoing chapters of Hegel's theory of the education of humanity by way of the genius-like Socrates - whose function is to introduce into the present an ideal which, while literally absent from the texture of the

ingrained customs and traditions of a people, bears sufficient relation to them, in virtue of the participation of its spiritual vehicle in their civic culture, to effect in them some change for the better, it should be clear that Hegel regarded dispositional change in society in terms neither of purely spontaneous nor purely extraneous agency. In the DS, Hegel was to object to the general concept of change implicit in Fichte's theory of practical activity that it involves an antithesis, irreducible throughout all eternity, between those driven towards the pure freedom of 'activity for the sake of activity' and those who are subject to a 'system of limitations' because they are driven to activity for the sake of enjoyment. What Hegel called a 'limited present and an infinity extraneous to it' ⁹¹ must, in Fichte's view, always persist. The solution to it cannot be one which changes the dispositions of men subject to the sensible drive of nature (Naturtrieb) towards pleasure, but only one whereby a 'community of rational beings' dominates a community of 'finite beings' condemned to an impoverished condition of present-minded neediness (of which Hegel had treated extensively in the GCR, a condition of unsatisfied 'life' and 'oppressed forces' opposite to that which had been demanded in the ASP), a 'state of indigence and necessity' ⁹². Hegel would have nothing to do with this contempt of the capacity of ordinary men - the bourgeois or burgher of indeterminate economic class - to subvert their subjectivity beyond the present. Rather could the elevation of the hearts of men, their Sinnesaenderung, be achieved through an exchange between the majority, passionate and unenlightened, and the disinterested and enlightened minority. This categorization, which we encountered in the ASP, Hegel now attempted to inform with more direct bearing on the analysis of German society and politics.

The central problem of his political thought persisted in

the form defined in Chapter One as the question how it is possible to accommodate and integrate the interest - personally and corporately determined - of the individual with that of the community. The grounds for Hegel's dissatisfaction with Fichte's and Schelling's solution to the Rousseauan problem, how each 'while uniting with all, still obeys himself and remains as free as before' have already been indicated: that it consisted in the so radical redefinition of the self that the problem must arise whether that self and its freedom is felt by their original to be pertinent. With the German version of Rousseau's liquidation of the influence of personal and corporate interests upon the determination of the General Will Hegel could have no sympathy since it did not meet the conditions of a definition of sensible freedom: that the individual needs to see in the absent idea of community a possible locus for the satisfaction of his present interests. If these are demolished to make way for the Absolute, a 'kind of avarice' for a present to come, hostile to what is here and now intelligible or absent, must supervene. The individual must, if he is to identify himself with the acts of the community, witness a mediation or exchange between its autonomy and his own, such that he may continue to regard as worthy of respect the inclinations of the sensuous personality which bear the weight of his identity. He must have a sense of the value of his present existence as well as an intuition of the absent or intelligible purpose of the community. He must be conscious, while the community demands of him a certain self-abnegation of his pathologically or heteronomously constituted identity or character, that its autonomy is yet careful of his interests. On this problem, we shall see later, turns the controversy in the modern debate on the entitlement to representation of persons as such or transcendent entities. Before we treat of the question what contribution Hegel's theory

of representation has made, on the relative titles of the 'present' and the 'absent' to be represented, the terms on which he can be said to formulate his contribution had better be defined. This purpose is best served by analysis of the WSS, in which Hegel developed a theory of political exchange or communication wherein it is stressed that the community which demands of the individual the negation of his particularity, while it constitutes an absent idea that is an 'object of freedom' and is therefore beyond the present, is yet equally congenial to it. It must be sensible as well as intelligible, this side of the present as well as yon side.

Men are said, in this fragment, unconsciously to seek the 'Unknown' ⁹³. By 'unconsciously' Hegel does not mean that they are unaware that they seek 'something' ⁹⁴, but that their consciousness, the intention of their theoretical subjectivity towards an object, is not called into play to the extent that their object takes on a determinate shape as a project evocative for its performance of a decisive will ⁹⁴. They have a sentiment of deficiency ⁹⁵ but no knowledge of what will make it good. They therefore feel an 'ever-increasing contradiction between the Unknown ... and the life which is presented and permitted to them, which they make their own' ⁹⁶. Yet, though they accommodate themselves to this given life, they need 'to obtain a consciousness over what holds them captive, and over the Unknown which they demand' ⁹⁷. Why this is so, Hegel does not say. At any rate, their need does not, of its own passionate resources, procure its own satisfaction: 'the passion of man is without reflection on his fate, without will, because he respects the negative (i.e. the given life), regards the limits only, in the form of their right and powerful existences, as indomitable, his determinations (i.e. the conditions of his given life) and their contradictions (i.e. his passionate demands against them) as absolute (i.e.

irreconcilable), and sacrifices himself and others to them, even though they violate his impulses' ⁹⁸. The picture thus drawn closely resembles Hegel's description in his letter to Schelling of April 1795 of the 'indolence of the sedate people, eternally accepting everything as it is' ⁹⁹. At that time the solution was said to be the 'spread of ideas as to what should be' ¹⁰⁰ in opposition to the dogma of the incapacity of the human race for freedom. In 1796, Hegel had called for enlightened and unenlightened men to join hands and do away with the repression of their different 'powers' ¹⁰¹. In 1798, he made much the same ¹⁰² demand which eventually, in 1800, took the form of an assertion of the need for convergence of the unconscious quest of men with the yearning after life of those who have elaborated nature into the idea in themselves' ¹⁰³. The 'need' or deficiency of the former 'meets with the need of the latter to enter over into life from their idea' ¹⁰⁴.

It will be recalled that, in the ASP, Hegel had asserted that only 'an object of freedom' can be called an idea and that the first such object is at the same time the subject of freedom, 'the representation of my self as an absolutely free entity'. Now, in 1800, the import of his conception of the role of the enlightened became explicit: the feeling for nature, in which men in general participate at the level of feeling or mere impulse, but without the reflective resources to convert her into an object of freedom upon which their subjectivity could intend itself as a definite project upon which to 'focus their will' ¹⁰⁵, is elaborated by the enlightened into an idea on the basis of which consciousness can construct an 'entire world' ¹⁰⁶ alternative to the 'given life' ¹⁰⁷, a creation *e nihilo* ¹⁰⁸ analogous to an 'aesthetic act' ¹⁰⁹. The 'need' of the enlightened differs from the passionate need of men in general in that it possesses the cognitive structure

which is the prerequisite of action: that there be, on the one hand, a representation of the self as an absolutely free entity ¹¹⁰, i.e. subjectivity, and, on the other, an object or project for its performance. Yet, Hegel argued, 'to enter over into life from their idea' ¹¹¹ is a need that cannot be satisfied except it converge with the inarticulate need of men in general, to whom life, but not consciousness, or conscious life, is given.

Freedom must remain in the form of mere subjectivity, and to the extent that it is not pursued 'into life' it is not worthy to be called an idea, so long as it does not get beyond the point of the representation of the self as absolutely free, the standpoint of the Absolute Ego. Hegel insisted that the enlightened 'cannot live alone, and the man is always alone who only represents his nature to himself, even if he has made a display of it to his associates and enjoys himself in it; he must also find that which is displayed as something living' ¹¹². To give life to the idea of nature, that is the imperative of the enlightened, for unless he do this he is condemned to loneliness. He needs neighbours.

Such loneliness was imputed to God by Schiller as the motive of His condescension:

'Friendless was the great Lord of the world,
Want felt he - wherefore made He Spirits,
Bless'd mirrors of His blessedness' ¹¹³;

and to the poet by Hölderlin. Hölderlin presented the fate of Hyperion, the hero of the novel of the same name to whose theme Rosenzweig compared, at great length, that of the WBS ¹¹⁴, as being, after his failure to liberate the German people, one of lonely communion with nature ¹¹⁵. Hegel, despite his familiarity with such feelings ¹¹⁶, determined that loneliness should be overcome by the communication of the enlightened with his people by way of a 'rational mythology' through which they might be educated to freedom.

To the enlightened, 'yearning after life', life appears not as something present and permitted to him from without, not as a behavioural imposition, a dead habit, which he must then make his own, but as that which is his own in virtue of his inner elaboration of it, which yet remains utterly absent, for its immanence is through and through intellectual and is not felt. The philosopher or intellectual is, so far, not sensible: he thinks, but cannot give life to his idea nor dwell in it. He merely knows that his idea contradicts his present existence, and cannot make this absent or intelligible 'object of freedom' live in the present¹¹⁸. The people is not rational: it feels that its present life is contradicted by its equally present impulses, but cannot articulate its sensible want into an absent idea the making present of which could constitute a project of consciousness. Because it only feels its nature, because it apprehends it not otherwise than in the present, a consciously sought objective, which to be so sought must take the form of an absent idea, would, if achieved, appear to it as a very mortification of its nature¹¹⁹. It would have, of course, to be the object of another than itself. The people has, so far, an existential commitment to the present. It is self-interested: yet it has no self, for to have a self implies intention towards the absent, a structural capacity for action, whereas the people is passionate. It lacks power to discriminate between its nature as impulse and its life as limit to that impulse. Change in its way of life must appear to it, while unconsciously it wants such change, as an affront to its sentimental nature. Yet it is from that nature that, however incoherently, there stems an impulse for change.

The enlightened, however, overcome the sentimental confusion of nature with the present life, of impulse with limit, by rendering nature into an idea of life which, absent by virtue of its

intelligible design, furnishes subjectivity with a capacity for projection fromward the 'existing life' in which it can ground its opposition to that present limit. The enlightened have, so far, a commitment to the absent. But so long as their interest is centred upon the maintenance of their subjectivity in projection towards the absent, while they do not yet act to make the absent not merely the locus of their self-projection beyond present limits but itself a project for living realisation in the present, so long as they do not make live the idea of life, they are condemned to loneliness. Their loneliness consists in that their escape from vulgar sensibility amounts to a blessed apathy, a too radical divorce of the conception of nature as life from affective connection with nature sensibly apprehended. The supposition may be ventured that Hegel was thinking here not only of the consequences of Schelling's demand of 1795 for the 'demolition of our personality' but also those of the radical destruction of the pathological self, if necessary by force, required by Rousseau.

Hegel described two alternative positions for 'the man whom the age has driven into an inner world' ¹¹⁷. This social type has been taken to signify those without political power in the German Empire, or those simply excluded from it. This is not specific enough to illuminate what part is to be played by such a class of people in social communication and dispositional change. It looks, in fact, as if Hegel wanted to maintain that everyone inhabits this 'inner world' who is in any sense restricted to 'private life', a concept due for further elaboration below ¹¹⁸. The privation of the inner world will, for the time being, be taken to mean, on the one hand, the impotence, elsewhere identified with positivity ¹¹⁹, of the unselfconscious quest after the Unknown, the sentimental passivity of the people; on the other, the impotence of the yearning after life of those conscious of nothing

but self, the intellectual contemplativity of the Absolute Ego. This provisional conception corresponds to the character of the alternatives through which Hegel maintained the social dichotomy of the sensible people and the philosophical few. A man's position can be, 'if he wants to maintain himself there (in his inner world), a perpetual death' ¹²⁰. It should be clear, pace Harris ¹²¹, that perpetual death means not the routine of 'ordinary life' but the lonely apathy of the never present idea. Otherwise his position can be, if nature drives him into life, only a striving to overcome the negative in the existing world, in order to find and enjoy himself in it, in order to subsist' ¹²². Here is clearly stated, in the second position, the view of the characteristic agitation of the 'bourgeois' which recurs throughout the VSN ¹²³: the bourgeois character, precluded by its lack of self-consciousness from being active in the pursuit of non-sensible 'objectives of freedom', strives withal against the existing world in which it apprehends a negation of the passional impulses by which it is driven. Yet the passive terms - Hegel's use of the appropriate voice is deliberate - of this strife to subsist ensure the further compression of the bourgeois into a world turned in upon itself and inimical to changes in the disposition of the hearts of men whereby they might transcend the self-interested, sensible morality of private life. His passionate strife against the existing world ends in his inward appropriation of its values, serves only to enforce the respect of the bourgeois for the limits which it imposes on him. These limits become his inner world. Lacking the capacity to represent 'himself to himself' ¹²⁴ as free, his subjectivity kept in slumber by his passion, projection towards the absent can only appear to him as an existential threat to his character.

Whereas the inner world of the bourgeois binds him to the

mere present in spite of his native impulses, that of the intellectual binds him to the purely absent for the sake of the maintenance of his precious subjectivity. It is important to stress that, despite his identification of potential for action with the capacity to distinguish self and world, that is, with consciousness, Hegel held the enlightened to be no less passive than the bourgeois. He differentiated their passivity not according to its degree but according to its kind. Whereas the bourgeois respects the limitations of the present way of life, the intellectual, on account of his scorn for these limitations, disdains to enter into relations with the life which they describe and so fails to realise his potential to make his idea of life live in the present. The passion of the intellectual 'is bound up with consciousness of limitation, on account of which he scorns life; as far as he can, he wills his passion!'¹²⁵.

It should be clear from the foregoing that Hegel considered nature to be the source of the apprehension of contradiction of the present, whether it is felt presently or conceived absently, by nature itself. This differentiation in the mode of representation of nature is central to a correct interpretation of what Hegel meant by contradiction. Nature was not supposed by Hegel to manifest itself in the same mode of apprehension of contradiction throughout society. Neither nature nor contradiction is to be understood as an autonomous force the intuition of which is tantamount to its existence as a power to change society. We shall see in the sixth chapter that the same is true of what he called 'necessity'¹²⁶. Either is susceptible of inarticulate as well as of self-conscious expression, and of complicity with the status quo as much as of hostility to it. Nature is intellectually apprehended by the few as totally absent, its contradiction of the present is absolute. But, as he was to make clear in the DS, such

absolute contradiction is, of itself, ineffective. For a goal, to be sought, must in some sense be 'already present ... how else could it be sought?'¹²⁷. It is sensibly apprehended by the many as partly present, but its contradiction of the present is therefore equivocal. The intellectual is disposed to endure the loneliness, the perpetual death of the apathetic idea because he cannot endure the limitations of the agitated world of the bourgeois cave. The bourgeois is inclined to tolerate the confinement of his consciousness to the cinematic present because he has made its reality his own and he cannot accustom his pathological self to direct sunlight.

Hegel seems - it cannot be decided with certainty on the evidence of this fragment - to regard his classification of society as being grounded in the 'absolute necessity of the ethical', in accordance with which, he was to argue in the NRS (1802-03), 'two classes are formed' ¹²⁸. Contradiction must first be apprehended by the intellectual as absolute and by the bourgeois as partial if dispositional change is to be accomplished. For, failing a conviction on the part of the few that nature is absent, there can be no intellectual resource for the persuasion of the many that their inner world, which they feel at the same time to be both violent and indulgent towards their impulses, is not merely unsatisfactory but existentially dispensable. Yet equally, failing a sentiment on the part of the many that their present existence is not utterly bereft of nature, it must be impossible to persuade them of the need for change in accordance with the absent idea of nature, since change would then appear to them as the mortification of their whole, apparently worthless being.

The possibility of communication between the few and the many rests upon the common origin in nature of their apprehension

of contradiction. But the possibility that such communication be effective of *Sinnasaenderung*, the elevation of the hearts of men above the self-interest with which, Hegel had argued in 1795, the spirit of despotic constitutions has made a pact ¹²⁹, rests on the convergence, from their opposite standpoints, of different modes of apprehension of contradiction. If the intellectual has no information to impart to the bourgeois other than the prescription that he should strive in eternity for an asymptotic approximation to the ideal of 'demolition of personality' ¹³⁰, and if the bourgeois is too indolent ¹³¹ to articulate the feeling of dissatisfaction with the limits of the present into a conscious distinction of his pathological personality from the limits of the world by which he is conditioned and against which he has been merely impulsively agitated, social change is not to be expected. Social change depends on the sympathy of the intellectual with the personality of the bourgeois, and on the docability of the personality of the bourgeois in the idea of subjectivity. Failing the possibility of communication, change that is neither impulsive nor coercive, neither unenduring nor unendurable is utterly inconceivable: for, since change must be from something present it cannot be effected, except momentarily, only by those for whom presence is the exclusive mode in which contradiction is apprehended and without those for whom it is not; nor, since equally change must be of something present, can it be effected, except by force, only by those for whom absence is the exclusive mode in which contradiction is apprehended and without those for whom it is not. Change, then, cannot conceivably issue spontaneously from the unreflective passion of the people, nor extraneously from the self-inflicted, voluntary passion of the intellectual, of whom it will be remembered that he compounds and confirms the limitations of the present by disdaining to mix his subjectivity

with it, no less than does the bourgeois by confusing his personality with it. Enduring and endurable change can be achieved only by overcoming what, in the DS, Hegel was to call the 'antithesis between a limited present and an infinity extraneous to it' ¹³².

Having thus characterised the relation of the intellectual and the sensible man to their respective 'fates', Hegel defined these fates as what is 'positive from the point of view of Will', i.e. to be scorned, and what is to be accepted though it is 'negative from the point of view of Nature' ¹³³, and went on to consider how they might be overcome. This, he argued, is not to be brought about either spontaneously 'through the violence which a man does to his own fate' ¹³⁴, or extraneously, 'through the violence which it experiences from without' ¹³⁵. For, in both cases, 'Fate remains what it is: determinacy, limit, is not parted from life by force' ¹³⁶. In the first case, we seem to encounter the bourgeois, or the people, as the doer of violence; in the second, the agent of violence seems to be the intellectual, while the patient is, proximately, the 'fate' of the bourgeois and, immediately, the bourgeois identified with it. In the second case, then, it can readily be understood what Hegel meant by the term 'alien force' ¹³⁷ which serves to qualify 'violence': it is alien to the fate of the bourgeois, and so to the bourgeois himself. This is proved by its failure to part that fate from the life of the bourgeois, to persuade him, say, entirely to repudiate his natural drive towards enjoyment of merely sensible pleasures ¹³⁸. What though, is the sense of regarding as 'alien force' the spontaneous violation by the bourgeois of his own fate? Hegel's meaning seems to be that it is alien to the bourgeois, not otherwise than is the violence of the intellectual, because, though he may appear to be its agent, the implication of his personality in the fate to which violence is done renders him rather its patient.

Its like failure to part the bourgeois from his fate, which would be to render him a free agent, disproves any hypothesis in favour of the interpretation of the violence of the bourgeois as the act of a subject and as such not alien to him but his own free deed.

Hegel's definition of alien force is that it is 'particular versus particular' ¹³⁹. Violence 'from without' is ineligible to be counted as action effective of change from but also of the present. Subjectivity does not alone qualify a deed an action. An idea of what ought to be cannot be accomplished without attention to what is: it involves knowledge of permissive and prohibitive conditions. Extraneous violence betokens, for Hegel, an ignorance of such conditions. Such ignorance disqualifies a deed as an action, since ignorance of conditions entails ignorance of consequences and therefore of knowledge whether that deed is satisfactory of what is subjectively intended. Such deeds are particular in that they neglect, indeed disdain, the mediation of what ought to be with what is. No more or less is the ostensible action of spontaneous force mere passion, for it is deficient in the mediation of what is with what ought to be, in knowledge of its intention. Not directed upon an absent idea, it is merely an impulsive against a repulsive present. Thus is that which seeks by violence to alleviate suffering, violence such as 'the robbery of property, a new passion' ¹⁴⁰. Further, the lack of mediation with the absent is reinforced by violence since it heightens the bourgeois' sense of the existential threat to his personality by which he is confronted when he attacks the fate to which he is bound: 'the animation of one bound is to him a fearful moment, in which he loses himself, recovering his consciousness only in the forgotten but not mortified determinacy' ¹⁴¹.

The doer of spontaneous deeds of violence, no less than the patient of extraneous attack upon his way of life, clings, after

the flush of enthusiasm has passed, all the more obdurately to the limits upon which depends his sense of security, to which he is so existentially committed that revolution against them is soon followed, as we have already seen Hegel argue in the cases of spasmodic revolts of the fugitive children of Israel and of Christ's direct attacks upon their religious practices, by regression to a condition of servitude ¹⁴². This being Hegel's long standing view of revolutionary as opposed to regular change, there is no justification for the opinion of Harris that Hegel held of violence that it enhances 'consciousness' of the 'fate' or set of limitations present to the bourgeois. Since Hegel did not hold this view, but the opposite, namely that violence brings only 'forgetfulness' of the confused emotions formerly felt by the bourgeois, there is no need to suppose that, in the passage just quoted, Hegel was 'forecasting his own failure' in the attempt, wrongly imputed to him, to 'enthuse the bondsman' ¹⁴³.

None of this should be taken, however, to suggest despair on Hegel's part of the possibility of social and political change. His point is that change is possible only in terms of a dialogue between the sensible present and the intelligible absent, a dialogue summarized in the tense concept of the 'sentiment of the contradiction' ¹⁴⁴. This concept involves the reciprocity of the present feeling of nature as an impulse towards the Unknown and the absent representation of nature as an idea fromwards the existent: 'The sentiment of contradiction between Nature and existent life is the need that it be transcended; and this happens when the existing life has lost all its power and dignity, when it has become something purely negative' ¹⁴⁵.

By the becoming 'purely negative' of the existing life, Hegel meant to argue, with regard to the bourgeois from whose point of view the existing life is negative, that change may issue from a

crisis of legitimacy. This crisis consisted in the fact that, from being not 'purely negative', that is, from being a world whose negative aspects could be abided so long as that world, at the same time as it limited him, provided the medium for the subsistence of the bourgeois, the existing life had ceased to serve even that minimal purpose. The 'inner world' of the bourgeois, essentially one, Hegel will be shown to argue ¹⁴⁶, of utilitarian calculation, is deprived of outer sustenance. The present now poses no less an existential threat to him than the absent. It no longer affords him security. But disintegration of the present and general disorder should not be interpreted as tantamount to a liberation in him of his slumbering subjectivity. Hegel regards the laying of hands on property consequent upon this crisis not as a solution to it but as a 'sign' of it ¹⁴⁷.

With regard to the intellectual, it is not made clear why the loss to the existing life of all its 'power and dignity' should disclose to him that his voluntary passivity in the face of what, from his point of view, is positive, that his scorn of life, in other words, as irredeemable, is the attitude of 'bad conscience' ¹⁴⁸. That, at any rate, is Hegel's view: the inner world of the intellectual, too, loses its stability.

The inner worlds of both classes become an 'arid life of the understanding' where bourgeois acquiescence and aristocratic contempt could no longer be felt to be legitimate attitudes to the present. Hegel proclaimed that 'All the signs of the time show that satisfaction is no longer to be found in the old life; the old life was one of restriction to an orderly mastery over one's property, a contemplation and enjoyment of one's completely subservient little world and finally, for the sake of reconciliation to this limitation, a self-denial and ascension in thought to heaven' ¹⁴⁹. Their extreme neediness had impelled the bourgeoisie

to extremes of passion, manifest in the robbery of property; and the intellectual's realisation of the corruption of his conscience, sustained by luxury and privilege, had overcome his scornful other-worldliness. The stress of this crisis of legitimacy had heightened men's power over reality. This is not visible in any 'intentional activity' ¹⁵⁰ on the part of either class, but simply in the collapse of the outer world that formerly constrained them to their respective commitments exclusively to the present and the absent. The passing of this constraint enables the convergence of their apprehension of its contradiction of nature. It is only after this passage that their latent capacities for action proper may emerge. In 1796, it will be recalled, it was to be only after 'enlightened and unenlightened' would have 'clasped hands' that the 'equal development of all powers, of each as well as all' was to be expected: 'No power shall longer be suppressed' ¹⁵¹.

Nourishment of this reciprocal striving after power, which striving is, however, not yet power itself, is dependent on 'the deed of the great character of single men, on the movement of whole peoples, on the representation by poets of nature and fate; through metaphysics the limits, and their necessity in the connexion of the whole, have themselves been limited' ¹⁵². Here Hegel expressed the conviction, to be found in the letters of 1795 and the ASP, that thanks were due to Kant for making room for faith in the possibility of moral action; to Schiller for propagating the belief in human dignity and the ideal of the aesthetic education of mankind; to the people of France for, 'not humbled in the dust', having themselves taken and appropriated their Rights and to the revolutionary armies for depriving the German Constitution, or making apparent its privation, of all power and dignity; and, perhaps, to Napoleon ¹⁵³.

But though there are echoes here, which continued to resound

in the VSN proper, of an emphasis on the power of great men to create out of nothing an entire world, the object of the WSS was to define the conditions under which, just as in the ASP, animated by a 'spirit sent from Heaven', mankind or the people itself, is conceivable as the very agent of its 'last and greatest work' ¹⁵⁴: how the articulation of a 'sentiment of contradiction' into an act of contradiction of the present by the people, an act of which it would not become the unwitting patient, so that it would be an act proper, might be possible.

To this problem Hegel addressed himself with direct reference to the problem of the reform of the German Empire. Taking as his basic datum its crisis of legitimacy, of which the alienation of bourgeois sentiment and the realisation by the intellectual that his ideas cannot live in peaceful coexistence with the present were evidence, Hegel considered how the need for a better life, on which both classes agreed, could be satisfied.

He denied, first, that from the viewpoint of nature 'in its actual life' ¹⁵⁵ there could stem an 'intentional activity' directed to the securing in power of the better life, but only a 'single attack on or refutation of the worse life' ¹⁵⁶. Such 'particularity against particularity' cannot be 'the object of intentional activity' ¹⁵⁷ because, though it is no longer constrained by a commitment to the present, it yet lacks information by an absent idea. Become present as power, the new regime is the victim of lack of commitment to it, because it has not attempted to irrigate the 'arid life of the understanding' ¹⁵⁸ with ideas of freedom, dignity, sacrifice of self-interest and so on. Taking for granted the mere particularity of the 'limited life', the bourgeois revolutionary concerns himself only with seizing power in order to attack that of the old regime. To the extent that he does this without attending to the problem of his

own legitimation, his power in turn is present only as particularity. His power is liable to be challenged on the same sensible grounds as those on which he had challenged that of the old regime: that there remains a disjunction between the calculative expectations of the 'inner world' of the bourgeoisie and the power of the political system to ensure their satisfaction. The 'limited life as power can only be attacked with hostility by the better (life) when the latter too has come to power. Then it has itself to fear force' 159.

To the thoughtless strategy of the bourgeois revolutionary Hegel proposed an alternative which takes seriously the problem of legitimation. This alternative is to assume that, though the old regime had become purely negative, it had formerly been accepted as legitimate, had once possessed power and dignity, inasmuch as it could once maintain the appearance of virtual congruity of its legal norms with the passions of the 'inner worlds' of its subjects. This congruity Hegel called its 'truth' or 'universality',¹⁶⁰, and it is such congruity, different though the figures related might be, that he believed the new regime must likewise seek to accomplish. All that is required to manifest and maintain this 'virtual' congruity, what Hegel elsewhere called the republican image, is the semblance of non-contradiction between the independent activity of state and citizen. As we have seen Hegel argue in the WBS, it was abuse of the custom of representation, by means, for example of encouragement of the pretended right of the unenlightened to instruct the enlightened and upright, that had made such an appearance impossible. In the German Empire as a whole, Hegel now argued, the 'prevailing universality, as the source of all right, had disappeared because it isolated itself, had been made a particular' 161. By this he surely meant, as shall be

shown ¹⁶², that the law had been manipulated in the interest of the privileged: 'The universality is therefore available only as a thought, no longer as a reality. Concerning that which public opinion has decided upon, clearly or dimly, through loss of faith, there is little point in making a clearer consciousness more universal' ¹⁶³. Railing against the illegitimacy of the old regime can only serve to excite passions which may be turned against a new regime distracted, by its vituperation against the old, from establishing its legitimacy on higher ground. It may indeed happen unfortunately that the 'partial ideas' ¹⁶⁴ which appeal to the sensible bourgeois, to which indeed Hegel accorded the status of being contained in the idea of the 'whole state', come to be made 'universal in thought' ¹⁶⁵, that is, to be conceded a due which is not proper to them. But 'in actuality' ¹⁶⁶ they cannot, even by the professedly bourgeois revolutionary, be accorded the universal significance to which he nevertheless encourages them to pretend. The opinion of their universal precedence cannot but come into conflict with the necessity that they be restricted by the right of the state, in which case the new regime will eventually fall prey to the sentiment of contradiction, to the feeling of the bourgeois that it is, no less than the old, a particular or merely present power without universal validity against him: 'if such a Part-Unity appears as a particular the contradiction between what it would be, and what it is, is very striking' ¹⁶⁷. A revolution due to rising sensible expectations is always liable to disappoint.

When he was on the point of describing the alternative to the persistence of the contradiction between what the state is and what it ought to be, Hegel broke off. What would have followed from 'Or ...' ¹⁶⁸ can, however, be deduced from the strategy which he had proposed as the best means to the stable

institution of the 'better life'. Rather than merely vituperate against the illegitimacy of the present and base revolution on nothing but affirmation of the bourgeois' passionate sense of injustice, Hegel proposed that 'the limited life can, through its own truth, which lies in it, be attacked and brought into contradiction with this (its own truth)!'¹⁶⁹. Not the passionate sense of being contradicted by the present life would then be animated, but the knowledge of the people, which may preserve them from the folly of pursuing their passions at the expense of law, that the state must contradict itself as soon as it deviates from law..

The 'truth' of the limited life, and of any determinate way of life, lies in the fact that 'it bases its dominion not on the force of particular against particular, but upon universality'¹⁷⁰. But it is in virtue of this very claim to truth that it can be contradicted. Its very claim to be law abiding furnishes a criterion upon the basis of which it can be criticised and, if found wanting, changed. What makes no claim to truth, what is mere force, cannot be shown, in virtue of any limitations to which sentimental objection may be raised, and on the grounds of which conflict may be joined, to contradict itself or its alleged universality. For it alleges nothing of the kind and is not amenable to criticism on account of its limitations. But, Hegel supposed, no political regime subsists on the particularity of force alone. It is its very limitedness indeed, which compels it, for the sake of its capacity to persuade those upon whom it imposes limits that they have an interest in their maintenance, that it is not 'purely negative', to claim to be universally satisfactory. This truth, or rather the claim which it makes to be valid, to universality and right 'must be taken from it and given to that part of life which is demanded. This dignity of a universality, of a right, is what so intimidates the demand of

the passion of the impulses that they come into conflict with the existent, with that honour-clad life, as if they were going against conscience' 171.

This guilty sense of obligation, this existential timidity of the bourgeois, the consequence of the construction of his inner world out of the normative material supplied by the present, to which he feels such a debt that he is afraid of changing it, can be overcome only by 'cladding' 172 him with the dignity conferred by detachment from his particularity. This is the dignity of a costume which is no mere habit but has the grace of something lively, vital and intelligent. Otherwise the political regime will always suffer from the tendency of the bourgeois to make upon it demands for the satisfaction above all of his acquisitive impulses and to remain ensconced in the fastness of his own personal domain, which alone will furnish him a basis, but no true criterion, for the judgement how satisfactory to him is the performance of the state. It is the timidity of the bourgeois, his ultimate unwillingness to sacrifice himself, that renders revolution unstable, not only because the bourgeois is inclined to retreat from its immediate consequences, but also because he must continue to be reluctant to sacrifice himself for the good of the whole. Hence, even of the ancien regime, Hegel was prepared to concede, even though it is a 'negation of nature', that it admits or posits, even if merely formally, the truth 'that Right must be' 173, that the universal must prevail over the particular. That it does this only in thought, however, necessitates that it be replaced by a regime which does so in reality. To give the truth to 'that part of life which is demanded' cannot, if the truth so given is not to be betrayed, be construed, as it is by Lukacs and, to a lesser extent Harris, as the project of an 'ideological champion' of the bourgeoisie 174.

It was not Hegel's intention to dignify the bourgeois by according him the status of the exclusive fons et origo of national sovereignty. It is true indeed that Hegel did not look to Sieyes for lessons on how to effect a revolution. Harris has an inkling of this fact but his explanation, that it was due to a preference for sans-culottism ¹⁷⁵, goes entirely astray. Hegel was surely aware that Sieyes demand that the Third Estate become 'something' had been corrupted, to some extent by Sieyes himself ¹⁷⁶, into an insistence that it should be the sole repository of an unlimited national sovereignty, that it should be 'everything' and be unconstrained by constitutional law ¹⁷⁷. It is sorely tempting to suppose that Hegel attributed this corruption to a necessity, which renders it no corruption at all, inherent in Sieyes demand, made from the indeterminate and sensible 'point of view of Nature'; that the demand to be 'something' is what Hegel had in mind when he wrote of the unconscious and to that extent passionate or unintentional quest for the Unknown, which issues in the mute insignificance of 'alien force' by which particularity is not overcome but intensified; and that, therefore, Sieyes is not to be distinguished from those for whom Hegel is erroneously supposed to have a political preference.

Hegel, in order to solve the problem of the crisis of legitimacy, made no concession to the idea of the constituent authority of popular sovereignty. Rather than legitimate the new regime by adjusting it to subserve the private interests of the bourgeois, Hegel's intention was, while due should be given to partial interests by containing them within the idea of the 'whole state', to adjust the public disposition of the bourgeois to a spirit of ready exchange. In this was to consist his new dignity. This was not to go so far as to insist upon an identity of public and private life by the 'demolition of personality' on the need for

which Rousseau and Schelling were in agreement. Insofar as Hegel's ideal of the communication between distinct social groups and their modes - present and absent - of apprehending the contradiction of nature by the existing way of life, in order to mobilise the possibility of change for the better, resembles the ideal of discovering a General Will which is no mere composite expression of the passionate commitments and interests of each, but a dialectical resolution of the essential parts which the sensible and the intelligible, the present and the absent, the spontaneous and the extraneous, have to play in change, the resemblance is with Montesquieu's vision of the *volonte generale* rather than Rousseau's.

For the WSS is concerned, like Montesquieu's *Esprit des Lois*, to arrive at a non-coercive conception of the synthesis of passionate inclinations and rational will. Montesquieu's ideal constitution is designed to accommodate the naturally conditioned spirit of a people, discoverable in their personal interests, while yet to educate the citizen of the democratic regime in its 'principe' of virtue. Hegel was heavily under the influence of Montesquieu, though intent upon using his static categories in the service of a belief in the possibility of orderly change from the norms of the 'principe' of honour, whose corresponding constitution is feudal monarchy, to those of the 'principe' of the ancient republican states, whose virtue both thinkers held to be recoverable, not indeed substantially but virtually, in the modern representative-cum-monarchical state ¹⁷⁸. This is evident from the phrase which encapsulates Hegel's argument that the constitutional system of the *ancien regime* need only be adapted rather than overthrown. For according to the WSS, it is possible that the 'honour-clad life' ¹⁷⁹ can be divested of the dignity of universality, the truth which its customs as well as its laws used to cooperate in maintaining, and that this same dignity, no longer compromised by

a disparity between what the state would or pretends to be and what it is, can become the costume of the 'better life'. If we return our attention to 1795, to Hegel's correspondence with Schelling, we find echoed Montesquieu's emphasis on a spirit of self-sacrifice and love of fatherland ¹⁸⁰. We find too an identification of the 'principe' of despotism as the annihilation of self-respect ¹⁸¹. In the fragment of 1799/1800 there emerges Hegel's view that luxury is among the signs of the crisis of legitimacy, a view which in Montesquieu took the form of the opinion that luxury is a factor in the destruction of a democratic state ¹⁸². And again, in the correspondence of 1795, Hegel held in contempt the chimaerical conceit of the state which wants 'to descend into the holy deeps of morality and to regulate them' ¹⁸³. This, as we shall see from evidence available elsewhere in the VSN ¹⁸⁴, signifies agreement with Montesquieu's view that 'we do nothing better than what we do freely and in accord with our own talents' ¹⁸⁵. Finally, that the state is not to be designed to subserve the partial interests of the bourgeois but to be regarded as an end in itself whose ultimate purpose is the maintenance of its singular authority ¹⁸⁶ and that, withal, this authority cannot be united without the identification with its purpose of the wills of each individual ¹⁸⁷, are convictions of Montesquieu maintained by Hegel at least implicitly in the WSS and expressly in other VSN.

Hegel's debt to Montesquieu seems to consist primarily in the use he made of the idea of 'raison primitive' ¹⁸⁸ and its passional and rational manifestations. Montesquieu's demand was for a system of legislative education which would assimilate the passional and the rational to a *volonte generale* the object of which was essentially conservative of the original 'rapports' of any given society ¹⁸⁹. Hegel converted 'raison primitive', an

essentially static norm, into that of nature unconsciously and self-consciously or, as has been the style in this study, presently or absently apprehended as a source of contradiction. Hegel's demand was for a system of communication analogous, in respect of its service to the end that citizens should readily exchange the total satisfaction of their present interests for the joy of ethical life, to Montesquieu's system of education but different in this respect: that the general will which it was designed to generate, while respectful of customary ways institutionalised in corporate organizations, had as its object not the static conservation of the rapport or correspondence of legal spirit and popular ethos to which Montesquieu's materialist interpretation of the spirit of a people ultimately committed him, but dynamic mobilisation of contradiction, should the sentiment and knowledge of it attain critical proportions, in the cause of the recovery of that rapport.

It shall be seen in the final chapter, where the NRS is to be examined, how Hegel, more explicitly than in the WSS, deployed the idea of contradiction in its two modes of apprehension as the idea of 'the negative as the maintenance of difference and the negative as its absence' ¹⁹⁰. It shall there become clear that, although it expresses much less coherently than the NRS the idea of the operation of a force, that of nature or necessity, at the same time in potential complicity with the existent (because of its manifestation in the sensible pursuits of the 'bourgeois', whose tendency is to disintegrate society by maintaining the difference of present purposes) and in potential contradiction of it (because of the tendency of the pursuit of the intelligible to take issue with the cinema of the present and to impose the unity of the absent, which is just the absence of difference), the WSS constitutes a preliminary version of the NRS, in which incidentally Montesquieu, though criticised for his static materialism, is explicitly acknowledged as a major influence ¹⁹¹. It should by now be clear

too that the WSS was an effort to give philosophical depth to the treatment of the problem of representation which he had attempted in the WBS. Wanting an elaborate scheme, such as began to emerge in 1799/1800 and became explicit in 1802/03, Hegel had despaired of his ability to conceive, in 1798, an electoral and representative system adequate to the pressing need to effect change in Wuerttemberg.

That the problem of devising a theory capable of determining how far and by what means the burghers 'narrow advantage or the advantage of his estate' ¹⁹² should be represented, and how its pretensions might yet be contained by the idea of justice, constitutes the central problem of the WSS, is a conclusion rendered inescapable by the likeness between the WBS, the sections of the NRS ¹⁹³ in which a clear theory of representation first emerged, and this very obscure fragment of 1799/1800. For all three are, in that order, more or less clearly concerned with the problem of the dispositional environment of the practice of representation.

The effect of the French Revolution had been to highlight the salience of representative institutions in the process of political change, but equally their liability to release the passions of the 'unenlightened mass of men' ¹⁹⁴ without taking care to establish a congruence between the new regime and the affections of its subjects. It was, according to Hegel in his later Lectures on the Philosophy of World History, the fact that there was inculcated in France no disposition on the part of citizens to regard all their opinions (Meinungen) ¹⁹⁵ as 'subordinate to the substantial interest of the state and to insist upon them no further than that interest will allow' ¹⁹⁶ that precipitated the French Revolution on its terroristic course. All the French constitutions were 'vitiating by the existence of absolute mistrust ... Neither government nor constitution could

be maintained on this footing' 197. The same view, that the French Revolution, in the words of Joachim Ritter's path-breaking study of Hegel and the French Revolution, effected 'no durable solutions ... nothing firm in organizational terms' 198 is to be found in the VSN 199. The same point is elliptically made in the WBS, where it is made clear that effective change is not to be expected if, 'when things are felt to be tottering', the 'collapse of the old building' is merely awaited 'confidently and blindly' 200. If the response to crisis is not so handled that, in the process of political change, dispositional change is effected so that men will seek justice by virtue of their being persuaded to cast aside passionate regard for their own opinion and property alone, all change will be in vain.

As we have seen, it was especially in the WSS that Hegel worked out his demand for the elevation of the hearts of men by a mediation of the present and the absent which would accomplish the annulment of the arid life of the understanding in which they were held apart as incommunicative opposites. To accomplish this feat would be to make men effective agents of their own destinies by releasing them from passive commitment to the one-sided inner worlds into which they were driven. Since in France, where these commitments had been intensified to a striking degree, where neither the character of the mob nor that of the men of virtue would brook any opposition, in other words, because the French mobilisation of contradiction had been one sided, merely particular against particular, it was to the German people that the task fell to enact the contradiction of the old regime. The German people were considered by Hegel to be fitter to accomplish a civilised process of change towards political modernity that would yet preserve the virtues of its customs than were the French.

It was for the philosopher to disclose to his people their

potential for the creation of a new world which would be habitable but not merely inhabited. This was the business of the philosopher as Hegel had come to see it in his theological writings: 'To think pure life is the task, to remove all deeds, everything which man has been or will be; character is merely an abstraction from activity and excludes the universal reference of determinate actions; consciousness of pure life, pure self-consciousness, would be consciousness of what man is' ²⁰¹. It is the task whose achievement would be tantamount to what was called in the ASP the last, the greatest work of mankind, the liberation of the repressed powers of all men ²⁰². In this context it means to satisfy the need of all men, through self-consciousness and the transcendence of their existential limitations, 'to obtain a consciousness over what holds them captive', and the need of intellectuals 'to enter over into life from their idea': to make limited life reflective and unconditioned thought effective. The medium who will enable this communication, bringing vitality to dessicated characters, is the philosopher in the surprisingly pedestrian garb of the constitutional historian. But what has been said by Jean Hyppolite of the theological writings applies with equal force to the VSN. In both Hegel 'concerned himself less with technical philosophy than with history; and again the word history (like theology) is ill-adapted to characterise this genre of speculation. What interests our thinker is to discover the spirit of a religion, or the spirit of a people, to forge new concepts fit to express the historical life of man, his existence as a people or in history. In this, Hegel is incomparable and, in the works of his youth we have his direct and still naive effort to think human life' ²⁰³.

Hegel had decided that no religion, even a religion of love, could now serve the purpose of establishing community among the

German people since their religions had not only become the pretext for particularistic claims against the sovereignty of the state and the conversion, as Hegel put it, of political rights into proprietorial rights ²⁰⁴: they had also been contaminated in the service of the 'completely subservient little world' alike of the burgher and the intellectual. He therefore turned to a concept, which seems at first sight far removed from that of love, that could express the historical life of the German people and thereby furnish it with a means, suited to its character, to overcome the fate with which that character was embroiled.

This was the concept of representation. Hegel had decided in the GCR that, however beautiful was the idea of a 'nation of men related to one another by love', however uplifting the idea of belonging to a whole which, as a whole, as one, is the spirit of God whose sons the individual members are, there was an incompleteness in this idea which would give fate a power over it, ²⁰⁵. As far as the German people was concerned, Hegel had to find a customary practice capable of completion by law. It is important to stress that there was, as far as Hegel was concerned, no bathos in this conversion from the ideal of love to that of representation. For in his correspondence with Nanette Endel ²⁰⁶, he had suggested that her love for him was the means by which he could be 'represented' so that, despite his unworthiness, he could draw near to holiness by proxy and thereby be assured the benefit of divine grace ²⁰⁷. Furthermore, we shall see in the final chapter how Hegel likened the representative system to a religious 'cult' ²⁰⁸. The system of representation was thus looked to by Hegel not entirely as a second-best alternative to a religion of love, but as that which could, more readily than religion, despite its like affliction by the disease of a particularistic exploitation of sectarian division, serve the German people as a means to

its attainment of community.

In the VSN Hegel wanted to show the German people the 'truth' which lay in their constitution; that this could be vindicated by the careful cultivation of its representative principle; and that in this principle, despite its perversion by religious particularism (because of which Hegel thought it important to study at close quarters the implication of confessional issues in matters of constitutional law), could be found the basis on which the burgher might submit to the ideal of community while yet preserving the feeling of his freedom in the satisfaction of the demands of his personal affections.

4. Representation as Integration

Prior to the detailed treatment of Hegel's ideas on representation, it is necessary, in order to establish the reasons upon which is based the argument of the next chapter, that Hegel cannot be interpreted as an advocate of the Machtstaat simpliciter, provisionally to indicate the most salient features of his developing theory of representation. These features are four. The first is that representation depends upon the existence of an absolutely sovereign legal order which enables the state to appear as the image in political life of the independent activity of its citizens in civil life and so as that to which they would be prepared to sacrifice themselves. We may say that it is that whereby the customary character of a people, its existential life, is articulated in order to enact its essential life, ethical activity (Sittlichkeit). It is in exchange for participation in this activity that the citizen will be prepared to subordinate the much less joyful cares of his calculative and arid life of the understanding.

The second feature is that in order to maintain itself as such an image of the activity of all, the state can be subject to mandatory instruction from no-one, else it were rather in fact passive and partial than virtually active on behalf of all. Thirdly, its action must not be 'jealous' or interventionist, as was the case, in Hegel's opinion, in revolutionary France and in Prussia. For if the state engage in activities which are proper to its citizens alone, which are not proper to ethical activity, it must come to be implicated in civil society as a partisan of some of its members in preference to others. The state must, no less than the citizen, respect the terms of political exchange. Finally, the state must have its basis in a society whose manifold plurality, with which it does not interfere, is yet guaranteed not to derogate from the essential unity of the political community.

It has been argued by Rolf K. Hocevar, in his important work on the concepts of Estates and Representation in the political thought of the young Hegel ²⁰⁹, that although the view of E. Fraenkel is to be conceded, that Hegel does not belong to the class of pioneers in the formulation of coherent theories of representation, nevertheless he showed himself to have mastered all the ancient sources of the idea of representation ²¹⁰. That so little is evident from his theological writings has already been shown, but it is surely a mistake to suppose, as does Poeggeler for instance, that we possess the young Hegel's 'ideas on political representation in simile only, by way of his ideas on representation in the ecclesiastical sphere' ²¹¹.

In fact it is clear that Hegel approached in the VSN what he arrived at in the NRS, a highly sophisticated theory of national or political representation far superior to those of Burke and Sieyes and capable of holding its own in comparison to theoretical

work on the problem during the 20th. Not only does Hegel's theory anticipate that of the present century, which has a growing, albeit dim, awareness of its indirect debt to Hegel's presuppositions, but there is growing recognition of the fact, which however has not yet been located early enough in Hegel's development, that he confronted specific problems in the theory of representation which presently exercise the minds of modern theorists.

Poeggeler, notwithstanding his express view that the young Hegel does not evince an explicit and articulate theory and that only in the Philosophy of Right did he develop the view that representation serves to 'mediate social spheres with the State'²¹², has borne unwitting witness to this fact. He stops short of the thesis here advanced that the WSS is an important piece of documentary evidence of the early emergence of this later view. With broad reference to Hegel's criticisms of the course of the French Revolution, Poeggeler, employing the locus classicus, the section in the Phenomenology of Spirit on Absolute Freedom and Terror, likens the purport of Hegel's attack on Rousseau's theory of the General Will and Sieyes' opposition of the prescriptions of a national representative body to the prescriptive claims of the superannuated social structure, with the conclusions of modern theorists such as Eberhard Schmitt²¹³. According to Poeggeler, the 'fate of parliamentary democracy in France, as elsewhere, teaches that national representation only works successfully where it is able to bind existing group interests to itself. Eberhard Schmitt, from the standpoint of contemporary historical research, has indicated the limitations of the concept of national representation and argued, in the face of the 'mythos' of the French Revolution that in the deficient integration of national representation with historically self-articulated group interests lies, perhaps, the origin of the crisis which affects parliamentary

democracy in many European countries' ²¹⁴.

It should be clear that the present writer has no argument with Poeggeler's conclusion that Hegel went straight to the heart of what modern theorists consider to be the most urgent problem of the representative system of government: quite the contrary. What is denied is the conclusion that Hegel demanded accommodation of the general will to the several wills of civil society from a point of view radically different from and theoretically far inferior to that which is discernible in the arguments of the Philosophy of Right for the organic integration of the legal system with the corporate structures of civil society; from a point of view, which Poeggeler wrongly imputes to the young Hegel, having affinity with the individualistic or 'moral' spirit of the natural law tradition. Poeggeler's suggestion that, for want of a critique of the 'mythos' of the French Revolution, based not upon the idea of an individualist Moralitaet, but rather upon the notion of Sittlichkeit, of an ethos peculiar to the integral or 'whole State', capable of comprehending historically developed group interests, the young Hegel failed to 'come to a considered presentation of the inner public law which can coexist with the differentiation of social and political spheres' ²¹⁵, is patently false. For we have seen at length that not only was Hegel always inclined to be suspicious of the French Revolution, but that the reasons for this suspicion lay in his perennial demand for the legal confinement of rampant subjectivity to its ethically appointed stations. We have seen in particular that he criticised the French Revolution precisely for its encouragement of the bourgeois to regard representation as a means to serve his partial ideas and interests ²¹⁶, an encouragement which left unscathed the fundamental timidity of character which indisposes him to any kind of sacrifice for the whole; and that in the alternative idea of the 'whole state',

which is whole in virtue of the integrative function of representation, Hegel sought the ideal of the education of the burgher to subjective identification with the spirit of law.

In such identification Hegel sought the possibility that the burgher, while he enjoyed in civil society a sense of being an agent, but in a manner properly to be regarded as an 'abstraction of activity' without 'universal reference' ²¹⁷, so determined by his particular character that his 'actions' are properly speaking passions, could regard himself as an agent by way of participation in the deeds of the State. Only thus could be realized the strict demand, in respect of which the French Revolution was deemed unsatisfactory, for 'equal development of all powers, of each as well as of all', the demand that the individual should be truly rather than abstractly such, an agent in the full sense. In the fragment which constitutes his last reflections on the German Constitution, Hegel was to write, in defense of the principle Quod omnes tangit ab omnibus approbetur debet, and against the principle Princeps legibus solutus est, that the 'condition of barbarity consists precisely in this, that a multitude is a people without at the same time being a state, that the state and individuals exist in opposition and separation, the prince is but a personal state power and the refuge from his personality is, again, only opposition of personality. In a civilised state there stand, between the personality of the monarch and that of individuals, the laws, or universality; the single deed of the monarch touches everyone, burdens or hurts everyone, or serves everyone. But that the monarch be at the same time the state authority, or that he have the highest power, that, in general, a state be, is one and the same thing. The power of the laws solves the contradiction that the state be the highest authority and that the individual be not oppressed by it;

it is disbelief in the power of the law from whence stems the lack of wisdom which dithers between the necessity of giving supreme power to the state and the fear that individuals will be oppressed by it' ²¹⁸. From this statement we see how had developed by 1803 the insistence that the state ought not to treat free men as 'cogs in a machine', that it ought to be the 'image' of their activity. We see also that it is the state in the form of a constitutional monarchy in partnership with representative institutions which serves, according to Hegel, as the means whereby the timid passivity, the dithering, anxious and scrupulous indecisiveness of the 'moral individual' is capable of conversion into ethical activity.

It is evident, too, that Hegel's views accord with the consensus said by Hocevar ²¹⁹ to obtain among modern theorists of representation such as Leibholz, Carl Schmitt, and Fraenkel that the concept presupposes the existence of a legal order, to which sovereign and subject are likewise subordinate and that it requires that the possessors of supreme public authority be regarded as if they unite in themselves all members of the legal community. This 'simulative' agent of all makes not a pretence of universality, but provides the burgher the only sphere in which he can be an agent, that is, can participate in actions having reference to universal projects of subjectivity into objectivity, rather than in passions involving no distinction between 'character' and the present world. It is preserved from the nature of a pretence so long as the law is sovereign, for in that case the abdication by the burgher of his power to act directly with full political autonomy to his representative is no alienation of personal power to another, merely particular, personality. If, in accordance with the principle of law or universality, burdens and services are equally distributed, there can be no appearance of sacrifice

of interest susceptible of interpretation as a zero-sum transfer. The individual burgher's negation by the community is not, then, liable to incite him to calculate what depreciation it inflicts on the value of his present interests. Fair exchange is no robbery.

The concept of 'simulated agency' is that of a sphere in which men may escape the toils of their character. Character permits them only an abstraction of activity. That activity within the arid life of the Understanding is 'abstract' is evident from the fact that their proprietorial mastery of their 'little world' entails, no less than an affirmation of personality in strife with the existing world, a fundamental denial of self. This is proven by the indecisiveness of the burgher, from his timid care, under the revolutionary as well as under the ancien regime, for the preservation above all of the security of his personal property, his total identification with which precludes his attainment of subjectivity. It is, then, the sphere of 'enjoyment and contemplation' of one's subservient little world, rather than the sphere of simulated agency which Hegel considered an abstract pretence of activity. The latter sphere was for Hegel the sole locus of action proper, the mark of which is decisiveness and the criterion of which is a subjectivity which is free in respect of its self-distinction from the environing world and at the same time determinate in its possession of intentionality towards that world. This is what Hegel meant when, in his final draft of the VSN he wrote that the 'Act of the public authority carries in itself a free and general determinacy and its execution is at the same time its application' ²²⁰. His view, as shall be shown, was that a people has life, as distinct from merely passive existence, only if such a sphere of simulative agency is available to it. Indeed, only there is it a people at

all, since it is there that is found legal articulation of the ethos which constitutes the vitalising project to which the individual can commit himself. This is the precise meaning of Sittlichkeit which Hegel was to deploy in the NRS. Underlying this notion of Sittlichkeit, in its emergence in the VSN, is the Aristotelian doctrine of the natural priority of the State over the individual given, by Hegel, the form of the view that the individual is constituted such, so that he transcends his particularity, only by way of his integration with the State. To representative institutions this mediative function belongs, a view which Hegel expressed in the VSN thus: 'in modern countries a state has been developed in which each individual no longer has a direct voice himself in any national affair; on the contrary, all obey a whole founded by themselves, i.e. a state and its branches and particularisations (the laws), an abiding, fixed centre to which each individual has a mediate relation derived from representation' 221.

Hegel's location of ethical life in this sphere of simulated agency and his view that the integrative function of representation is the precondition of the attainment by the burgher of free individuality and the sine qua non of the constitution of a people as a creative agent of its own vocation would appear to suggest that Hocevar is right to suppose that Hegel's has a close affinity with Rudolf Smend's view of 'representation as integration' 222. This supposition requires some qualification. Hegel's is a theory of representation as integration, but in terms which, unlike Smend's, preserve the identity of the entities integrated at the same time as they supersede their differences. Hocevar attempts to establish a genealogical relation between Smend and Hegel, arguing that Smend names Theodor Litt as the mentor of his integrative theory and that Litt was very much influenced by Hegel.

This line of argument is not to be pursued here, for it may be circumvented simply by pointing to the fact that, in his 'Verfassung and Verfassungsgeschichte', Smend responds to the view of Hildegard Trescher, that Hegel's Philosophy of Right admits of the interpretation that it countenances 'the most vigorous penetration of all social spheres by the state for the general purpose of winning for the state all the vital energies of the people', by claiming Hegel as a forerunner of his views, thus: 'This is precisely the integration theory ... (it puts an end to the principle that the a-political economy is independent of the state and that the state is apart from the economy'.

This is a tendentious interpretation of Trescher and a fantastic view of the Philosophy of Right. It would be equally fantastic if it were to seek confirmation in the VSN, which agree entirely with the Philosophy of Right in denying the propriety of subjecting 'to the immediate activity of the supreme public authority' all institutions, that is, estates and corporations, 'implicit in the nature of a society' ²²³. The end of integration is not the institution of a jealous state but the cultivation of a self-respecting people which finds in the state an image of itself as a free agent. If this image is to be communicated, the state must not remove from the heart which is to be elevated by it the sensible appreciation, afforded by the abstract activity of everyday industry and effort, of what it is to be, albeit in a limited and partial sense, an agent. The corollary, then, of Hegel's denial to the burgher of the right to a direct voice, whether by literal presence in the legislative body or by the issue of binding instructions to his representative, assured of compliance by instruments of terminal responsibility, of his denial of the supposed right of the burgher to intrude his passional interests in the sphere of simulated agency, is that

the state should not become an interested party in spheres of abstract activity.

It is the weight of these two substantive features of Hegel's theory of representation which guarantee the possibility of realising the formal condition, the feature first itemised ²²⁴, that the representative state, to be such, must be a Rechtsstaat, one in which the transfer to it of competence to make provisions entailing both burdens and services cannot be construed by the citizen as a zero-sum transaction between one particular and another but as a fair exchange. It may be ventured that in respect of this view Hegel is in agreement with that of Harvey C. Mansfield, which corresponds to the views of Leibholz, Carl Schmitt and Fraenkel that the possessors of supreme public authority must be regarded 'as if' they united in themselves all members of the legal community. Mansfield's view is that modern representative government involves, not the mediaeval conception of the making of representations on behalf of the subject to the sovereign, in the manner of interested litigation, but the antithesis of this dualistic or en face relationship: namely, the monistic conception that the sovereign is the very people, that 'the people is a whole having no ruling part' ²²⁵.

It is this monistic conception which underpins the inherent connection between the modern idea of representation and that of the Rechtsstaat in which not persons but laws are sovereign. According to the dualistic conception, on the other hand, it is admitted that since representations are made to the state on behalf of particular interests, it may decide in their favour and so forfeit the identification with its decisions of interested parties which are disadvantaged by such decisions at the same time as they are encouraged by the permission, implicitly conceded to them by the dualistic view, to regard the state as a potential

instrument in the service of their partial demands, a regard in which it cannot appear as a simile of universal activity.

On the common ground of their monistic understanding of representative government, Hegel ²²⁶ and Mansfield ²²⁷ establish a necessary coordination of the requirements that the state be absolutely sovereign and that its competence be limited. This is the proper interpretation to be put on Trescher's view that Hegel denied the value of Montesquieu's doctrine of mixed government because it disables vigorous action by the state ²²⁸.

'That which makes it act' (the phrase is Montesquieu's) is its winning 'all the vital energies of the people' ²²⁹. That this is the purpose of 'vigorous penetration of all social spheres' ²³⁰ precludes the imputation to Hegel of a favourable attitude to economic intervention. For that, in Hegel's view, is, as we shall see, nothing but inimical to the very existence of the vital energies of a people. The state cannot be active in the depression of the powers of particularity if its citizens know nothing of independent activity ²³¹. Penetration is not interference.

The denial, common to Hegel and Mansfield, that the representative state can be a jealous state ²³², since it can be such only at the expense of its capacity to simulate the activity of all, hence of its integrative capacity, stems from their like characterisation of modern society as thoroughly plural and secular. For both, the jealous state is an analogue of the jealous God of Judaism, in whose transcendent character Mansfield, like Hegel in his theological writings, finds the explanation of a 'penal and highly regulative notion of government by divine imposition' ²³³. It will be recalled that Hegel characterised the relationship of the Jew to Jehovah as loveless and as partaking of the nature of a passive obedience, reflected in a lifeless conception of God, undertaken in the manner of a transaction, in return for guaranteed subsistence. Such a transaction is the equivalent of representation

en face, in which is enshrined the assumption that the state exists for the sake of the security of the interests of the passionate personality, rather than to the end of providing it, that in it may be awakened its slumbering subjectivity, directed towards great objects ²³⁴, an exemplar of activity.

It must be admitted that the affinity of Hegel's with Mansfield's understanding of representation as integration stops short of a concurrence on Hegel's part with Mansfield's view that modern representative government is 'government determined by its material rather than government impressing a form' ²³⁵. Hegel, given his insistence that communication between the citizen and the state depends on a mediation of present interests and the absent ideal of community, clearly agrees that 'men cannot be represented in that to which they must be compelled or habituated' ²³⁶, since representation is designed to render men closer to their potential for action. This is incompatible with compulsion or habit, for in either case men are passive. But if we are to take seriously Mansfield's phrase - 'determined by its material' - he means that government must be passive. In that case it would furnish men no image of activity and leave them embroiled in a compulsive habitude. Such a condition must be that of the society which Mansfield describes, for he affirms that modern representative government requires a 'representable society consecrated by an undemanding (i.e. Deist) God, a society without aspirations' ²³⁷. He thus defines as a representable society one of pure presence, of complacency and indolence, of subjectivity suffocated by habit. But, by his own admission, such a society 'cannot be represented'. It might be thought that Mansfield maintains a consistent position in that he depends representation upon a condition in which the citizen does not feel himself to be passive, and in that he denies

its possibility only where the citizen is rendered passive by the extraneous imposition upon him of habits impertinent to his hitherto acquired identity; that Mansfield does not object to habits spontaneously evolved that they incapacitate men to be represented, and is consistent in holding that men may be represented in respect of these habits, and that the interests corresponding to them may 'determine' government, because in them men's subjectivity is apparent, in them men feel themselves, and are not forced, to be free.

This would presuppose that Mansfield subscribes to the naturalistic view of subjectivity as inherently native to the individual. If that were the case, no exception could be taken to the logic of his liberal view of the relation of the individual to government: that by way of representation, government is 'determined by its material'. Consequently, his subscription to the conception of representation as integration would have to be so qualified that the integration of 'the people' into 'a whole' ²³⁸ is conceivable as a datum, a happy consequence of the harmonious interaction, as it were in the first and last instances, of apparently contrary wills; or, more precisely, so that the individuality is taken as given prior to its engagement in any form of social life and that political association is arrived at by convention between these individuals with a view to securing to them the preservation of the constellation of interests in which their individuality is embodied.

On the contrary, however, Mansfield denies this naturalistic view that subjectivity is fully constituted in what, in its passional mode, the personality prefers as its interest and that government serves only to instrument the accommodation of that interest with those of competing personalities. He undermines both propositions in the course of an argument which concludes

that the integration, in his style the 'formation' or 'mediation' of 'a people ... into a public' ²³⁹ cannot be conceived as having its basis in the conventions of personalities already individuated as agents. Specifically, he denies that the development of representative institutions can be explained as the consequence of the deliberate invention or convention of such rational agents. Rather must they be explained as a gradually evolving 'social inheritance' ²⁴⁰ and the 'mobilization of society' ²⁴¹ in their direction be understood as a process whose genesis is 'objective' rather than 'subjective' ²⁴². Just the same view, that representation is no invention, was maintained by Hegel ²⁴³.

As an alternative to the view that this process is 'subjective', that is, conceivable as the rational convention of individuals upon the adoption of an entirely new or invented political system, the view which Mansfield attributes to Thomas Jefferson ²⁴⁴ and the American revolutionaries but which is equally that of Sieyes and the French, is set out the view of post-Rousseauan political philosophy, characterised by Mansfield as historical rather than naturalistic: the former type of political philosophy is said to involve the hypothesis that, since 'man was certainly not made by God and was now also not a being of nature the remaining possibility was that he made himself' ²⁴⁵. This hypothesis of human 'self-generation or self-creation' ²⁴⁶ necessitated the abandonment of the assumption of a 'fixed human nature' such as governs the pre-supposition of naturalistic political philosophy that a rational disposition to live in community or as a public under a sovereign is conceivable as given in advance of the constitution of the sovereign or public.

The historical hypothesis favours rather, the view that a rational disposition to concur in the institution of a sovereign is not an option available to individuals prior to their engagement

in public life, for it is only in this engagement that they cease to be merely personalities to whom a disposition agreeable with something beyond their personal interests is insensible. It is public life which constitutes them subjective individuals capable of subvention beyond the present interests from which, in private life, their character is inextricable and, to that extent, not individual. This gloss explains what Mansfield means by arguing that man 'makes himself, but only by stages, for self-creation all at once is a superhuman feat. If man could create himself all at once, it must be true that he could see himself from the beginning. But by postulation, there is nothing to see at the beginning ... Man makes himself, necessarily without self-awareness, because there is nothing to survey, no human nature to see, until the creation is complete. We can make ourselves only on condition that we do not know what we make' ²⁴⁷. Self-creation is, therefore, to be paradoxically understood not as a reflexive but as a transitive and fundamentally opaque process. This is not, of course, how Hegel regarded the idea of self-creation, either in his youth or in his old age, notwithstanding the fact that Mansfield is prepared to claim that the Philosophy of Right expressly supports his view, albeit without explanation ²⁴⁸. Mansfield's views merit treatment precisely because, despite his claim to affinity with Hegel's anti-naturalistic political philosophy, he is far from agreement with the theory of reflexive change advanced by Hegel throughout his pre-systematic writings. That theory, as we have seen, certainly emphasises the view that change can only be effected in accordance with the customary conditions determined by practical subjectivity, whose content is the effort and industry of individual men. But this does not mean that it is effected by the casual behaviour of practical subjectivity, for change is not the mere variation without purposive criteria

for its regulation which such 'characters' produce whose pursuits are 'abstractions of activity' ²⁴⁹. To put the matter in terms which Hegel was to use in mature years, nothing great was ever achieved without passion ²⁵⁰. But that does not mean that it is by passion that change is caused. Change is what takes place with reference to definite criteria of identity without which it is absurd to speak of a self which creates itself or anything else.

If Mansfield's theory of self-creation, that whereby a people becomes a sovereign whole, could be made to agree with Hegel's conviction that it is only through law that a customary entity can become an ethical totality, it would need to be disembarassed of an argument which, advanced without qualification, is nonsense. It makes no sense to argue that men can make themselves on condition that they do not know what it is that they will in the end have made, unless it be added that, all the same, the stadial process of self-creation is not so fundamentally transitive and opaque that it becomes meaningless to speak of it as if it were reflexively and perspicuously done. In human matters, it makes no more sense to speak of nature as a teleological terminus, at which 'creation is complete', than as an archaeological principle. And though knowledge of an end is not available to them, men can have practical knowledge of a kind, other than the knowledge which Mansfield equates with a view of what is 'there to see', namely knowledge of what is intended in the mean time. Knowledge of what is thus intended is articulated in positive law, which lends to custom, without subjecting it to an utterly new determination, a dimension of cognitive subjectivity without which self-creation or reflexive change is inconceivable. In other words, law is the valid, though not necessarily finally true, expression in determinate and authoritative terms of the will in which the identity of the community represents itself to itself as an object of freedom.

Such knowledge, knowledge of what they intend to become, which may be the same as or other than the identity which they have achieved, is that which satisfies the condition of reflexive change: that though the cause in which it is articulated is an absent idea, its effect is not utterly to negate the present. Intention towards the absent, an idea which is an 'object of freedom' ²⁵¹; contradiction of the 'limited present', not by an Absolute Idea which is 'extraneous' ²⁵², but by an Absolute in which absence converges with presence in neighbourly striving of opposites (*Bestreben der gegenseitige Annaeherung*) ²⁵³ for a habitable but not merely inhabited dwelling place: these are the themes of the ASP, the WBS, the WSS and, as we shall see, the DS, upon which may be grounded not only a more coherent explanation of historical change as self-creation (to which a 'representation of self' ²⁵⁴, not to be sure an epistemonical, but an intentional representation, is necessary), but also consistent reasons, lacking in Mansfield's theory, for a rejection of the dualistic in favour of the monistic or integrative conception of representative government. This, being defined as the conception of the constitution of a public as a 'whole having no ruling part' ²⁵⁵, requires a theory of self-creation not only as an historical hypothesis, but as the ground for the normative definition of the proper relationship between government and governed.

The theory of the self-creation of the people into a sovereign entity affirms that the full subjectivity of its members is consequential upon rather than prior to its articulation of their legal community. This should entail that it makes no sense to prefer 'determination by material' to 'impression of form' ²⁵⁶, for that is tantamount to the admission that the sovereign ought to be susceptible to disintegration by the decision of individuals to dissociate should the condition, the preservation

intact of their passional interests, upon which the disposition (which would have to be adoptive rather than inherent to their subjectivity) to live in community would depend, appear to them not to be met. Political exchange requires rather, the approximation, convergence or communication of these opposites, matter and form.

Mansfield seems to have been seduced into the espousal of the value of 'determination by material', which is inconsistent with a theory of self-creation in both its capacities, hypothetical and normative, because he takes the correct denial of the original visibility of self to the incorrect conclusion of the impossibility not only of its epistemonomic but even of its intentional representation (*Vorstellung*). Hegel, on the other hand, held impression of form to be the business of an intentional self, the representation (*Vorstellung*) of which in the cause of 'self-creation' does certainly not require that it be visible (if it were it would be superfluous to intend it), but that it should merely not be thoroughly uncongenial to the life of presence.

Mansfield fails to see that 'impression of form' need not - for Hegel it must not - be transeunt with respect to the habitative environment to which it seeks to impart an image of self-creation. To impress form with a view to the constitution of a sovereign apt to be regarded 'as if' it united in itself all members of the community is to satisfy Mansfield's prohibition of the coercive imposition of impertinent habits, since it precludes the state from jealous interference in 'abstract activities' ²⁵⁷. Hegel's theory of self-creation, the application of which to the historical explanation of the emergence of representative practices will be examined in the fifth and sixth chapters, involves the normative requirement that representation

as integration be conformable with a pluralistic social system, to be shown in the sixth chapter to be among the major presuppositions of his concept of the 'whole state'.

While Hegel's theory thus limits state action, it meets, better than Mansfield's theory, the latter's obverse stipulation that representative government should have absolute sovereignty ²⁵⁸. This is because its theoretical basis, the idea of self-creation, lays stress on the intentional perspicuity of action at the expense of the opacity of behaviour. Not relying exclusively on this latter hypothetical condition of self-creation, Hegel's theory needed have no resort to the normative requirement of 'determination by material'. Hence its capacity, unlike Mansfield's theory, to resist implication in a dualistic conception of representation, the corollary of which is a permission of mandatory instruction liable to produce either or both of two effects disintegrative of sovereignty conceived as the simulative bearer of the identity of the whole. The first effect would be that, failing satisfaction of its particular demands, any corporation might repudiate the sovereign which refuses it satisfaction (Brandenburg-Prussia's attitudes will be shown to be a case in point) ²⁵⁹; the second, that satisfaction, if given, would be at the expense of the plural distribution of satisfaction. (Hence the need to curb the over-exuberant development of the power of particular corporations ²⁶⁰.) The second would manifestly give rise to the first effect.

The integrative Rechtsstaat must burden and serve all equitably. It cannot do this if it is determined by its material, except on the ideal condition that it governs a 'society without aspirations' ²⁶¹. Mansfield's resort to this normative condition exhibits the elenchus to which the inconsistency of his theory of self-creation must lead, that representation is at a premium where there is no use for it. It is supposed to serve the purpose of integration in a society said to achieve integration haphazard or thanks to the happy lack of

ambition or greed among its members.

Hegel's theory of self-creation, on the other hand, evolved in the face of the emergence of the 'bourgeois principle' alike in relations between territorial estates and social estates ²⁶², systematically relates the demands that the state be absolutely sovereign, that it therefore foreswear the jealous interference demanded of it by interested corporations, and that it thus maintain a pluralistic society, to the view that it should be a legal order whose simulation of intentional activity secures the confidence of all that they are themselves active in its regulation of their particular and passionate commitments, though that involve their very depression. Thus his conception of representation as integration insists on pluralism, while it stands opposed to the requirement (putatively compatible with, but in fact, by reason of contingent ²⁶³ differences of corporate capacities to impress their demands, inimical to social plurality ²⁶⁴) that 'the people must participate determinatively in the execution of state power and undertake the exercise of public sovereign authority by way of prior authorization or posterior consent' ²⁶⁵.

It is thus clear then how, in terms of his requirement of the mediation of present and absent, of passion and action, Hegel arrived at a concept of representation as communicative exchange intended to instrument the relationship between representatives and principals so that ethical activity (Sittlichkeit) could be derived from abstract activity, or custom (Sitte). This would serve the purpose of harmonious integration of the personalities involved in the passionate strife, which custom is not of its own resources able, in modern society at any rate, to contain. On the one hand, it would avoid the extreme of total governmental penetration of the sphere of economic activity, which does not qualify as integration but as homogenisation. On the other, it would avoid recourse to the device prohibitive of the

freedom of action of the sovereign, and so of integration. That device, isomorphic representation ²⁶⁶, in which there is alienated to the representative, as to the attorney, not the power to interpret the interests of his principal, but only the technical competence to defend them, Hegel repudiated along with the mediaeval view of representation as a dualistic confrontation between subject and sovereign, wherein the exercise of sovereignty is quite distinct from the practice of representation, the representative being merely instrumental in the downward transmission of command and the upward transmission of demand.

Rather, the practice of representation was to be the very exercise of sovereignty. Hence the need for a monistic relationship of sovereign and representative. To this need Hegel addressed his peculiar employment of the notion, original to mediaeval theory, of the sovereign as vicarious image of the whole ²⁶⁷, whose function was the mobilization of consent as a sentiment of constructive commitment to sovereign decisions rather than of instructive commission of them. Hegel's theory contrasts with the mediaeval notion of mystical embodiment of the community in the sovereign, in tandem with that of its cosmic replication via the representative. For according to these notions, decision is equated with 'finding' rather than 'making' the law, and so merely with the passive reconciliation (dictated by custom), of the claims of corporate persons against each other and against the sovereign. Hegel's concept of simulation, on the other hand, involves the idea of the conversion and development of custom, for the sake of the conservation of the community of which it is the original expression, by way of the enactment of the historical 'character' of a people, rather than passive adjustment of decisions to the demands of the usual habitat to which they refer. Such a passive procedure is manifestly inappropriate to an

increasingly dynamic society of burghers, for it must permit the casual prevalence of the customs of the more powerful over those of the less powerful ²⁶⁸.

The practice of representation comes thus increasingly to be dissociated from corporative (genossenschaftlich) determination, though its structure maintains conformity with a civil society corporatively differentiated, and increasingly to be identified with the exercise of sovereignty (Herrschaft). Neither representation nor the exercise of sovereignty are to be construed as activities passive with respect to one another. Representative government is not intended merely formally to represent a multitude of its principals, the members of the community which it serves. It is not supposed to personify (and certainly not to ossify as habits), either isomorphically or mystically, the interests of any one of a variety of customary communities. Such a 'representation' has to be distinguished, as merely theoretical or passive, from representative government as follows: to the former, action on its own account cannot properly be attributed, while to the meaning of the latter it is analytic that it act on its own account, though on behalf of another of which it is, qua agent, a practical rather than merely theoretical or behavioural simile.

If the representative is to be an agent, what he does must be attributable to his judgment and intentions. Yet his action must be such that his principal, whom it touches not insofar as he is passionately interested - for his interests as he interprets them do not come into account - but insofar rather as he is constructively committed to it, can identify with it as that which he might have done had he but judgment and authority. Active identification rather than passive suffrage is the condition of the conversion of Sitte into Sittlichkeit. The action of the

representative must be 'as if' it were what the principal might do if he were in the privileged position of an ethical agent. Only in that case is it an action which he can own. To be such an action it must at least, though clearly it may contradict the principal's passional interpretation of his interest, not be or appear to be in contradiction with his present interests on account of its being affirmative of the present interests of any other principal, for with these at least some principals cannot be expected to identify.

This is not to say that representative government ought not to care for men's interests. In so far as a distinction must be made between cases of representation, in which the sovereign acts on behalf of the principal, and cases of (e.g. Hobbesian) authorisation in which the sovereign need attend only to extremities of interest, it is not to be maintained by the provision for attention to the diurnal interests of the burgher. To act on behalf of the principal is rather to communicate to him what is lacking from his diurnal behaviour, though it contains an abstract intimation of action. This lack, the making good of which constitutes his proper interest is of the dispassionate form of subjective intention. The 'interest' of the principal for which the representative must have regard is that of believing himself to participate in action rather than to suffer his own passions or those of others. It is important to emphasise that Hegel's theory of representation does indeed affirm a conceptual inherence in representative practices of attention to the interest of the principal. It has lately been argued by A. P. Griffiths that, failing attention to interest it would be pointless to distinguish representation from 'gift' or 'abdication' of authority ²⁶⁹. This is not to be disputed. What is questionable, however, is the naturalistic assumption that interests fixed in advance of

political action are those above all which qualify as the basis upon which is to be judged the degree to which political action is representative.

Griffiths' view is that ascription to principals of responsibility for and commitment to the acts, and their consequences, of representatives is justifiable only if the principal has already 'the right to do or avoid the act so ascribed to him' ²⁷⁰. The function of representation is said to be to make good merely the inability of the principal to pursue his own interests 'by his own causal activity and will' ²⁷¹. It is therefore determined to that pursuit on pain of withdrawal of consent. Representation, therefore, since consent to it involves the alienation of judgment as well as 'causal' power, if it is to permit ascription, must conform judgment to interest, since such conformity is the conventional criterion for the imputation of responsibility for actions of all kinds: that is not done responsibly which an agent (from which status minors, madmen etc., are accordingly excluded) has not premeditated in the light of his interests.

But we have seen that Hegel's theory of self-creation implies the denial of the possibility, conventionally admitted, that a principal, in his private capacity, is a fully constituted agent capable of perspicuous judgment of his interests. Hegel completely subverted the conventional assumption of the precedence of interests to action. Denying that persons act in pursuit of their passional interests, however they may think that they do, he argued that the perception of interest is posterior to participation in collective and projective action. He did not believe that it lies deep in human nature to act for that in which one is passionately interested, but rather that it is possible 'to interest oneself only in something for which one acts, something with which one can co-operate in resolve and deed, something in which the

will can be' ²⁷². Human interest lies in an escape from passion by way of assimilation to that which resembles, but is not, the abstract activity of everyday life. The 'passive benefit' ²⁷³ conferred by the state whose intervention is a reflex, rather than a regulation, of the interventionist demands of its citizens, furnishes no such escape, evokes no genuine interest, and discloses no semblance of activity.

Hegel's position, then, with respect to the mandate-independence controversy ²⁷⁴, is to agree with the 'mandate theorist' that independent representation exhibits the form of action but neglects the service of present interests ²⁷⁵, with a view, however, to the denial that this is reprehensible; and to disagree with the view of the 'independence theorist' that instructive delegation exhibits the substance of action, but not the form ²⁷⁶, with a view to arguing that the substance of action cannot coexist with servility to private and present interests and is not separable from, but can only be appreciated through its form. The purity of form of action, in turn, is not to be confused with inattention to 'interest', for it is interest in or identification with the action of the 'sovereign' which is its substantial end.

That interest, as we have seen, consists for Hegel in the citizen's faith that sovereign action is virtually or vicariously his. This is the esoteric core of Hegel's argument, whereby he can be said to agree with the requirement, specified by theorists of representation such as Pitkin and Diggs, for example, that representatives must be able to act independently but not in such a way as to exclude the agency of the represented ²⁷⁷ or that, as opposed to a theoretical representation, a representative 'in the practical sense ... is an agent in one sense of persons regarded as ... agents in another sense'. ²⁷⁸ Free scope must be left to the abstract activity of persons, so that the same shall be

available to the ethical activity of the state, for if they suffer undue encroachment by the public authority upon such matters of their customary life as are not derogatory to the ethical totality of the community, its citizens will neither feel themselves to be active in any sense nor, therefore, be able, much less inclined, to regard the state as the image of their activity. In that case the passive character of the people will languish without active expression and, wanting identity, the people will depend on good hap to preserve it from disintegration.

Chapter Four

The Integral State

'The grand old Holy Roman Empire, how does it hold together'
(Goethe, Faust)

1. The Reform Proposals and the concept of genius

The final chapter of Hegel's *Verfassungsschriften* sets out the terms upon which he thought could be created some 'mode of cooperation for the universal' ¹ whereby the provinces might be not merely passive beneficiaries ² but active members of the state. It is clear that he wanted such cooperation to be, as well as of provinces, of lesser persons. For the construction of a 'state power directed by an overlord with the cooperation of the parts' ³ would be designed to the end of bringing the German people 'once again into connection with Emperor and Empire' ⁴. It was clear to him, however, that the sense of identification with the activity of the state, which he required of the individual, would be conditional on the participation of the provinces in the same spirit. This priority of provincial over individual integration will presently be more fully explained ⁵.

Cooperation was to be effected by means of an Imperial Diet whose electoral constituencies would be other than the individual provinces of old. Since not all of these had their own territorial assemblies, it would not in any case be possible to constitute the Imperial Diet of deputations from such bodies. The Imperial Diet would, rather, be elected from constituencies based upon new subdivisions of the Empire. These, established for military purposes, would cut across old territorial jurisdictions.

This would at once obviate three problems: first, that of disproportion in the value of the franchise, which would arise if the Imperial Diet were constituted on the basis of the former territories, the populations of which were so various. Delegates should, rather, 'be chosen in accordance with the number of inhabitants' ⁶ of the districts into which these subdivisions would be further divided. Thus would be eliminated the disproportionate representation of the smallest imperial cities, analogous to the 'rotten boroughs' in England, of whose problems in this matter Hegel was, at this time, doubtless very much aware.

The second problem, inequity in the financial contributions made for the upkeep of the Imperial Army would likewise be resolved, so as to avoid excessive expense for the very small estates. These military subdivisions would be independent tax districts. It is clear that, while in matters said by Hegel to be inessential to the necessary character of the state - administration of justice, management of revenues ⁷, religion etc. - he allowed that traditional relationships might persist between princes and their subjects, there was to be a 'complete revolution' ⁸ in these relationships so far as they touch what is essential to the state, namely its military organization. This revolution would consist in the direct payment by the provinces to the Emperor and Empire of 'the money which they pay directly to their prince and only indirectly to Emperor and Empire' ⁹. That the annual authorization of such payments was to be the *raison d'être* of a Diet constituted from functional subdivisions presupposes a corresponding redistribution of tax burdens.

By these means would be resolved the third, chief and all-embracing problem, the persistence in the Diet of old territorial

loyalties. To fragment the traditional alignments of interest between territorial Herrschaft and Landschaft, to divorce the interests of the provinces from the personal ambitions of their princes, would be to achieve the end of the self-creation of the Germans as a people which, in the DS, Hegel asserted to be 'the most perfect organization' ¹⁰ that Reason can give itself. These alignments, whose sedimentation was the result of religious divisions exploited by the princes, had been acknowledged by Hegel to be possessed of the most 'alluring charms' ¹¹. The substance of their attraction for the subjects of the provinces, of provincial pride in belonging to a particular state in whose territorial sovereignty had once lain the guarantee of political and religious freedom ¹² against the proselytic pretensions of a 'universal monarchy', was now gone.

Yet there remained the likelihood of resistance, albeit inert, on the part of Germans to the reforms which Hegel proposed. For they continued to be encouraged by their several princes to have regard above all for their private interests, by way of the identification of their confession and conscience, which the princes claimed to defend, as the 'inward legitimation' of their burgeoning 'bourgeois sense' ¹³. Thus, the political particularism ¹⁴ of the princes evoked in its support a social particularism so reinforced by religious rationalisation that such political isolationism had the appearance of a 'mere consequence' ¹⁵ of religious division. It appears to have been Hegel's intention, however, to argue that, of themselves, the attention of the bourgeois to his own peculiar interests and his cognate infatuation with the affairs of his 'inmost heart' ¹⁶ were insufficient to explain the perdition of the German Empire into the abyss of its dissolution. They had this effect only because the princes 'could find no better ally than the conscience of their subjects

in their (the princes') endeavour to withdraw from the supremacy of the Empire' ¹⁷. For their part, the peoples of the provinces contributed only unintentionally to dissolution. But whereas their intentions were honourable and honest, whereas they were innocent, 'the princes knew what they were doing' ¹⁸. Upon the emasculation of the princes, then, depended the Germans' 'self-creation as a people'. This would be the perfect self-organization of Reason ¹⁹.

Since, however, they had no recent experience of 'living together and common activity' ²⁰, their exodus from under the tyranny of their princes by way of 'common laws' ²¹ could not be spontaneous. Hence, according to Hegel, the need arose for a conqueror. Hegel described the task of such a conqueror as to make 'effective in action' his 'insight into necessity' ²². The meaning of this phrase will be fully explained in the course of an analysis ²³ of the introduction to the VSN, the final draft of which he wrote eighteen months later. It suffices here to indicate that he specified the idea of necessity, or of Reason perfectly organized in the shape of a people, as the 'necessary principle of the unity of the state' ²⁴, a form of organization given to Reason not by itself but by a political genius, such as were Theseus and Richelieu ²⁵. It will be made precisely clear in the sixth chapter that, as is apparent from its use here, the term 'necessity' refers not to something that cannot but be victorious but to that whose victory is sorely needed ²⁶.

It may be supposed that by the summer of 1801, Hegel's mind was made up on the view, fully articulated only in the last paragraph which he wrote on the subject of the German Constitution in the winter of 1802/03, that 'all wisdom in the organization of states' rests on the solution of the problem of 'disbelief in the power of law' ²⁷. From such disbelief, he argued, stems

'the lack of wisdom which dithers between the necessity of giving supreme power to the state and the fear that individuals will be oppressed by it' ²⁸. Just such timid and mistrustful dithering was the problem to which the 'Thesean solution' of the conclusion was addressed. As shall be demonstrated with reference to Hegel's debt to the ratio status tradition in German political thought ²⁹, the organization of legal community was conceived as the means to the end of mobilizing the ethical life of a multitude to the point of its concentration as the decisive ethical activity of a state. This was to be achieved via the animation of the ramshackle 'building of the German constitution' by the 'spirit of the time' ³⁰ or, as he later put it, by way of furnishing the vitality of the present day with knowledge of 'how to concentrate itself in laws' ³¹. Only thus could there be a transition from the barbarity which consists in the fact that 'a multitude is a people without at the same time being a state' or, what is the same, 'that the state and individuals exist in opposition and separation; that the regent is but a personal state-power; and that the refuge from his personality is, in its turn, only opposition of personality' ³². In a civilized state, on the other hand, a national multitude may become truly a people, for in it the laws or universality 'stand between the personality of the Monarch and that of individuals ... The power of the laws solves the contradiction between the supreme authority of the state and the freedom of individuals from oppression' ³³.

From the fact that in the midst of this passage Hegel made clear reference to the principle quod omnes tangit, ab omnibus approbetur debet, and that it served as a bridge between his discussion of military, financial, and judicial powers and the subsequent discussion of representation, it should be quite evident what purpose he intended should be served by the conquering

genius, whose features he composed in the image of Theseus and Richelieu: namely, the institution of a representative Rechtsstaat.

It has frequently been questioned whether there is a consistent relation within and between the two aspects of the reform proposals contained in the conclusion to the VSN. Quite simply, in spite of ample textual evidence to the contrary, it has been supposed that Hegel so lacked commitment to the idea of a Rechtsstaat in which the power of the monarch would be constitutionally limited by representative institutions, that he opted for a solution to the 'fate of Germany' involving complete deference to the idea of the Machtstaat. It has been argued, eminently by Haym, that Hegel opted for the Machtstaat by default. Haym extended to the explanation of Hegel's stipulation of the necessity of a conqueror the view which he elaborated in his discussion of the Wuerttemberg fragment: that Hegel's uncertainty concerning the question from what mode of election an electoral college independent of the court was to be expected persisted in the Jena period, with the consequence that he viewed with despair the prospect of a realisation of his proposals to give an effective role to the Imperial Diet ³⁴.

On the other hand, it has been argued by Rosenzweig that Hegel was in any case quite emphatically and positively on the side of the Machtstaat. The final chapter appeared to Rosenzweig as the logical rather than delinquent conclusion to the VSN, as the finishing touch to the 'tangible' but 'elusive' image of the 'power-breathing' state impressed upon the pages of the introductory chapters ³⁵. In Hegel's conclusion and introduction we are invited to discover, or rather feel, the 'impact of the times' upon the 'inner personal history of our hero' ³⁶ and thus intuitively to realise why Hegel paid such attention to military power ³⁷. And the very reason is that Hegel selflessly, because he had

'now grasped History', adopted towards his own reform wishes (Reformwünschen) ³⁸, a 'hard unfeeling abnegation in the face of the previous course of things' ³⁹, taking the side of the 'powers who are in a position to enforce the future: History itself, and great historical personalities' ⁴⁰. These great men the many (and in this Hegel differs from former advocates ⁴¹ of dictatorship and/or enlightened despotism), 'instead of freely concluding with one another a civil contract, obey rather against their will, because he (the great man) has on his side their unconscious will, the will which they will some day have: that is Hegel's new solution' ⁴².

Both explanations entirely miss the point of the relations between the two aspects of Hegel's reform proposals, and between the two dimensions of the first aspect. The first aspect consists, on the one hand, of suggestions concerning, as we have seen, what kind of constituencies are to be represented and what matters are to be devolved from the jurisdiction of the old provinces to the newly constituted Imperial Diet; on the other, of the argument that only a conqueror can give effect to such a 'revolutionary' derogation from some, albeit only some ⁴³, of the traditional prerogatives of the old estates. Of this aspect it should be noted, and will be shown, that the force of 'conquest' is intended to fall not on the 'people' who are innocent of primary guilt, but on the princes, and that this is to happen by means of a fragmentation of constellations of interest formerly in the control of princes ⁴⁴. For reasons which Hegel had outlined - to which attention will be addressed in the due course of the final chapter - their concertation of the interests of their subjects with their own was increasingly defective ⁴⁵, so that this partial revolution would itself be only partly revolutionary.

The second aspect of the proposals consists of a discussion,

not of constituencies and of jurisdiction, but of the composition, structure, internal relations and procedures of the proposed Diet. It is to be noted that Hegel - and here there is some point to Haym's criticism of his ambiguity on the question of what 'mode of election' ⁴⁶ was to be preferred, though not the point intended by Haym - failed to make clear whether delegates to the Diet were to be directly elected by the 'people'; whether, if they are to be elected indirectly, all citizens are to have any part in the nomination of the electors and the eligible; whether, in that case, the electors are to be assembled in a body other than the traditional territorial Estates or not; and whether, if not, a real distinction is tenable between indirect nomination from (it is not specified by whom) the new constituencies and the old method whereby existing Estates Assemblies used to depute some of their members to the Imperial Diet. Failing to elaborate upon this issue, it would seem that Hegel left open to question the very realisation of his proposals for a Diet truly independent of the traditional bastions of provincial sovereignty. The necessary pertinence of this issue to that end prohibits it to be argued that Hegel thought out the problem whether the new constitution of the Diet would render unproblematic at the Imperial level the question which had so troubled him with respect to the territorial level of representation: namely, whether the interests of the provinces (qua Landschaft) could be represented independently of those of the provincial sovereigns. That he continued to be troubled thus in 1801 is evident from his admission that, 'just as what nourishes a healthy body would only corrupt a sick one still further if it were given it, so the true and genuine principle that it is a territory (Landschaft) which confers the power and right of a vote (in the Diet) has contributed all the more to the dissolution of the German Empire now that it has been

introduced into it' ⁴⁷. Hegel may have supposed that his proposed reconstitution of the representative body would render it immune to the disease - the 'urge for isolation' ⁴⁸ - which had afflicted the former Imperial Diet, but the very fact that he depended his 'revolution' on developments (especially the increasing consciousness within the provinces of a territorial identity no less distinct despite the fact that it was no longer concentrated in the person of a prince) already in train renders it questionable whether he was right to hope that the contribution to dissolution already compounded by such developments would not be still further compounded.

That this was a problem he could not satisfactorily resolve is all the more likely in view of the fact that he remained in a state of indecision concerning the power of the Cities Bench, which was to be the College in which were to be represented the new constituencies, to 'turn the scales' in the event of disagreement among the colleges and in the face of opposition either from the College of Princes or from the College of Electors ⁴⁹. His proposals then, though federalistic in appearance and theory, involved an implication of unresolved confederalistic elements. What is more, the fact that he countenanced at all the possibility that Free Imperial Knights might sit on the Cities Bench ⁵⁰ suggests that he was prepared not to permit this College the kind of social homogeneity which, at the territorial level, especially in his native Wuerttemberg, had been one of the best guarantees of the independence of the Landschaft from territorial Herrschaft ⁵¹. However, the prohibition of dictation (of prepared statements ⁵²) by representatives in any College implies on Hegel's part a strong preference for free debate uninhibited by mandatory instruction. Hence it is possible that despite heterogeneity within the College of Cities, as between representatives, elected directly or

indirectly, and members ostensibly present in their personal capacity, but possibly as disguised delegates for some interest other than that of the Landschaft, Hegel expected (perhaps too ingenuously) no detraction from the free representation of the people.

Be all these criticisms what they may, Hegel's fault here is one of omission. The ambiguities within the second aspect, and his failure there to resolve the problem of the electoral process to which he had failed adequately to attend within the terms of the first dimension of the first aspect do not have utterly vicious consequences for the general proposal for a re-constitution of Imperial representation. Hence there is no need to regard the second dimension of the first aspect as an alternative resort. He was rather too optimistic of the effect of his proposals for devolution than, as has been suggested by Haym and Rosenzweig, so riven by doubt or so merely wishful that he gave himself up, as to an end in itself alternative to his general proposals, to a solution of the decline of Germany involving resort to the ideal of a conquistadorial Machtstaatsmann. Haym was correct to draw attention to Hegel's reservations about the possibility of an autonomous instrumentation of electoral practices to the end of instituting a representative body. Rosenzweig, too, was right to argue that Hegel rejected the possibility of a free option on the part of competent authors, either for their spontaneous self-creation as a people by way of rational invention of a representative organisation or for their willing submission to a leviathan. But they both, because of their failure properly to understand that the purpose of the political genius whom Hegel considered indispensable was to overcome the 'dithering' of a people afflicted by a spirit of 'disbelief in the power of the laws' to solve the contradiction between the

personalities of the sovereign and the subject, construed Hegel's argument to mean that he preferred, as a means to German recovery, a community of subjection to power over a 'living together' ⁵³ of citizens (including the monarch) equally subject to legal community; and to mean that his scepticism concerning the spontaneous capacity of the Germans to institute a common social life dependent upon the practice of representation caused him to despair of, or to dispense with, the proposed end of a constitution devoted to representative government.

Their misconstruction of his argument turns on their equal misunderstanding of what Hegel meant to convey in the final sentence of the VSN: 'The concept and the insight (of and into necessity) carries (sic) against itself something so mistrustful that it (sic) must be validated by force and only then does man submit to it (sic)' ⁵⁴. The mere idea of necessity, even when acknowledged, is not in itself enough to cause men to give it effect. Hegel here deployed the idea of mistrust in the same way as he had that of timidity in the seminal fragment, the WSS. There he wrote of diffidence in the face of change as of a conscience intimidated, or, its corollary, a cupidity seduced, into commitment to the present, or respect for the restrictive limits of the old life. Just as he had attributed this timidity to passionate devotion to property and to passive contemplation and enjoyment of a servile little world, so in 1801 he yoked the idea of servile subjection to that of ignorance of the idea of common laws as a means to living together and common activity ⁵⁵. So, in his conclusion, he wrote of popular mistrust of the idea of necessity as of a consequence of compulsive attention to self-interest. This mistrust he later called disbelief in the power of law ⁵⁶, which disbelief was said, as in 1799/1800, to disable men from accomplishing anything against the prevailing regime, to

confine them to the particularity against particularity⁵⁷ of ephemeral violence and to taking refuge, as he was to put it in 1803, in opposition of personality to personal state-power⁵⁸, the effect of which was to compound both timidity and cupidity. And just as in the WSS Hegel had positively affirmed that spontaneous revolt must relapse into timidity, and that no purpose but the enhancement of 'loss of faith'⁵⁹ in law as such could be served by popular sedition, so in his conclusion to the VSN he denied that, without a conqueror, the necessary foundation for his ideal of the Rechtsstaat could be laid.

To make 'a clearer consciousness more universal'⁶⁰ among the masses of the invalidity of the pretensions of the prevailing regime would be counterproductive. It has been true, Hegel insisted, even when the idea of unification 'has accorded with the general culture of the day'⁶¹ (as purveyed by poets and philosophers or as instinctively felt by whole peoples⁶²), that its coming to pass 'has never been the fruit of deliberation but only of force'⁶³. For the idea of a national union was so alien to the 'common people of Germany, together with their Estates Assemblies, which know of nothing at all but the division of the German people'⁶⁴, that they 'would have to be collected together into one mass by the power of a conqueror; they would have to be compelled to regard themselves as belonging to Germany'⁶⁵; that, indeed, the deliberations of Estates Assemblies as presently constituted might achieve no more than the very aggravation of their self-interest, sectarian opinion and faithlessness to the law.

It was because of the vacillation of the Germans between timidity and cupidity that Hegel stipulated the need for a single man sufficiently disinterested, like Theseus, to 'have the magnanimity to grant to the people he would have had to shape out of scattered tribes a share in matters that affect everyone'⁶⁶ and

like Richelieu, sufficiently resolute 'to bear the hatred with which ... great men have been laden who have wrecked men's private and particular interests' ⁶⁷. In Germany the spirit of self-interest, or social particularism, compounded and exploited by separatism, or political particularism ⁶⁸, had so distorted man's social nature and compelled him to throw himself into idiocy ⁶⁹, that this nature, become so deeply inverted, dissipated its strength upon this repudiation of others and in the affirmation of its characteristic seclusion sank into madness. This madness is 'nothing other than the total alienation of the individual from his kind' ⁷⁰. This bondage to idiotic interests had not gone so far in Germany as it had, in Hegel's view, among the Jewish nation in which he had descried the same tendency. But it had preempted the individuation of self as 'absolutely free being' ⁷¹, intent upon its realisation in the idea of a state, sufficiently to deprive the personality of capacity for 'living together' ⁷² or 'common social life' ⁷³ deliberately and self-consciously concentrated in 'common laws' ⁷⁴. Particulate 'character' and its abstract activity had become so intimately bound up with the personality that insight into the necessary principle of the unity of the state and of legal community was too weak in itself, too timid, despite the distinct feeling that violence was being done to social nature, to become 'effective in action' ⁷⁵ against the lawless dominion of the old life.

To make the idea of legal community effective in action, which is ideally the self-creative deed enactive of the emotion of 'whole peoples' ⁷⁶ is, under the circumstance that the people has no individuality, a task which must devolve on the single agent of 'great character' ⁷⁷, to whom it falls to validate the 'truth-claim' of the better life by force. But this force cannot be supposed to be alien to the life to which it is intended to give

organisation and law. To effect necessity is to bring life to thought in law and thought to life ⁷⁸ in the organisation of Reason as a people ⁷⁹. It is to make the present and the absent converge in actuality, to make the ethical effective (wirklich) or valid. The law in which ethical life becomes ethical activity, though not susceptible of spontaneous creation, cannot be merely extraneous to the present, for life could not in that case respond to it. The goal is to be achieved by 'freeing consciousness from its limitations' ⁸⁰ so that the sensible quest, the need deeply and distinctly felt ⁸¹, may become intelligent. Else this happen, there shall emerge a machine state, not one of communion between intelligence and sensibility, but of coercion by a 'community of rational beings' of a 'life impoverished multitude' ⁸².

Seen thus, from the point of view of the closely contemporary DS, the stipulation of the need for a conqueror is not made as of a need for an alternative to law. Nor is conquest exactly a means to law, as we shall shortly see. Rather it is law itself, 'vindictive' ⁸³ for ethical life of the truth with which it is instinct. It is the activity which life has not yet attained, but with which it is pregnant.

The limitations from which consciousness is to be freed are those imposed upon the latent universality of the Empire by its princes. It is against princes, as Hegel was to make clear in his introduction, and in his interpretation of Machiavelli's 'Prince', that conquest by the power of law was to be directed. Their undoing would be the making of their tribes, whose capacity for self-creation as an organized people would thereby be liberated. This is what Hegel meant by the requirement that the conqueror, in order to effect unification, should give his people what it could not give itself, 'a share in matters that affect everyone' (quod omnes tangit) ⁸⁴, which would have to be by way of 'some form of organization' ⁸⁵. Though he called him who could grant this

share a 'Theseus' (and though he invited comparison of the Germans with primitive tribes) ⁸⁶, he immediately implied that mere martial heroism was not to be looked for. Since the Germans, prey to the spirit of social particularism, lacked the naive sense of community which stood for the tribal Greeks in the stead of individuality self-consciously intent upon the idea of community, they needed, not charismatic leadership, but genius of quite another kind. The nature of this genius resembled much more closely that of Richelieu than that of Theseus. 'Since a democratic constitution like the one Theseus gave to his own people is self-contradictory in modern times and in large states' ⁸⁷, the form of organisation granted must be of the representative kind designed to deal with a political and social particularism not encountered by Theseus. Representation is fitted, according to Hegel's conception of it, to negate the political effect of the spirit of privacy in a manner otherwise impossible in the modern world. And it was to Richelieu that Hegel gave credit for such an achievement. The weight of Hegel's concept of genius rests, therefore, on the ideal-type, not of Theseus, but of Richelieu.

This has significant implications for the question whether the 'force' exerted by the genius is supposed to be directed against the people as such. Hegel seems always to have thought, with respect to the synoecism effected among the warring tribes of Attica, that Theseus had simply to transpose their sense of natural community to Athens. This entailed coercion of the very national identity of these tribes, already peoples at heart. It was not that the tribal folk felt a sense of belonging to a community other than that of a prospective Athens but that they were other, for they participated immediately in communal deeds ⁸⁸. Theseus had actually, by devising a religious pantheon, to make

of them a new people who would likewise not belong to, but would be Athens. Athens had to be small enough to permit this transposition of natural community. It had to be a direct democracy. This achieved, Theseus could be dispensed with, repaid with ingratitude, the spirit (which arises in company with the substantial kind of republican sentiment) some simile of which, such as faith in and respect for the law, Hegel hoped could be breathed into the Germans ⁸⁹.

Precisely because a German conqueror would have to deal with persons who felt that they belonged to their provinces rather than with peoples already extant who felt that they were their provinces, the obstacles in his way were political rather than primarily communal. Hence it was that the creation of the Germans into a people would not involve their assumption of a radically new identity. They would, in matters of religion, for instance, remain what they had been. The plurality which prevailed in such matters of custom need not be effaced, so long as law could give intelligibility to the long abused custom of representation ⁹⁰. For the Germans to be 'compelled to regard themselves as belonging to Germany' would not be a total revolution, except for those who regarded their patria as indivisible from their being, namely the princes. Of course for these, the revolution in political relations would be felt as total. The same would apply, to be sure, to those interests which felt that the state belonged to them, not they to the state. But it was this feeling that representative government was intended to deny them, of whatever estate they might be. Bourgeois self-interest was considered by Hegel to be tolerable, nay even virtuous, so long as it did not become the principle of the constitution. That it should not, that none should think themselves to be or to own the state as if it were a patrimony was the condition upon which the Germans, from first

regarding themselves as belonging to one state, would find in its law and organization a mediate simulacrum of their freedom and a recovery in its deeds of the sense of activity supposedly vouchsafed immediately to the Athenians. For its deeds in matters that affect all would have to be approved by all, so that none would feel them to be exclusively done by some. Among the Germans, too, particular persons were to be made to count for nothing beside their legal organisation, to be treated ungratefully.

What we have so far called social particularism, as distinct from political particularism, might better be distinguished, as an inevitable consequence of modern economic life with which Hegel did not think it realistic or meaningful to take issue, by the less opprobrious term, social individualism. For in itself, the inclination of the burgher to pursue his own interest need not take him so far as idiotically to seclude himself. On the contrary, Hegel was to write of it as of something conducive to vitality, a contented mind, free and self-respecting self-awareness, ease, welfare and honesty ⁹¹. Whether social individualism was effective in economic life, as what Carl Schmitt has contemptuously called 'possessive individualism', against which he mistakenly supposed Hegel's NRS to be the first major polemic of modern political theory ⁹², or in such private matters of opinion as religion, Hegel had no axe to grind against it so long as it was not exploited for purposes inimical to the integrity of the state. So long as the spirit of the bourgeoisie is 'kept to one side', as Hegel put it in the NRS ⁹³, it can be regarded as innocuous. But should it be used, as Hegel believed it had been, particularly in its religious aspect, by the German princes, who pretended that their withdrawal from the sovereignty of the Empire was for the sake of the liberty of their subjects, social individualism is harmful. It passes over, in that case, into

the form of what it is appropriate, because, as we shall see, Hegel characterised the autarkic behaviour of certain princes as motivated by a 'bourgeois principle'⁹⁴, to call 'possessive particularism'. Only when intruded, writ large, in political affairs does the pursuit of self-interest deserve to be denigrated as particularist. It is so far from being the case that Hegel wished to polemicise against possessive individualism that, in a part of the VSN composed after the NRS, he was to attempt, as we may suppose, to persuade possessive individualists to be on their guard against possessive particularists for this reason: that 'if the state lose all its authority, while yet the individual's ownership rests on the power of the state, the ownership of those who have no support but the state's power - which is equally null - must be very shaky'⁹⁵.

There is, to be sure, a sense in which Hegel regarded the removal of political obstacles to German unity as involving a fundamental revolution in the hearts of German burghers, a change in their personalities such that their potentially utter social particularism, or alienation from their kind, would be held in check in order to fit them for common social life. But what really mattered to him was to ensure that so far as men were private-spirited, this weakness would not contaminate their public life; that social individualism, especially as manipulated by political separatists, would not issue in faithlessness to the idea of public law, in the abuse of the state-power for private purposes. His intention was, simply, that the bourgeois sense should be kept in its proper place. It figured for him primarily as an aspect of political culture which was certainly pernicious to community but whose effect to this consequence depended upon another variable, the ambitions of princes. This being so, it is understandable why in his specification of the nature of

the nature of political genius, he attended, as far as concerned Germany, to statesmen whose work had consisted only incidentally in the reconstitution of social character but primarily in the emasculation of political parties which took advantage of that in the political culture of citizens which was weak and mistrustful. Hence the priority of Richelieu over Theseus. Hence too, Hegel's remarkable reinterpretation of the role of Machiavelli's 'Cesare Borgia' in the political life of Italy.

2. The Vicar of the Whole

Hegel's interpretation of Machiavelli differed substantially from the view of Herder, at that time commonplace, that the Florentine Secretary 'pictured the prince as a creature of his species, according to the inclinations, drives and the whole habitat in which he dwelt' ⁹⁶. In the VSN Machiavelli is said to have 'grasped with cool circumspection the necessary idea of the salvation of Italy through its unification in one state' ⁹⁷. Hegel followed Herder in repudiating the trite opinion that Machiavelli was either a 'satirist' or a 'damnable doctor' to princes or a 'weak-minded something-in-between' ⁹⁸. Thus he praised Machiavelli as having had a 'genuinely political head endowed with an intellect of the highest and noblest kind', discharged him of any fault of 'baseness of heart' and 'frivolity of mind' and scoffed at the well-intentioned wish of his moralistic and 'wily public' to regard Machiavelli's works, 'the whole thing', as 'ingenious persiflage and irony' ⁹⁹. His judgments, based not only on the Prince, differed from those of Herder in that he appears to have been deliberately intent on distinguishing his from the behavioural-historicist interpretation by Herder of Machiavelli's intentions: 'With strict logic he (Machiavelli) pointed out the way necessitated more by this salvation than by

the corruption and blind folly of the time' ¹⁰⁰. Hegel took it that Machiavelli, like himself, regarded the ill-effect of personal or moral culture as dependent upon the intentions of perfectly responsible political agents, whom he dubbed 'criminals' or exalted as men of political genius. Their culpable or laudable responsibility was not allowed by Hegel to be obscured by historical circumstances, and it was to salvation from attributable criminality, not from habitual and general corruption as such, that Machiavelli's genius and that of his heroes was addressed.

Despite his admission that it is 'utterly senseless to treat the execution of an idea directly created out of an insight into the Italian situation as a compendium of moral and political principles applicable indifferently to any and every situation i.e. to none' ¹⁰¹, Hegel saw a close analogy between the contemporary German condition and the former situation of Italy which 'has had the same course of fate as Germany, except that Italy, since development had gone further there at an earlier period, brought its fate earlier to the complete fulfilment which Germany is now encountering' ¹⁰². Although, in Hegel's opinion, the analogues are not symmetrical, mere temporal distance furnishes insufficient grounds to deny their commensurability. Germany's was not 'any' situation. Apart from the superficial aspect of the similarity between Machiavelli's 'Italy' and Hegel's 'Germany', that each had become a 'battlefield for the wars which foreign princes waged on its soil' ¹⁰³, Hegel grounded his analogy on their like exhibition of a constitutional inertia stemming from their participation in a common Imperial tradition. This was the tradition of distribution of sovereignty according to principles of private rather than public law, in such a way as to make it an object, qua heritable patrimony, of partisan litigation. His intention was to show that the submission to the Imperial Courts

of disputes over territorial succession and accession was bound to give rise to civil wars and so to involve foreign powers in the making of decisions proper to the sovereignty of the Emperor and Diet, because it encouraged interested parties to regard the outcome, since litigation over a matter implies the indifference to one another of the issue and the public interest, as an affair upon which it was legitimate to exercise their influence 'according to their own understanding and good intentions' ¹⁰⁴. Such matters come, in that case, necessarily to be played 'out of the judicial into the political sphere' ¹⁰⁵ and to be submitted to the contingencies of greater and lesser power. This being so, if the coercive power of the Empire, i.e. the Emperor and Diet, is inferior to that of one or more of its member estates the unacknowledged fact is manifest that 'the whole principle of the constitution is overturned' ¹⁰⁶.

The proper institution and maintenance of the state depends upon preservation of the distinction between its authority and objects of rights, i.e. private property. For, in Hegel's view, private property and the power of private persons (a category including estates such as Brandenburg, the chief target of his strictures) are, or rather their increase is, a matter of chance, of arbitrariness ¹⁰⁷. If it leaves matters affecting its sovereignty to the contingency of judicial decision and execution, the state gives notice that it has foregone its otherwise tenable independence of chance, its quality of being an 'abiding, fixed centre' ¹⁰⁸. Germany was no state because its fixed centre had been disturbed by subjection to 'forensic treatment' ¹⁰⁹ of matters touching state sovereignty. So too Machiavelli's Italy was no state: 'As little were two states considered as one whose monarchs used occasionally to select a third as arbiter to settle their disputes, or in general had a common justice at the papal

throne, just as little can what is called imperial justice, and the related financial organization, be held to constitute Germany one state' ¹¹⁰. What Hegel wanted to make of this analogy may be inferred from his argument that it was inappropriate to call Italy's situation 'anarchy'. This was framed in terms ¹¹¹ so similar to those which he used elsewhere to repudiate Voltaire's application of that word to Germany, namely that its epithet is predicable only of one state, rather than of relations between several estates which had achieved effective sovereignty by taking advantage of the arbitral procedures of private law, that it cannot but be supposed that he attributed 'Italy's situation' to the same cause as had given rise to that of Germany.

This cause was the 'criminality' of ambitious princes. The criminality of one prince in particular, Frederick the Great, was argued by Hegel to be the motive of his hostility to him whom Hegel enlisted in his defence of public law against the solvent effects of private interests. According to Hegel, it is worth noting that a 'modern monarch, whose whole life and actions have expressed most clearly the dissolution of the German state into independent states, made this Machiavelli the subject of his academic exercise' ¹¹². The duplicity of Brandenburg was permitted, in Hegel's view, by the fact that, though in theory Imperial laws had established the principle that disputes over accession of and succession to territorial sovereignty 'should be hailed before the Emperor and Empire, therefore must be decided through the legislature, not the judicial authority' ¹¹³, the effective principle of the constitution, Praxis, i.e. expediency had always decided otherwise. Praxis had applied likewise in the negation of public authority by the entry of member-estates, in the prosecution of their patrimonial interests, into alliances with foreign states.

This happened regardless of the reservation in the Peace of Westphalia, which permitted this intrusion of international law into the proper sphere of public law, that such treaties should not 'contradict duties towards the Emperor and Empire' 114.

Thus, the German Empire had 'no guarantee against several German territories becoming unified in the hands of a single house, with complete legality, through inheritance' 115 and its sovereignty was mocked by the cunning politics of the artful dodger.

The condition to which Germany had been brought Hegel expressed in the concept of a 'Gedankenstaat' 116. Hegel employed this concept to specify a fiction, that the Empire is indeed a state, which confers upon the power of the prince in his territory the authority stemming from his ostensible allegiance to the public authority, yet is powerless really to enforce that allegiance. The fact is that 'Germany' was not a state, for purposes of princely Praxis, while yet it was a state - again, for purposes of princely Praxis. It was, to be precise, an ideological structure providing for the security of private property - that of the princes - and the legitimation of the power politics of 'parties' constituted as states within the state. While Hegel declined, in the cases of Italy and Germany, to call this situation 'anarchy', because there was in reality no state in either, he was prepared to castigate its manifestations - territorial consolidation at the expense of imperial sovereignty, alliances with foreign powers etc. - as the 'greatest crime' 117 against the 'state', chiefly perpetrated by Brandenburg, though the 'Austrian party' was not without blemish either. These 'parties', the German and the Austrian, Hegel compared, 'with modifications arising from altered circumstances' 118, to the Guelphs and Ghebellines. The problem is to determine why, in the very absence of a state, Hegel was prepared to speak of what,

on his own terms, presupposes the existence of a state, namely the crime of 'engineering anarchy' 119.

Of this apparent anomaly, which Hegel did not think he needed to explain, between the propositions that neither of Italy nor of Germany is the epithet 'anarchic' predicable and that, nevertheless, parties to disputes who call on foreign powers are yet to be spoken of as parties to civil wars, the 'fate of being the theatre' 120 of which was common to Italy and Germany, and are guilty in this of the 'worst of crimes', of the height of malevolence' 121 towards the state, the explanation lies in Hegel's assumption that it is meaningful to speak of the state sub specie futuritatis. It is in view of a prospective legal order, an organization of ethical activity to be vindicated for the present, that it may be said, not that a deed is, but that it is like, a crime. The said anomaly is thus merely apparent. For what Hegel argued was that the heinous deed in question has in all ages been regarded 'as a crime' 122, 'if there could still be any question of punishment when the state was in its death throes' 123. The 'crime' is against what the 'state' could be, but, in consequence of it, is not. It is likewise against what the 'state' will be, i.e. a legal order. In this tense period in the pathology of the 'state', when 'life is on the brink of decay, it can be reorganized only by a procedure involving the maximum of force' 124.

In this light, what Meinecke has called Hegel's 'high handed juridical argument' 125 in secondment of Machiavelli's justification of Cesare Borgia seems perfectly intelligible. Dismissing platitudes such as 'that the end does not justify the means' 126, Hegel argued that to 'engineer anarchy is the supreme or perhaps the only crime against the state, because all crimes of which the state has to take account are concentrated in this. Those who assail the state directly, and not indirectly as other criminals

do, are the greatest criminals, and the state has no higher duty than to maintain itself and crush the power of those criminals in the surest way it can' ¹²⁷. There can, in such circumstances, 'be no question of any choice of means' ¹²⁸. The state's execution of this supreme duty is 'not a means; it is punishment; or if punishment were itself a means, then every infliction of punishment on any and every criminal would have to be called detestable and every state would be in the position of using detestable means, death or long imprisonment, for the sake of its own maintenance' ¹²⁹.

If this interpretation is problematic, in that the equation of conquistadorial violence with penal justice presupposes a source of obligation upon the prince which renders his election of means rather a duty - albeit perfect only in the future - than a choice, that is because Hegel explicitly depended his argument on 'The Prince' alone. The concern of that book, being above all with the conduct of the new prince, is not to justify his action by the allegation of criminality against his state on the part of opponents. Since Hegel can scarcely have been ignorant of the fact that 'The Prince' was largely concerned with the foundation of the state ab initio, it must be supposed that his interpretation of Borgia as a vicar of what once was and is to come was guided by an assimilation of the overt purpose and historical specificity of that work to the broader meaning of Machiavelli's 'other genuinely idealistic demands' ¹³⁰. Borgia is described, consistently with what Machiavelli wrote in Book XI of 'The Prince', as being 'merely an instrument for the founding of a state' ¹³¹. Such foundation has the significance not of origination but of performing for the necessary idea of the state a task for which it had been rendered incompetent by the power of factions.

This estimation of the role of Borgia, as being instrumental

in the salvation of statehood, rather than original in its foundation, and as marking an epoch in its pathological history in which it depends on vicarious action on its behalf in the matter of punishment, is indicative of Hegel's intention to interpret 'The Prince' in the light of the fundamental problem of the 'Discourses', the restoration of the state to its original principle in the face of the ambition of private citizens to attain a standing, with the backing of sects, 'akin to that of a prince' ¹³², but without the legitimation of constitutional law. Borgia was a 'genius' ¹³³ capable of averting 'the fate of a people which hastens to its political downfall' ¹³⁴. By political genius, Hegel meant a quality of inexorable decisiveness that manifests itself when the state, which ought to sustain and be sustained by a people's ethical activity is no longer its fit vehicle but is merely a legal monument to its past life, power, development and activity ¹³⁵. The genius is the vicarious embodiment of a people's ethos and is, by virtue of the linkage of his personality with the principle, necessary to the existence of any multitude as a people, of the 'unity of the state' ¹³⁶, alone able to reintegrate it as a legal 'whole' ¹³⁷ in which the vitality of the present can know 'how to concentrate itself' ¹³⁸. To this end he is ready to endure the hatred with which they have been saddled who have 'wrecked men's private and particular interests' ¹³⁹.

We have already, in the first chapter, seen what a strong influence of Machiavelli upon Hegel's early concept of genius may be detected in his theological writings ¹⁴⁰. The possibility that Hegel depended heavily upon the 'Discourses' is more certain as regards the JSN than in the case of the VSN ¹⁴¹. However, the argument of the WSS that change, to be effective, must be adapted to the character of the people among whom it would be introduced,

while yet it must so affront that character that its introduction involves the use of force, is close to Machiavelli's views concerning the capacity of composite bodies to change. Their capacity is inhibited by the predisposition of their 'materia' to ignore the warnings, concerning the gradual rise of 'inconveniences', of even their most perspicuous members ¹⁴². The need therefore arises for saving genius, be it in the form of the virtue of some individual or of an institution or of laws given by some individual, while yet that individual must adapt his conduct to the times ¹⁴³. The resemblance is sufficiently close to permit it to be supposed that Hegel's purpose in invoking the name of Machiavelli in the VSN was to yoke the image of the genius to the concept of ethical activity, meaning the standing of the state in harmonious relation to the customary life of its subjects but, no less, the withstanding of their inclination to make the public authority subservient to private interests and, thus, of their fatal impulse to dissociate.

To the end of solving the dilemma involved in this posture, it was necessary to express the purpose of genius as that, not of a lawless conquistador, but of a vindicator or validator of legal order. It was his espousal of the principle, ignored in practice by his detractors, that 'freedom is possible only when a people is united into a state by legal bonds' ¹⁴⁴, which attracted Hegel to Machiavelli and guided his understanding of Borgia. To derive legal concentricity from polycentric customary life was the objective which Hegel believed he had in common with Machiavelli.

Though Hegel invited identification with the tradition of ratio status, with the German variant of which his general conception of legally bound ethical activity will shortly be shown to be in conformity, his image of genius, even in association with the figure of Cesare Borgia, is not to be taken to

signify sympathy on his part with a 'power-breathing' image of statesmanship inimical to the interests of the subject ¹⁴⁵.

This is all the more evident from his concluding reference to Richelieu as the ideal-type of his statesman, and from the appraisal of Richelieu which immediately preceded and conditioned his appreciation of Machiavelli's 'Borgia'. Following one of his favourite pragmatic historians, Johannes von Mueller ¹⁴⁶, Hegel discounted from his 'Richelieu-portrait' any suspicion of libido dominandi and sought the impersonal causes that made him effective in his pursuit of the end of attaining for France 'a centre in which all power is concentrated and which is bound by laws freely determined' ¹⁴⁷. Richelieu did not, and this made his example particularly relevant to the salvation of a confessionally divided community for which no Thesean pantheon could be devised, direct his energies towards the coercion of social character. Rather, he attacked political obstacles to the unity of the state. Just as Borgia's genius was to be argued to consist in punitive action against criminal factions, out of a sense of obligation to the absent ideal of the state, so the genius of Richelieu's character was located in his dispassionate devotion to the principle of the unity of the state, the necessity of which enabled him to prevail over the passional antagonism of his opponents to the idea of public law ¹⁴⁸. The nobility and the Huguenots were, innocently or wittingly, criminals, inasmuch as each impugned the authority of the law. The former sought to make themselves 'immediate subjects of the monarchy', to be preferred, above the laws, as a medium between the monarch and the individual ¹⁴⁹. The latter simply 'formed a sort of sovereign state' complete with armies, fortified towns and independent foreign relations ¹⁵⁰: they threatened to achieve the kind of independence which was to render Germany a 'Staat aus

Staaten' ¹⁵¹ and, precisely because they did so, incited the innocent insubordination of the nobility towards the law. These guilty and primarily innocent parties were vanquished by Richelieu's destruction of the public effect of their private interests. But Richelieu's genius did not assault private interest as such: 'Though he annihilated the Huguenots' state, he left them freedom of conscience, worship, civil and political rights ... From this epoch ... there dates the period of the power and the wealth of the state and the free and lawful prosperity of the individual' ¹⁵².

Hegel delighted in the irony, though certainly not in the consequences, of Richelieu's *raisons d'etat*, whereby he depressed the principle of autarky in France and elevated it in Germany. By the Peace of Westphalia (1648), Richelieu's policy, carried out by Mazarin, embodied in the German Constitution the principles of cuius regio, eius religio ¹⁵³, according to which the personal religion of the prince was deemed to be that of his Landschaft, so that the confessional interests of the latter failed to be distinctly represented in the Imperial Diet, and of itio in partes ¹⁵⁴. This principle legalised the procedure whereby the corpora evangelicorum et catholicorum ¹⁵⁵, to which the princes affiliated themselves, and likewise their territories from which they were not legally distinct, henceforth settled disputes, not by submitting them to the majority decision of the legislature ¹⁵⁶, but to the arbitral processes of the judicial authorities and thus, ultimately, to diplomatic negotiations whose outcome depended upon the power of de facto sovereign estates rather than upon the public authority of the 'Emperor and Empire'. Power-politics, and suspicion of the hegemonic pretensions of the House of Hapsburg, conspired to extend the application of the principle of itio in partes beyond its proper limitation to 'questions in

which religion was involved' ¹⁵⁷, and so to extend, to all manner of affairs other than religious, the effect of the lack of distinction, in the Imperial Diet, between the confessional interest of the prince and that of his subjects.

The greater irony is, however, that Hegel tacitly turned against the political outlook of von Mueller, one of his mentors in the pragmatic practice of historical explanation, the very idea of the genius which Richelieu had displayed. Von Mueller was among the protagonists of the League of Princes, formed by Frederick II of Prussia to resist the allegedly hegemonic aspirations of Joseph II. Accordingly, he could consistently regard Richelieu as the benefactor not only of France, in that he had secured the unity of the state in that country, but also of Germany, precisely because he had made prevail there the autarkic principle which he had suppressed in France ¹⁵⁸. Hegel was convinced that Mueller's fundamental presuppositions, that Prussia was the natural guardian of religious freedom and that Austria's ambition for universal monarchy rendered her the natural enemy of freedom of conscience, were not tenable and that, therefore, without danger to the customary life of the estates, the same work of genius done in France by Richelieu could be done in Germany by a statesman of the same kind: a conqueror whose person would be identified with the necessary principle of the unity of a state in which all power is concentrated and which is bound by laws freely determined ¹⁵⁹. This would be the whole or integral state to whose genuine legality and universality Hegel had looked forward in the WSS. Austria's candidacy for the title to be acclaimed as the integral state would, to be sure, be inimical to the political particularism which Hegel argued to be the cause of the perdition of the 'original character' ¹⁶⁰ of the Germans in the abysmal fate of

their dissolution as a people ¹⁶¹. But it would, by that very token, be congenial to the proper development of the 'german character' ¹⁶² to the true conception of freedom with which 'public opinion' ¹⁶³ or 'general culture' ¹⁶⁴ was increasingly instinct. Before we come to consider the grounds upon which Hegel gave the palm to Austria, claiming to show the 'necessity' of the 'system of events' which the pragmatic historian was committed to discover, rather than to complain of arbitrariness and victimisation by libido dominandi, it would be well to lay the ghost of the identity of the genius whose 'necessity' Hegel stipulated. On this matter turns the question whether Hegel's claim to have analysed scientifically or philosophically the course of German history can be sustained.

A great deal of ink has been wastefully spilt, ever since Rosenkranz averred that Hegel wanted to become a 'German Machiavelli' ¹⁶⁵, on the spurious question, To whom was Hegel addressing his 'appeal'? Dilthey was the first to be seduced: he nominated Napoleon Bonaparte ¹⁶⁶. Rosenzweig thought it implausible, in view of the evidence that Hegel looked to Austria for the regeneration of the Holy Roman Empire, that an enemy of that country could have been in his mind ¹⁶⁷: so far, so good. But to suggest what has subsequently been generally accepted ¹⁶⁸, that Archduke Charles of Austria was the 'addressee' is to make an equally unwarranted guess. For, in 1801, in the course of the critique, already referred to, of the assumption that abiding authority can be founded upon the submission to 'forensic treatment' ¹⁶⁹ of matters affecting the sovereignty of the state, Hegel had referred to the 'summons' ¹⁷⁰ of the Estates to the defence of the Empire, issued by Archduke Charles in 1799 and 1800, wherein he had depended the union of the Empire upon the hope of its achievement through the good offices of the Imperial

Courts. Hegel, of course, could have no truck with such hopes ¹⁷¹. He may have admired the Archduke's military prowess, but he clearly doubted his political sense. The fact is that Hegel thought the uttering of exhortations, whether to or by great patriots, a sign of 'zeal, to be sure, but at the same time (of) the folly of unnecessary effort' ¹⁷². As for Hegel's supposed wish to play a 'Machiavelli' to the Archduke's 'Lorenzo', it must be said that Hegel did not want his own voice to die away 'without effect' ¹⁷³, like the final chapter of 'The Prince'. So far as he emulated Machiavelli, it was not his 'genuine sincerity' ¹⁷⁴ or patriotic zeal that he particularly admired but the 'strict logic' ¹⁷⁵ with which he pointed out the necessary - meaning the only possible - way to sorely needed salvation ¹⁷⁶. It was his 'political science', not his 'patriotism' that Hegel sought to follow. Hegel nowhere addressed an appeal to any putative conqueror. Unlike the final chapter of Machiavelli's 'Prince', his conclusion is not in the vocative case. Nor does it have the illocutionary force of an invocation. It contains no more and, what is more important, no less, than the formulation of a conditional prediction - not a prophecy -, based upon a 'universal statement of non-existence' prohibitive of an 'existential statement' ¹⁷⁷ such as, 'Germany has the capacity to be unified without force'. Thus: no event of kind (u), where (u) stands for unification of a people that knows of nothing but division, has ever been the fruit of deliberation, but only of force. Therefore, if Germany, whose 'people' is in such a condition, is to be united, the power of a conqueror is indispensable ¹⁷⁸.

None of this should be taken to suggest that Hegel intended to adopt the stance of an indifferent social scientist. The point is simply that, on his assumption that the Germans lacked

the capacity deliberately and spontaneously to enact their latent potential for common social life, a project which he undoubtedly thought worthy, the capacity to give it effect in action had to be - could only be - that of a genius. Hegel surely always believed that 'ought' implies 'can'. To stipulate the need for 'power' was not, therefore, as Haym gratuitously supposed, an 'intimation of despair' ¹⁷⁹ on his part of the 'value' of the legal organisation which he proposed but, on the contrary, a condition of belief in its validity. It should never be forgotten that he had taken care to argue that the 'power' of any conqueror, to be such at all, has to be congenial with the life of the customary material which it is to inform, that alien force has no capacity to 'free consciousness from its limitations' ¹⁸⁰ or to satisfy the felt need of the common people for 'consciousness over what holds them captive' ¹⁸¹. To make law prevail without force of some kind, in circumstances such as those which confronted Hegel and his contemporaries, is an ideal which it would have behoved a liberal of Haym's times not to presume to preach. To accuse Hegel of despair of right and faith in might is quite unwarranted.

3. Maiestas and its political system

Richelieu's achievement for France of the pre-eminence of law alongside freedom of conscience and property ¹⁸² could be reproduced, nay even outdone in Germany. For there Hegel hoped it might take the form not merely of the Enlightenment's assertion of the values of toleration, civil and political equality of rights, and free and lawful prosperity of individuals ¹⁸² but, more fundamentally, of an integration, rather than mere juxtaposition to one another, of the ethical activity of the community and the customary life of its members in devotion to the wholeness

or concentricity of the Rechtsstaat. The conception of freedom in contrast to communal activity would not, in Hegel's view, serve the need for political unity. It is necessary now to consider to whom Hegel attributed the confusion of freedom with negative individualism, as we may call the particularist perversion of social individualism.

Strictly speaking, he had in mind the 'Germans' as a whole. But, as we have seen, he was not inclined to blame them for the limitations of their consciousness, for their lack of a positive individualism or collective subjectivity intent upon common social life. Fated 'character' could not be argued to bear responsibility. Responsibility belonged rather to those who mobilised the impulses of the 'German character' towards the practice of political isolationism. The princes in the first instance, especially the Elector of Brandenburg, their ideologues, particularly 'Berlin journalists' but also constitutional historians¹⁸³, those in general who raise the cry of 'freedom' calling 'Fight for German freedom'¹⁸⁴, and at last the oligarchic 'city councillors'¹⁸⁵, whose advantage too lay in deriving passive benefit from the Empire while doing nothing whatever for it, were those who had seduced the Germans into their idiosyncratic hostility to the public interest, which they mistook for freedom. In the 'endeavour towards the complete independence of the members ... the provinces stood by their princes and were at one with them, but they were bound to find that, in that sovereignty of the princes, German freedom was not achieved: on the contrary'¹⁸⁶.

Among the ideologues of 'German freedom' was von Mueller, whose account of the history of the League of Princes clearly represented the point of view which imported into 'German freedom' the negative meaning of 'striving against universal monarchy'¹⁸⁷. Mueller, cited in the chapter (8) immediately preceding that in

which Hegel eulogized the French genius who destroyed the League 'which had brought the French state to the brink of the abyss' ¹⁸⁸ and the Italian thinker against whom the criminal Prussian had raised empty moral cries, was not attacked explicitly. But the chapter (10) immediately following is designed to debunk Mueller's presuppositions.

The obsession with the danger of Austria's hegemonic aspirations was dismissed as never realistic: 'The idea of a universal monarchy has always been an empty word. The fact that, when it was planned, it never was actualised, shows the impossibility of its actualization and also the emptiness of this concept' ¹⁸⁹. This judgment certainly applies to the aspirations of the romantic Maximilian II. Hegel appears to have been ready to concede, in part, that this inductive generalization does not save the appearances in the case of Austrian power during the Counter-Reformation. Ferdinand the Jesuit ¹⁹⁰, after all, served by the military genius of Wallenstein, relentlessly pursued the idea and implacably persecuted Protestantism ¹⁹¹. But Hegel's view was that, since the days of Charles V, thanks to the division of the Hapsburg imperium, a system of balance of power in Europe had operated ¹⁹², in such a way that it was spurious to regard any one power, be it Sweden or Prussia, as the sole bastion of freedom of conscience ¹⁹³. He was, no doubt, aware that in 1552, the French king had assumed the title of 'Protector' of German Libertaet. As for Maria Theresa's oppression of Protestants ¹⁹⁴, Hegel was convinced that her flirtation with the Jesuits had been irrevocably reversed by the policy of toleration pursued by her son, Joseph II ¹⁹⁵. His principles, no mere 'whim of a single monarch' had 'passed over into the firm universal structure of civilisation and the basis of politics' ¹⁹⁶.

German religious liberties, then, were in no danger from

Austria and required no defence by Prussia. The pretence that such defence was necessary itself constituted a danger to freedom. The Protestant party exaggerated the proselytic intentions of Austria in order to discredit any belief among the faithful that this aspect of their customary life could coexist with the law, by arousing the suspicion of Jesuit influence upon the legislature and by keeping alive such speculation on the possibility of hell-fire for non-Catholics, as to deprive them of the 'assurance that they are in possession of the truth' ¹⁹⁸ that would free them from neurotic doubt of the capacity of their churches to subsist independently of secular protection from cunning seduction by Jesuits. Thus was fostered a general 'sort of mistrust' ¹⁹⁹ of the imperial authorities. Thus thrown into the arms of their princes, they put their faith in powers which, unlike that of the Emperor in respect of political and civil liberties as well as religious, were unconstrained by 'the weight of infinitely numerous rights' ²⁰⁰. Hegel's argument was, in effect, that the people had been duped into jumping out of what was made to appear to be a frying pan, in which private religious activities were alleged to be in danger of going up in smoke, into a fiery furnace in which such spiritual matters would be preserved, but which was, at any rate, not guaranteed to preserve their civil and political rights and would, as likely as not, consume their customary independence in their abstract economic activities. The contrast was, in his opinion, most strikingly apparent in the difference between the 'political systems' ²⁰¹ of Austria and Prussia.

These were presented by Hegel in the first place as, essentially, systems of inter-provincial relations ²⁰². But, as his argument progresses from a discussion of diplomatic relations to an examination of the political principles which

govern them and finally, in the subsequent chapter, to a treatment of the internal aspect of these principles, it becomes clear that he took it that the relation which held between the central power and the provinces within their political systems, held likewise between the central power and subjects, in their capacity as individuals and as citizens. Whereas in the Austrian system, these relations were held to be integral or concentrated in legal authority, in the Prussian, they were said to be 'rational' or susceptible to regulation only according to the whims of political power. The Austrian system was that of a whole; the Prussian, that of a sum.

The distinction between Austrian power and Prussian politics ²⁰³, as Hegel put it, was drawn as follows: in its dealings with other states and Estates, Prussia enjoyed considerable freedom of movement because, unencumbered by a corpus of customary duties enshrined in public law, international or municipal, it could act according to its calculations of its own power and interests. In this respect it had the advantage, though it was a great state, of appearing in the diplomatic sphere as if it were a 'moderately sized state' ²⁰⁴. Its ambitions in that sphere seemed to be incrementalistic rather than globalistic ²⁰⁵. Despite the peculiarity of inter-state relations within Germany, that lesser estates feared Prussia less than Austria when either moved against them, that each construed Prussian mobilisation against one of them as just that, whereas Austrian mobilisation against one was, because it appeared to constitute an erosion of the rights in se of the estates vis a vis the Emperor, liable to be construed as an attack on all ²⁰⁶, Hegel maintained that, in fact, Prussia was more to be feared than Austria, in respect of the actual erosion of the rights and interests of the lesser estates ²⁰⁷. Precisely because of the

construction that would be put on imperialistic adventures by Austria, if would tend not to engage in them and to confine itself to keeping the peace.

It was precisely because of the greater fear of Austria, based upon apprehension that attacks upon the interests of one are equivalent to the dissolution of the rights of all, that Austria was to be feared less by 'petty abbots, prelates and princes' ²⁰⁸ than Prussia. Less was to be feared from the great potential power of Austria, because its diplomatic and military appearance corresponded to, or was if anything more fearsome than, its real power, than from the moderate actual power of Prussia, whose appearance was less fearsome than its reality. Austria was constrained to act according to the law, Prussia was freed by its moderate status for purely real-political action.

Underlying the skillful dialectic of this argument, by which Hegel intended to show that dependence on Austria was in fact tantamount to relative independence from her, and that the quest for religious and political independence achieves exactly its contrary, is an ethical judgment of the distinct nature of the political systems of Austria and Prussia, or, rather a judgment that their ethical natures were quite distinct. Each stood as a state in a completely different relation to the ethical life of its peoples, a relation conceived by Hegel in terms of an economic characterization. Austria was the kind of great power that it was because it was what it was like, a free nobleman whose wealth is entailed ²⁰⁹. This wealth was regarded by it as an integral whole which does not suffer loss or diminution by concessions to its parts ²¹⁰. In the Austrian system - not to be sure, in the degenerate imperial system - there prevailed a principle of 'royalty or majesty' ²¹¹ on the strength of which it might be regarded as an example of 'legal concentration' ²¹².

This concentricity consists in the fact that nothing is recognized to be 'more sacrosanct than law' ²¹³. But this recognition of law involves the peculiar characteristic of the ethical activity of the state: that the interpretation of law is congenial to the customary life whose centrifugal forces it withstands in order that such life may be expressed in its direction towards community, without which it must be dissipated in the passionate striving after private satisfaction. To this end, the power of law must be informed by a quality, equivalent to majesty, which Hegel called grace ²¹⁴. Grace is not higher or more sacrosanct than public law. But it is that quality in the exertion of legal authority which, precisely because it is more sacrosanct than private rights, enables public law to be enforced with discretion in respect of such rights, so that its concessions to them are not derogatory to legal authority. Thanks to grace, the public authority can 'forgo its right' ²¹⁵.

Thus it was the sensitive and gracious interpretation of customary rights, mindful of the needs of the people, of the 'whole situation' as Hegel had put it in the GCR ²¹⁶, not the mere weight of their very corpse, which rendered Austria the kind of power that it was. Accordingly and likewise, as we have seen Hegel assert, its incursions upon private rights were not to be construed, however they might appear, as derogatory to these rights as such, but only to their excessive assertion. In its limitation of the political claims of the provinces, whose princes pretended these to be of a piece with all private rights as such, the public authority simply drew to attention the contradictory presupposition not, for reasons of Praxis, explicitly admitted by the princes, namely, that if there were such an identity, it could not but be premised on the existence of a sovereign by definition capable of constraining private

rights from the excess of limit in virtue of which they tend to dissolve the very concept of right. The princes wanted, in their genuflection to the idea of the state, to have their cake, and in their deflection of its effective existence, to eat it. But Hegel pressed their pretence of proprietorial right to its conclusive self-contradiction: 'if it is to exist, the State cannot possibly allow private rights in their whole range and implication: taxes, which the state must exact, are already a negation of the right of property. If political rights are supposed to have the force of private rights, then they carry in themselves a contradiction' ²¹⁷ of the sort just explained.

This renders precise the meaning elsewhere attached to grace: in the instance of toleration, namely, which contradicted the instruments whereby Richelieu designed the Peace of Westphalia to undermine in Germany the principle of equality under the law, there was manifested accordance of the law with 'the higher natural rights of freedom of conscience and the independence of civil rights from (matters of) faith'. ²¹⁸ Here was a concrete example of the contradiction, by the grace inherent in the public law of a state, of one of the chief devices by which it had been attempted to reduce Germany to a 'Staat aus Staaten' whose internal relations must be conducted on the principles of private international law ²¹⁹.

This, one of the few places in the VSN in which Hegel deployed the concept of 'natural rights', does not imply any absolute indefeasibility of the rights of private persons. Rights must never be maintained to the extent that, regardless of the good of the whole people, senseless of their ethical community, the authority of the State, by which alone, after all, they are upheld, is undermined. Though we shall see that Hegel argued the independence of the individual in his habitative

environment to be sacrosanct, this sanctity entails not only the forbearance of the state from interference in abstract activity but the prohibition of what is at the root of such interference, the demand of private interests for public service. The quid pro quo of their relative insignificance in the face of the public interest is, however, that the state should act in a spirit of gracious respect for the independence of the private person.

Grace inheres, therefore, in a spirit of genial accommodation or exchange between law and the economic or private habitat.

Although, at this point, Hegel conceded that Frederick II of Brandenburg-Prussia exhibited grace and even, at another, described that monarch as a 'genius' ²²⁰, he was at pains to stress, in the latter case, that his genius was merely 'personal' and did not claim for his 'grace', as he did for that of Joseph II, that it inhered in the legal or 'universal structure' ²²¹ of Prussian civilization: on the contrary. Austria exhibited an 'abiding, fixed centre' ²²², because it attended to a distinction - which in its articulation of a lawful and not merely personal relationship between public law and private rights is an ethical and no merely moral distinction ²²³ - between its interests and its constitutional position ²²⁴. To that extent, it had an ethos of which it would not be proper to speak in the case of Prussia. Austria had to be what it appeared to be, it had to attend to the ethical limitation placed by its authoritative position upon its disposition in each and every one of its exertions of power. Prussia, on the other hand, was guided not by its constitutional position but by the whims of power in motion. In strictness, Hegel denied that it was proper to speak of Prussia as having any fixed centre or position at all. For, as he complained, 'Even a guarantee treaty it can renounce

at once' ²²⁵. Austria, therefore, was in a better position than Prussia, which indeed was in no position at all and lacked the noble magnanimity conferred by position, or structural grace, to guarantee the independence of the small estates. Prussia necessarily lacked the 'capacity and inclination' ²²⁶ to do that which its ideologues claimed to be its intention: to maintain so-called German freedom. It could no longer, if ever it could, be regarded as 'the natural centre for maintaining the independence of the estates' ²²⁷. It did not act on behalf of the 'Integrity of the Empire' ²²⁸, that is, of the body of the estates, because it did not exhibit the 'concentration of life into laws' ²²⁹ but behaved in accordance with its rational calculations of its passional interests and power, regardless of the need for their integral adjustment with the idea of a legal community. In short, Prussia was an uncivilised state.

This is what Hegel meant by his argument that not majesty - the grace and magnanimity of authoritative position - but the character of the bourgeoisie - ever mobile in the pursuit of the satisfaction of its passion - was the principle from which the 'new' ²³⁰ (not, be it noted, modern ²³¹) politics of Prussia have proceeded. His comparison of Prussia with a bourgeois, whose wealth is a sum accumulated 'penny by laborious penny' ²³² signifies three ideas: first, that when Prussia mobilized against another estate, its limitation of that estate's rights was actually negative of their very substance which it appropriated without gracious concession to its continued independence, and that it would suffer no diminution of its gains; second, that it attended to no distinction between its right and its might; third, that it was existentially avaricious, making no distinction between its existence and its purpose, its self and its every act of accumulation. This last is the worst manifestation

of the fact that the wealth and the power of the Prussian State was not an integral but a rational number. It was not, to use a mathematical metaphor, the legal square of a customary root. Rather its legal existence as a political agent on the international and municipal scenes was in a relation of mere continence to quantum of economic passion from which it cannot be qualitatively distinguished.

In Prussia's relation to the Empire, as to that of which it demanded service for its proprietorial claims, it is quite clear that there was justification for Hegel's argument, whose provenance seems to have been aristotelian, that the 'bourgeois principle' dictated its behaviour in such a way as to derogate from the fundamental requirement upon which his idea of representation was based. This was, that private interests should not make the state descend from ethical into abstract activities. Because of pressures, above all, Hegel believed, from Prussia, the State had been made to serve as an 'order of justice' ²³³ devoted to the resolution of conflicts of private interest, rather than as a representative organization.

As an 'order of justice', the State was depressed from its fixed centre, from which it could pursue its telos, namely the wholeness of disinterested law, and was compelled to serve that which constitutes only the condition of the existence of the state, rather than the purpose - the autonomy of a people - to the sake of which that of its economic conditions should be subordinated. Hegel had put this point in a fragment written in February or March 1801, to which reference has already been made, & propos the question of litigation ²³⁴: 'the distinction between State - authority and objects of rights is very important; an object of rights is a private property: State-authority cannot be private property; it flows from the State; there is no right to it but

that of the State; its ambit and possession depend on the State, and count only in relation to it; (it can be) no object of forensic treatment. Gain of private property (is) is matter of chance, of arbitrariness. State authority must stand in the closest connexion with the whole; the State is the highest command - even if only in respect of the defence of the laws, especially against foreigners. Therefore all right proceeds from it; it alone, not chance, not charters and other claims, has to decide' ²³⁵.

Like Aristotle, Hegel insisted that the intrusion of matters of chance, to which is subject the bourgeois endeavour of penny after penny, upon the sphere of necessity (teleological rather than archaeological necessity), is disruptive of the self-sufficiency or autonomy of the State. It is noticeable that from the criticism of this intrusion, primarily exhibited by Prussian diplomacy, Hegel passed immediately in his earlier draft to a partial critique, by way of mere allusion to be sure, of two key figures, Hermann Conring and Hippolytus à Lapide (i.e. Bogislaw Philipp von Chemnitz) in the ratio status tradition. Of these two, Chemnitz emphatically shared the antipathy to Austria later expressed by von Mueller. In his quest for a ratio status, by which in common with other German theorists of Staatsraeson, Chemnitz meant a principle of political organisation precisely adapted to the historical development and way of life of any people ²³⁶, this thinker, according to Hegel, 'gave precise expression to the inner character and tendency of the nation' ²³⁷. But Hegel wanted, as we shall shortly see, to rescue that part of the ratio status tradition, with which he sympathised on the whole, from confusion with a political outlook favourable to the 'extirpation of the House of Austria', an outlook whose ideal of adaptation (to rather than of the customs of the Germans)

was passive rather than active. That part of the ratio status tradition with which Hegel sympathised was its advocacy, especially as expounded by Conring, of the priority of public law over private right. Hegel's abiding interest was to show, in the face of Chemnitz's arguments to the contrary, that Austria alone could maintain this priority, whether within the Empire as a whole, or within its several provinces.

Hegel's view was that Chemnitz's main fault consisted in his failure to see that the naive spirit which he himself inhaled, the 'spirit of integrity', was quite simply inadequate to maintain the Empire in despite of the centrifugal forces to which it was subject.

The demand of the tradition to which Conring and Chemnitz belonged, that there should prevail a public law rooted in German customs, and careful of German liberties, made sense only within an imperial order. The latter expressed his confidence that the 'general welfare of Germany' ²³⁸ could rest on the free will of its parts, a confidence which stemmed from 'the spirit of integrity on which the German nation prides itself so much' ²³⁹ and which made the provisions of the Peace of Westphalia, whose effect was the renunciation of central authority, quite agreeable to him. Chemnitz sincerely expected that the individual estates would 'freely co-operate' for the 'general interest' ²⁴⁰. Hegel perhaps excused Chemnitz, whose 'De ratio status in Imperio nostro Romano Germanico' was generally taken to have influenced the peace-makers of Westphalia, for his assumption that Austria harboured absolutist and hegemonic pretensions, an assumption which could not be condoned when made over a century later by von Mueller, to whom he had referred immediately before his mention of Chemnitz in the definitive text ²⁴¹. The six-point 'ratio status' proposed by Chemnitz was that:

- a. the Hapsburgs should be expelled
- b. their lands should be confiscated
- c. the Emperor should be elected from a weak family
- d. dynastic perpetuation of the imperial dignity beyond three generations should be prohibited
- e. the Roman Catholic Church should be expropriated
- f. a standing army should be established ²⁴².

His work, whose vituperation against Austria Hermann Conring said Chemnitz later regarded as inordinate, was given the seal of Prussian approval through the commissioning by the ministry of foreign affairs of Brandenburg of a German translation. But Chemnitz was conceded by his translator, J. P. Carrach, to be no Prussianist ²⁴³. For he was hostile almost no less to the power of the Electors than to that of the Emperor. There can, what is more, be little doubt, though Hegel disapproved of Chemnitz's desire to render the Empire a constitutional aristocracy of princes, co-equal with the Electors in terms of their right to determine the terms of the Electoral Capitulation to which each new Emperor had to submit, that Hegel agreed with Chemnitz's radical view of the proper sovereignty of the Diet and with his location in that body of the true maiestas of the Empire ²⁴⁴.

However, the unintended consequence of Chemnitz's ratio status could only be, in Hegel's view, the achievement of secure state-power not via public law for all Germany, but only within its several parts. The attack by Chemnitz and later Conring on the resort to litigation within the terms of Roman law was taken up guardedly in the draft of February-March 1801: 'Conring and Hippolytus a Lapide made this distinction (corresponding to that which Hegel maintained between public authority and objects of private rights) between public law and Roman law but, as it seems,

rather (in terms conducive) to the dissolution than to the unification of the state; they constituted the estates as states in which, to be sure, private right was inapplicable; but in that case Germany was no state' ²⁴⁵. Here it is implied that the object was defeated. For the whole rationale of seeking to deprive Roman law, private in form but public in function, 'of its transcendental dignity as the only valid ius caesarium' ²⁴⁶, was the preference for a public law rooted in indigenous customs common to all Germany, in so-called 'German liberty' (Libertaet).

The chief principle of German liberties was the idea that in imperial representation there was to be found a maiestas, the replica of which Hegel located in Austria, which was distributed between the Emperor and the Diet. This distribution on the Imperial level was supposed to be ideally effected by means of an Electoral Capitulation the chief purpose of which was to secure from the Emperor, upon his election, a commitment to refrain from the pursuit of dynastic perpetuation of his office among his heirs. Hegel clearly denied the feasibility of depending the sovereignty of the state upon the principle of the election of its monarch. He could not agree with the aspiration of Chemnitz that, in virtue of a reformed system of election, the Diet should become the sole source of maiestas. His preference for hereditary monarchy ²⁴⁷ was probably due to doubt that the privilege of election could be wrested from the oligarchic grasp of the College of the seven Electors and to his reluctance to see it in the hands of the College of Princes, since in the former case the effect was, and in the latter would be no less, an erosion of the maiestas of the Emperor. But his affirmation of the maiestas of the Emperor, as of an impersonal maiestas bound by law and complemented by the 'cooperation of the people through its representatives' ²⁴⁸ does not amount to

a negation of the maiestas of the Diet. Hegel's concept of majesty rather affirmed a belief in the value of a constitutional distribution of sovereignty between 'Emperor and Empire', that is, between the Emperor and the Diet.

It may be, though it cannot be proved, that Hegel had in mind, in his development of the theory of representation as the organisation of a people's 'living together' under 'common laws' ²⁴⁹, the origins of the theory of distributed maiestas in the 'Politics' of Althusius, to whose theory of representation was central the idea of the Empire as a monarchical polity in which, by way of representation, were organised a hierarchy of civil 'consociations'. These, analogous to the corporations of civil society of Hegel's mature political philosophy, embodied the 'living together' (consociatio) of like individuals and enabled their mediate representation in the public authority ²⁵⁰. Althusius' attempt to establish the social basis of the relationship between legal and customary communities, to the end of liberating political science from the straits of Romanist jurisprudence and 'establishing it as a separate discipline founded on sociological principles' ²⁵¹, seems to have been taken up without acknowledgement even of a terminological debt, with a view to showing the compatibility, within the framework of gracious majesty, of monarchical and representative elements; and with a view to showing that the habitat of old German freedoms could be integrated with the activity of a modern state.

Although the evidence of the Althusian provenance of this essentially 'sociological' project is indirect, it is clear that Hegel was familiar with the work of one, namely Hermann Conring, who was about the same business.

4. The modernization of 'German freedom'

As we shall see in the next chapter, Hegel attempted the reconciliation of Libertaet with modern freedom under the ægis of the tradition of ratio status as it was developed by Conring, with the sole reservation that this tradition tended to obscure the fact that Austria bore the necessary principle of majesty, whereas bourgeois Prussia neglected it in such a way that, while it might within its kingdom have established the priority of public law over private right ²⁵², it had done so without regard for the independence of the sphere in which the claims of private right were proper, and therefore without regard for the liberties of which it had been allowed to appear as the most formidable defender. Its disregard was due to its neglect of the principle of representation in its own estate. This disregard was the inward manifestation of its bourgeois character. For without representation, its laws, while public in form, were private in function. Its ratio status was, in truth, a ratio economicus ²⁵³, the rationale of the patrimonial state. It lacked the 'integrity', within as well as without, which Chemnitz took for granted ²⁵⁴. This deficiency prevented it not only from 'assuming equal obligations with other estates' ²⁵⁵ but from acknowledging its obligation to maintain the liberties of its subjects.

If liberties were to be maintained in the modern world, the understanding of freedom itself had to be modernised. There had, to this end, to be brought to the forefront of public opinion that in the idea of old German freedom, namely the principle of representation, which had suffered precisely because of the emphasis of the provinces upon their freedom from the true vehicle of modern German freedom. This had happened. Ten years of revolutionary war, and especially the spectacle of

Prussia's separate conclusion of peace (Basel, 1795), had changed the German people's concepts of freedom, had purged them of 'their former emptiness and vagueness' ²⁵⁶. This had been achieved not by the theoretical instruction of the Germans in any Machiavellian or other manual but by the 'might of the age' ²⁵⁷. Public opinion, thanks to a new 'constellation of circumstances' ²⁵⁸ opposing its acquiescence in the wish of the princes for independence, and in their assumption of the identity of interests between Herrschaft and Landschaft, had reverted to the identification of the 'interest of German freedom' ²⁵⁹ with its true source, the principle of majesty. Its clamour has given way to the notion that 'firm government is indispensable for freedom' ²⁶⁰. But no less deeply engraved on men's minds was the 'notion that the people must share in the making of laws and the management of the most important affairs of state. The guarantee that the government will proceed in accordance with the law, and the cooperation of the general will in the most important affairs, those which touch all, the people has in the organisation of a body representing it, which has to sanction payment to the monarch of one part of the national taxes, but especially extraordinary taxes. Just as in former days the most important matter, i.e. personal services, depended on free agreement, so nowadays does money, which comprises influence of every kind. Without such a representative body, freedom is no longer thinkable. Once freedom is so defined, all vague ideas vanish, along with all the emptiness of the clamour for freedom' ²⁶¹.

If greater proof were needed of the argument that only Austria can guarantee modern freedom, than the fact that its territories thus freely agreed to extraordinary contributions for the war against France ²⁶², it would be that Austria had long been thus cooperatively disposed towards its hereditary

estates and to the Empire as a whole. For in 1672, the Emperor refrained from taking advantage of the offer by the Council of Princes that, so long as they could determine their own tax-liability without reference to their subjects, he could depend on them not to interfere with such like behaviour on his part towards other estates, including his own ²⁶³. Similarly, the Emperor helped the cities to free themselves of the 'German freedom of the city councillors' ²⁶⁴ to raise taxation without representation. Nor had he taken advantage, against his own territories, of their exclusion from participation in the control of the Reichshofrat to which, apart from their right to representation, they could have recourse in the event of misappropriation by him ²⁶⁵.

As for Prussia, it had defended German freedoms by instituting, in its estates and conquered territories 'which had privileges and taxes determined in accordance with ancient rights and customs', a 'new and artful tax-system' ²⁶⁶ which deprived their Estates of all their significance. By withdrawing itself, moreover, from the jurisdiction of the Imperial Courts, in 1781 and 1782, Prussia ensured that 'its' German subjects could not avail themselves of the common law of the Empire. The Geheimes Obertribunal ordinance of 1782 expressly denied the jurisdiction of the Reichskammergericht ²⁶⁷. Such were the 'new politics' ²⁶⁸ of the 'bourgeois' system. They could not qualify as the politics of a 'modern' state fit to effect the modernisation of old German freedom. The old politics of the Austrian system were so qualified and to that extent they were, indeed, said to be politics against which 'what used to be called German freedom would have to be on its guard' ²⁶⁹. But whereas the danger to such freedom, as it came from Prussia, was the danger of perversion, the threat posed them by Austria was rather the threat of improvement, the threat that customs long observed in a deadly spirit of mere habit would be animated by active performance of the ethical life of all Germans.

5. The voice of an optimistic heart

We come now to consider those sections of the VSN in which Hegel opposed to the solvent ratio status of Chemnitz his own view that there could be recovered for the Empire the feudal resources - military, monetary and territorial - which had been decisively laid waste by the Peace of Westphalia, upon whose negotiation it was generally supposed that Chemnitz's work had had great influence. It is these sections, more than any other, which seem to present Hegel in a somewhat utopian mood. This mood is well captured in words which Hegel struck out as soon as he had written them, sometime in February or March 1801: 'The following pages are the voice of a heart that is unwilling to bid farewell to its hope to see the German state raised up from its insignificance, that would like, before being absolutely parted from its hopes, once more to recall to life its gradually failing wishes, once more to nourish with a mental image its willing faith in the fulfillment of its hopes' ²⁷⁰. Though clearly alive to the scientific inadequacy of hopes and images, Hegel could not efface from his reflections on the military, financial and territorial resources of the Empire a certain tendency to attempt, by indulging in nostalgia for their ancestors, to compensate for the despair and misery of war - weary Germans who sought 'nothing but peace for the nonce, at any price and without regard for the future' ²⁷¹. Hegel seems to have had a soft spot for the encouraging imagery of the Ritterzeit, and the distant times of Tacitus, though he never went so far as to extol Hermann the German as the embodiment of the martial virtues that would make up for bad organisation and the treachery of Prussia ²⁷².

It was not, Hegel believed, lack of valour among the Germans which had contributed to the incapacity of the Empire to defend

itself. In one of the fragments from the February-March 1801 cycle of composition of the VSN, he referred to 'what has been said' ²⁷³ on this subject. Whether he meant what he himself had said in some fragment, not any longer extant, cannot be determined except on the uncertain grounds of the possibility that Rosenkranz's summary, which refers to the replacement of personal by impersonal combat involving gunpowder and 'disciplined movement' ²⁷⁴, is based upon an argument which may have led to the conclusion that the Germans 'are not an unwarlike nation unfamiliar with the skills which in modern times are just as conducive to victory as courage; even in these unhappy wars (i.e. the French revolutionary wars) the imperial contingents have shown themselves worthy of their ancestors' ²⁷⁵.

It is not inconceivable that Rosenkranz was in fact depending on materials which are available to us from the same cycle of composition ²⁷⁶, where Hegel wrote of how, before the imperial peace, 'the (mailed) fist and wild audacity, personal power' ²⁷⁷ had settled 'what is now decided through politics ... In the place of sudden attack has emerged calculation of the consequences; of personal courage, calculation of the forces of the opponent; of the fist, calculation of all powers which are for or against an interest. The difference is like that between the chess games of children and old men; or between a tournament and the campaigns of a Fabius' ²⁷⁸. If this were his source, it may be that Rosenkranz inadvertently spoke of the gunpowder revolution, nowhere mentioned in the VSN, relying on his memory of the Lectures on the Philosophy of World History, where Hegel spoke of the effect of gunpowder upon the replacement of 'chivalric encounters' by the 'rational bravery of abstract enemies' ²⁷⁹. Both in the fragment in question and in the Lectures talk of the decline of chivalry is preceded by mention of the rise to power

of confederations of cities, and of the Hanseatic League ²⁸⁰. Rosenkranz, however, was clearly true to the spirit of the VSN in arguing that it was Hegel's view that the Germans were not deficient in native resources out of which ethical activity might arise ²⁸¹, but in its organisation to the end of self-defence. It need not be supposed that nostalgia went very deep in Hegel's own heart, nor that he felt unqualified hostility to the bourgeois spirit of the cities (as social rather than as political entities), to appreciate that he might have believed that a carefully administered dose of German mythology might do something for the capacity of his less enlightened contemporaries to contribute more to the enactment of ethical life. His fundamental point, however, concerns the effect upon military organisation caused by the particularist variant of the bourgeois spirit. The imperial contingents had such resources, but their failure in deed was ensured, not by excess of calculative skills as such but by their unethical application in the opposite of their proper direction by none other than the master of self-interested calculation, Prussia. Once such calculation is made, it is argued in each cycle of composition and in the definitive text, it would be unnatural and absurd ²⁸² to expect the estates to behave as if they really did 'work together as a whole' ²⁸³. The fundamental fault that rendered the shield of the five-fold contingents of Hanover, Brandenburg, Saxony, Bavaria and Hesse an untrustworthy escutcheon, was the clause in the Peace of Westphalia which permitted estates to make treaties and alliances with foreign powers' in so far as such alliances do not conflict with duties to the Emperor and the Empire' ²⁸⁴.

In June - July 1801 ²⁸⁵, as not in 1802-03 ²⁸⁶, this fold of five included a sixth, the Austrian, contingent. This indicates that it was for Hegel a real issue whether in these

matters, as not in strictly constitutional affairs, Austria's relation to the Empire was not, like Prussia's, also calculative. Could Austria, too, be accused of neglecting its duty to the Empire? Even in the early draft Hegel withdrew from confirming any such suggestion by pointing to the military exertions of Austria in excess of its constitutional obligations ²⁸⁷. The same point is made in the definitive text ²⁸⁸, but it is less clear there than in the draft that the difference between Austria and two of the other five - Hanover and Brandenburg - was supposedly that Austria thus deployed the forces of its territories because it was an integral member of the Empire, whereas they did not because they were de facto foreign powers, 'members of the Empire, but such only in name because of the independence and self-centredness of their interest' ²⁸⁹. Hence foreign interests must be brought 'into collision with the interest of Germany' ²⁹⁰. It was not merely, as in the definitive text, that the cooperation of the five for the defence of the Empire was 'as unreliable and accidental as the cooperation of some foreign power' ²⁹¹, but that it was necessarily unreliable because it would be such foreign cooperation. 'Foreign cooperation' was manifest as the absurdity that it is in the Seven Years' War of which, rather than of the Thirty Years' War, given the post-Westphalian context of his argument, Hegel must primarily have been thinking when he wrote that the formidability of Germany's potential strength was directed to its tearing the flesh from its bones ²⁹².

It was this legal absurdity - de jure membership in tandem with de jure and de facto foreignness - that completely emasculated the Westphalian proviso ²⁹³ and justified, not only refusals to make war contributions, but also actual withdrawals - notably by Prussia in 1795 - from the war with France. Thus was Germany legally abandoned to the devastating ascendancy of

the enemy ²⁹⁴. Very obligations could be adduced for this infidelity to the 'holy obligation' ²⁹⁵ to defend the Empire. Herein Germany's 'ceasing to be a state' ²⁹⁶, its dissolution into 'independent states' showed itself most visibly.

Praxis, the 'all powerful principle' ²⁹⁷ of the German constitution was operative with the effect not only that military service was not rendered, but also that 'other obligations' ²⁹⁸ could be adduced in apology for the non-payment as well of ordinary as of extraordinary or war-taxes. In February - March 1801, Hegel had written down a series of jottings or notes on military and judicial taxes (Kriegssteuern und Kammerzieler) ²⁹⁹. He was not at that time sure in what context, military or judicial, to deal with the question of imperial finances and gave himself over to musings: if only the state, as in feudal days, depended only on personal services from the estates, it would be untroubled by their neglect of their duty, under the superannuated system of the Imperial Quota, to pay and provision their contingents; if only there were not a natural reluctance to suffer necessary imposts, if only 'self-interest' understood itself properly and realised that it is only to be secured through common activity ³⁰⁰. No sooner had Hegel written this, which nevertheless remained his ideal definition of interest, than he recognised the need that 'first must the power to that end be provided for' ³⁰¹. What kind of power was that to be? Hegel's answer to that question is very confused.

In another fragment in this cycle, to part of which reference has already been made ³⁰², though Hegel recognised that the feudal constitution had been destroyed by the independence of the vassals ³⁰³, his heart seems still to have been affected by nostalgia for the Ritterzeit and by the wishful thought that the personal service aspect of the feudal system might be retained

without its embarrassing consequences in ancillary matters. The 'pure feudal constitution' in which 'the feudal lord had domains for the defrayal of those costs which suzerainty caused him, in which each vassal had personally to defray war expenditure, in which state revenue was very abundant', was admitted to be an 'old heirloom' ³⁰⁴. Accordingly, the German state had 'no finances to inherit and in modern times one does not encounter financial institutions' ³⁰⁵. If only this 'financeless system' of the feudal constitution could be retained in matters concerning the universal, 'regulation of that of which the laws speak and security from foreign enemies' ³⁰⁶. In the matter of defrayal of these, the only expenses which ought to interest the state ³⁰⁷, if only hereditary income were enough, the Empire would be spared the embarrassment, by which it did itself no service at all, of meddling in other than universal matters.

But its 'financeless' dependence of yore on personal service and reliance upon immediate but casual intervention by the public authority in everyday affairs threatened to turn, from what had been no liability when hereditary revenues were available, into the burden of an opposite extreme of 'financelessness', in which 'state direction of the finances has become a mania' ³⁰⁸, in which control was all physical and not at all fiscal. There was danger of excessive regulation even in every 'small as can be aspect of the public service of small as can be states' ³⁰⁹. There was a mania abroad to let no village take care, for example, of the payment of its bailliff ³¹⁰. In the German Empire, Hegel complained, the immediate estates and the provincial Estates 'take care of the finances which immediately concern them - in principalities as a whole, even in villages - and care for the payment of their magistrates, courts etc., but all under oversight from above ... Every expense of officials, down to village justices of the peace and lowlier still is shuttled to and fro, as impost and expenditure, between the

highest state power and the pettiest branch of the public service'³¹¹.

The persistence of feudal habits of public service in the absence of the hereditary resources which, under the pure feudal constitution, rendered them innocuous to the liberty of the estates, both 'immediate', i.e. occupational, and provincial, was deprecated by Hegel as a cause of the conversion of the Empire into a hybrid system of undependable personal services and illiberal, no longer casual, physical intervention. Some distance had to be put between state power and the diurnal regulation of social affairs. That could only be achieved through the fiscal independence of the public authority which would disembarass it of the need to encroach upon the independence of the estates. Hegel had to conceive of a means whereby the fiscal independence of the Emperor, the 'greatest feudal lord' ³¹², could be maintained in the absence of hereditary income, thanks to which feudal 'financelessness' had been possible, but without encountering the danger of degeneration, because of modern 'financelessness', into immediate supervision of what would be better left to the estates.

But he avoided the pain of this necessity by the rather curious expedient of changing his mind about the dangers to the Empire as a whole of its modern financelessness. By June - July 1801, Hegel had come to the conclusion that as least one advantage accrued from the absence of state in the Empire: that there could not happen in it what he had deprecated in February - March. After all, then, in Germany 'public intervention of the state in every petty public cost does not take place, the immediate estates, the provincial cities in them and villages themselves care for the finances which immediately concern them, under general supervision but not according to orders from the state power' ³¹³. The model of modern financelessness, then,

did not apply to the Empire as a whole. In another fragment of the February - March cycle, Hegel argued that 'it is even conceivable that the power of the state, insofar as it requires money, could be nourished through no contributions at all from private property; in the feudal constitution it so happened that the state as such had no need of money and was very powerful; or, when it needs money, it is conceivable that it should defray state expenses through its domains and not be a tax-centre' ³¹⁴. Feudal financelessness would, he argued in the June - July cycle, not hinder Germany's being a state, 'if only, insofar as in modern times financial institutions are necessary for common defense through a war-power, (such financial institutions) were available' ³¹⁵.

It is clear that, even in the definitive text, Hegel had not managed to overcome his confusion on this matter. There too the distinction between feudal financelessness and modern financelessness is drawn ³¹⁶. And, as in the June - July cycle, it is argued that European states, though not, as in June - July 1801, all ³¹⁷ European states, had 'more or less' ³¹⁸ departed from the feudal constitution, so that 'in modern times finances have become an essential or prominent (only prominent?) part of state power' ³¹⁹. As we shall see in greater detail in the sixth chapter, with reference to Hegel's arguments that the 'feudal system' could be regarded as the basis of the modern state, whereas apparently modern states such as revolutionary France and Prussia are in fact to be regarded as anti-modern, Hegel wanted to believe that between feudal and modern financelessness there existed a via media towards viability in the modern world for the state whose sources of revenue were essentially feudal - crown lands etc. - but which at the same time enjoyed 'financial institutions'. Quite apart from the fact that he knew 'financial institutions' had arisen in European states in consequence of

the inadequacy of feudal resources, it is clear that he contradicted, or rather ignored, his earlier view that modern Germany had neither. If only Germany could have the best of both worlds - the financial independence of the greatest feudal lord and the security of income of those states where the feudal relationship had been so to the advantage of the monarch that it had been possible to establish institutional instead of personal sources of revenue - there would be nothing, in respect of its money power, to hinder Germany's becoming a state.

But Hegel himself admitted, both in the fragment of the cycle of June - July 1801 ³²⁰ and in the definitive text ³²¹, that there had only been false dawns in the matter of restoring the preeminence of the monarchy as it stood in relation to the vassals within the 'pure feudal constitution' from the impotence to which it had degenerated in the actual historical development of the increasingly impure 'feudal system' ³²² of Germany. In Germany, military service had ceased to be purely personal, the system had become impure, precisely because Imperial crown revenues had declined thanks to the profligacy of such Emperors as Maximilian. Such restoration of the power available to the monarch in virtue of 'pure' feudal relationships, though of course it would not be of these relationships as such, might have been effected by way of financial rather than personal contributions to a common centre. During the revolutionary wars, reversion to 'pure' feudalism, as Hegel appears to have been prepared to conceive it, on a monetary rather than personal foundation, had seemed to be in prospect via the expedient of a common military commissariat. But this modern financial-cum-'pure' feudal relationship had 'affected only petty estates and was a matter of passing chance' ³²³.

Quite apart from the fact that Hegel played fast and loose

with the concept of feudalism, isolating the power of the Emperor from its structural matrix, it is probably the weakest aspect of the VSN that Hegel attempted to make a virtue out of the weakness of Germany in financial matters. He appears to have been content to argue that but for the development of the political power of the vassals, the feudal want of financial organization could be compatible with German modernization. If only that power could be diminished 'pure feudal' financial arrangements would be an advantage to the emergence of Germany as a modern state, even if not to its sure foundation as such. That Germany 'is not harassed by cares arising from the great political questions and problems about the sort of taxes, state debts and credits which will be fairest, least extravagant and not inequitably onerous' ³²⁴ permitted it to dispense with the talents for management of these, in other states, 'enormously important matters' ³²⁵ in which mistakes could have the most fearful consequences. But the very simplicity of its money-matters, thanks to which Germany needed 'no Pitt' ³²⁶, the very fact that Germany's 'regular finances' ³²⁷ were constituted only by Kammersteuern (taxes for the upkeep of the Reichskammergericht) and not Kriegssteuern was precisely the cause of the military weakness which Hegel bemoaned and the consequence of the power of the vassals, which he abominated ³²⁸. Hegel's 'solution', so far as it can be drawn intact from the multiple folds of the draft and definitive VSN, can scarcely be regarded as more than an elaborate conjuring trick no better than those, symbolised by the minting of magic mountains or catching of elusive bears ³²⁹, which he derided in others. Hegel deserves credit only for his analysis of the causes of Germany's financial plight. Here he ventured upon firmer ground.

Hegel's analysis turns on the provisions of the Peace of Westphalia. The principle, he argued, upon which estates such

as Brandenburg refused to make contributions even to Germany's regular finances, the Kammersteuern, was that the minority in the Diet could not be bound by majority decision, on condition, that is, that the minority be Protestant ³³⁰. On the principle of itio in partes, adventitious confessional justifications could be adduced for subverting 'that which alone constitutes a state', namely, the national solidarity which depends upon majority decision ³³¹. If Germany were a state, the principle of itio in partes would be utterly impossible ³³². Because of this principle there had emerged first the Corpus Evangelicorum (1653), then the Corpus Catholicorum. Thus, quite according to law, albeit not home-made law, the Emperor, at the head of the latter, declined to the status of a mere party. The consequent 'anarchy', made thus the lawful relation between the monarch and lesser parties ³³³, made it superfluous to speak of foreign factors in the destruction of Germany since independent states, foreign de facto, had been imported into its midst ³³⁴.

Germany had become incapable of defending itself ³³⁵. It had lost many provinces to foreign powers. But what was much worse, what in February - March 1801 Hegel argued to be the 'deepest cut for the state' ³³⁶ was a loss of quite another kind than the straightforward 'subjection of German territories to foreign control and their utter sequestration from all rights of and duties towards the Empire' ³³⁷. There had been a 'revolution which, without needing to change the constitution one iota, has overturned and completely subverted it' ³³⁸. This consisted in the fact that so many territories 'have remained, to be sure, in all their erstwhile legal relation to Emperor and Empire, but retain princes who are at the same time monarchs of independent kingdoms' ³³⁹. Though no apparent loss, because it seemed to leave everything as it was of old, this had 'undermined

the cohesion of the state in its foundations, because these territories have thus become independent of the practical authority of the German state' ³⁴⁰. The most obvious example of this constitutional anomaly was to be found in the relationship of the Elector of Hanover to the Empire. But thanks to the power of the British parliament to dispose over the administration of the treasury, the foreign and military policies of Britain could scarcely be strictly coordinated with Hanoverian interests. Besides, English hostility to France had united its interests with those of Austria ³⁴¹. Prussia, on the other hand, had become 'an imperial power in part of Germany' ³⁴² whose interests, upon the pursuit of which there was not the possible constraint of 'ministerial separation' and parliamentary power, were hostile to those of Austria ³⁴³. The law was entirely compromised.

Prussia had attained a position in Germany legally and practically tantamount to that of a foreign power. Expansion of military forces and lawful pacts with foreign powers, which were insignificant elsewhere, made Prussia's subjection to Imperial law impossible. Given its two hundred thousand regular troops how could the ban of the Empire be effectively executed against it? ³⁴⁴ Prussia owed its independence not to any change in the 'pure feudal constitution' - after all, as Hegel pointed out later, the Margrave of Brandenburg still, just as when he had only two thousand troops, presented the Emperor at his coronation the oats with which Charlemagne had been presented ³⁴⁵ - but to the historical development, regardless of public law, of the feudal system. What had once been in the gift of the supreme feudal lord had now assumed the character of a private right: 'The principle of the feudal constitution, that the right of sovereignty over territory and people stems from princely, ducal, noble lineage has been largely transcended through the introduction

of the right of primogeniture in the princely houses ... and so it is that one of its most important consequences, namely the harmlessness of the vassals for the whole, has been lost' ³⁴⁶. The private right of primogenitary inheritance had led, in Germany, to the legal consolidation of territories which would otherwise have remained separate.

There had been a reversion to the situation of Germany before the Imperial Peace (1495), in which the estates could 'behave towards one another as sovereigns, wage war and make peace' ³⁴⁷. But, before 1495, there had at least 'held sway over all a superior power which is now no longer to be found' ³⁴⁸. Thus, not the principle of law but power and cunning prevailed in the modern relations of the estates. Accordingly, the smaller ones were encircled ³⁴⁹, the stronger grew stronger and the weaker were swallowed up ³⁵⁰ and anarchic behaviour of the estates as sovereigns became the powerful and cunning tyranny of genuinely sovereign international actors against which the laws of the public authority were powerless to speak ³⁵¹. Judicial pronouncement might, perchance, be given against them, 'but where is the power which upholds the law against the powerful estate, the executive authority which really sets against a powerful one the right of the weaker recognized by the judge?' ³⁵².

Throughout these sections on military power, finances and territorial status, Hegel's purpose was to inveigh against the pretences contained in constitutional but not home-made law - for example in the proviso 'in so far as such alliances do not conflict with duty to the Emperor and Empire' ³⁵³ -, in moribund financial arrangements - such as the unpaid Roman Months ³⁵⁴ -, in resolutions of the Diet - notably that which earmarked as a budgetary resource the value of territories held by foreign powers, to be realised when they should be regained ³⁵⁵ - and in

the fatuous expositions by German professors of constitutional law, of the claims and titles of the Empire to lost territories in Hungary, Poland, Prussia, Naples, Lombardy, the United Provinces, Switzerland, Burgundy etc. ³⁵⁶ Hegel compared the constitutional lawyers who rejoiced in all these 'empty and now meaningless symbols or insignia of the past and its claims' ³⁵⁷ to impoverished noblemen who comfort themselves by dusting, in order to preserve them against rot, the relicts and portraits of their ancestors ³⁵⁸. All their pretences concerning the military, financial and territorial reality of German power were comprised in makeshift expressions ³⁵⁹, often taken for concepts to which some reality is supposed to correspond, but which in fact express nothing. Such were the empty titles 'Head of Christendom', 'Lord of the World' and 'Roman Emperor and King of the Germans' ³⁶⁰.

Having dealt with Hegel's explicit arguments concerning the necessity that there be available to the state adequate power to enforce the principle of its unity and considered, albeit in the case of representation not yet exhaustively, his views on the relative importance of representative and judicial bodies, and of military and financial resources; and having treated of his attitude to practitioners and apologists, witting or unwitting, of behaviour inimical to the integration of the Germans as a people and examined his views on additions and qualifications that compromise the coherence of constitutional law and its capacity to control the vicissitudes in the history and pathological system of the whole whose identity it is supposed to conserve, we have now to endeavour an explanation of Hegel's complicated relationship, already adverted to for the purpose of defining his posture with respect to the political alternatives represented by Austria and Prussia, to systematic trends in German constitutional thought since the 17th century.

Chapter Five

Fromward the Political Theory of Possessive Particularism

'Fiat iustitia, pereat Germania'

1. Ratio status and the impropriety of Roman Law

Hegel's relationship to German constitutional thought since the 17th century is extremely difficult to determine because of his curious reticence concerning its influence upon him. It is proposed in this and the following chapter to pursue the steps whose traces he kicked over as he began to approach the empyrean reaches where he would tread for the rest of his career. It will be argued that having assimilated unacknowledged views hostile to the isolationist tendencies of territorial princes, and favourable rather to a political life of familiar cohabitation under the common law of the ethical totality of the German people, Hegel directed his energies to the task, performed likewise without naming names, of demolishing paradigmatic conceptual edifices whose tendency was to support the illusion, so very advantageous to the princes, that what they knew to be an ens rationis, a Gedankenstaat, was in fact an ens realis, which conferred upon their privileged sovereignty a certain legitimacy, but constrained them not at all. A great deal of attention will be devoted to the demonstration of Hegel's attitude towards thinkers such as Samuel Pufendorf and Gottfried Achenwall.

Though Hegel never mentioned them by name in the VSN, or for that matter, in any other of his writings, it can be shown that he was hostile to the former, whose work on the German Empire could not but have compelled Hegel, as, since 1667, it

had compelled other theorists, to take into account the terms in which it explained the evolution of Germany's political system. While it can only be argued, with the aid of allusions that make sense only if interpreted as references to Pufendorf, that Hegel intended to discredit the entire system of presuppositions that persisted without critical reappraisal in the work of constitutional historians such as Johann Stephan Puetter, it can be shown with much less reconstruction of the evidence from what tradition Hegel derived a preferable system of presuppositions to which he proceeded to give a philosophical dimension. This was the tradition of 'political statistics' begun by Conring, whom Hegel did name, and perfected by Achenwall, whom he did not, but of whom it may be said that he helped at a decisive time to shape Hegel's understanding of the relationship between civil society and the state, as well as to reinforce Hegel's determination to consider political life as it is rather than as it ought to be.

But before we attend to Hegel's relationship to the desiderate constitutional theory of Pufendorf and the considerate treatment of political systems which Hegel met with in Achenwall, whose work he probably first encountered when, in 1798, he made his no longer extant commentary on Kant's 'Metaphysik der Sitten', let us deal with one of the few theorists whom he did name in the VSN, Hermann Conring, and examine the wealth of contribution which he made to Hegel's ability to slough off the dead weight of conventional constitutional dogma that bore down on German political thought at the end of the 18th century.

It is of fundamental importance to the understanding of what Hegel was about to appreciate that his derision of the expressions cited at the end of the last chapter was nothing new. As we have seen, there is evidence in the February - March 1801 cycle of fragments that Hegel was in general agreement with the

attempts of Hermann Conring and B.P. von Chemnitz to defend the claims of public law against private right ¹. This attempt involved an assault on the prescriptive basis of Roman law upon which the defence of private right was founded. The quest for a ratio status in imperio nostro Romano-Germanico had explicitly set itself the task of founding the priority of German public law upon the allegation of its radical relationship with German customary life and of the impertinence of the procedures and values of Roman law to the German habitat. German public law was intended to be conceived as a 'native growth' ² out of this customary environment and there had, to that end, to be a divorce of the idea of the German Empire from the presumption of its continuity with the Roman Empire. This presumption had been most lately criticised by Puetter, one of Hegel's chief sources of information relative to the development of the German constitution. But there are compelling reasons, which we shall examine in due course, but merely adumbrate here, for serious doubt that Hegel's opinion that the union of Hungary, Poland, Prussia, Naples etc. under the Roman Emperor in his 'capacity as head of Christendom ... has nothing to do with the German state' ³ had anything to do with Puetter's superficially identical view. It is not evident from the notes which Hegel made during his reading ⁴ of Puetter that it was his debunking of the theory of the translation of the Roman into the German Empire that had any influence upon the argument of the VSN. Yet it is certain that Hegel too, for different reasons than Puetter's, was determined to argue the fatuity of the translation myth. Hegel's argument was that the claims and titles still expounded by professors of constitutional law such as Carl Friedrich Haeblerlin ⁵ depended upon the absurd presupposition of the equivalence of the contemporary German to the Roman Empire, and involved the cognate attempt to present

the public law of the Empire as if it, like that of the Roman Empire, were so substantially guaranteed by central power and authority that it could equally abide the centrifugal tendencies of private right, to the extent even that ius publicum could be permitted to be regarded as legitimate in virtue of a contractual relation between subjects and rulers ⁶. It is of some interest that Haeberlin could maintain these views without feeling that they prejudiced at all his allegiance to Puetter. Puetter, after all, attacked the romanist myth on the mere grounds of its proven falsity, rather than because of its adherents' complacency, because it exaggerated the strength of the Empire, in the face of political dissolution.

Puetter's 'Staats und Fuerstenrecht' amounted to a legitimation of the 'results of the historical developments that were eventually to lead to the dissolution of the Empire' ⁷, because it advocated no more than the systematisation of the profuse growth of aggregated territorial rights. It was his 'optimistic view of the constitution' ⁸, born of an 'almost total absence of political consciousness' ⁹ of the pernicious consequences of private right for public law which, as we shall see, Hegel castigated as a dependence of the maintenance of the state upon 'a most special divine providence' ¹⁰. It would seem, then, that even if Hegel were aware of Puetter's critique of the translation theory, he would have regarded it as empty of the political implications with which he would have it invested. These were concentrated in the view that if the dissolution of the state were to be reversed it would have to be by means of founding public law upon a source of legitimacy quite distinct from Roman tradition, since that was incompetent to mobilise the political vitality of a people to which it was foreign and irrelevant. The end of such mobilisation was the modernisation of the

conception of freedom rather than, what he regarded as the consequence of the romanist myth, its restriction to the meaning attached to it by the princes, the 'German freedom, if you like to call it so' ¹¹, of private right.

The maintenance of such a restricted meaning, justified by the pretence that the German Empire had, like the 'Roman imperial dominion', the interest, will and power to maintain supremacy over an 'unnatural union of territories separated both by geographical situation and by national individuality' ¹² in spite of large concessions to private ius civile, had been precisely the motive which had inspired the princes to foster the translation myth, with a view to making private right the principle on which the union of the Empire should be based. Professors of constitutional law like Haeberlin, duped by the myth, might very well suppose that the Reichskammergericht, whose institution in 1495 formalised, though it did not cause, the regulation of imperial relations according to Roman private law, was the 'high palladium' ¹³ in which German liberties were maintained against the princes. But Hegel was convinced that it had performed and could perform no such service ¹⁴.

In controverting the translation myth, Hegel stood upon ground already prepared by Hermann Conring, who had been the first German legal historian to explain and to criticise the sway of Roman law in the Empire. With a view to establishing the autonomy of German law with respect to Roman law, Conring denied the relevance of scriptural doctrine and attacked the prejudices of the natural universality of Roman law so far as these were adduced in justification of the Reception of Roman law in Germany ¹⁵. He deprived it of this justification by explaining it entirely by way of a primitive 'sociology of knowledge' or social etiology of legal practice. The Reception

had been due, in the first instance, to the fact that from the 12th century the sons of the German nobility and urban patriciate began to join the ranks of the 'natio Germanici' of legal scholars in the universities of Bologna and Padua. The impact of Roman law ceased to be felt only in the sphere of canon law and its practice began to be regarded as a means of social and political advancement, rather than merely a part of clerical education. By the end of the 15th century there had been established in Germany two chairs of Roman law (Basel 1460, Tübingen 1477) ¹⁶. Henceforth, especially after the Reichskammergericht Ordnung of 1495 had admitted the validity of the Corpus Iuris as the common law of the Empire and had depended upon its application the princes' jurisdictional privileges - de non evocando and de non appellando ¹⁷ -, there existed a demand, from the side of the princes, but also on the part of common litigants and petitioners, for the services of professional academic advocates in preference to the increasingly redundant people's judges (Volksrichtern) and courts of jurors (Schoffengerichte), the traditional instruments of customary law (Gewohnheitsrecht). Except in some provinces, notably Saxony, the resistance of the Diets to the supersession of the principle of 'communal finding', and to the departure from customary laws and legal process, was unavailing in the face of increasing concentration of the power of the territorial princes ¹⁸.

It was against the opportunity presented to the princes for privileged jurisdiction (the standing of the prince was held to count 'tantum ... in suo territoria, quantum Caesaris in suo imperio') and absolute authority (according to the principles 'princeps legibus solutus est' and 'quod principe placuit, vis legis habet') that Conring set his face in his 'De origine iuris germanici' ¹⁹. In his 'De germanorum imperio romano'

and 'De finibus imperii germanici', he deprived the principles of Roman law of the putative legitimacy of their application by demonstrating the utter distinctness of the Roman and Carolingian Empires ²⁰. It was, therefore, not at all the logical conclusion of his argument that concepts such as 'Emperor and Empire' were products of 'moral religious and natural law considerations which were invalid for politics' that he should exalt 'in their stead the particular territorial principality as the real creation of the rational will of the ruler and as the valid exercise of his Libertaet' ²¹.

That Hegel seems to have been aware of those of Conring's arguments in 'De origine iuris germanici', 'De germanorum imperio romano' and 'De finibus imperio romano' and 'De finibus imperii germanici' is attested not only by his like criticism of anachronistic concepts in the VSN, but by his much earlier advertisement of his knowledge of Conring's social etiology of legal practice, in which he too argued, in effect, that the Reception of Roman law in Germany was promoted by the ideological assumption of the pure rationality of Roman law, notwithstanding the fact that it had, in any case, been perverted by its adaptation to mediaeval Italian circumstances ²². For, in 1798, Hegel had noted that 'In Italy, where political freedom had presented itself in pure forms and beautiful characteristics, but declined somewhat earlier than in Germany, legal scholarship arose in Bologna ... the noblest of the peoples streamed there from all quarters and were happy to return to their fatherlands as learned and strict judges, in the belief that on the seat of justice they could be servants of an idea, servants of law rather than just servants of a man' ²³. But they learnt their law in a period of Italian history when there was no people but only a 'crowd of individuals ... All conflicts touched the rights of individual families and of

men who could never be brought or reconciled to the best social union of their rights. Living together in cities was rather coexistence in the same space, within the same walls, than subjection to the same laws. The power of the state was weak, there prevailed absolutely no ideas. The countryside was bedecked with countless castles, which each built for his security, and every palace of city families was secured with fortifications etc. ... Enforcement of justice was only the victory of one faction over another' ²⁴. As we have seen, Hegel was greatly interested in the like affliction of Italy and Germany, each in their own time, by the misconception of the state as an 'order of justice' where the laws lacked force against the tyrannical pretensions of the princes because they lacked radical relation to a customary foundation from which alone, whether in a city-state or in an empire, the public authority could derive its power. We have seen also that it was upon the deterioration of the feudal relationship he blamed the decline of the laws from their status as the embodiment of the ethical life of a people to that of a fairweather instrument, to be abandoned in favour of force if necessary, of the pursuit of personal interest. We shall shortly see that there seems to have been expressed in the idea of 'living together' under the same laws a strong affinity between the arguments of Althusius, Conring and Hegel for a repudiation of the competence of foreign legal and political forms to assure the stability of the German Empire. We have first, however, to clear Conring of any suspicion of partiality to the cause of territorial particularism.

It is a far from negligible fact that, though in the February - March cycle, Hegel guardedly criticised Conring, along with Chemnitz, for seeming to allow that the good principle of the depression of private right might ultimately be realised not

within the German Empire as a whole, but only within the territorial state ²⁵, he did not in the definitive text think it appropriate to criticise Conring but only Chemnitz. For Conring was not open to the criticisms to which Hegel subjected Chemnitz. Indeed, as we have seen, Conring had an interest, because of his close association with the work of Chemnitz, in minimising the extent to which the latter was taken for an outright antagonist of the Imperial dynasty. Chemnitz's six-point ratio status, not endorsed by Conring, was susceptible to criticism precisely because it sought to undermine the principles of the habitat of the feudal constitution from which, Hegel believed, Germany might derive strength. It did so particularly on account of its recommendation, contrary to Hegel's admittedly rather confused and utopian sympathies for aspects of the feudal order, that the Hapsburgs should be expelled, that the emperor should be elected (and that for no more than three consecutive generations from, to boot, a weak family) and that the Austrian Crown Lands, its feudal resources, should be confiscated.

Moreover, not only did Hegel not criticise Conring with the force which he would have deployed against him, as against Chemnitz, if he had deemed him to be essentially an advocate of the territorial interest, but also he showed himself to be a follower of Conring particularly in the manner in which he, unlike Chemnitz, developed and rehabilitated the tradition of ratio status. For there appears to be a systematic correlation between Hegel's views and Conring's assault on the 'translation theory', his establishment of the possibility of a comparative study of political development, his reevaluation of Machiavelli and his argument that any solution to the emasculation of the sovereignty of the German Empire could not be achieved except by way of the foundation of public law upon the notion of customary German

freedom, purged of implications in favour of the post feudal Libertaet of the German princes and independent of the inadequate services of the Imperial courts ²⁶. All these concerns, dispersed throughout Conring's works, Hegel concentrated in his assumption of the likeness of the fates of Germany and Italy, his comparison of the Guelphs and Ghebellines with the corpora evangelicorum et catholicorum, his consequent rehabilitation of Machiavelli as an antagonist of 'criminal' factions, his interpretation of Borgia as a duty bound saviour of public law from litigious predators upon the liberty of the people, and finally, of course, his own assault on the translation theory.

A brief review of Conring's achievements will serve to confirm this surely not accidental congruity between his work and that of Hegel. Firstly, it was Conring whose debunking of the idea of the Holy Roman Empire as continuous with the last of the 'four monarchies' ²⁷ instituted by God's Providence and in accordance with eternal law was the propaedeutic to the study of the German Empire by means of the same methods and criteria as were thought to be appropriate to the study of other, secular states. On his appointment to the chair of politics at the University of Helmstedt in 1650, Conring introduced a course entitled notitia rerumpublicarum totius orbis ²⁸. This was the foundation of the incipient comparative practice of political science and history, which came to be developed by the 'political statisticians' ²⁹ and pragmatic historians of 18th century Germany, particularly Gottfried Achenwall and August Ludwig von Schloetzer of Goettingen, who constituted one of the bridges between the work of Conring and Hegel. For they collected data, under the heading of 'notable political statistics' (Staatsmerkwuerdigkeiten) ³⁰, with a view to studying states 'as they really are', rather than 'as they ought to be' ³¹, or as Natural Law

jurisprudence would have it that they ought to be. It was to this secular tradition of political science that, as we shall see in greater detail in the sixth chapter, Hegel nailed his colours, giving it a philosophical depth which it had hitherto neglected to develop. In his assault on the schematism of the natural law tradition, Hegel did no more than affiliate himself to the 'father of German jurisprudence' ³².

Secondly, Conring was the first German political theorist of any note to essay a fundamental re-evaluation of the work of Machiavelli. His efforts in this direction were the counterpart of his attempt to free political science of the stultifying effect of natural jurisprudence upon its capacity to explain the characteristic as well as the comparative development of law and political institutions. He regarded Machiavelli exclusively as a political scientist who, like himself, worked 'not in the fields of moral philosophy or sacred theology but in the political arena alone' ³³. This virtue rendered Machiavelli immune, like himself, to the illusion of an eternal order capable of sustaining the reality to which imperial concepts used to apply and a providence capable of translating that reality from one Empire to another. Both his admiration for Machiavelli and his contempt for the myth by which the princes promoted the appearance that their power did not derogate from that of the Empire mark Conring out as a genuine antagonist of political particularism.

Rather than upon its conformity with eternal law, the sway of public law was seen by Machiavelli and Conring to depend upon its radical relation to 'the times', to its customary materia. So it was with Hegel. That this was not the case in Germany was the cause of the dissipation of the sovereign power of the Empire. Its restoration called for a ratio status, a policy promoting custom-built public law fit to depress the rights of princes as

territorial sovereigns and to oblige them as imperial subjects ³⁴. This was the nub of Conring's re-evaluation of Machiavelli and of the very idea of ratio status. His interpretation of Machiavelli as a theorist of ratio status turned, not on any intention to criticise him from the standpoint of questions concerning the 'best form of state', but rather upon the view that he was to be appraised as one who appreciated that that state is best which is adapted to the character of a people. This was what Conring brought from his aristotelian education ³⁵ to the interpretation of Machiavelli, rather than the strictures of a pedantic schoolman ³⁶. Conring was not at all the protagonist of natural law which some have taken him for ³⁷. Yet his hostility to the moral, religious and natural law considerations implicit in concepts which he held to be invalid for the politics of contemporary Germany, and his taste for Machiavelli and ratio status do not, pace Krieger ³⁸, qualify him a theorist of the territorial Machtstaat. On the contrary, both attitudes stemmed from suspicion of the authoritarian designs of the princes. For his attack on the translation myth and Roman law amounted to an assault on princely privilege, while his view of Machiavelli, after all, was that his spirit was a spirit 'alien to tyranny and congenial, rather, to the study of popular states' ³⁹.

Thus yoked to the cause of opposing freedom to the Libertaet of the princes, the idea of ratio status as radical public law was freed from the disrepute into which it had been brought by its earlier devotees. The sense given to ratio status by its first German exponent, Arnold Clapmarius, that the prince should compensate his subjects for their actual oppression with 'semblances of power or liberty' ⁴⁰ and that only by such means could the Germans, jealous of their old liberties, be kept under control, was not at all the sense in which Conring understood the idea.

Public law was not to be a tissue of iura inania; the ius commune seu ordinarium, whose object was the bonum publicum, was not, as Clapmarius held that it ought, to be subordinate to the privilegium dominationis. That was not Conring's understanding of ratio status ⁴¹. Nor, of course, though it appears to have some affinity with the view, attributed in this work to Hegel, that the state must furnish the citizen a simulative image of his own activity, while yet it must actually be the product of the activity of no-one in particular, did the Clapmarian concept of 'compensation' bear any relation to the idea of political exchange in Hegel's pre-systematic writings. It may be that in the WSS, when Hegel acknowledged the fact that it is not simply upon its coercive capacity, as 'particular against particular' ⁴², that any regime bases its dominion, but upon the appearance it can give to be universal, and when he argued that this appearance of the 'dignity of universality' ⁴³, become dissimulative, must be appropriated by an order that is genuinely lawful, whose simulation of common activity is not to the advantage or privilege of the powerful, our hero had it in mind to attack Clapmarius' assertion that 'It is necessity and power that have dignity so that often a thing not lawful acquires the attributes of law and justice' ⁴⁴. If so, it may be, further, that Hegel came across this claim, so useful to the 'forces of particularity' ⁴⁵, and made without any view to criticise the possession and attribution of dignity, in the work of Chemnitz ⁴⁶. At any rate, the dissimulation of responsiveness to the demands of subjects for satisfaction, as enjoined by Clapmarius, has a nicely matched opponent in Hegel's principle of the simulation, through representation, of every citizens' responsibility for the activity of the 'whole state'.

Rather than perpetrate the dissimulative emasculation of

German liberties, the law had, according to Conring's conception of ratio status, genuinely to harness to the service of the sovereign state the natural striving of a people for liberty ⁴⁷. In this way effect could be given, without deception, to the Clapmarian principle, with which Conring did agree, that a state requires not only the form of legality but that there should be an opinion of correspondence between the acts of the state and the character of its people ⁴⁸. But despite this agreement on the fundamental meaning of ratio status, its connotation had, for Conring, to be of that which is lawful rather than arbitrary and deceptive.

In this respect, Conring was at one with Clapmarius' critic and immediate successor as the chief interpreter of ratio status, Christoph Besold ⁴⁹. Though he stood in the natural law tradition and might therefore have been expected to be inveterately hostile to Machiavelli, Besold could admit that the teachings of Machiavelli were abused by those 'new politicians returning from Italy convinced that a prince is entitled to squeeze money from his subjects by any fraud' ⁵⁰ and was peculiar also in that he admitted what the natural law tradition had long denied, namely that the absolute sovereignty of the state could coexist with the liberties of its members. Taking the standard ratio status view that it depends on national character what constitution best suits a people ⁵¹, Besold broke with the dogma, which had stifled constructive discussion of the character and development of the Empire, that constitutional forms could only be judged disjunctively, as either monarchical, or aristocratic, or democratic. In the face of Jean Bodin's denial of the capacity for stability and survival of mixed forms of constitution, indeed of any form but that of pure monarchy, Besold made the German Constitution intelligible in terms of the idea of a status mixtus ⁵². Once

this assault upon the sterile constraints of natural law and the neo-aristotelian categories had been made, it became possible for German constitutional theorists to look for a solution to the competition of the Emperor and princes for sovereign power, rather than to the Courts, to the representative institutions of the Empire in which was embodied the principle of the status mixtus, that is of maiestas constitutionally distributed between the Empire and Diet.

This process of the disembarassment of political theory of scholastic burdens had begun with the work of Althusius. Althusius was the first to refute Bodin's application to Germany of the view that where there are representative institutions - aristocratic or democratic - there can be no monarchy, except in the mode of administration. In respect of constitutional form, Bodin's view was that representation is incompatible with monarchy. But Althusius argued that the Empire was, just as much as France after 1614, a monarchy ⁵³. Bodin's categories did not equip him to understand the native coexistence of Emperor and Empire and that this mixture was not necessarily conducive to instability. The contrary view, that a status mixtus is more likely than a pure form of state to be stable, a view which Machiavelli encouraged in his sympathisers, was, in fact, gaining increasing ground in 17th century German political theory. Status mixtus was the ratio status for Germany.

It is of some interest that, not accidentally, the designation of advocates of absolute princely power as 'machievellian' was criticized by protagonists of status mixtus, like Besold and Conring, as illicit, while Bodin attacked Machiavelli for his admiration of the mixed constitution of Polybian theory ⁵⁴. No doubt Bodin would have had a low opinion of Machiavelli's first 19th century follower, and on the same grounds. It can be shown,

conversely, in what contempt, though he mentioned no names, Hegel held Bodin's deduction of the necessary incompetence of the German constitution to be adapted in the service of political stability. Though Hegel admitted its historical instability, he blamed this on the corruption of the 'pure feudal constitution' by the attempts of princely potentates to secure themselves in their territories on the strength of the principles of Roman Law. Moreover, he went much further in criticising the standpoint of Bodin than Althusius. For Hegel held not only that Germany had in its traditions the potential for the modernisation of freedom, but that it had more potential for modernity, and for stability too, than France.

For in 1801, though he allowed that after the 'harsh arrangement' whereby from 1614, France had no Estates General, she remained a state, Hegel argued that she ceased to qualify as a modern state, for 'all modern states subsist by representation, and its degeneration alone, i.e. the loss of its true essence' ⁵⁵, destroyed France's constitution and led it eventually upon the course which ended in the French Revolution. Bodin, wrong about the superiority of French absolutism, was equally wrong about the inferiority of German representation.

Bodin's fault was that he abstracted the German constitution from its indigenous customary foundation. Althusius (and following him, Hegel), on the other hand, saw that the German Empire could only be securely founded upon the representative institutions which invested the life of the community with the majesty of the laws ⁵⁶. We have seen what a remarkable congruence there is between the concepts of living together, law and representation as they appeared in the work of Althusius and Hegel. It is on the grounds that Althusius attempted to establish the function of representation as mediation between the material of communal life

and the form of common laws that he has been recognized as the founder of political science 'on sociological principles' ⁵⁷, who enabled its liberation from the abstract straits of natural jurisprudence. That Hegel likewise regarded representation as fundamental to maiestas indicates that he was as indebted to the tradition stemming from Althusius, the hallmark of which was the concept of distributed maiestas and the quest for the social or ethnic foundations of representation, as to Montesquieu, who similarly sought to discover the origins of representation in the customary life of the 'German forests' ⁵⁸. As we saw in the second chapter, the notion of trust (fides), the spirit of fealty of the German forests described by Tacitus, interested Hegel on account of the possibility of discovering in it the basis for the virtual republicanism of the status mixtus. So it was with the early protagonists, such as Conring, of the value of distributed maiestas, which depended on the idea, inherent in the notion of trusty living together, of freedom as reciprocal obligation ⁵⁹, and whose advocacy was nothing but an attempt to promote an indigenous system of constitutional status mixtus. It was Conring who, turning to Tacitus, took up and developed the idea of discovering the social and ethnic (in the sense of customarily rather than racially characteristic) basis upon which that cause could be advanced, from the culture in which an uncivilized or unconstituted version of distributed majesty had first occurred, the cohabitat of the 'German forests'.

It is, of course, well known that Montesquieu, also an advocate of status mixtus depended heavily, for his views on the German forests, upon Tacitus' 'Germania'. This was indeed the main source of the image of the Germans as 'whole men', whom, Hegel noted, the French call 'hommes entiers' ⁶⁰. But Montesquieu's chief object was to explain the origins in this ethno-social matrix of English representative institutions and to

justify the idea of division of powers rather than distributed maiestas. For the explanation of German representative practices in terms of the 'striving for freedom' ⁶¹ of the old Germans there were much better resources at Hegel's disposal than the 'Spirit of the Laws'.

What is less well known is that it was Hermann Conring who, not content to document the modern history of the acts of the Imperial Diet ⁶², inquired into the political culture of the old Germans which was credited as the precondition of the representative system. It was Conring who, to this end, researched beyond Carolingian times ⁶³ and, particularly, discovered in Tacitus ⁶⁴ the putative origins of 'iuris germanici'.

This third aspect of Conring's achievement clearly influenced Hegel. It may be said that they shared an interest in the ethnology of the 'pure forms and beautiful characteristics' ⁶⁵ of German freedom and in the urgent task of adapting the German striving for liberty to the circumstances of the modern world, in order to the accomplishment of a modern constitution of freedom. Though there is wanting direct evidence, such as is available respecting Hegel's knowledge of Conring's explanation of the Reception and debunking of the translation myth, that he was interested in this Tacitist aspect of Conring's 'De origine iuris germanici', it is clear that, where Hegel referred to anonymous 'modern professors' ⁶⁶, he had in mind, at the very least, scholars - whether of public law or political statistics - whose work would have been inconceivable but for the pioneering efforts of Conring. One such, though not one whom it is intended ⁶⁷ to consider as a candidate for the status of 'modern professor', was D.F.C. Majer, whom Rosenzweig identifies as one to whom Hegel was probably referring when he wrote of professors who had given up the attempt to classify the constitution in abstraction from its characteristic

development⁶⁸. This Majer followed Conring not only, in his 'Teutsche Staatskonstitution' (1800), by doing what had become commonplace, namely deriding 'school questions' concerning the form of the constitution and dismissing the empty titles paraded by the likes of Haeberlin, but also by delivering, in Tübingen, frequent lectures on Tacitus' Germania and, from this outlook upon the customary roots of German law, attacking the 'romanising publicists who applied principles from Roman private law to matters of state in a manner completely inappropriate'⁶⁹. Whether it was through Majer that Hegel first heard of Conring cannot be ascertained. The same is true of the question whether Hegel ever attended Majer's lectures. But it will become clear from what follows in this and the final chapter that Hegel was undoubtedly a self-conscious participant, if not a very frank one, in the tradition of legal ethnology begun by Conring and his repudiation, to the end that the state might be disembarassed of debilitating myths, of all kinds of scholastic constitutional theory.

We are now in a position, with the benefit of hindsight from all the materials composed in 1801 and dealt with in the last chapter, and of insight derived from them into the original sources of Hegel's preoccupations, in a position to turn to his treatment of 'old German freedom', of law and representation in their aspect as the means to its modernization and to his attitudes, positive and negative, to traditions in German political science which, by and large, stemmed respectively from the influences of Machiavelli, Althusius, Conring and Montesquieu, and from that of Bodin. These attitudes, as well as Hegel's treatment of custom, law and representation, are disclosed in the materials, now due for consideration, which span the period 1798 to 1803.

2. From a people of whole men to its stead

By June or July 1801 ⁷⁰, Hegel had given definitive expression to his views on 'old German freedom', which he first began to formulate in 1798 ⁷¹. These views are crucial inasmuch as depends upon the clarification of their apparent ambivalence the proper understanding of how Hegel could maintain that 'old German freedom' had been the cause of the dissolution of the German Empire, while yet there stemmed from it the principle of representation upon which every modern European state was based and which had to be reappropriated by the Germans if that people was to exist in the modern world as a state ⁷².

This paradox, that Germany gave to the world a principle which it failed to develop for itself ⁷³, a principle which did not exist in the forests of Germany but arose from them ⁷⁴, will be more fully explained when the time comes to consider Hegel's incipient philosophy of history. Let these statements be provisionally taken to mean, in accordance with the theory outlined in chapter three, that the development of political practices and sentiments - in this case, those of the 'feudal system' - if it takes place not in response to deliberate design but entirely casually, renders them more liable than they would be if they were consciously instituted and enacted, to be perverted from its proper course.

That Hegel thought of the 'period of the old German freedom' ⁷⁵ as a period which was instinct with the principle of representation, and thus as one in which was inherent the potential for, or the precondition of, the formation of a modern state, puts in grave doubt the common assumption that he attached a single and opprobrious meaning to the term. For, as we have already seen, Hegel could speak with approval of the 'great popular interest

(of German freedom)' ⁷⁶, an interest the reversion of which to its source ⁷⁷ expressed a need for the reconstitution of the principle of the German forests, in contemporary Germany only formally extant in the Diet, the principle of the monarcho-representative system. Some aspect, then, of the old german freedom, by association, qua source, with the new 'sound common sense' notion of freedom ⁷⁸, and hence by dissociation from the 'German freedom of the city councillors' and princes ⁷⁹, was accorded by Hegel a degree of respect which he withheld from that aspect of old German freedom which was the primitive source of contemporary particularism.

The one aspect is that of a nation which was held by Hegel to be innocent, or, it might be truer to his meaning to say, the cause of Germany's decline only by reason of the peoples' irresponsibility. It was Hegel's view that though their confessional divisions had contributed to the downfall of Germany, the religious side of their social individualism was 'honourable and honest', and had been the cause only of 'unintentional dissolution' ⁸⁰. For this, after all, the peoples were not culpable. The other aspect is that of a part of the nation which Hegel did hold morally responsible: the princes 'knew what they were doing' when they exploited religious sentiment ⁸¹. They took advantage, to the end of imposing their 'tyranny' ⁸², of a situation that might be described as 'anarchy' ⁸³ but for the fact that, at the critical time, there was no state of which that epithet could be predicated, or, what is the same, no statutory law against which they could be said to have acted criminally. Nevertheless, the princes were to be 'regarded as criminals' ⁸⁴ in that they caused the arrest of the development, which Hegel clearly believed could conceivably have taken place, of the legal order implicit in the 'feudal constitution'.

By no means, then, can Hegel be supposed to have confounded the 'drive for freedom' of the primitive German Volk ⁸⁵ with the striving of the Estates for Libertaet. That, after all, was a confusion to which Chemnitz had been favourable ⁸⁶, for it lent to his aristocratist ratio status the prescriptive justification of aboriginal sentiment which it would otherwise have lacked.

It appears, rather, to have been Hegel's view that 'old German freedom', in its guise as political particularism, had been the cause of the disintegration of the Empire at the expense of 'old German freedom' in its aspect as what he called an 'inner togetherness of dispositions' (Zusammenhang der Gemueter) ⁸⁷. Even during the Fehdezeit, 'amidst all the storms of the lawless situation in the days before the Imperial Peace, there still persisted, in respect of the relation of the estates to one another and to the general interest, a certain togetherness of the whole (Zusammenhang des Ganzen)' ⁸⁸, which served in place of legal togetherness or integration (gesetzliche Zusammenhang) ⁸⁹. It is of great interest that Hegel argued that, thanks to the growth of the imperial cities, there came about the political spread of the bourgeois spirit (buergerliche Sinn), in consequence of which was finally destroyed, by individualisation or particularisation of dispositions (Vereinzelung der Gemueter) ⁹⁰, the familial political culture described by Tacitus. This argument, to be more fully discussed in its immediate context, came to the conclusion that though the primitive German disposition or character was such that its individual members 'were always willing to let themselves and their power coexist in a state' ⁹¹, the admixture of such politically articulated bourgeois interests reinforced the public effect of a social stratification that did not matter in the sylvan German family and caused a conversion of the 'original German character' ⁹² towards unwillingness to permit

the existence of a universal state. From having - despite its 'unruliness' - a potential to acquiesce to the law, the original German character and its drive for freedom took, under circumstances of embourgeoisement, the contrary direction of actual breach ⁹³.

It was because the bourgeois spirit drove the German character inward, to 'man's inmost heart' ⁹⁴, that its originally communal disposition was destroyed. It could appear that separation into particular states was 'but a consequence' ⁹⁵ of the German character whereas, in truth, it was merely 'in accordance' with it ⁹⁶. There appears to be some justification for the interpretation of Hegel's understanding of the 'drive for freedom' as if he regarded it as an homogeneous phenomenon, in that he averred, after this analysis of the factors and stages of its appearance in the modern world, that the 'original unruly character of the German nation determined the iron necessity of its fate' ⁹⁷. Yet, on the whole, it is clear that it was in the 'bourgeois spirit', only once it was invested with the 'inner and outer legitimation' ⁹⁸ which it sought from a privatised religion for the politics of 'possessive particularism' that Hegel found the essential cause of the decline of Germany. It is for this reason that it is impossible to agree with Hans Maier that, while Hegel 'knew how to describe it lyrically' ⁹⁹, he made 'old German freedom' the basis of his allegedly 'monocausal explanation' of the destruction of the German constitution ¹⁰⁰.

Hegel may be said to have regarded the German character itself as a cause of political particularism only in the extended sense of a circumstance permissive of what politics conducted according to the bourgeois principle ¹⁰¹ induced: 'great numbers of states and the dominance of trade and commercial wealth had developed; the unruliness of the German character could not of

itself (unmittelbar) cause the emergence of independent states' 102 hostile to the principle of majesty. It is clear from the above statement that his meaning was not at all determinist when Hegel wrote that the peculiar form or principle of German constitutional law 'is deeply grounded in that for which the Germans have made themselves most famous, namely in their drive for freedom' 103, and that it 'stands in unsundered connexion with the condition of Europe in which the nations participated in the supreme power, not indirectly through laws, but immediately' 104. There was no determinist implication either, when he argued that their drive 'never allowed the Germans to become a people subjecting itself to a common public authority even after every other European people had become subject to the dominion of a state of its own making' 105. Equally, if more obviously, free of determinist overtones is his view that the Germans differed from the other peoples of Europe, with whom originally they had in common a form of 'universal authority in which each individual had a sort of free and personal share ... dependent on an arbitrary will' 106, in that they 'have not wished to transform this ... share into a free share, independent of arbitrary will and consisting in the universality and power of laws' 107.

It was not of necessity that the Germans' constitutional history took the course that it did. To have adopted such a unilaterally determinist argument would have begged the question: Why, from the same situation, had not other European peoples followed suit? To have supposed the Germans to have been necessarily predisposed against legal togetherness would have undermined Hegel's general view that it was out of Germanic political culture, out of the customary environment or ethical habitat in which dispositional togetherness prevailed, that there had emerged among other European peoples the legal and stately order of modern representative government 108. For in that view

was involved the presupposition that law was implicit, though not extant, in the German forests, just as representation arose from whence it did not exist. Thus, elsewhere, it had been willingly that the arbitrary and personal had been transformed into deliberate, universal and indirect political participation, whereas the Germans were unwilling, which is to imply that they were able, to construct another situation than that which is founded upon and perpetuates 'arbitrary will'. They would have been so able to construct a political edifice like that of other Europeans, which would have been no less deeply grounded in or directly connected with their old familial dwelling-place, because, like other European peoples, their fundamental disposition was originally not antinomian (gesetzwidrig) but merely lawless (gesetzlos) ¹⁰⁹.

That, as it happened, they were unwilling, is a fault which Hegel seems, at a superficial glance, to have intended to impute indiscriminately to the German character and as its necessary consequence. But it is clear that the contrariness to law which supervened upon mere lawlessness was held by him to be rather the fault of the 'individual parts' which would not sacrifice their particularities ¹¹⁰, and to have arisen rather as a matter of chance, effective only because of the lack of the authority of public law and because of the character of a few, not all, Germans. The German character became a significant factor in the dissolution of Germany only insofar as its original environment was distorted by possessive particularism. As is clear by cross-reference to the fragment in which Hegel made mention of Conring, where it was argued that 'gain of private property (is) a matter of chance', wherefore 'state authority cannot be private property', ¹¹¹, Hegel's view was that it was in consequence of the fortuitous achievement by some of 'power over others' ¹¹², and so because of

eminent rather than common character, that the togetherness of the whole had been destroyed.

What then, if Hegel did not attribute the fate of Germany to the indiscriminate and necessary effect of national character, is the significance of his views on old German freedom? It would seem that he derived from the Tacitist tradition, within which Conring and Montesquieu were probably his chief mentors, the model of a community that, without need for public law, had been ethically integrated or, what is the same, had been a people (ethon). Upon this model, perhaps the 'mental image' of the first draft of the Introduction to the VSN, Sollte das Resultat ... (SdR) ¹¹³, Hegel hoped could be founded the recovery of Germany, with the all-important difference that ethical integration could now be accomplished not independently of public law, not by simple virtue of binding manners (Sitten), but only by means of the enactment of those manners as an ethical activity (Sittlichkeit) concentrated in public law and so directed against the particularist tendencies by which, because of its lack of self-conscious articulation, the German character had been perverted.

It is essential to a clear appreciation of the sense in which Hegel believed that the old togetherness of the whole could and should be recovered that it be understood that his attitude was not one of yearning, like many of his contemporaries and near-contemporaries for the restoration of the old way of life. In a marginal note in SdR, where Hegel first expounded his views on old German freedom, he was quite emphatically of the opinion that it would be 'childish and absurd to yearn for such a condition (as that of the primitive Volk bound not by laws but by manners) as if it alone were natural, and not to respect the condition in which laws prevail as necessary and as a condition of freedom' ¹¹⁴. Hegel's position here may be compared to that which he took in the

Philosophy of Right where he was to criticise those who unconditionally prefer the 'holy chain of friendship' to the rational bonds of law ¹¹⁵.

At the same time as he made this his first very explicit statement in 1798 of the later view that the togetherness of custom is not abrogated but enhanced by its legal enactment ¹¹⁶, Hegel averred, equally emphatically, that it was shallow and weak-minded to hold that the primitive Germans were 'loathsome, unfortunate and stupid' whereas the moderns were 'infinitely more excellent, more fortunate and more civilized' ¹¹⁷. This unsympathetic and rationalist view, of which Voltaire was the foremost exponent, was one with which Hegel could have no truck. For it took no account of the possibility that, in their own time, the manners of the Germans and the dependence of their relations of mutual obligation upon customary usage were adequate to the maintenance of the community as a whole. So little could Voltaire believe this that he actually ventured to accuse Tacitus of fabricating his account of the communal life of the German tribes and derided Montesquieu for believing it ¹¹⁸. Hegel, on the contrary, took the political capacities of the primitive Germans, and their achievement of uncivilized community, quite seriously. So much is evident from the definitive text of 1802/03 where, just as in the corresponding part of its first draft, SdR (1798/99), Hegel argued that a 'living soul' had once' - in 1799 for more than a millenium¹¹⁹ -, as the congenial Fate of generations long dead, dwelt in and supported the 'building' known as the German constitution. Indeed, in the definitive text he went even so far as to write, perhaps under the influence of his rhetorical leitmotif, 'Germany is no longer a state' ¹²⁰, as if he actually believed that the primitive Germans enjoyed what he knew technically as statehood, i.e. that they lived as a people in virtue

of their common subjection to laws: for he wrote of olden laws that have lost their former life, in contrast with modern life that knows not how to concentrate its vitality in public law ¹²¹.

This is a deviation, which occurs nowhere else in the definitive text and the drafts of the VSN, from their usual argument that, whereas the German people had not formerly needed laws, it could not now, without a state, be a people again. Hegel deviated here from the view, brought out by additional clauses entered in the revision of SdR in February or March 1801, that, in the period when, 'without subjection to a state, the individual, unbowed before the universal, stood for himself and when his honour and fate depended on himself alone ... there was not yet a state' ¹²². This view Hegel took care, in the definitive text, to reiterate only shortly after, and in contradiction of, his lapse from the strict view that the primitive Germans knew no law ¹²³, that, in the words of Sollte das politische Resultat (SdpR) 'not laws but manners bound a host into a people, similar interests not a universal command gave the people the likeness of a state (das Volk als Staat darstellten)' ¹²⁴.

The point of the foregoing is that, while Hegel paid due respect to the manners which were the basis of the effective political integration of the German tribes, he was, excepting on one occasion, careful not to confuse the primitive condition, even though it 'deserved well to be called German freedom' (Wohl hiess diese Zustand die deutsche Freyheit)' ¹²⁵, with the modern condition of freedom 'in which laws prevail' ¹²⁶.

Had he usually confused the two conditions, he would have seen no absurdity in yearning for the former condition since there would, on the view that it was already stately, be no reason to doubt that it had the capacity to restrain the centrifugal effect of the bourgeois spirit upon the togetherness of the whole.

Indeed, from that point of view, it would be unlikely that the 'advance of culture and industry' ¹²⁷ would have been regarded as a problem of political integration in the first place for, as was argued in the first chapter, the nostalgic political outlook depends upon neglect to consider the constraints of present reality. The political effect of the bourgeois spirit would simply not have occurred to Hegel's mind, had it not been educated by such of his mentors as Garve to doubt the possibility of regression to childhood ¹²⁸, had he been disposed to wax nostalgic, as a problem. He would have ignored it. Such was the case, for example, with Justus Moeser, who yearned for the communalism of the tribes and for the direct participation of the Volk in council ¹²⁹ regardless of the fact that economic development had made such a political system impossible.

Hegel was quite sure that it would be impossible to recover the pristine forms of that system. Under that system 'every free man's arm was counted on and his will had its share in his nation's deeds. Princes were chosen by the people and so were war and peace and all acts of the whole. Anyone who wished participated in council; anyone who did not so wish forebore of his own will and relied on a similarity of interest with the others' ¹³⁰. Where once there had been no classes disruptive of the common interest ¹³¹, when the 'bourgeois had not introduced a great heterogeneity into the whole' ¹³², those not present in council could, albeit without the formal assurance vouchsafed to the modern principal by his representative, likewise trust that those present would not prefer their own interests to those of the people not present. Here and now, in Hegel's view of contemporary affairs, neither that trust nor that formal assurance was to be had and, hence, there was not available, either immediately or by simulation, the sense of the participation of each man's will

in the deeds of the nation ¹³³, from which stems the emergence of a common interest ¹³⁴.

Yet the fact that such a sense of participation and common interest was regarded by Hegel as the ne plus ultra of political life suggests that he sought to discover something that the modern condition should have in common with the primitive. This was the element of trust. Since the basis of the trust exhibited by primitive representative practices had been disintegrated, the old forms were unworkable. They had depended on the sense of mutually trusty, rather than mandatory, obligation that had obtained in olden times thanks to the dispositional togetherness that served instead of legal togetherness. Trust could now be had only on the basis of a formal assurance that the private interests of the bourgeois, who 'cares only for an individual and not self subsistent end and has no regard for the whole' ¹³⁵, would not have public effect. For want of the legal institution of the practice of representation, whose casual undertaking in the German forests was not adapted to inhibit the centrifugal effect upon the whole of a bourgeois class of men who 'look exclusively to their own necessities and their own living' ¹³⁶, that trust had gone. The project of its restoration by way of laws and constituted representative institutions would have been meaningless if the extent to which primitive representation had become formal, and so practicable independently of the pressure of social and political particularism, were so exaggerated that the autonomy of the public authority would have to be discounted as an effective restraint upon disintegrative tendencies. For if there had been a state when the disintegration of the German people set in, what good would a state be now, what contribution could statehood now make to its re-integration?

It will readily be understood, then, why it was not without

reservations and qualifications that Hegel agreed with Montesquieu, whose belief that representation was to be 'found in the woods' ¹³⁷ implied that it existed as a fairly coherent and regular or law-bound system. By way of qualification, Hegel argued that representation did not exist as a constituted system in the forests of Germany though it did arise from them ¹³⁸. He argued that trust existed informally there, but inasmuch as it was casual, could readily be betrayed. What amounts to the essence of these arguments, he asserted that, though there was a disposition which, under the favourable circumstance of social homogeneity, was the equivalent of a state in which individuals were willing to let themselves and their power coexist, there was, withal, not yet a state proper.

There was, however, in that the individual belonged to the whole in character, manners and religion, an invisible living spirit and some few large interests ¹³⁹, what may be called, in conformity with Hegel's repudiation of those who regarded the primitive condition 'as if it alone were natural' ¹⁴⁰, the larval form of the state: for manners and similar interests 'gave the people the likeness of a state (das Volk als Staat darstellten)' ¹⁴¹ at a time when 'the nation constituted a people without being a state (die Nation, ohne ein Staat zu sein, ein Volk ausmachte)' ¹⁴². Inasmuch as Hegel wanted to be recovered, as was argued at the end of chapter three and the beginning of chapter four, the sense of common interest stemming from cooperation in resolve and deed ¹⁴³, he sought in the stately form of representation the 'imago' of its customary material. Out of primitive representation in the shape of the mystical embodiment of the individual in his people and of the people in the prince, ritually attested by the magical deed of election ¹⁴⁴, Hegel sought the imago of trust in the stately form of representation.

It may be said by way of summary that, in order to depress the bourgeois principle, Hegel looked, not to the form of the caterpillar (the stage representing the period of old German freedom), nor to that of the cocoon (the feudal period from which the alternative to the bourgeois principle might have emerged), but to the form of the butterfly which would realise the dynamic and serviceable 'potencies' implicit in the larva and chrysalis, would make the German nation a people once again. This is to say, in effect, what lends a remarkable significance to Hegel's mature definition of the corporation, that which, with the guidance of the State, leads its members beyond civil society and prepares them for membership of the State, as a 'second family' in whose bosom refuge could be taken against the pressures of the civil society whose effect was to 'negate' the first family¹⁴⁵, that here, within a diachronic rather than the synchronic scheme of the Philosophy of Right, Hegel sought the recovery, or, better, the re-validation for the political community of the bonds of trusty kinship characteristic of the familial political culture of the German forests.

Lest this seem a fanciful attempt to intrude into the VSN a relationship between the family and the state (wherein familiarity of a primary or secondary kind is supposed to be at the 'ethical root of the state'¹⁴⁶), which occurs explicitly only elsewhere in Hegel's political philosophy, and to do to that relationship the violence of placing it in an historical rather than a timeless perspective, let it be noted, first, that Hegel used language, in a manner to which attention has been paid throughout this work, to signify the nature of the community bound by manners, which strongly suggests that he thought of the 'building' of the primitive German customary whole as having been, as it were, a home: for in the definitive text he wrote that the old Germans'

fate 'inhabited' the constitution (worin jenes Schicksal hauste) ¹⁴⁷ and in the two earlier drafts that the 'justice and power, courage, cowardice, honour and blood, the neediness and well-being of long past days, long perished generations' (Geschlechter) 'dwelt' in it ¹⁴⁸. It cannot but be that the implication in one another of the ideas of dwelling (Wohnung) and custom (Sitten or Gewohnheit) was not far from his mind.

What is more significant of an identity, in Hegel's theory, between the idea of family bonds and custom and, further, what is compelling evidence of Hegel's conviction of the necessity that family or customary togetherness be sublated (aufgehoben) in stately or legal togetherness, is that, secondly, he not only exploited collocutionary implications, but also made clear, in the DS of August 1801 and in SdR/SdpR, though not quite clear in the definitive text of the VSN, that he was already thinking in general terms of the disruption of the family by civil society and of the necessity, consequent upon the incompetence of the family to preserve the intimate community of kinship, that the state vindicate the integrity of its 'first nature' ¹⁴⁹. It is evident, therefore, that he was thinking of a kind of Aufhebung of custom (or old German freedom).

This was not wishful thinking but, precisely because it took full account of the irrevocability of economic development and of the fact that modern men had to look exclusively to their own needs and livelihood ¹⁵⁰, an aspiration limited to the hope of recovering by other means than custom something like the cohesion of political 'structure' and individual member that had once prevailed, something like the trust, joy and love ¹⁵¹ which Hegel regarded as the fruits of the old customary life and, later, as the binding affections of the family. These affections constituted not a finished model to be imitated in political society but

the armature of the familial model which had, out of materials dessicated by the 'arid life of the Understanding' under which property and affairs had been made absolutes ¹⁵², to be reshaped, to be given articulate and legal rather than ineffable and customary form.

What the bourgeois principle had put asunder, the 'pure forms and beautiful characteristics' ¹⁵³ of German freedom, the kindred feeling of which the bourgeois was now bereft, the state had to join together. It had to accomplish or 'fulfill' ¹⁵⁴ what Hegel called in the DS the 'potencies' (trust, joy and love) of a genuinely ethical identity, i.e. a people, what have here been termed the archaic larval materials of a telic form ¹⁵⁵.

The DS has long been accorded significance chiefly for its claim that 'philosophy issues from its time, and if one wants to call the fragmentation of the time its ethical corruption, then philosophy issues from that corruption; but it does so in order to re-establish man from within himself, against the confusion of the time and in order to restore the totality which the time has rent' ¹⁵⁶. To specify the meaning of this claim with respect to the idea of the State and its constitutional or public law is the sole object of the following analysis of the DS, of which it will be argued that a significant part constitutes simply a formal elaboration of an argument to be found in more concrete terms in the VSN. The business of the State, and a fortiori of the philosopher of the State, is to encourage the restoration of the rent costume of ethical life, by clothing men in dress in which they can feel their wholeness and integration with the community to be virtually recovered.

The member of bourgeois society was inwardly disrupted in so far as the community was no longer a familial union of what Hegel called 'whole' men independent of class, reliant on their

own brains and brawn ¹⁵⁷ or mind and character ¹⁵⁸ for their power or failure to please themselves. No longer could the individual whimsically ¹⁵⁹ and without fear or self-doubt ¹⁶⁰ impose upon his industry and activity only such limits as he chose and not such as he had to suffer from without ¹⁶¹. (It is in SdR, let it be noted in passing, that the antithesis between acting and suffering is most clearly drawn.) The bourgeois was no longer a true agent, for it was not true of him, as it was of the 'sons of the (old German) condition (of freedom)' ¹⁶², that 'what lay within his sphere was so much, so entirely, himself that we could not even call it his property; on the contrary, for what belonged in his eyes to his sphere, i.e. for what we would call a part only and for which therefore we would risk only a part of ourselves, he risked life and limb soul and salvation. He knew nothing of the division and calculation on which our law depends ... he was completely and entirely involved in anything his own (in French entier means both entire and self-willed)' ¹⁶³.

This description of the primitive German gives the impression that there is about the behaviour of the child of the old German forests, the quality of existential commitment to the present life which was argued to be the attitude that, in the WSS, Hegel held to be pernicious of Nature and community. The difference is, however, that the 'invisible living spirit' ¹⁶⁴ of community so pervaded existence in the forests that there arose no question of, or quest for, an alternative living idea or natural life: unlike the existential commitment to the present of the bourgeois, that of the primitive German to what was present to him was so informed by something 'invisible' that it was at the same time the locus of an absent (if not quite intelligent) intuition of community, in virtue of which he sensed an immortality quite

devoid of the promise of sensible satisfaction in a present to come. It was no 'kind of avarice' and was not maintained in spite of the violation of his impulses ¹⁶⁵. It was not a calculative and timid, but rather was a so whole-hearted and fearless commitment that there could occur no thought of limitation by another, no concept of accommodation of artificially defined spheres of proprietorial interest, and hence no notion of privacy or of its corollary, a notion of society standing to it, of necessity, in a relation of constraint.

The old Germans did indeed, Hegel wrote in SdR, though after its revision in 1801 he struck the passage out, 'beat unmercifully upon one another, yet at the same time, while they fought with one another, their needs and individuality converged, they became similar to one another like all enemies' ¹⁶⁶. The explanation for this convergence lies perhaps in the absence of what Hegel argued enables, in bourgeois society, the reconciliation of contrary interests 'with the least possible sacrifice, in order that each can coexist with the other regardless of conflict' ¹⁶⁷, namely of a concept of private property which, though from one legal point of view it is the basis of universal relationships, 'remains in fact something isolated and without relations' ¹⁶⁸. From the private law regulative of property relations only superficial reconciliation is to be expected, for by its erection of a sphere of privacy, by its reduction of communal relations to a traffic in alienable properties and by its mollification of social contact, it deprives men of the opportunity for the development of the deep kinship available from the risk of life and limb, soul and salvation. It was just this risk, involved, before the Imperial Peace and the decline of feudalism, in the 'clash of born equals' ¹⁶⁹, that used to generate dispositional togetherness. Bourgeois society on the other hand is free of

fundamental risk, demands only marginal sacrifices and provides for no deep living relationship among its members. (It cannot but be noticed that here is a palpable anticipation of the sections of the 'Phenomenology of Spirit' on the struggle for recognition and the dialectic of Herr und Knecht).

In the DS, more formally than in SdR/SdpR, Hegel criticised, by way of an attack upon Fichte, the understanding of freedom as 'self-limitation' ¹⁷⁰ with a view to coexistence with others whose freedom would otherwise be encroached upon. This, in Hegel's view, can only be achieved by what was called in the WSS 'restriction to an orderly mastery over one's property, a contemplation and enjoyment of one's completely subservient little world and finally, for the sake of reconciliation to this limitation, a self denial and ascension in thought to heaven' ¹⁷¹. In the DS, the conception of freedom as self-limitation is said to have the effect that 'every truly free, reciprocal relation of life, every relation that is infinite and unlimited for itself, that is to say every beautiful relation, is nullified' ¹⁷². Rather than be universal 'for itself' ¹⁷³, every social relationship acquires the character of universality only in its reference to an external criterion, something 'ideal and opposite' ¹⁷⁴ in respect to the affections of the 'living being' ¹⁷⁵.

Though Hegel did not, in the DS, specify what sort of criterion he had in mind, the likeness to his argument here of that which, in SdR, he elaborated concerning private property, namely that 'the relations which derive from it are, as it were, relations of isolation and that private property is 'a universal only from the legal point of view' ¹⁷⁶, suggests that he was thinking of the criterion of private personality by which are regulated all contacts in the community governed by 'rational beings' ¹⁷⁷. These rational beings resemble those whose legal

relationships are said in the VSN to depend on 'division and calculation' ¹⁷⁸. In order to sacrifice as little as possible of the proprietorial parts into which they parcel themselves out, they sacrifice their entirety, or the openness of their hearts to unreserved involvement in the rich variety of what, in the DS, Hegel called 'living connections' ¹⁷⁹, that is, relationships not hedged about by the understanding of free individuality as private-legal personality. This understanding they try to impress on their subjects, ignoring their potential to be elevated, by way of their membership of the social and territorial estates through which they ought to be vouchsafed mediate participation in public affairs, from an abstraction of activity ¹⁸⁰ to devotion to 'great objects' ¹⁸¹.

No community can be based on the 'unsatisfied life' and 'oppressed forces' of such persons ¹⁸². Among them there can not emerge their self-organisation as a true people which is 'the organic body of a communal and rich life' ¹⁸³. For as merely private persons they can constitute only an 'atomistic, life-impooverished multitude' ¹⁸⁴ whose coexistence, like that of the 'crowd of individuals' ¹⁸⁵ of whom Hegel wrote in the fragment on political freedom in Italy that its 'living together in cities was rather coexistence in the same space, within the same walls, than subjection to the same laws' ¹⁸⁵, is superficial, designed to involve the least possible sacrifice. Such a multitude lives by the law, to be sure, but it does not by that token constitute itself as a people. For the law by which it lives is a law of privation, of limitation of interests with a view to mere 'spatial' or punctually tactless coexistence, whereas the law of a true state must have community of customs and assimilation of interests as its model though not, as we shall see ¹⁸⁶, its necessary content. This cannot, of course, be its actual

economic foundation in the modern world, for such community and similarity are things of the past.

It is necessary only that law perform the task which custom as such used to perform adequately, but for which its irregular development had rendered it useless. Law must assume this responsibility, not by restoring uniformity of custom and interest, but by enacting such customs as can be useful to the maintenance of community, thus defusing the derogatory effect of habits pernicious of it, and, within the terms of political exchange, by leaving to themselves, keeping withal a watchful eye upon their development ¹⁸⁷, customs whose content is matter of opinion to which the state can afford to be indifferent, but whose autonomy must be preserved so that citizens should, as agents only in abstraction to be sure, have some idea of action upon the basis of which they can appreciate the truly ethical action of the State as similar to their own and in similar need of autonomy. The political vocation of the State is to furnish the citizen a refuge from the atomistic isolation of bourgeois society, in order that the 'heart' of man might be preserved from exclusive involvement in its 'mechanical interaction' ¹⁸⁸. But to offer modern man such a refuge it is necessary not so to offend his present sense of his worth that he cannot but repudiate it.

Such a refuge is the people. But its self-creation, precisely because of the anti-ethical tendencies of the bourgeois principle, cannot occur except by way of legal organization or validation of its primitive customary larva, the kin-group, from the standpoint of which Hegel thought it possible to speak to the childhood experience of all. It is certain that when Hegel wrote of the state as the 'true infinity of a beautiful community, where laws are made superfluous by customs' ¹⁸⁹ he wanted so to.

speaking. He did not believe, however, that customs could of themselves maintain the pure forms and beautiful characteristics of primitive freedom, the freedom of a carefree child absorbed in trusty, loving and joyful relationships, but that the beauty of a community founded on the reciprocity of relations between the 'enlightened and unenlightened' ¹⁹⁰, the intellectual and sensible vectors of nature ¹⁹¹, could be restored only by the State which he regarded by no means as necessarily a 'mechanical thing' ¹⁹², as many interpreters of the ASP, so close in many respects to the DS ¹⁹³, have supposed, but as a necessary condition of freedom. Still more than that, by inference from the fact that he denied the customary condition to be 'alone natural', Hegel clearly held the State to be also natural, in the manner of a telos or 'true infinity' ¹⁹⁴ of custom.

It would not be quite just, therefore, to agree with Rosenzweig that, in the DS, any more than in the contemporary VSN, Hegel was in pursuit of the ideal of a 'meta-legal' organisation of freedom ¹⁹⁵. For when, in the DS, he preferred to laws the customs which would render them superfluous ¹⁹⁶, just as in the ASP he had appeared to argue that the State must be superseded ¹⁹⁷, Hegel can have intended to deprecate only private law and the attitude that its parties adhere to, namely, Fiat iustitia, pereat mundus ¹⁹⁸. (This, be it noted, was the attitude of the most lofty of the exponents of the view that, after all, the State cannot but be a machine operative upon that principle: Kant.) He criticized only that law which, because it lacks the grace of the principle of majesty, the embodiment of the customary unanimity of individual, people and prince ¹⁹⁹, involves the mechanical application of the characteristic bourgeois principle that 'right must be done, even though for its sake all trust, joy and love, all the potencies of a genuinely ethical identity, must be

eradicated root and branch' ²⁰⁰. This need not at all be true of the State whose civilization is structurally, through and through, gracious or majestic ²⁰¹.

Private law disinherits the world of these potential roots of a modern Volk. It is only by way of the public law of an abiding, concentric, structurally gracious, political authority that these 'potencies', once the actualities of customary kinship, can become the actualities of lawful peoplehood. No such State is held to be one which treats 'free men as cogs in a machine' ²⁰². Rather there is devolved upon it the task of making life enjoyable rather than unsatisfied, and of releasing forces hitherto oppressed into their natural channel, that of activity directed towards great objects ²⁰³. In the face of those who would confine the political community to the functions of a 'system of justice' preservative, not of deep communal relationships, but only of the privacy which is the means to superficial coexistence, nothing less authoritative than the public law of an integral state can validate 'hallowed joys' ²⁰⁴ of living together in intimate relationship. For these are constantly under threat from the bourgeois spirit, whether in its aspect as 'possessive individualism', in which case its motto is 'Fiat iustitia, pereat mundus', or in its more immediately political aspect as 'possessive particularism', for whose 'system of justice' there is, according to Hegel, 'perhaps no more appropriate superscription than Fiat iustitia, pereat Germania' ²⁰⁵: Right must be done, even though for its sake the State of the whole people, the actuality of its trusty, joyful and loving disposition must be destroyed. Such an idea of justice is no fit criterion upon which to attempt to maintain the identity of a people.

3. The political practice and theory of possessive particularism

As we have just seen, Hegel believed that private property had been attributed by law a capacity to serve as the basis of universal relations which its character, operative as privation of all but the most formal of human contact, utterly belies. Having dealt with the alternative way of life of the old Germans, he proceeded to argue conversely, that the State, which would ideally perfect, as its 'true infinity', that natural condition of freedom in such a way as to establish not merely universal, but also deeply seated and felt universal relationships, had been denied by 'law' the power to make these operative once more as the refuge from 'abstract activity' of which the bourgeois might avail himself. Private law had eradicated the 'potencies of genuine ethical identity', among them the joy of unlimited free activity of the whole for great objects, before ever they could be established as the actuality of a people given effect as a state.

This is what Hegel meant when he declared that 'German constitutional law is private law' or 'German constitutional law is really private law and political rights a legal possession, a property' ²⁰⁶, rather than the basis of a sense of belonging to a people, to be defended at all costs. These statements contain the technical meaning unfortunately expressed quite rhetorically in the definitive text by the misleading assertion that 'Germany is no longer a state' ²⁰⁷. By this Hegel implied, what he had no intention of maintaining, that the German Empire had once been a State, in the proper sense of an abiding, fixed centre of public authority and source of public law. He meant no more than that the Germans had once been such a people that the public domain was prevalent and all-pervasive and that private

interest was insignificant by comparison with the joy of participation in the life - imagined by its members to be immortal, but not intelligently so maintained - of the people. The lack of statehood did not occur as an event or as a process. What happened was that its lack became significant as its erstwhile equivalent and alternative, customary community, disintegrated under the growing weight of private interest. That is why Hegel phrased the above-quoted, more technically designed statements in such a way as not to imply procession from a public form of constitutional law to a private. Apart from the phrase already criticised ²⁰⁸, 'While these laws have lost their former life ...',²⁰⁹, there is only one other instance, outweighed by every other statement concerning the relationship of constitutional to private law, of a lapse from the strict view that Germany never was a state, never, except potentially, constituted a source of public law. That instance occurs only in the so-called 'Plan' ²¹⁰ of May, June or July 1801, where Hegel noted 'Constitutional law has become private law (Staatsrecht ist in Privatrecht uebergegangen)',²¹¹.

Hegel's recognition of the fact that 'Germany could never be regarded as a state' ²¹² marks an all-important difference between him and J. S. Puetter, of whom it may be remarked that he was a close friend of Justus Moeser ²¹³: both believed that German 'customary law' (Gewohnheitsrecht), so-called, was a tenable condition of freedom. Hegel denied this article of their reverent faith in the capacity of manners to maintain their integrity in actuality. It accords with Hegel's view, as expressed in the Philosophy of Right ²¹⁴, that custom can become law without ceasing to be custom, to speak of law that is customary. But it is not admissible to speak of custom as if, as such, it were law. Because of his growing inclination to contradict the likes of Puetter ²¹⁵, it may seem that Hegel came increasingly to

countenance the possibility of discounting the value to the end of community of the content of all custom. But this is not the case. Hegel simply assigned such custom as was not to be embodied in law, on account of the uselessness of much of it to assure ethical identity, and in some cases of its derogation from such identity, to the sphere to which, in the modern world, it must belong, the sphere of opinion. As we shall see, he held such customary matters as language to be useless or of no moment, and such as religion to be harmful to ethical identity ²¹⁶. But it is equally important that useful customs, such as representative practices, were intended by Hegel to be constitutionally enacted. Only a state, only statutory public law could enact the passive material of Sitten into Sittlichkeit. Though it was probably from Puetter that Hegel derived his account of how there arose upon the basis of chance and eminent power and character, up to the beginning of the 16th century when stabilization set in, an embarrassment of incremental aggregates of territorial rights ²¹⁷, which 'became fixed as time passed' ²¹⁸ constituting 'not a system but a collection of rights without principle' ²¹⁹, he had, unlike Puetter, no hesitation in holding this confusion to be tantamount to the non-existence of the state. Convinced that superior power, a necessary but without public authority and legal constitution insufficient condition for the existence of statehood, had been lacking since 1495, while yet it was needed to reconcile disputes of private right between territorial estates, Hegel denied that since the beginning of the 16th century there had even been anything like a state ²²⁰.

Puetter, on the other hand, as usual with Hegel by implication rather than by identification, was one of the kind of constitutional lawyer who, though he 'cannot any longer call Germany a state because he would have to grant many inferences

which follow from the concept of a state' ²²¹ was still not prepared to call Germany a 'non-state' ²²². This was a reflection of his confusion of custom with law and of nationhood with statehood. It was not, as far as Puetter was concerned, to the point that Germany had not the coercive or authoritative equipment whose organisation, Hegel insisted, must not be 'confused, divided and conjoined in the most irregular way, and into the most disparate proportions just as multiplex as the property of private individuals' ²²³ if Germany were to be a state. Rather than look for the secular equipment of the self-maintenance of public authority, this mystical positivist, who was naive enough to take the Imperial Diet to be already a modern Parliament representative not of individual territorial rulers but of the very 'nation' ²²⁴, took the fact that Germany had survived so far as evidence that the continuance of its putative statehood could ever be depended upon Providence. Just as the vitality of the olden times had been maintained by divine providence, so would the same 'continue to keep watch over our nation' ²²⁵. Puetter was prepared to hold that upon the foundation of 'customs or traditions, ... unwritten law that is observed in one way and not in another because it has always been done that way' ²²⁶, could continue to be based the 'binding power of common law' ²²⁷.

Not by any means did Hegel accept that despite the 'advance of culture and industry' ²²⁸, despite the cognate concentration of territorial supremacy, Providence would ensure that Germany could persist as something in between a state and non-state, what Puetter called a 'Staat aus Staaten', a state of states, a 'Kingdom divided into several republics of divers kinds which are united in the manner of a composite republic' ²²⁹ or, even more pretentiously, a 'body politic of several coexistent states, particular to be sure, but nevertheless still constituting

together one state' 230.

Puettter's optimism was regarded by Hegel as an absurd renunciation, in favour of other than human agency, of the need for a ratio status integer, that is, for a policy designed to mobilise human power, regulated by laws rooted to be sure in customary potencies, but directed against the bad habits into which they had degenerated. The need for such power could not be met by what Hegel sarcastically called 'a most special divine providence to maintain the whole' 231 ('in Ruecksicht aufs Ganze 232, der speziellsten goettlichen Providinz, um es notdurftig zu erhalten'). He felt nothing but contempt for Puettter's reverence for the way in which 'unwritten laws' had allegedly always been observed; nothing but hostility for this happy 'Praxis' 233 which supposedly served, where peace treaties, electoral capitulations, family settlements, judicial mandates, decrees of the Diet etc. 234 might not quite exhaustively and authoritatively define the 'political property' and independence of the estates, to make good this omission; nothing but impatience with the mystical gloss of venerability conferred by the connoisseur of the infinite details of the law upon a 'system of justice' devoted, not to the public interest, but to the punctilious preservation of rights not awarded by Providence and certainly not by the so-called edifice of the state, but acquired thanks to the accidents of bygone times; nothing but disrespect, not to be sure for the ingenuous attachment of the Empire itself to what dignity and succour it could still find in claiming to be a 'body politic' standing under a 'common imperial head' in an 'imperial union', but for the constitutional lawyers filled with 'wonder and amazement in the face of the sacredness of this German body politic' 235.

As to the last, Puettter's presentation of Germany as a 'body

politic', destined to be preserved by divine providence on account of its sacredness, was regarded by Hegel as a dishonest pretence that Germany was as good as a state, still as ever.

That dishonesty was outstandingly manifest in the conjury of his famous definition of the Staat aus Staaten: 'a body politic of several coexistent states, particular to be sure, but nevertheless still constituting together one state'. The word 'nevertheless' excused a multitude of sins of particularism and, by its alchemy, 'body politic' was made to stand for 'one state' the plain assertion of whose existence was, of course, out of the question. Just this kind of academic deceit, perhaps even this very definition, was what Hegel had in mind when he wrote that 'in the scientific and historical field we must fight shy of such meaningless expressions' and scathingly added: 'grant separate and irreconcilable state interests in the political field, but suppose that for other important reasons, a unity there must nonetheless be, both in civil and political life: to that end there is no better means than to find some general expression which satisfies both sides and which yet leaves both sides at home with their own will' 236.

No-one, of course, was any longer, Hegel was to write in 1802, as an abortive introduction to the chapter which he intended should follow the sections on old German freedom and the private character of German constitutional law, 'happy about calling Germany one state; yet they (the publicists) allow that it is an Empire, a body politic; but even these names are still too portentous for the slight relations in which the German estates stand to one another' 237. Hegel well knew that the constitutional lawyers of his day were up to nothing more than what contemporary and earlier 'publicists' intended, namely the justification of the status quo, when, like these, they used such

portentous terms as 'body politic' and 'composite republic'. There had, by means of such terms, been kept up 'for centuries a show of union in which in fact no member has yielded up one jot of its claims to independence' ²³⁸. Political and legal thinkers of the highest order had contributed to this fiction, this show, still maintained by the likes of the naive Puetter. The chief of these contributors was Samuel Pufendorf.

As official publicist or propagandist, whether of the Elector of the Palatinate or of the Elector of Brandenburg-Prussia, Pufendorf, it has been said, sought always 'to express the sentiments of the master' ²³⁹. Even apart from his work as an apologetic historiographer ²⁴⁰, his contributions to scientific jurisprudence, because of their import for the development of a body of rules to regulate the relations and intercourse of the Estates, were understandably coloured by the Electoral interest. It may have been the effect of this interest upon Pufendorf's explanation of relations between the Estates and the Empire in terms of the concept of territorial sovereignty (Landeshoheit) that Hegel had in mind when he wrote, in the Entstehungsschrift (ES), of enquiries into the 'origins and legal foundation' of territorial sovereignty, that they 'usually have the end, the result, of finding (in favour of) what interest has already decided upon' ²⁴¹.

Though in this piece, written early in 1799, not the slightest hint was given that Hegel may have been thinking of Pufendorf, stronger grounds for supposing that this is the case are to be found in SdR and its second version, SdpR. In the first, that is at the turn of 1798 into 1799, just before the writing of the ES, Hegel wrote the pregnant but undelivered phrase 'Every judgment of speculative philosophers on constitutional law ...' ²⁴²; in the second, in February or March 1801, at the once more

fragmentary end of his draft of the definitive section in which he criticised the indulgence of constitutional lawyers towards private law and its 'Praxis' ²⁴³, this phrase came closer to delivery, thus: 'From the concept and essence of the state every judgment ... ²⁴⁴ (... of speculative philosophers on constitutional law ...'). It would not, of course, be legitimate on the strength of a reconstruction of Hegel's meaning from the ES, SdR and SdpR alone, to identify Pufendorf as him whom Hegel had in mind as one of the speculative philosophers who were intent, in the interest of territorial princes, upon judging deductively the rightful foundation of Landeshoheit from its hypothetical origin in the decisions of a perfectly constituted and sovereign state. But, as we shall see, Pufendorf's judgments did proceed from the premiss that constitutional law has to be appraised in the light of the supposed advantage of purity of form, whether this be monarchy, aristocracy or democracy. Of this paradigmatic assumption Hegel was highly critical ²⁴⁵. But he also seemed to be concerned that such judgments might have the same 'end or result', though their basis were deductive, as accounts that were merely descriptive and uncritical of the implications of statehood imported by expressions such as 'body politic'. Unless we assume that Hegel was bent upon the criticism of the paradigmatic structure of jurisprudential concepts erected by Pufendorf and inherited, with a show of methodological independence ²⁴⁶, by Puetter, very little sense can be made of Hegel's view of the history of German constitutional thought since the 17th century ²⁴⁷.

We are therefore entitled to wonder whether Hegel meant that, in accordance with the Electoral interest, such deductive judgments deliberately subserved an anti-Imperial evaluation of territorial sovereignty, whereas the positivism of writers like

Puetter merely did so unintelligently, inasmuch as the former consisted of speculative hypotheses to justify the private character of constitutional law, whereas the latter accepted territorial sovereignty as a politically innocuous fact and felt no need at all to justify it. (On the contrary, Puetter rejoiced in the confusion of German constitutional law ²⁴⁸.)

The conjecture will presently be shown to be very likely true that, in the last three places cited from the VSN, Hegel had in mind, first the Electoral interest, and second philosophers like Pufendorf and perhaps Leibniz, whose bread and butter it was ²⁴⁹ to issue a speculative version of what was otherwise merely a naive genuflection towards 'iustitia', which Hegel sarcastically called the 'soul of the constitution' ²⁵⁰. In short it will be shown that Hegel was alert to the danger that scientific and historical work on the constitution should be dominated by philosophers or jurists who, wittingly or unwittingly, contributed to the exoneration of responsibility for the destruction of imperial sovereignty of those who pursued policies of possessive particularism.

Such suitors were much more dangerous to the whole than mere possessive individualists with whom, as we shall see ²⁵¹, Hegel believed the state could and should come to terms, despite the fact that it was their spirit, writ large as the principle of the 'new politics' of territorial estates such as Prussia, which had precipitated the destruction of the whole. In the ES, Hegel likened the pursuit by the Estates, qua Landschaefters, of their private rights, to the behaviour 'of a crowd which supports itself on a frozen river, of whose ice each struggles to rip up as much as possible, unaware that the more he enriches himself the more he hastens his and the others' downfall' ²⁵². He was convinced that the bourgeois principle of Fiat iustitia, if it were made,

by its adoption by territorial as well as individual and lesser corporate subjects of the Empire, the 'only moving principle' of German politics, to the exclusion of the principle of majesty, must ensure Germany's decline into the abyss of its dissolution ²⁵³. He wanted to make clear that the territorial sovereignty of the princes and the cities was quite simply incompatible with the maintenance of the whole, that despite the traditional constellation, or appearance of identity of the interests of territorial sovereigns with the interest of their peoples in political and religious freedom ²⁵⁴, this alignment had to be broken ²⁵⁵, and that despite the traditional constellation, or appearance of identity of the interests of territorial sovereigns with the interest of their peoples in political and religious freedom ²⁵⁴, this alignment had to be broken ²⁵⁵, and that the sophistical or naive presentation of Germany as a 'body politic' could neither render acceptable nor disguise the fact that it was not, and never had been, a state.

It could only become a state, as we have seen Hegel argued when he denied that the freedom of the peoples was compatible with the Libertaet of the princes and city councillors, once constitutional effect had been given to the new awareness among the German people, due above all to the lesson in the meaning of Libertaet taught by war with France, that their freedom depended upon recourse to its true source ²⁵⁶, the majestic principle inherent in Imperial sovereignty, whose structural graciousness was no longer compromised by hegemonic aspirations to impose cultural uniformity in matters of faith. This is the significance of Hegel's readiness, declared in the ES, to put his trust in two circumstances whose tendency was contrary to the 'principle of dissolution'. Those two circumstances, thanks to which Germany might become what it never had been, 'one state' ²⁵⁷, were

that religious persecution was a thing of the past and that territorial sovereignty had been exposed by war for what it was, the whited sepulchre of German statelessness. No doubt Hegel did not believe that the zealous warnings of patriots like himself could arrest the decline of Germany ²⁵⁸, but he did, we may be sure, believe that the views of those who attempted to legitimise Landeshoheit could accelerate it: hence his hostility to Pufendorf and Puetter.

There was between Pufendorf and Puetter this likeness, that both took it for granted that Germany was, in a significant sense, a state. For Puetter, it was such 'still' or 'nevertheless'; for Pufendorf it was, though not endowed with true sovereignty, at least a descendant, legitimate if not as well bred as its forebear, of a true state.

Puetter could believe in Germany's statehood because he attached no rigorous meaning to the word. To Puetter, for whose kind of constitutional lawyer, Hegel believed, civil and political unity were a necessary datum, that which simply must be (*stattfinden soll*) ²⁵⁹, rather than that which must be constituted, Germany seemed just as capable as ever of persisting as what Hegel thought was untenable in the face of the brute facts of social and territorial disintegration, namely as a customary entity.

Pufendorf on the other hand, from whom Puetter evidently learnt the equivocal terms for statehood, 'composite republic' or composite 'body politic', could believe that Germany was somewhat a state in spite of his formal concept of statehood. For while Pufendorf clung, good Bodinian that he was, to the view that true sovereignty can reside only in a simple form of public authority, whether this be monarchic, aristocratic, or democratic ²⁶⁰, he was prepared to admit that a state might either be thus regular

and simple or it might not ²⁶¹. In other words, what he called an irregular republic was nonetheless a state or, as he put it more sophisticatedly, a systema civitatum of sovereign states compounded in one 'body politic' which amounted to somewhat more than a mere federation ²⁶². Indeed, not merely was he prepared to accord the dignity of statehood to a systema civitatum of the kind typified for him, and later for Puetter ²⁶³, by the Swiss Confederation and the United Provinces, but he was quite happy to regard the condition of Germany as being even closer to statehood, in that it was located midway between the regular and simple form of monarchy and the compound form of a systema civitatum ²⁶⁴. Germany had an irregular constitution, according to Pufendorf, inasmuch as it was neither exactly a systema civitatum, since in his opinion there could be attributed to the Imperial Courts, the Diet and the Emperor some coercive power over the Estates rather than none ²⁶⁵, nor exactly a monarchical state since the Estates enjoyed the privilege of territorial sovereignty ²⁶⁶. It was in his explanation of how it had become irregular or hybrid that Pufendorf demonstrated his capacity for eristic deductivism, for the discovery of a speculative justification for what the Electoral interest in territorial sovereignty had already decided upon. It accorded with that interest that the emergence of territorial sovereignty should be given an appearance of regularity and rationality which, as a matter of historical fact, it certainly lacked. This service Pufendorf performed in his 'Severini de Monzambano' (1667) or, as it was known in English translation (1670) 'The Constitution of the German Empire' ²⁶⁷.

Since Pufendorf argued in this work that the imperium of the principle of maiestas 'no longer exists' ²⁶⁸, it might be supposed that there is a family resemblance between his views on the German Constitution and Hegel's. For Hegel opened his definitive

introduction, partly written around December 1802, with the famous rhetorical pronouncement that 'Germany is no longer a state' ²⁶⁹. Likewise did he close the section written in 1802 with the words: 'The state exists no longer' ²⁷⁰. But we have seen that, and why, he argued more carefully in his draft of 1801 that Germany could never be regarded as a state ²⁷¹ because there was still no state ²⁷², though there was still a feudal power ²⁷³, at the time when the possibility of its development as a state was precluded by the emergence of territorial sovereignty as the private law basis of constitutional law. Hegel's pronouncement, when its meaning is thus properly and strictly interpreted, imports, against him who had previously said something ostensibly similar, severe if ironic criticism for trying to make obscure how and why the emergence of territorial sovereignty had taken place and for propounding a speculative myth which served to condone it.

According to Pufendorf, the imperium which once attached to the principle of majesty did so in the only way in which, according to the presupposition which he inherited from Bodin, that maiestas or sovereignty is indivisible, it is possible to conceive of the existence of true sovereignty. Only a simple state, he had argued in 'De republica irregulari', whether the form of its constitution be monarchic, aristocratic or democratic, can be truly sovereign ²⁷⁴. The imperium which 'no longer existed' was that of the pure form of monarchy. Rather than abandon the Bodinian dogma, rather than recognize the uselessness for the explanation of German constitutional history of the neo-aristotelian taxonomic scheme, Pufendorf made an explicit virtue out of the necessity, since the paradigmatic categories of his political science were not to be permitted to suffer denial of their eternal validity, that history should be made 'auxiliary to political science' ²⁷⁵. Faced with the thorny question of how

the absolute sovereignty of a putatively pure monarchy could have come to be lost, Pufendorf resorted to the speculative hypothesis that it had been contractually ceded to the post-Carolingian stem-dukes, who later gained the dignity of Electors ²⁷⁶. Thus, in order to save the categories, did Pufendorf abandon the phenomena. By recourse to the idea of a contract among distinctly formed parties, within a pre-existent legal order, he falsified what was in fact a highly irregular process of evolution towards the principle of the territorial sovereignty which arrested the development of feudalism and accelerated the tendency towards 'patrimonial or personal rule based on a bundle of separate rights rooted either in local custom or in private law' ²⁷⁷.

This process, whereby the possibility of the emergence of a common German public law was ruled out, was confirmed in 1356, when there was not yet a state, by the Golden Bull of Charles IV which conceded the principle of primogenitary succession within the seven great principalities (excepting Bohemia) ²⁷⁸, which thereupon became Electoral territories. Thus, as we have seen Hegel argue, the feudal constitution or power (not 'state') was destroyed ²⁷⁹. It was not a 'contract' which performed this process even though the issue was a contractual relation between Electors and the Emperor - the device of Electoral Capitulation (Wahlkapitulation). The effect was not a decline from pure monarchy, for the feudal system was only prospectively law-governed and stately. Pufendorf's judgments, therefore, constituted a speculative elaboration upon history and tended, for the very reason that they took the original sovereignty of the feudal Emperor for granted, and so the stateliness of the feudal system, to confer upon the growth of the privilege of territorial sovereignty a legitimising derivation from public law which belied the fact that at that time there was nothing which the neo-

aristotelian categories could be said to describe. This irregular growth then acquired, through private Roman law, the appearance of rationality.

Hegel appears to have had Pufendorf's myth in mind when, in SdpR, he denied that the principles of German constitutional law were derivable from 'the unity of a constitutional concept like, perhaps, that of monarchy, aristocracy, democracy etc.' ²⁸⁰. This is the more apparent in the definitive parallel text of 1801, where he ignored aristocracy and democracy ²⁸¹. But there is unfortunately absent from that version Hegel's alternative explanation of the rise of territorial sovereignty, which quite emphatically denied the Electoral interest the legitimising excuse proffered by Pufendorf. Hegel's explanation withheld from the principle by which the 'whole' was destroyed the sanction of descent from a voluntary act of a public authority. According to Hegel, the principles of German constitutional law were mere 'pictures of realities' ²⁸². Such legalised realities were the result of the conquest by private persons of discrete spheres of possession. This possession was 'earlier than law, did not originate from laws, but was independently acquired and has become a legal right. According to its original legal basis, therefore, German constitutional law is really private law and political rights a legal possession, a property' ²⁸³. Unlike Pufendorf, who was well aware that the principle of territorial sovereignty arose in order to the private justification rather than public permission of territorial possession, in force as early as the 11th century, Hegel was not prepared to dignify the resultant irregularity of the German constitution by the pretence of legitimate descent. He had no intention of allowing history to be made a mere auxiliary to 'political science', nor political science to become the handmaiden of anti-imperial interests.

For all his pious complaints that Germany was a political 'monstrosity', complaints which Pufendorf toned down with the qualification in the edition of 1668 to the effect that its body politic was 'all but monstrous (tantum non monstro simile)',²⁸⁴, and which in any case did not appear at all in the posthumous and accredited edition of 1706²⁸⁵, Pufendorf, in that he engaged in the elaboration of a 'science' of something that did not exist, nor ever had, reinforced the pretence of his masters that they could 'eat their state' and have the public authority with which its theoretical existence as an historical source of authority endowed them. His work was merely a theoretical reflex of the Praxis whose interest it served that Germany should be a state in theory, a Gedankenstaat.

In his attempt to come to terms with the irregularity of the German constitution, an irregularity said to consist in its deviation from the constitutional form of absolutely sovereign monarchy, Pufendorf had attempted to salvage at least the vestigial appearance of sovereignty without conceding, what would have been anathema to his Bodinian conviction of the incoherence of the status mixtus, that this could be maintained by way of a distribution of maiestas between the Emperor and the Diet. The problem of distribution was transposed from the dimension of the 'whole' (to follow Hegel's usage) to a semi-international dimension in which the pretended essence of Imperial sovereignty could remain, if only formally, intact. Agreeing with the premiss of Bodin, that if the Imperial Diet have maiestas the Empire could not be at all monarchical, but not wishing to go so far²⁸⁶ as to endorse Bodin's conclusion, Pufendorf argued that the independence of the princes fortunately negated the sovereignty of the Diet while it did not quite destroy that of the Emperor²⁸⁷. In other words, the problem of the

Estates, which in reality was the more intractable the more it took the form of the struggle of territorial units for independence, was held to be less destructive of imperial sovereignty than it would be, according to Pufendorf's theory, if an attempt were made to resolve it by allowing expression to be given by means of imperial representative institutions to the urge for freedom and a share in the exercise of sovereignty. It would be better that the several provinces should inherit the substance of maiestas than that the people should be permitted to be involved in its recovery for the whole. That way could be preserved at least the shadow of pure monarchy.

The contentment of Pufendorf, and later of Puettter, with a situation in which the sovereignty of the German Empire led the shadowy existence of a 'body politic', their complacent readiness to accept that it could not (Pufendorf) or need not (Puettter) be otherwise is evidently the object of Hegel's scathing criticism, in the definitive version of his introductory chapter, at its beginning (1802/03) ²⁸⁸ as at its end (1801) ²⁸⁹. Hegel derided those who keep up with 'general expressions' ²⁹⁰ a 'show of union' ²⁹¹ in the slight relations between the German estates. Both Pufendorf and Puettter, as we have seen, contributed to this show by depending the present dignity of the Empire upon a mythical past statehood of one kind or another. Neither claimed that the supposed union was preserved by 'a bond which exists now' but both were prepared to allow that it could subsist on 'the memory (Erinnerung) of an old one' ²⁹². As far as Hegel was concerned, however, although fallen fruit 'is recognized as having belonged to its tree by the fact that it lies under the tree top ... neither its position below the tree nor the tree's shadow which falls on it can save it from rotting or from the power of the elements to which it now belongs' ²⁹³.

An extremely condensed historical survey of German jurisprudence occurs in the definitive version of 1802-03 just before the last-cited passage in which Hegel probably meant to tar Pufendorf and Puetter, as far as concerns the ideological import of their work, with the same brush. Though neither of these authors was named, it cannot but be assumed, for none other fit better the descriptions given, that it was they whom Hegel had in mind ²⁹⁴. In SdpR, the version of 1801, his draft historical survey was less well turned (though, as we shall see ²⁹⁵, it is in one respect more informative) in that it was not followed by any ideological equation of Pufendorf and Puetter, nor did it contain in itself any attempt to distinguish them from a methodological point of view. In his definitive survey, however, Hegel managed to convey that their methods were distinct but that they served the same interest. We have seen how Hegel, all but by name, attacked Puetter. We now see him assault Pufendorf, to whom, it cannot but be supposed, Hegel was alluding when he wrote of the 'older professors of constitutional law' that they 'had the idea of a science before their minds when they were handling German constitutional law and consequently set out to establish a concept of the German constitution' ²⁹⁶.

For Pufendorf did set out to show that the irregular body of the German political system, rotten state though it might be, was rightfully descended, by virtue, we may say, of a contract in favour of territorial sovereignty (Landeshoheitsvertrag) subsequent to the original sequence of social contract (Gesellschaftsvertrag) and compact of government (Herrschaftsvertrag) ²⁹⁷, from a state which once conformed to the supposed conditions of true sovereignty. Thus had he accomplished a notable feat, the elaboration of a science of something non-existent that was speculatively derived from an ens rationis, a unitary constitutional form.

As might well have been expected of such a scholastic quest, its great discovery, the derivative irregular body politic became the object of much fraternal disagreement ²⁹⁸ concerning the degree of dissipation which maiestas could endure before it ceased to be the attribute of a state. It may have been this controversy to which Hegel was referring when he noted that the older professors 'could not reach unanimity about this concept before the modern professors gave up trying to find it' ²⁹⁹. He may also have had in mind the more fundamental dispute between Pufendorf and Chemnitz concerning the question, stemming from an absolute presupposition common to them, namely the Bodinian dogma that true sovereignty is indivisible as between the aristotelian forms, whether the Empire was originally a pure aristocracy, as Chemnitz held it was, rather than a pure monarchy ³⁰⁰. Be that as it may, let us consider the upshot of the great taxonomic confusion into which Pufendorf had brought the understanding of the German Constitution in his attempt to resolve his perplexity in the face of the problem of the constitutional status of the imperial estates.

Bodinians like Pufendorf felt, despite their conviction that monarchy is not only the best but almost the only form of true statehood, not disposed to declare deviants to be absolutely bereft of it ³⁰¹. The consequence of their semantic confusion was that positivist thinkers of the 18th century, such as J. J. Moser and Puetter, abandoned the attempt to establish a deductive relationship between hypothetically pure forms of maiestas and the historically hybrid development of the Empire. They continued to use the nomenclature devised by Pufendorf, but for the purpose of mere description rather than with a view to systematic classification of the kind and extent of sovereignty pertaining to the Empire or to the rationalisation of the relation between imperial and territorial sovereignty.

As Hegel put the matter, they now 'no longer treat constitutional law as a science, but only as a description of what exists empirically and not conformably with a rational idea, and they believe that they can ascribe to the German state no more than the name of an empire or a body politic' ³⁰². Moser, believed that it would be 'fair to describe the Empire as consisting of a head and its members' ³⁰³ and, feeling no compunction to qualify his faith in the unity of this body politic, derided outright the scholasticism of previous thinkers in their discussion of maiestas ³⁰⁴. Moser, according to Gross, 'liked the constitution as it was' ³⁰⁵, if only it were observed. So did the optimistic Puetter who, having dismissed the aristotelian scheme from which Pufendorf had proceeded to his definition of Germany as an irregular body politic, felt free to use the name while ignoring its meaning ³⁰⁶.

We saw in the first chapter how, as a boy, Hegel had benefited from the healthy empiricism of the tradition of Gelartheit to which Moser belonged. But it is to be doubted that, as a man who had given much thought to the problems of Germany, he continued to be as impressed by the direction taken by some members of that tradition, a direction which was merely positivist and, insofar as it carelessly took over the 'general expressions' which Hegel regarded as quite vacuous ³⁰⁷, quite eclectic, as he had been impressed by their voluminous research into the customary sources of German constitutional law ³⁰⁸. Hegel was inclined to follow the much more rigorous conceptual path open, once scholasticism had been discredited, to those with a taste for the empiricism, and the interest in ethically and historically specific conditions of place and time, of the tradition of practical legal scholarship. We shall see in the next chapter to whom it was that Hegel was indebted for the further

opening of the path which Hermann Conring had broken by means of the idea of a ratio status integer, the idea of a positive policy of erecting the power of the Rechtsstaat upon the basis of a public law radically related to custom, or integrated with it as a square is to its root ³⁰⁹. Such a policy, as opposed to a disintegrative ratio status like that espoused, in favour of aristocracy, by Chemnitz, was the only viable alternative to the pretence of Pufendorf, in favour of the Electoral elite, that nothing could be done about the condition of Germany, and of Puettter and, to a lesser extent Moser, that nothing need be done but depend on Providence that, for the sake of the whole people, customary union would be preserved.

Hegel's attitude to these schools of thought was that of one who would call down a plague on all their houses. It is evident from SdpR that he could not abide the scholasticism of Pufendorf, for all its ostensibly critical invective; from the ES, that he disagreed with Pufendorf's diagnosis of the inevitability ³¹⁰, once territorial sovereignty had been conceded, of the decline of Germany into a condition of acephalous monstrosity. This was not solely because Hegel rejected the implicit exoneration of the princes, but because he would not accept Pufendorf's supposition that territorial sovereignty must be the 'only moving principle' in the German Empire' ³¹¹. Hegel simply did not share Pufendorf's view that, failing the purity of the sovereignty of the Emperor, there could not exist another principle, an other kind of sovereignty than that which was a one and indivisible miniature reproduction of an hypothetical original. Hegel did not regard sovereignty as distributable only between alternative centres for he had not been blinded by Bodin to the possibility that it could remain, or rather first become, concentrated at the same time as there came to be established the principle of its internal

distribution, its distribution between arcs of authoritative decision having the same centre. For Hegel, as not for Pufendorf, of whom it has been said that he regarded the relation of the representative institutions to the sovereign authority as that of a peripheral conditio rather than that of a radix ³¹², the means to the resolution of the great surd, the status of the Imperial Estates, which confronted those who sought to convert the 'plurality of mediaeval German liberties into one internally conditioned authority' ³¹³, were not to be found by way of Bodin's abstract concept of maiestas. A sovereign authority erected in accordance with the stipulation that it be pure and unmixed, upon which the conditions placed must be external rather than radical, would be quite foreign to the principle of distributed maiestas which, in Hegel's view, was implicit in the customs of the German people. It was to this principle that life had to be given if Germany, 'still at the crossroads between the fate of Italy and unification into one state' ³¹⁴, was to be 'raised up from its insignificance' ³¹⁵.

As for the political fideism or optimism of Puetter, who took Germany's representative institutions to be already a sound basis for its existence as a nation ³¹⁶, Hegel showed it nothing but contempt, since it took for granted a vitality in the principle of representation which had in fact yet to be mobilised. Only in a reformed Imperial Diet disembarassed of traditional territorial particularism could the customary principle of maiestas be made a living alternative to the abstract idea of sovereignty.

It is, therefore, not at all possible to agree with Maier, who fails to identify those thinkers to whom Hegel was referring in his introduction, beyond classifying their positions as, on the one hand, that of 'contemporary schematism', and on the other, that of 'empiricism', that Hegel can be said to have preferred the

latter to the former 'with the caveat that interest should be directed to definite concepts rather than positive claims' ³¹⁷. Hegel preferred neither those who, like Puetter, attempted only a 'description of what is empirically to hand (Beschreibung von dem, was empirische Weise ... vorhanden ist)' ³¹⁸, nor those who, like Pufendorf, erected a taxonomic apparatus to the end of explaining why Germany was not what, according to the eternal principles of his 'political science', it 'ought to be'. Their procedures prevented either from looking to what, of its own customary resources, Germany could be, for the one attended only to the 'now' (was vorhanden ist) and depended on Providence to maintain it as ever, while the other attended to the 'never', from whose conformity with a rational idea (einer vernuenftigen Idee) ³¹⁹ the present and future, since that idea had nothing to do with the past, could not but decline.

The New Method and the modernisation of German freedom

'To recognise reason as the rose in the cross of the present ... this is the rational insight which reconciles us to the actual, the reconciliation which philosophy affords to those in whom there has once arisen an inner voice bidding them to comprehend, not only to dwell in what is substantive while still retaining subjective freedom, but also to possess subjective freedom while standing not in anything particular and accidental, but in what exists absolutely' (Hegel, Preface to the Philosophy of Right)

1. The Factors of Necessity

For the discovery of what Germany could be, rather than for the complacent pretence that social and political unity there must be ('Vereinigung stattfinden soll')¹ or for the stipulation of unattainable and impertinent conditions, a new method was necessary. It appears from Hegel's definitive text that he wished to credit no-one but himself with the invention of such a method of treating German constitutional law. For, in his survey of his predecessors he alluded only to 'older professors' and contemporary positivists or empiricists. But it is clear from the second draft of the introduction that he knew of other thinkers to whom he should properly have attributed the unequivocal abandonment of Pufendorf's taxonomic enterprise, and of whom it could not be said that they shared the uncritical outlook of Puettter. In the definitive text only the difference of tenses betrays Hegel's misappropriation of the kudos: the modern professors 'gave up' (abgaben) the taxonomic quest, whereas

the positivists, who actually continued to use some of the categories devised by Pufendorf, except without their architectonic context, 'no longer treat' (behandeln) constitutional law as a science ². The positivists achieved nothing by their abandonment of the neo-aristotelian schematism. The genuinely modern professors, whose identity will shortly be revealed ³, and Hegel after them, put their freedom from its constraints to good use.

In SdpR, having posed the question whether there must be no other 'public' (struck out) ⁴ or political result of the war against France than the loss of some of Germany's fairest lands and of some millions of its children, the compensation of its dispossessed princes by the annihilation of its spiritual members ⁵ and the prolongation into peace time, in the form of a heavy burden of debt, of the misery of war ⁶; and having made his declaration (though he struck it out) of his heart's desire, nay determination, to 'nourish with a mental image its willing faith in the fulfillment of its hopes' ⁷, Hegel had proceeded to identify those who had genuinely broken the spell of Pufendorf's schematism. It was the 'professorial statisticians' (Katheders-Statistiker) ⁸ who had given up the hopeless task of adjusting the superannuated categories of natural law in order to rationalize the problem of territorial sovereignty. It was they who first realised the incompatibility of their 'official task of classifying the constitution and bringing it under the aristotelian classes of monarchy, aristocracy etc.' ⁹ with the scientific task of explaining the constitutional status, and its consequences, of the German Imperial Estates. Unlike Pufendorf, who dutifully performed his official task (Amtspflicht) in spite of his admitted misgivings ¹⁰, these 'statisticians' acknowledged that they could not thus 'come to terms' ¹¹ with territorial sovereignty.

Though, as usual, Hegel did not name those to whom he alluded,

it cannot but be that he was thinking, above all, of Gottfreid Achenwall and August Ludwig von Schloezer. Achenwall, Professor of Political Statistics at the University of Goettingen from 1748 to 1772 and Schloezer, its foremost professor of history, jointly conducted there a course on what, pursuing Hermann Conring's interest in notitia rerumpublicarum, they called 'political notabilities' (Staatsmerkwuerdigkeiten) ¹². Like Conring, they interested themselves in the intimate relationship between constitutional law and customary practices not only in religious, cultural and political but also in economic life. Indeed, in their guise of political economists, they were the first to seek to explain the constitutional relations of the Imperial Estates in economic terms. By that means was to be accomplished the supersession of the scholastic approach, which had evinced no appreciation of the mundane causes of territorial particularism.

The shift in emphasis from the morphological to the 'statistical' (sometimes regarded as proto-sociological ¹³) explanation of the German Empire had more than scientific significance. It made a difference to the question whether Germany had any prospect of political vitality. Only if appraised independently of the neo-classical paradigms of political perfection, and apart from impertinent and abstract criteria of sovereignty, could it be maintained that Germany might yet emerge from its parlous condition of decomposition. For in those terms, what the 'statisticians' regarded as its peculiar, and perhaps only, source of vitality (albeit potential rather than actual), could not but appear as a weakness. The appreciation of the virtues of a representative-cum-monarchical constitution, status mixtus ¹⁴, depended entirely on the invention of a new method. It was this method, and the values which informed it, that attracted Hegel.

Hence it was that Achenwall, in his 'Staatsklugheit', had

insisted that 'the idea of the state used throughout this work is not an abstract conception containing nothing more than general characteristics ... In short, I shall look at the state as our states really are' ¹⁵. From the consideration of states as they really are and in terms of their peculiar historical development, rather than from the impertinent and a-historical desideration, albeit in tandem with the speculative genealogy of their claims to legitimacy, of what, in abstract terms, they ought to be, was to be expected a more positive view of contemporary political reality. Just such a view, involving not only acknowledgement of reality 'as it is' ¹⁶ but also its acceptance 'as pretty much what it is in its own actual inherent strength' ¹⁷, was what Hegel intended the publication of the VSN to promote: 'The thoughts contained in this essay can have no other aim or effect ... than to promote the understanding of what is and therewith a calmer outlook and a moderate tolerance of it both in deed and word. For it is not what is that makes us vehement and passionate (ungestuem und leidend), but that it is not as it ought to be; but if we recognize that it is as it must be, i.e. that it is not due to arbitrariness and chance, then we recognize also that it ought to be so' ¹⁸. This might appear to be tantamount to a 'positivist' manifesto of contentment with the 'now'. We shall see that it is nothing of the kind.

Just like the alliance of political statisticians and pragmatic historians, who, as we saw in the first chapter, made it their chief object to discover the spirit, system or inner relationship of events ¹⁹, Hegel insisted that it was the business of the political commentator 'to recognize necessity and to think it' ²⁰ by interpreting it 'as a system of events ruled by a single spirit' ²¹. By that means it could be impressed upon the German people that, as Hegel had first argued in 1798/99, they 'had to

be completely subjected to political degradation' ²² in the service of a 'higher end' ²³, namely the raising up of Germany from its 'insignificance' ²⁴. The 'now', then, was to be located as a punctuation, qualified as such by the modal verb 'must' ²⁵, of an historical dimension of meaningful spiritual development, ethical inasmuch as the end to be attained was the existence of the Germans as a people, whose customary community is enacted in the form of statehood.

But it is to be noted that while Hegel qualified 'what is' as necessary, and also the events conducive to it, he did not imply that the fuller development of the spirit of peoplehood or statehood must (in the sense of cannot but) take place whatever the disposition of the Germans. He had more hope than Pufendorf, who saw no more than the decline of the present from what ought to be and ignored the 'actual inherent strength' vouchsafed to the Germans by their ethos and the political practices bound up with it. But he did not believe with Puettter that mere historical connection with their aboriginal forebears, the 'Urvolk' ²⁶, would afford the Germans certain life as a people. 'Necessity' did not mean for Hegel an ineluctable force with independent ontological status. It meant, rather, the limitation, imposed by the irreversibility of events, upon political possibility ²⁷. This was its objective bearing. But the term had also a subjective bearing conveyed by the qualification to what 'is as it must be', that, further, it 'ought to be' so. Interpreted in accordance with this qualification, limitation of possibility appears, so long as insight into its necessity sub specie praeteritatis is maintained, as opportunity sub specie futuritatis. For the adept in the ways of necessity can 'derive advantage' from his insight ²⁸.

Hegel's introductory manifesto, then, is not to be construed

as a call for political quietism or passivity. On the contrary, he regarded the recognition of necessity as the cognitive counterpart of the practical outlook of 'anyone who does not surrender to what happens' ²⁹, and so as the only means of escape from the helplessness of those who, however vehement they may be in their denunciation of them, continue to 'suffer under events' ³⁰.

When the people itself should become by this means an agent with the advantage over events, rather than a patient, its ethos is active for the first time. Its spirit exists no longer merely as objective necessity or 'fate', that is as custom whose lack of articulation disables it from preventing its perversion, but as necessity made subjectively meaningful, to every member of the people, as the ethical 'activity' in which, for the sake of immortal ethical 'life', each participates as if it were his own, without presuming to make his own affairs the measure of the service which it does him.

That Hegel probably had such an end in mind, that he hoped the 'people' could become as those very few who 'so act in the midst of great affairs that they could themselves direct them' ³¹, may be inferred from the affinity with that part of the introduction written de novo in 1802-03 of the cognate arguments of the only two strictly philosophical essays which he wrote before 1803 and in the midst of his composition of the VSN. For in the NRS, completed immediately before his revision of this introduction, he deployed an argument which contains the view of the VSN that the vice of the Germans consisted in the fact that their laws (meaning, in strictness, the civic enlightenment with which the Praxis of their civil culture ought to be in harmony) and lives are dissonant ³², but which goes further in the development of the view that the consequent disintegration of the Germans is remediable by the therapeutic interpretation of the fatal

limitations of a people as implicative of its vital moment of opportunity. That the Germans were not at the peak of national happiness was a circumstance which presented them with an opportunity for the pursuit of virtue ³³.

In the NRS, the German nation is said to be disintegrated in that ethical identity no longer pervades its laws ³⁴. Conversely, any period in which ethos and laws are one, when the relationship between the life of the individual and that of the people is such that the former is 'one pulse beat of the whole system and is itself the whole system' ³⁵, Hegel defined as one in which the ethos of the people is lent by the form of law 'the appearance of something inherently necessary' ³⁶. The self-maintenance of the whole, the persistence of 'living unity binding the members together' ³⁷, depends on the articulation of the vital or lively elements with which, no less than with its fatal or deadly elements, is instinct the objective necessity of the people, i.e. its past. It depends on the articulation of necessity so that the individual can, while occupied with his own projects, identify with it prospectively as well as acknowledge it retrospectively. His public environment, if it is to remain such in the face of stresses which do not impinge on natural environments, must not only be a necessity, as water is to fish and air is to birds ³⁸, but appear to consciousness as such, so that the individual may be ethically rather than merely naturally adapted to the limitations and opportunities of his necessity. Thus to recognize necessity is to raise it to the higher power of virtue.

Hegel's overall meaning, in the complementary terms of the NRS and the VSN, may be expressed as follows: in order to achieve ethical agency or identity a people must, since any action must proceed from what is, first have confidence that there is inherent

in what it has been some capacity for action. If its past disclose manifest incapacity, let it be shown that this stems from a negative aspect of its character or spirit in which is latent a positive aspect ³⁹. By his analogy with the animal world, prescinding from the fact that the flight of a bird, for instance, exhibits an immediate experience of the reciprocation of the negative and the positive, flight being possible because of the resistance to exertion offered by the atmosphere, whereas in the action of a people the experience of reciprocation must be historically disjoined and consciously apprehended in terms of a causal rather than reciprocal relation, Hegel made clear that he meant by necessity that which contains opponent principles whose interaction, not at once but over time, nor immediately but on reflection, does not 'hinder life' ⁴⁰, but gives it shape or direction.

In concrete terms, the opponent principles that Hegel had in mind were the principles of 'bourgeois' or civil heterogeneity and 'non-bourgeois' or civic togetherness, the principles respectively of territorial sovereignty and imperial majesty. From the exhaustion of the one, if only Germany's degradation were not regarded as merely fortuitously related to the 'urge for isolation', since in that case restoration would not appear to depend on repression of particularism, could proceed the regeneration of the other. The 'inner causes' of degradation had to be so starkly apprehended that no pretence could any longer be sustained that their public effect might coexist with the cause of ethical integration. Their results had to be impressed without mitigation upon the conscience of the Germans. Recognition that the past could not, given the ascendancy of the bourgeois principle, have been otherwise and that, if that principle persist, its consequences were irreversible, would be the propaedeutic to

the determination of the German people to enact the positive aspect of their spirit.

A people can only attain ethical life if it 'confronts the negative as objective and as fate and by consciously conceding to the negative a power and a realm, at the sacrifice of a part of itself, it maintains its own life purified of the negative' ⁴¹ or 'cleansed of the past' ⁴². To recognise that what has been and is are as they must be is to be strengthened in resolve to shape what is to come. The most significant sense of such resolve is that of its embodiment in laws and organization adapted to the maintenance of ethical life against the derogatory stresses of the particularism by which it is negated. The business of law is to confer the appearance of necessity upon the positive, the customary roots of ethical activity, so that the negative, which Hegel equated with that in German law which permitted privilege to prevail against public law ⁴³, may be held in check ⁴⁴.

By its identification with the idea of law, the idea of necessity assumes, then, the significance of a job of maintenance to be done - at least virtually or simulatively - by a people, rather than merely a course of disrepair suffered by an unethical crowd which ascribes necessity to the dissimulation or pretence of lawful right ⁴⁵. Only from obedience to necessity in its aspect as an ethical imperative was to be expected the satisfaction of the need which, in the DS, Hegel announced as the cause in which his philosophy was enlisted: 'to re-establish man from within himself, against the confusion of the time and to restore the totality which the time has sundered' ⁴⁶. To restore the togetherness of the German people and to save their hearts (Gemüether) from seclusion ⁴⁷ from truly universal public relations and affections, from the calculative idiocy ⁴⁸ of the

systems of 'justice' ⁴⁹ or 'absolute possession' ⁵⁰: these were the concerns which Hegel had in common, as a philosopher, with the political scientists who had first posed the question upon what basis but the resources of their past, refashioned in order to resist continued dissipation, could Germany and the Germans come to resemble again the 'wholes' that they had used to be.

None of these political scientists had devised, in the course of their methodological self-liberation from desiderate conceptions of what ought to be, a concept of necessity designed, like Hegel's, to express the coexistence, in the individuality of any historical entity, of factors of limitation and opportunity, of the negative and positive, the consciousness of whose contradiction ⁵¹ generates the advance of individuality through metamorphoses ⁵² and the progressive liberation of consciousness from its limitations ⁵³. Yet it was surely by their work, pervaded by the belief that native political characteristics, seen by Bodin and Pufendorf as barren of constitutional viability, were the only and so the best basis for national civilisation, modernisation or development (Bildung), that Hegel was assured that it was reasonable to consider the principle of representative-cum-monarchical government, the positive aspect of German political culture, as a vital 'moving principle' ⁵⁴ alternative to its negative aspect, the Landeshoheit by which that cultural or customary inheritance had been dissipated.

2. The idea of a 'compound society'

This is most likely in view of that which is of greatest interest in the matter of Hegel's knowledge of Achenwall and Schloezer. The former, in particular, combined with the objections of his mentor, Hermann Conring, to the treatment of states according to the 'permanent and unchangeable principles' ⁵⁵ of

neo-aristotelian method, a positive evaluation of Germany's capacity, given the mobilisation of the principle of representation latent in the familial political culture of the German forests, for genuine statehood as opposed to the merely second-best political limbo to which Pufendorf supposed it to be condemned.

The statisticians recognized, without any equivocation, that Germany was presently not a state at all. Both Achenwall and Schloezer attributed this fact to the public effect of private interest. Germany was rather and consequently what Schloezer called, in a sense very close to Hegel's own use of the term, a 'civil society' or what Achenwall termed a 'societa aequalis'⁵⁶. The epithet aequalis was applied to civil society to signify, not actual social equality, but equality of rights. In such a society, actual social inequality is not mitigated by any idea of community. In it, according to Achenwall, there is no internal unity beyond the aggregation of its members on the basis of private law⁵⁷. To this kind of society, whose members are individuals associated by mere contractual relations for their more or less successful pursuit of private interests, Achenwall opposed a kind which he dubbed a 'compound society' (zusammengesetzte Gesellschaft) or societa inaequalis⁵⁸. The epithet inaequalis was applied to such a society to signify effective political depression of the power of more successful civilians to gain political advantage from their eminent social position, in other words to disintegrate the community by exploiting its universal authority in the service of particular ends. The members of such a society, of which the family was the model, were held to enjoy a mystical relationship stemming from action in conjunction for common rather than several ends. Thanks to the factor of their representation by an imperium to which all are equally inferior, there belongs to the compound society alone

the full and entire sovereignty which can contain the independence of the members of the societa aequalis, the order of which can therefore persist without detriment to the interests of all ⁵⁹.

It is remarkable how close is Hegel's 'mental image', to which he adverted in SdR just before his mention of the statisticians, to Achenwall's vision of the possibility that although, in accordance with Schloezer's general hypothesis of an historical succession of three basic types of social organization, the familial (hauslich) the civil (buergerlich) and the stately (staatsgesellschaftlich) ⁶⁰, Germany could not revert to the first condition, it might yet become once more, as a state, like the kind of compound society which, as a family or kin-group, it had been before the rise of civil society.

For, if we compose Hegel's 'image' from its various appearances throughout the VSN and contemporary texts, it is evident first, that he too looked to the principle of a representative imperium for the legal validation of the relations of togetherness disrupted by the bourgeois spirit ⁶¹; second that, as we saw at the end of the third chapter and the beginning of the fourth, he held that only from the cooperative action of representative government could emerge a more than superficial sense of identification, membership and interest the depth and strength of which permits, as we shall shortly see more fully, a degree of independence in the politically 'inessential' sphere of civil society or societa aequalis ⁶²; and third, as we are now in a position to see with reference to the NRS, that he shared with Achenwall the idea that there subsists in legal compound or togetherness a mystical sense of membership of a whole to which the individual devotes himself, as to the locus of his interest in cooperative action, rather than confine himself to the pursuit only of private interest.

In the NRS, having criticised at length the 'empirical' and 'formal' ways of treating natural law for their tendency, arbitrarily in the case of the former ⁶³ and surreptitiously in the case of the latter ⁶⁴, to confer the status of absolute validity ⁶⁵ upon the merely hypothetical or circumstantial disposition of the moral individual ⁶⁶, Hegel proceeded to argue that principles, laws, ends, duties and rights are determinable only with reference to the specific historical context in which they are operative. This context Hegel called 'absolute ethical totality', which he defined as 'nothing other than a people' ⁶⁷.

It is at this point in the argument of the NRS, and this is all the more striking because much the same view recurs in the third paragraph of the definitive version of the VSN, that is just after what would have been, if he had been faithful to his second draft, the right place to refer to the statisticians, that Hegel took his stand against the Kantian doctrine of 'perpetual peace' ⁶⁸. This is striking because he did so from a standpoint already occupied by Achenwall. Just as Achenwall had argued that a compound society best accomplishes the feat of joining its members in mystical communion when it is acting externally, in confrontation with another society, and that only then is it an 'unum morale' ⁶⁹, so Hegel insisted in the NRS that 'ethical totalities, such as peoples, take form and constitute themselves as individuals; and thus, peoples, as individuals, take their position against individual peoples ... In war there is the free possibility that not only certain individual things but the whole of them, as life, will be annihilated and destroyed for the Absolute itself and for the people; and therefore war preserves the ethical health of peoples in their indifference to specific institutions, preserves it from habituation to such institutions and their hardening ... Corruption would result for

peoples under continual or indeed 'perpetual' peace ... The shape of ethical totality and its individuality is fixed as an individuality facing outwards and the movement of this individuality is fixed as courage ...' 70.

It will be remembered from the treatment of the 1801 cycles of composition of the VSN that it was Hegel's view that representative institutions come into their own especially in the making of decisions upon war and peace 71 and that the wars with revolutionary France had occasioned in public opinion an aversion from the 'bourgeois principle' and a reversion, out of the objective necessity with which the Germans were confronted in war, to the principle of majesty as a subjective necessity, that is to the source of genuine freedom 'as a need' 72. A people is preserved in a healthy state of activity and from a corrupt state of habituation to its institutions by the negation, posed by the danger of death, of its individual members' inclination to look only to their own present interests. It is this inclination which, if given free play, negates the vitality of the public and so undermines that which alone can ensure the satisfaction of such interests. War, then, is a case of the 'negation of negation' 73, or public opposition to the opposition by the individual, against the ethical totality, of his merely present world - the 'manifold reality' 74 of physical needs and pleasures, work and the amassing of wealth for these needs.

The 'so-called political economy' 75 is nothing of the kind for it cannot preserve its own order. The system of the political economy must be prevented from becoming a 'self-constituting and independent power' 76, must be impressed with an 'awareness of its inner nullity' 77 and impeded in its tendency to promote social heterogeneity 78 to the detriment of 'positive ethical life' 79. This means that the legal relations peculiar to the economic

system, once it accomplishes, in the passage from mere possession to property ⁸⁰, a unity of external relations of formal equality or of aggregation (Sammlung) ⁸¹, must not be allowed to be a criterion for the determination of what is just. What Hegel called 'true total justice' ⁸², ethical justice rather than the justice of private law, cannot, as we have seen with reference to the DS, be done if for its sake all trust, joy and love, the potencies of genuineness ethical identity, are eradicated ⁸³. It is the business of 'immediate ethical perception' ⁸⁴, which cannot but be identified with what Hegel was later to regard as the imperative of duty to her kin obeyed by Antigone ⁸⁵, to realize 'true total justice and ethical life' ⁸⁶.

Hegel did not, to be sure, call in the NRS upon the shades of such exponents of custom-built public law as Conring and Achenwall. For the consumption of his philosophical public, he cited the authority of Plato in support of his argument that the administration of ethical justice is a practical art ⁸⁷, rather than what Conring had deprecated as a 'science with permanent and unchangeable principles' ⁸⁸. But this does not matter, since that was exactly the attitude which he had come across in his encounter with the tradition in German jurisprudence extending from Conring to Achenwall.

What does matter is that he was at one with Achenwall's intention to show that only in a societa inaequalis, meaning not an unequal society but a political system negative of the merely fortuitous power of actually unequal members of modern civil society, could the irreversible heterogeneity and individualism of societa aequalis, meaning not an actually egalitarian society but an aggregate of personae only formally equal, be made consistent with the political togetherness or composition of its members. Only in a societa inaequalis could possessive individualism be

contained in its proper sphere and prevented from passing over into possessive particularism. The political structure of the state, as set out in the NRS, is that of a societa inaequalis and its object is the creation of a compound society compatible with civil society but not subservient to its order.

Hegel did insist that 'absolute ethical life' must negate the system of economic reality ⁸⁹. But this meant only that the state must prevent the occlusion of the public interest by private interests. If, he had argued in that part of the definitive introduction of the VSN written in 1801, political offices and rights are shared out in accordance not with the needs of the whole, but in accordance with the power of private persons, if, that is, 'the state loses all authority, while yet the individual's ownership rests on the power of the state, the ownership of those who have no support but the state's power - which is straightway null - must necessarily be very shaky' ⁹⁰. In other words, the seclusion of political authority from the pressure of private interest is the condition, the degrees of power of private persons being, in reality and because of mere chance ⁹¹, very different, of the security of the private interests of all. This was what Hegel meant, in the NRS, when he maintained that the 'cancellation' by absolute ethical life of the independence of the real economic system amounts at the same time to its 'endurance': 'the cancelling posits something that it cancels, the real' ⁹². Unless the real inequality of fortune within the economic system be prevented from intruding upon political life, even the formal equality of rights in civil society is at risk.

As has been argued throughout this work, the great strength of Hegel's political theory is that it takes into account the need, if the denizens of the modern economy are to be persuaded to be good citizens, that the community, for the sake of which

they must sacrifice the relentless pursuit of their private interest, must assure their present interests a substantial degree of security and independence. This is not to be done by the indulgence of the state itself in abstract economic activity. It is not enough 'to set up the propositions that everyone has a right to live, that in a people the commonweal has to see to it that every citizen shall have a sufficiency and that there be perfect security of ease and gain' ⁹³. On the contrary such principles would allow the economic system 'full sway to entrench itself absolutely' ⁹⁴. Rather the negative particularism of the economic system, whether its dominant members are territorial Estates or social classes, must be 'kept to one side' ⁹⁵. Only then can 'ethical organization remain pure in the real world' ⁹⁶.

To this end, society must be divided into three classes: the first is 'wholly devoted to the public interest' ⁹⁷ and its work must involve it in exposure to death; the second, because it is engrossed in economic pursuits, is not called upon to be thus apathetic ⁹⁸; the third, because its economic function does not engender in it the individualism of the second class, is elementally at one with its customary and natural environment and, like the primitive 'whole man' ⁹⁹, will risk everything for it. Its force lends itself, therefore, to the service of the political function of the first class ¹⁰⁰. While the first and third classes contribute to the individuality of the whole, the second class, which is both timid and intemperate ¹⁰¹, must be given a realm of its own 'where it can make itself secure and develop its whole activity in its own muddle' so that it will feel its 'political nullity' to be compensated by the 'fruits of the system' ¹⁰².

The civilian is allowed his 'justice'. But it is to be constrained by the ethical totality to operate only within what Hegel termed the sphere of inorganic nature, control over which

the people foregoes. Each individual is capable of taking up the relation of a bourgeois to the community ¹⁰³. So long as he wants to enjoy exception from the apathetic life he must respect the conditions on which he does so: 'this relation is only this relation. If you are in this relation, then be in it with reference thereto' ¹⁰⁴. But while the bourgeois may not solicit the State to serve his interests, he can, in virtue of the fact that he was not born a bourgeois but a child, in no way in his turn avoid being impressed by the majesty of the State. Though he cannot touch the State, he can look upon ¹⁰⁵ and be touched by it. It can arouse in him alter-religious feelings of fear, trust and obedience ¹⁰⁶, for as a child he was 'suckled at the breast of universal ethical life' ¹⁰⁷. The people is originally and ultimately his family. Thanks to his education in its care it is vain for him to 'strive after a private, positive ethical life' ¹⁰⁸. The individual's consciousness is pervaded by the ethos of his country. The height of this organic embodiment of the ethical in the individual is attained when custom is perfectly expressed in a system of legislation ¹⁰⁹. Such a system must be not merely universal on its own account but be made visible to the nation in the 'form of particularity' ¹¹⁰. Having such a form it 'must be regarded and worshipped as the nation's God; and this view must in turn have its own vivacity and joyful movement in a cult' ¹¹¹.

3. A cult of representation

Wanting definition in the NRS, the nature of this cult, devoted to the sensible manifestation of the intelligible, must be inferred from other writings. It may be ventured, to begin with the NRS, that by a cult Hegel meant a celebration within the nation of its outward facing individuality, an inward

expression (through bodies which come into their own, and are preserved from habituation or from being regarded as instruments of private interest, in the making of decisions upon war and peace) of the mystical sense of membership vouchsafed to the whole by the outward action of the first class. Rather less hazardously, it may be supposed that, as the 'form of universality' inheres 'in the laws' ¹¹², the 'form of particularity' inheres in custom, and that their perfect union is the object of the cult. Just so, as we saw in the first and third chapters, was it the purpose of the genius and a mythology of reason to promote the convergence of intelligent subjectivity and the merely practical subjectivity of the customary life of diurnal effort and industry.

But the semantic problem remains concerning what is this 'God' or 'shape' to which the enlightened and the unenlightened must devote themselves. What is it that is both an intelligible and sensible instantiation of community, that is both absent and present? What constitutes a union of legal universality and customary particularity? If our text were the Philosophy of Right, it might be declared without hesitation that shape or individuality of this kind is the peculiar characteristic of the representative body whose function is that of a 'middle term preventing both the extreme isolation of the power of the crown, which otherwise might seem a mere arbitrary tyranny, and also the isolation of the particular interests of persons, associations and corporations' ¹¹³. Eighteen years after writing the NRS, Hegel maintained that only through the Estates is there 'a genuine link between the particular which is effective in the state and the universal' ¹¹⁴ and that mediation between the customary configurations of civil society and the legal structures of the state is most vividly impressed upon the public by the Estates' performance of an educative function ¹¹⁵ which inhibits

the pretentiousness of the bourgeois, just as in the NRS he had argued that education ¹¹⁶, and so, by inference, perhaps representation, serves to cancel the negative. But we cannot adduce these imperfect parallels as evidence that in the NRS Hegel was thinking of representation as the cult-object, for the treatment of representation in the Philosophy of Right does not even remotely suggest that representation is a cultic practice. Yet we can trace a line of genealogy between the section of the Philosophy of Right dealing with representation, through the VSN and DS, to the passages of the NRS in question, in such a way as, at least, to give the palm to the hypotheses that Hegel was proposing a cult of representation over hypotheses such as that he had in mind a cult of religious or even racial identity.

In the Philosophy of Right, Hegel assigned to representation the function of a 'middle term preventing both the extreme isolation of the power of the crown, which otherwise might seem a mere arbitrary tyranny, and also the isolation of the particular interests of persons, associations and corporations' ¹¹⁷. We have already encountered the argument of the VSN that representation alone affords the guarantee that government will 'proceed in accordance with law' ¹¹⁸, that 'barbarity' consists in the fact that law does not stand between the personality of monarch and individuals ¹¹⁹, and that 'lack of confidence' in representation and law begets a 'lack of wisdom' which dithers between the sentiments of trust and fear of the supreme authority of the state ¹²⁰. There occurs in the NRS the same equation of 'barbarism' and its sign, 'lack of skill in formulating the true ethical principles (i.e. customs serviceable in the pursuit of ethical identity) as laws' ¹²¹, with want of faith, that is, of a cult ¹²². Hence, by means of a textual algebra, it can be established that to have a cult is to be civilized, that is to practise the faith of law

and representation in such a way as to do away with the disaffection from authority which leads to the extremism and barbarity of particularism.

Thus, through the cult of that which is both rooted in custom and the foundation of law, namely the practice of representation, is to be established an inward as well as outward-facing individuality with which every member of the people can vivaciously and joyfully identify. Only thus is barbarity, or the condition of a multitude that is a 'people without at the same time being a state'¹²³ to be avoided. Otherwise a people, said in the DS to be, so long as its political order is 'organic' rather than mechanical, the most perfect organization into which Reason can shape itself¹²⁴, is reduced from a state of legal composition or togetherness to that of a multitude of individuals, merely externally or atomistically related¹²⁵, against the negativity or particularism of whom custom cannot of itself hold out. Allow to be proven this further equation of a multitudinous or atomistic society with barbarity, and so with a society lacking the organic shape sustained by a cult of some kind(X). Such an equation is significant in that, if in 1802 there was in Hegel's mind even the germ of the argument of the Philosophy of Right, namely that representation serves to prevent the reproduction in the state of the mechanical atomism of civil society, then it is justifiable to import to the term cult, in place of the indeterminate (X), the value 'of representation'. But even if this algebraic proof be accepted, it is essential to establish, upon a less conjectural basis than that of the overlap in terminology and meaning of passage in the Philosophy of Right, the NRS the VSN and the DS, that Hegel did indeed mean by a cult (X) a cult of representation. A more secure basis is to be found in the VSN alone.

In the NRS Hegel wrote so vaguely of a cult as to permit the view that he might have meant something literally not different from a system of religious devotion, so that the practice in virtue of which alone a people is credited with being a state rather than a multitude might be taken to be nothing other than the practice of a religion, presumably one religion since in the NRS he speaks of 'the God of the community' ¹²⁶. But, besides the fact that, as we have seen, this would be incompatible with his own critique of positivity, in the most politically specific sense of the word ¹²⁷, the advocacy of such a cult would fly in the face of the facts of religious life as Hegel had already described them in the VSN. For in the section on religion, written in June - July 1801, in a passage which Hegel was to develop fully only in the section on the essence of the state ¹²⁸, he maintained, in effect, that in post-Reformation Europe at any rate, religion was no longer fit to perform the function of a cult, namely, to bind its devotees in the togetherness mystically vouchsafed to members of the same communion, to afford them a sense of participation in or identification with the deeds of an individuality not immediately their own. It was through religion that men had once been able to regard one another as partners within a whole ¹²⁹. But with the confessional schism this 'most inward' of links between men was ruptured ¹³⁰ and in Germany, where there was no state to maintain a deep sense of partnership, the superficial partnership of economic activity became the dominant mode of relationship.

It is at this point in his argument that it becomes clear that Hegel's intention was to aver that in representation is to be found the object of a cult in devotion to which men might find again the togetherness and sense of ethical totality which the cult of the divine used to maintain. For the very disruption

of the religious bond upon which political wholeness used to depend actually gave rise to the practice of representation and, we may say, to the object of the cult of representation, the nation. Here emerges most clearly and simply an answer to the question, begged in the NRS, What is the 'nation's God'? The answer is evidently that it is the very nation itself, given the shape of individuality by representation.

What Hegel was arguing in the section of the VSN presently under consideration is, in effect, that religion had, by its division, lost the cultic or mythic force, which it had possessed in the German forests, by means of vital and joyful ritual practices to bind men to one another in mutual trust. But he was also arguing that the vacuum left by the division of religion could, at least in principle, begin to be filled by a system of devotion whose object is a secular rather than other-worldly deity: rather than God, the nation. The nation, as of course he was aware, came into play as a political factor only after the Reformation and as an object of popular interest only after the rise, which in Hegel's view would have been inconceivable but for the Reformation, of a monistic system in which sovereignty is inseparable from representation ¹³¹: sovereignty resides in the nation and the nation exists only in virtue of its representation. Without representative government no nation can create itself, can know what it wills or intends to be. Representative government is the *sine qua non* of the intelligent constitution of the civilized identity of a people as a political, rather than merely natural, nation.

Let us see, then, how Hegel came to argue, in June - July 1801, that though a people could no longer depend upon religion for its cult, it could have recourse to an alternative made possible by the very dereliction of the religious communion of the nation.

According to the VSN, 'while religion has completely rent the state asunder, it has yet afforded an inkling, in a remarkable way, of certain principles on which a state can rest' ¹³². Hegel wrote later, in the 1802-1803 cycle, that in themselves similarity and dissimilarity of religion have neither united peoples into states not rent states asunder ¹³³, and earlier, in the February-March 1801 draft of the section in question, that religious schism had been an 'important determinant' or contributor to political rupture only insofar as or because, first, there was no express distinction ¹³⁴ between the interests of territorial princes and their subjects, and second, the time was not ripe for what could have ensured the absence of a pretext for rupture, the separation of church and state ¹³⁵. From these later and earlier elaborations upon the theme of his argument in June or July 1801, it is clear that his meaning in its first clause is that the princes, animated by the spirit of possessive particularism, were the culprits of the mobilisation of conscience against the Empire ¹³⁶. Not religion of itself or of necessity, but the exploitation by princes of its division, in order that they might withdraw from the supremacy of the Empire, without constraint by it or by the interest of their subjects, for that was not in a position to gain expression, was what negated the individuality of the people. This emasculation of ethical totality by the 'negative and restricting attitude' ¹³⁷ of possessive particularism took place by means of the pre-emption of the possibility of the emergence of a source of public law through the guarantee by the Peace of Westphalia of the private right of itio in partes, 'the right of this or that religious party not to submit to a majority vote' ¹³⁸. If only this private right were invoked in private matters, to which category, in Hegel's view, affairs of religion and conscience clearly belong, for they have 'in the last resort, nothing to do

with the state' ¹³⁹, all would be well. On the contrary, however, as Hegel argued, at greater length and in greater detail in the draft version of February-March than in the definitive text of June-July 1801, the right of itio in partes had been so abused as to bring to nothing matters which are entirely affairs of state and to make them 'ecclesiastical affairs, affairs of a state within a state ... But what is still more important, the activity of the state can be completely hemmed in, and that in every general matter of state which has no relation at all to religion: war and peace, taxes. What little remains to the state can be trod under foot by religion and everything be hindered which ought to be decided by the majority. (For example) Brandenburg does not, because of this (right), pay the increased cameral taxes (Kammersteuern).

What Hegel bemoaned here is the annihilation of the potential of the German people to achieve, by way of the essential principle of majoritarian decision, the inward individuality upon which alone outward-facing individuality can be based. Yet while religion had been invoked in order to prevent the constitution of the whole as a decisive individual it had, at least in some parts of Germany, 'helped to promote another separation ... and thus given force to some principles which are necessary conditions of the existence of a state' ¹⁴¹. It is noticeable that in three respects this statement exceeds its definitive parallel ¹⁴², cited above ¹⁴³, in the weight of its import. For, first, the division of religion, in this respect not susceptible to the manipulation of princes, had effected, in spite of them, the distinction of their interests from those of their subjects; second, this distinction had not merely 'afforded an inkling' of, but had 'given force to' the principles of representation; and thirdly, these principles were said to be not merely optional or

possible but necessary conditions of the modern state.

A much more important ¹⁴⁴ factor permissive of the emergence of a nation and its state than the mere admission in principle that, since rights adhere to two religions, the state cannot prefer or be dependent on one, was the undeniable fact that, where princes had adopted a religion different from that of most of their subjects, there grew from this difference, since religion was made an instrument of policy in other than religious matters, a so manifold differentiation of the interests of princes and subjects that the latter ceased to acquiesce in the tacit convention that in extra-territorial affairs their prince spoke for them. Since the Peace of Augsburg (1555) it had been legally established, on the principle cuius regio, eius religio, that regardless of the confessional allegiance of the majority of the inhabitants of a territory, the religion of their prince was deemed to be theirs. Thus, Hegel related, at the beginning of the 17th century, the Prince of Pfalz-Neuberg, whose subjects were largely Protestant, became a Catholic and, in accordance with the Peace of Augsburg, could vote in the Diet and in the Reichskammergericht in disregard of their confessional interests ¹⁴⁵.

It was clear, in that case, that the prince was in no sense representative of his subjects, since there was no expectation of him that he should care for their interests. There being no such expectation it was naturally to be understood that the presence of the prince in the Imperial Diet or Courts signified nothing beyond itself, no intention to act on behalf of something other. Hence 'the ruler of different, even separated, countries had only one vote. His person and his territory, his personality and his capacity as representing his territory, were to all appearance not distinct' ¹⁴⁶. Likewise 'if one principedom was divided between different princes, each of them had a vote of his

own' ¹⁴⁷. In other words, since the idea had not occurred that there ought to be made a distinction between princes 'as princes and as territorial representatives' ¹⁴⁸, they were present in the Diet only in their personal capacity.

By the end of the 17th century, on the other hand, the distinction between the person of a prince and his capacity as a representative, in the Imperial Diet, of his people rather than as present on his own behalf had become, according to Hegel, 'clearer and all the easier to make' ¹⁴⁹, the more so in territories which enjoyed representative government within, for on that account there had long been established constitutional recognition of the fact, cuius regio, eius religio notwithstanding, that there was a divergence between the person ¹⁵⁰ or, more precisely, the interest ¹⁵¹ of the prince and those of his subjects. Thus, at the end of the 17th century, though the Elector of Protestant Saxony became a Catholic, his vote in the Imperial Diet and Courts remained Protestant ¹⁵². Likewise, in 1721 and 1749 respectively, the princes of Wuerttemberg and Hesse, both largely Protestant territories enjoying domestic representation, like Saxony but unlike Pfalzneuberg, had, when they became Catholic, nevertheless to continue to vote with the Protestant party, the Corpus Evangelicorum ¹⁵³. That is to say that they had to act on behalf of another interest than that of their own persons, to act 'purely' ¹⁵⁴ as representatives because there existed in their territories a sentiment of nationality independent of princely personality and sustained, in the case of Wuerrtemberg until 1770, by representative institutions jealous of their 'co-governmental' prerogatives ¹⁵⁵. In such territories, in short, there was emerging a monistic system in which the Estates' claim to be representative was made with a view not to supplication of condescending justice, but to participation in government

(Herrschaft). The territory and its people was increasingly taken to be an entity apart from its prince.

Yet Hegel seems to have had reservations, not indeed about the principle of nationality as such, the 'true and genuine principle that it is a territory which confers the power and right of a vote' ¹⁵⁶, but about the extension of this principle of nationality to the German Empire as a whole. By its introduction, he argued by analogy with the further corruption that affects a sick body if 'what nourishes a healthy body' is given it, this principle had 'contributed all the more to the dissolution of the Empire' ¹⁵⁷. Does this not appear to put in doubt the identification of the national cult, which Hegel was to advocate in the NRS, as a cult of the represented nation, indeed to put in question whether Hegel attached at all such value to representation as has been argued throughout this work? Not at all! For, in the first place, it is clear from the draft version that Hegel held, more nicely than the medical rhetoric of the definitive version would suggest, that only in 'one aspect' ¹⁵⁸, which he promised to, but did not explicitly, mention elsewhere, was 'representation of this kind' ¹⁵⁹, that is of the kind to be found in Saxony, Wuerttemberg and Hesse, if extended to the whole, inimical to its statehood. It could, that is to say, if a people were persuaded by their prince of the congruence of his interests with theirs, reinforce his capacity to withstand the whole and cast it into the abyss of dissolution ¹⁶⁰.

But this is not the prospect for representation which Hegel expected or hoped would be realised. For, secondly, as we saw in the fourth chapter ¹⁶¹, the design of the representative system which he proposed was adapted to fragment constellations of deceptively mutual interest between princes and their peoples, which had in the past deluded the latter into support of the

former in many causes other than, but confused with, religious affairs. Hegel's system was yet to come. That which he berated, as is more clear from the perfect tense of the definitive version, where it is written that the principle of representation 'has contributed' to dissolution, than from the tenseless statement of the draft that 'representation of this kind has an aspect wherein it unites in itself a power which is capable of withstanding the State' ¹⁶², was extant in the unregenerate Diet.

Thirdly, it is clear from the whole train of argument of this section of the VSN and its earlier draft that Hegel regarded representative government (and its generation of a strong sense of nationality having a focus in an agent of public decision - constituted an individual or 'unum morale' ¹⁶³ by strict adherence to the idea of majority rule -) as the means, alternative and successive to religion, to the achievement of togetherness. Even in the inchoate notes of February - March 1801, this view is quite salient. There, in apposition to a remark that in Germany 'nationality' had been 'too unfit' ¹⁶⁴ to resist the destructive effects of the dissolution of religious unanimity, he had noted that there was no means available to the Emperor, for the purpose of preserving the whole, other than, in order to withstand the Protestant party, to make new imperial princes because he could not win a majority of votes. But since, because of the principle of itio in partes, Germany was in the grip of political strategies designed to avoid the compromises of a representative system of arrival at a majority view, this means of assuring himself a majority against an unrepresentative minority was in any case quite idle and vain ¹⁶⁵. Yet the apposition seems to signify an equation in Hegel's mind between 'nationality', which we have argued to be the best candidate for designation as the object of the 'cult' of which Hegel was to

write in the NRS (all religious sources of political cult being exhausted), and the purpose of building a representative majority ¹⁶⁶. Though the Emperor is censured in these notes for being himself a member of a party-system inimical to majoritarian achievement of togetherness or nationality, Hegel seems to have been prepared to credit him at least with an intention to serve these ideals, that is, as Hegel put it in preparatory jottings of early 1801, to recreate the bonds of togetherness in 'heart, sentiment and trust' ¹⁶⁷, which religion was no longer competent to cultivate.

4. Togetherness without regimentation

If the view is to be sustained that Hegel did indeed see in representation a practice deserving to be regarded as an alter-religious cult fit to raise the state and its decisions to a power whose activity is that of an individual as able as a very God so to act that the autonomy of its deeds is not liable to corruption by the contingency of fortune rife in the society which it represents, and that the interest in which it acts seems so comprehensive that all its members feel united in the kind of symbiotic community argued in this study to be the ideal Hegel assimilated from the tradition extending from Althusius to Achenwall, then account must be taken of certain statements which seem to contradict that view. One which seems to assort ill with the idea of recreation of the bonds of heart-felt togetherness by means of representation, is that the bond so tied 'is an external one bearing on external things ...' ¹⁶⁸.

This seems to militate against the view that Hegel regarded representation as a modern system of secular devotion wherein, according to the VSN, majority is to serve instead of unanimity and, according to the NRS, the nation or people is a substitute for God. It seems to go against the view that Hegel expected

from representative government a sense among citizens of constructive commitment ¹⁶⁹ to the decisions of a majority whence emerges a cultic sensus communis or common 'interest' ¹⁷⁰, without which is inconceivable the maintenance of the ethical totality of the nation, that which appears as an awe-inspiring, though not therefore jealous ¹⁷¹ or annihilative ¹⁷² God. It seems quite uncongenial to the view that it was in representative government that Hegel sought a 'majesty and divinity' ¹⁷³ inherent in the State, with which the individual can identify without abnegation of those private affairs which he believed ought not to be subject to minute intervention and regulation according to the will of the majority ¹⁷⁴. On the contrary, it appears to tell in favour of the view that in the 1801 cycles of the VSN at any rate, Hegel ultimately defined the function of representation in terms that do not seem at all to credit it with the capacity to engender the feelings of cultic or mystic communion once afforded by religion, nor to integrate in the spirit of a compound society the dispositions of men content to participate in a disintegral 'society without aspirations' ¹⁷⁵. In fact, it appears to tell in favour of the view that Hegel, howsoever he may have favoured a cult of representation, whose God is the nation, preferred that such a God be relatively 'undemanding' ¹⁷⁶.

If these appearances could be proved to correspond to the intentions underlying Hegel's theory of representation, then they would subvert the argument of this work that in representation Hegel located the idea of a political practice which vouchsafes to the citizen the image, available to the ancient republican and the primitive German, of a communal activity participation in which amounts to membership of an immortal ethical whole, a divine individual with which the ordinary man can feel at one. Then indeed the State or the God would stand to the civilian

devotees of their 'cult' as what Mansfield has called a 'Deist God' ¹⁷⁷, one which sets in motion a merely clockwork system of social relationships and affords the associated the advantage of escape from jealous government. But it is scarcely credible that Hegel, whom we have seen criticise at length the disappearance under the 'machine state' of all manner of affectionate relationships, should have meant by 'external bonds' a system of social integration by means of representation which leaves out of account the need for the impression upon the material of civil society of the form of a 'living together' that amounts to more than spatial coexistence in a mechanical universe.

Great care must be taken, therefore, in the interpretation of those passages in the VSN where representation, 'the principle of modern states' ¹⁷⁸, is said to be a bond which impinges upon the individual not in his innermost being but in the utmost currency of personal relationship: civilians have only to contribute money, not to dedicate themselves, to the defence of the whole ¹⁷⁹. For no more of this than of the view expressed in the Philosophy of Right, that the demands made upon the individual by the modern state must be 'reduced to terms of money, the really existent and universal value of both things and services' ¹⁸⁰, should it be supposed that Hegel regarded the need of no deeper bond than this as if it signified 'an abstract, heartless and dead state of affairs' ¹⁸¹. While the bonds which can be imposed upon the modern bourgeois - whose individualism Hegel, at the time of composing the VSN no less than in 1821, believed should be allowed free self-determination, so that individuals should not have the freedom of their 'substantive activity' ¹⁸² limited by any exaction of non-monetary dues - are repeatedly said to be 'external' ¹⁸³, 'togetherness' is the objective sought. Legal bonds, unlike customary, are of course external in the sense that their being

made intelligible involves their becoming objective. But this need not preclude their being heart-felt. Even Hegel's sometimes legalistic point of view in the Philosophy of Right never blinded him to the possibility that, in the form of law, the content of ethically serviceable customs remains valid. As for the view that the obligation to render money-payment is doubly more 'external' than the voluntary sacrifice of life, we may venture so far as to say that in 1801 Hegel believed implicitly just what he maintained expressly in 1821, that the payment of many taxes is characteristic of the deep-seated spirit of freedom and legality to be found in 'a constitutionally governed state' ¹⁸⁴. Hegel had the good sense to realise that, under modern circumstances, 'sentiment' is not enough. To maintain the semblance of the togetherness that used to obtain, it is necessary to oblige it. But this does not alter the fact that Hegel had in view the preservation by law of the same togetherness that custom once assured. To become the same, as was argued in the first chapter, it is necessary to change in accordance with more rigorous circumstances than were originally encountered.

For definitive evidence that Hegel held, on the whole, that representation can engender even in the bourgeois a spirit not only of willingness to pay taxes but also of commitment to the common ends to which they are means, a spirit akin to religious unanimity but less susceptible to exhaustion, we must turn to that part of the VSN concerning what is essential to a State that was written after the NRS. For that part is informed by the general argument of the NRS that it is essential to the modern State that the individual feel himself to be in a relation of 'genuine, living, non-servile oneness' with 'absolute ethical majesty' ¹⁸⁵ not only out of 'fear, trust and obedience' ¹⁸⁶, but also through education or cultivation ¹⁸⁷ to the recognition

of the divinity of the State.

After having reiterated the inventory, first composed in February and March 1801, of matters not essential to sovereign statehood, Hegel recurred again in the winter of 1802 to the question of representation. Before we deal with his assertion of the necessity of representation to the modern State, it would be well to account for his denial of the necessity of many matters alleged by his juristic and other predecessors to be essential to any State. Hegel held it to be a matter, 'as regards theory, ... of the greater or lesser good and, as regards actuality, ... of chance and caprice' ¹⁸⁸, whether the constitution be formally monarchical or democratic; whether the supreme public authority be hereditary or elective; whether civil rights be uniform throughout the citizen body or not; whether civil society tend towards equality or inequality; whether there be heterogeneous relations of provinces to the central authority; whether there be similarity of laws and legal procedures so far as strictly civil laws and the administration of justice are concerned; whether weights, measures and money be of invariant standard; whether legislation belongs to one particular power and how exactly electoral rights are allotted; how the kinds and jurisdictions of courts are organized; what is the form of administration in general; how tax liability is determined; and even whether there be great differences within the population arising from differences in manners, education, and language.

The first two points ¹⁸⁹ are straightforward contradictions of the tradition from Bodin to Pufendorf. Hegel here asserted the possibility of a status mixtus. The following ten points, especially the last ¹⁹⁰, convey Hegel's indulgent attitude towards administrative and social plurality. It may surprise those who think of Hegel as a rationalist in regard to social and legal

relationships ¹⁹¹ to find him not at all critical of the fact that in pre-revolutionary France there was 'such a multiplicity of laws that, apart from Roman law which prevailed in several provinces, Burgundian law, Breton law etc. ruled elsewhere and almost every province, indeed almost every city, had its own customary law'¹⁹². Likewise, those who think of Hegel as a sympathiser with the French Revolution may confess their perplexity ¹⁹³ at his allowance that such multiplicity in civil and penal ¹⁹⁴ (but not in constitutional) affairs is compatible with genuine statehood, as well as at his tolerant attitude towards social inequality ¹⁹⁵ - surely not consistent with any supposed sympathy on his part with Rousseau - and the compounding effect thereon of fiscal inequity in, for example, the French ancien regime ¹⁹⁶. And, of course, those who regard him as a precursor of Weberian appreciation of bureau-technical political organization ¹⁹⁷ may wonder why Hegel is positively indifferent to standardisation and administrative homogeneity ¹⁹⁸.

Those, however, who have learnt to regard Hegel as a radical, in the sense of the word used throughout this study to signify one who requires of the laws and the constitution that they be adapted to their customary environment, but in such a way as to be animated by, and in turn to enact ¹⁹⁹, that alone which is vital in it and to mortify that which is 'fatal', will not be surprised to find that, as is to be expected, Hegel denied that it is necessary to statehood that there should be identity among citizens in respect of culture, manners, customs, education and language ²⁰⁰. For, as has been argued since the first chapter, public law need assure conformity only to customs whose content is of moment to the self-maintenance of the people. To those matters of opinion, such as education and language, which Hegel here placed in conjunction with the terms culture and custom,

thus signifying that custom contains much whose legal articulation or clarification is immaterial to the maintenance of civilization, the state can afford to be indifferent. Only customs that affect matters of earnest require to be made the root of the integral state. Where this is assured, in modern states whose essence is that they are representative, civilization is well enough articulated to permit plurality in culture and manners to flourish. If law were to attempt to circumscribe the spontaneity of everyday industry and activity, civilisation would founder as surely as if no attempt were made to adjust culture to the cause of civic enlightenment.

So long as the constitution conserves that in diverse customary traditions which is conducive to 'living together' it need not fear the dangers to which custom of itself is susceptible, ie habituation and ultimate barbarization. This permissive attitude to customary plurality is not, it must be emphasised, in accord with what, in the NRS, Hegel criticized as the 'shapelessness of cosmopolitanism' ²⁰¹. But it is equally far from the cultural nationalism of Herder, with whom Hegel has been, quite erroneously, supposed to have had an affinity, especially regarding the political importance of linguistic homogeneity ²⁰². As far as Hegel was concerned, difference as between classes and estates in manners, education and language are merely superficial causes of social aversion and inconsiderable criteria of social identification ²⁰³. As such they are amenable to pragmatic resolution of any centrifugal effect they may have not by legislation, but simply through 'the spirit and art of public institutions' ²⁰⁴. Civilisation (Bildung), as far as Hegel was concerned, does not depend upon social and cultural homogeneity. On the contrary, cultural heterogeneity was asserted to be 'a necessary product as well as a necessary condition of the

stability of modern States' ²⁰⁵. Hegel's preference, then, was emphatically for social and cultural plurality. Social plurality can be contained as long as political identity is guaranteed. This, we can see again from the train of Hegel's argument in that part ²⁰⁶ written de novo in 1802/03, is assured in the modern State by representation. Representation is the condition of the promotion of a nationhood quite different from that which Herder so prized. Once more adverting to the impossibility that, in modern times, religion should perform the task at which it alone used to be competent, namely to give men, in spite of all their differences, a trusty point of concentricity from which they could 'gain confidence in and become sure of one another' ²⁰⁷; once again arguing that religion had been historically the conditio sine qua non for the foundation of other kinds of 'oneness or trust' ²⁰⁸; maintaining, in accordance with the principle that the performance by anything, in the past, of a service to which it is no longer adequate is no ground for the justification and maintenance of it in the same function, either for the present or for the future, that identity in religion, and its defence by the State, is something with which modern States have found it possible to dispense; still insisting, that is to say, on the irrevocability of confessional, social and cultural differentiation and on the consequent necessity that the State eschew jealous interference on behalf of any particular interest, religious or other, Hegel went on, as before, to advocate the capacity of representation alone to provide a political or legal identity fit to contain the differentiation of civil society and to impede the excesses of the 'subordinate systems of rights and privileges' ²⁰⁹ in the pursuit of private interest.

He did so in terms much more suggestive than those which

he had used in the drafts of 1801, that the virtue of representation is that it contributes to a political cult of the majesty or divinity of the state on the strength of which social plurality may be permitted without ill-effect upon ethical life. For the concentration of the public authority in one centre for debating and deciding upon political affairs of general concern ²¹⁰, a concentration which is distributary at the same time as it is unitary ²¹¹, inspires the 'awe of the masses' ²¹² in virtue of which there exists, as once was the case thanks to religion, a 'fixed centre' ²¹³. This alter-religious awe is due, Hegel's syntax makes it clear, to the representative body, for the personal majesty of the monarch is supposed to contribute an additional object of cultic devotion, his sacrosanctity: 'If this centre is secure on its own account in virtue of the awe of the masses, and is immutably sacrosanct in the person of a monarch ... then a public authority may without fear or jealousy freely hand over to subordinate systems and bodies a great part of the relationships arising in society and their maintenance according to the laws' ²¹⁴.

As we saw in chapter three, the conception of representation as integration, meaning the binding together with bonds of mutual trust of the hearts of individual burghers so that they should not see in the State a potential threat to their interests but regard it as their commonwealth, entails the idea that the State must forswear involvement in the abstract or immediate activity of civil society. Unless it do so, there can be no trust but only suspicion that one immediate interest will be served by the State at the expense of another. Hegel added in 1802/3, as a fresh statement of general principle, to that part of the section under discussion most of which was written in 1801, that only if government refrain from excessive intervention in civil life can

it depend on respect for the autonomy of the political, for its independence of particular interest and so, in the event of danger to the sovereign, on the burgher's sense of his duty to subordinate his to the common interest. If government ordinarily demands more than what everyone can see is indispensable for the whole, resentment of the excess becomes resentment of what is essential ²¹⁵. If everything on which the public authority can count is under its even control, it can count on nothing else ²¹⁶. It cannot rely on the 'free devotion' ²¹⁷ of the people. On the other hand, where there is such a spirit of awe and devotion, where the people trusts the government, the government may in turn trust the people. Where custom conducive to ethical wholeness is enacted and the system thus shaped commands the cultic enthusiasm of the people, the economic system may be left to its own internal devices, though government may exercise powers of marginal intervention to ensure that imbalance does not enter the system ²¹⁸.

An inward security from the 'pressure of individuals' ²¹⁹ is afforded the State by the awe felt by citizens who, insofar as their habitual activity is not so trammelled by state regulation that they do not know at all what action is, know at least how to appreciate the ethical activity of the whole as if it were a work of art, whose execution, though they are not directly involved in it, they can, from their own experience of free activity, look upon with enjoyment ²²⁰ as well as awe. Given this security, a public authority may without fear or jealousy entrust to civil society the maintenance of its own orderly relationships, 'according to the laws' ²²¹, to be sure, but not by restrictive reference to their provisions. These laws Hegel described as nothing less than a 'hallowed tradition (proceeding) directly from custom itself' ²²² while of the free activity of the

citizens he said it is 'inherently sacrosanct' ²²³ and that to facilitate and protect it is the most sacred duty of government.

Hegel would have freedom to administer the internal affairs of civil society granted to the citizens and their corporations because, in his view, there arises from the participation of the individual will in public affairs of an inferior kind, such as the administration of justice, education and support of the poor, what he called 'free and self-respecting self-awareness' ²²⁴, a feeling among the people of being treated 'with trust and freedom' ²²⁵ without which a devout attitude on their part to the State, and their reciprocation of its trust in them, is not to be expected. The people will trust the State, which is to say that they will allow themselves to be represented and so refrain from the ambition importunately to determine its course of action in advance, or to participate directly in decision-making, only if the State in turn refrains from the jealous interference, which excites that ambition, in abstract or not universally touching affairs, with which representative government ought to have nothing to do.

5. Conclusion: Civilisation and the modernity of the old model

It is because representative government has only to impress upon a multitude the form of a people that Hegel insisted that each 'estate, city, town, commune etc. can itself enjoy freedom to do and to execute what lies within its area' ²²⁶. It is not so that a multitude may inhabit the undemanding society argued for example by Mansfield (who illegitimately enlists Hegel's evaluation of the role of the mediaeval germanic idea of the right of the corporation to self-government in support of his idea of representation as the basis of passive government ²²⁷)

to be alone capable of representation. Hegel did indeed build into his theory of representation the germanic idea of corporate freedom. But he did so with a view to ensuring that members of civil society should enjoy in their own spheres the exercise of their own autonomous vitality so that, on the one hand, they might understand that government in its sphere likewise needs, if it is to act effectively, a corresponding autonomy of its own; and that, on the other, since citizens need not fear partisan intervention, they might regard the actions of the State as if they were their own. A State in which corporate self-government is not allowed cannot hope either for this understanding or for this sense of identification. Its citizens must resent the fact that they are deprived of opportunities for independent action, and become impatient with the State's independent action even in essential matters ²²⁸. And they must doubt the impartiality of the State which provides services, such as poor relief and education, that benefit others rather or more than themselves ²²⁹.

The kind of State which does not refrain from jealous intervention in the abstract affairs of civil society, but enacts legislation whose greater cost to some and greater benefit to others incites invidious calculations corrosive of the hearty sense of belonging to a people, Hegel called a machine-state. It is well known that Hegel had Fichte in mind as the chief theoretical exponent of the view, which, as we have seen, occurs also in the work of Kant ²³⁰, that the State is, as Hegel put it, a 'machine with a single spring which imparts movement to all the rest of the infinite wheelwork' ²³¹. When he inveighed against the 'pedantic craving to determine every detail, the illiberal jealousy of any arrangement whereby an estate, a corporation etc. adjusts and manages its own affairs' ²³² and against their usurpation by a 'mechanical hierarchy, highly intellectual and

devoted to noble ends' ²³³, Hegel clearly had in mind his criticisms in the DS and NRS of Fichte's 'community under the dominion of intellect' ²³⁴ in which 'there is no doing or stirring that is not bound to be subject to some law, subject to direct supervision' ²³⁵ and from which is utterly eradicated the 'faith and constancy' which Fichte would have replaced by the compulsion of all under the general will ²³⁶. Fichte had been criticised for his failure to provide for the mediation of the individual and the general will through 'majesty' ²³⁷, the connotations of which, as we have seen at length, include the idea of representation. He had been attacked for conceiving the State as a machine as opposed to an 'organization' ²³⁸. Again, as we have seen from various passages in the VSN ²³⁹, this term, antonymous to 'machine-state', was either identified with the institution of representation or, in that it was held to be antithetical ²⁴⁰ to the barbarous condition of 'multitudinarity' as opposed to peoplehood, related to the purpose of representation, which is to cultivate enthusiasm for the system of law upon which the existence of a people depends.

Hegel was not, however, intent upon criticising Fichte upon merely idealistic grounds for extolling a political culture in which the values of a representative system, such as trust, and its objectives, namely the mobilisation of peoplehood by means of its cult, have no place. On the contrary, he was content with nothing less than to show not only that the representative State is more congenial to its members than the bureaucratic or police State, but also that it deserves to be regarded as more modern, efficient and decisive than the State whose principle of universal mechanism Fichte, as well as other spokesmen of such States, fancifully supposed gives it the advantage in all these respects. We shall shortly see why, in a related argument,

Hegel made the remarkable claim that States which, according to his lights, have reneged on the principle of representation, such as revolutionary France and Prussia, are in this respect reactionary against the direction of modern development. In advance of this, it is necessary to give an account of the polemical context in which he began to elaborate his challenge to the view, which was, in his time no less than it was till of late in our own, quite conventional, that the bureaucratic State is much better adapted for the pursuit of modernisation than that State which, in Hegel's words, leaves much of the work of social management to 'native impulse' ²⁴¹.

It must not be supposed that Hegel's prohibition of state intervention in the alleviation of social need is due to a backwoodsman's hostility to the progress of measures of equitable social reform. Rather it stems from a preference that such progress should have as its cause the ethical 'potency' of love and compassion, rather than the merely coercive power of 'intellectual' compulsion. Where that is the case, as has been argued throughout this work, there is held to exist the customary vitality without which the ethical activity of the State cannot be well-founded. It stems from a belief that to pretend to be representative yet to depend upon coercion is simply to maintain a contradiction that can be sustained only by the plea that the principal is a principle to which the present must be compelled to convert because it is inherently and ever unregenerate. This is clearly the exoteric meaning of Hegel's dissent from what he identified, as we have seen ²⁴², as the reason for Fichte's prejudice in favour of coercion. In the words of the DS, 'one finds (in Fichte's construction of the relationship between Nature and Ego) always the same antithesis between a limited present and an infinity extraneous to it' ²⁴³. An unrepresentative

State will always find cause to deny that the present is yet as worthy of representation as the purely absent. A representative State must, on the other hand, attempt to establish a harmony between the present and the absent.

It is impossible to attribute to a coercive State either the character of modernity or the inclination to fulfill it. Although Hegel did not criticise Fichte expressly in terms of the problem of modernization, it may be admitted that to transfer such terms from what we shall shortly see to be their proper context, the question of the durability of States which have repudiated the feudal bequest to the modern State, namely the principle of representation, serves well the purpose of specifying what it was in Fichte's idea of state activity that Hegel considered to be spurious and derogatory to the principle of a representative system.

As in the VSN ²⁴⁴, so in the NRS, written shortly before the final phase of composition of their first half, Hegel denied that the machine-state can readily keep itself, as it were, in perpetual motion. The manner in which he did so again throws into relief his belief that the majoritarian decisions of a public authority, consisting of monarch and estates, between which maiestas is distributed as within the 'abiding fixed centre' ²⁴⁵ of a durable and stable modern State, alone conduce to the decisive and effective expression of the will of a people, while attempts to arrive at a satisfactory expression of the general will in which, except in the authoritarian sense of representation to which Fichte's metaphysics lends itself, representation plays no part, so that the interests of the 'limited present' are left out of account, must end in political ossification.

The Fichtean variant of the machine-state, wherein the coercive and supervisory administration is supposed to be one

'representative' of the general will, while an 'Ephorate' consists of 'other representatives' ²⁴⁶, is designed so that the 'supreme will' of the former, under constraint from the latter, will converge with the general will. But in Hegel's view this mechanical arrangement, whereby a command system (characterized as a descending pyramid) is opposed by a system of judicial and constitutional review (an ascending pyramid), the whole being supposed to be efficient in the mobilisation of the general will, can only give rise to a stalemate: 'such a perpetuum mobile ... will, instead of moving, settle at once into complete equilibrium and become a complete perpetuum quietum' ²⁴⁷. Fichte's advocacy of a circle of equal and opposite legislative forces, in preference to the internally conditioned and self-limiting centre of representative government whose will is absolutely sovereign while comparatively liberal, is likened by Hegel to the institution in revolutionary France of various forms of 'rival and paralysing legislative force' ²⁴⁸, invested in bodies which are no more representative, for all these wills are private parading as general ²⁴⁹, than the succession of revolutionary governments.

Turning now to that part of the VSN, as far as is known written largely de novo ²⁵⁰, after the mechanical business of tidying up the sections on military power, finances and territory ²⁵¹, in the winter of 1802/03, we will find that this section on Legal Organization ²⁵² owes much to Hegel's abiding concern to criticise the Fichtean recommendation of a political immobilism, the relief of which could readily be found in the liberation of the will of the majority from the constraints of private wills passing themselves off as constitutional supervisors of governmental arbitrariness. For, with reference to Germany, Hegel criticised the system whereby Imperial law depended for its application upon judicial authorities which were not only incapable

of enforcing their decisions, if they got so far as to reach them ²⁵³, but also obversely, had the power, because constitutional as well as private rights and obligations were subject to their judgment ²⁵⁴, to hinder the sovereign authority of the State and so to paralyse the conversion of the theoretical into the real prevalence of the State ²⁵⁵.

Thanks to what Hegel called the 'barren history' ²⁵⁶ of the asymptotic approach towards the conversion of general regulations, whose effective application is the condition without which it is not possible to speak of the existence of the State ²⁵⁷, into particular executions, Germany remained a State in theory only, a Gedankenstaat. This 'barren history' is obviously the cousin of 'bad infinity' in Fichte's metaphysics and, in his politics, dead equilibrium ²⁵⁸. And 'Gedankenstaat' was evidently not just a name for contemporary Germany, whose members' territorial authority profited from the semblance of its derivation from a putative imperium, which can in turn exact no genuine loyalty, but for any State where political authority is subject to 'forensic treatment' ²⁵⁹. Thus Hegel, in his draft of a small part of the section of the VSN now under discussion, that part whose chief significance is that he took the trouble in 1802/03 to rewrite it word for word as an aid to editorial splicing of the first and second halves of the definitive text ²⁶⁰, arraigned revolutionary France on the same charge as that which he brought against that aspect of the German political system which inhibited the realisation of its potential for modernity.

Having argued, as we have already seen from another small fragmentary draft of this section ²⁶¹, that 'the administration of justice goes quite beyond itself should State authority become its object, because in this manner what is actually only a part of State authority is placed over the whole' ²⁶² and is made the

capricious arbiter of the question whether or not the whole should be subordinated to the parts, Hegel went on, though he struck this remark out, perhaps as an idea which in 1801 he was not yet ready to pursue, to point out that it was 'well-known that the - otherwise quite distinct - idea of a juri constitutionel in France, which has appeared in various forms as *senat conservateur*, has some similarity with the imperial courts ...' ²⁶³. That similarity consisted in their like incapacity, for all their appeal to advocates of a mechanical system of checks and balances, to regulate the operation of the jealous State, to serve as a means to the more than superficial resolution of the conflicts of parts of a people with one another and with the whole.

For all its paraphernalia of supervisors and supervisors of supervisors, the machine-state cannot attract the devotion of its subjects, for its administrative and judicial structures afford them no sense of positive relationship with the whole: the former does instead of the citizen what he could do himself, while the latter would not be of such account if it were not necessary to redress the sense of opposition between the individual will and the general ²⁶⁴ occasioned by the coercive role of the administrators of the general will. Just this want of a positive relationship of the individual to the whole, available to him whom independent activity affords a sense of sympathetic affinity with the independent activity of the State, so that its deeds appear as if they were his own, was what afflicted the political systems of France and Prussia.

In France 'tremendous political experiments' had partly realized the political theories propounded by 'would-be philosophers and teachers of the rights of man', such as Rousseau and Fichte ²⁶⁵, and immediate state activity had so eroded the self-respect of its citizens as to engender a political culture of

passion and passivity, of 'dullness, baseness (continually lapsing into shamelessness) and poverty' ²⁶⁶. The sterility of scientific and artistic life in Prussia already bore witness to the consequences of the excessive political regulation of civil society. To look beyond the superficial appearance there of political strength impressed by one man is to see, Hegel argued, that the Prussian State lacks the infinite strength afforded by the 'all powerful, invincible spirit' of a 'free and unregimented people' ²⁶⁷. The strength, efficiency and decisiveness of Prussia's novel political machinery was 'ephemeral' ²⁶⁸. It was likewise in the case of revolutionary France. Hegel doubted whether the machine-state could afford the basis for enduring political organization. He predicted that the same dull and spiritless life would come to pass in France as in Prussia, if the high pitch of its 'pedantry in domination' could be maintained ²⁶⁹. The implication was that neither France nor Prussia, for all their pretentious appearance, were modern States at all! For the lasting stability of the modern State depends on a plurality of centres of social autonomy and this they had attempted to eradicate.

This is probably the most remarkable view that it is possible to find in the whole corpus of Hegel's political thought, not least for the fact that it confounds those who are accustomed to regard Hegel as, in his youth, a revolutionary idealist or, in his maturity, a reactionary conformist to the Prussian political system, and who tend to allow these monochromatic images to invade other periods of his thought than those from which they supposedly originate. Even though the best of those who attend to Hegel's voice as a friend of the French Revolution acknowledge that he denied that it achieved anything durable in institutional terms ²⁷⁰, though they draw evidence for this only from Hegel's

mature works, it must confound them. For in the VSN, Hegel went so far as to argue that revolutionary France, in virtue of its departure, notwithstanding the rhetoric of its ideologues, from the principles of representative government - that it be lawful rather than capricious and arbitrary, independent rather than subject to mandatory instruction, structurally 'gracious' rather than 'jealous', and so tolerant of an ideologically and socially plural society ²⁷¹ - was reactionary in respect of the proper trend of modernity. With this trend the political system of Austria was, structurally rather than superficially, in genuine accord.

Hegel held France to be reactionary against representation in almost the same measure as Prussia, whose procedure from the 'bourgeois principle' belied its monarch's posturing as the 'First Servant' of his people and showed him to be, as it were, the 'biggest bourgeois' among them ²⁷². In France and Prussia alike the state had become an instrument of preferential social intervention: in the former the Third Estate, and in the latter the King, had attempted to become everything.

Revolutionary Frenchmen were portrayed by Hegel as authors of dangerous experiments in morals and religion whose results, at the least, are very ambiguous ²⁷³ and not at all the calculable enterprises that their protagonists suppose. Though Hegel was clearly out of sympathy with the 'harsh arrangements' in France whereby between 1614 and 1789 representation went by the board and, except in Richelieu's time, the preeminence of the personal over the disinterested capacity of the nobility attained a 'shocking' degree of intensity, he discredited the Revolution for its failure to make a gradual transition to more satisfactory arrangements ²⁷⁴. The misfortune of France consisted in the loss of its true character thanks to the 'complete disintegration of

the feudal system' ²⁷⁵. It was insofar as France had suffered, and continued to suffer, degeneration in respect of the essence of the modern State, the representative system inherited from the feudal constitution ²⁷⁶, that it lacked a modern constitution, though it continued, unlike Germany, to be a State ²⁷⁷. It was not among the 'European States that have not experienced a revolution in modern times' ²⁷⁸ and so was not a State that was, as, according to Hegel, those States were where revolution had not interfered with or reversed the conversion of the feudal system into a State, more or less organized on the 'modern model' ²⁷⁹. The 'old feudal system' had been able to become stately ²⁸⁰ in countries where the nobility had been permanently and effectively depressed so that their possession of estates might not become a ground of public station but, in the words of the NRS, be 'kept to one side' ²⁸¹. Wherever revolution had undermined the strengths of the feudal constitution, there remained no possible obstacle to a more socially widespread diffusion of possessive particularism.

France was not organized on the modern model, it was not among the modern States that subsist by a representative system of feudal provenance. For its successive constitutions had renounced the triadic structure of the Estates General and, by allowing the bourgeoisie to pervade the representative body rather than be confined to separate representation in a Third Estate, a confinement which is essential to Hegel's concept of a representative system with whose actions all estates can identify ²⁸², had practically given utter preference to the interests of the bourgeoisie over those of the First and Second Estates. It may seem highly idiosyncratic to those who are accustomed to equate modernisation not with the civilisation or cultivation of worthy customary roots, but with their eradication, to withhold the

accolade of modernity from the world historical event which seems above all to exemplify the principle of eradivative perfection. But Hegel, despite his abiding awareness of the inspirational significance of the French Revolution, its importance, in other than institutional terms, as a manifestation of the inadequacy of a political preference, in the face of environmental stresses, for a merely 'positive' posture, one that equates the maintenance of identity with the attempt to 'stay put', clearly did not believe that its mythos of national representation ²⁸³ was sufficiently considerate of the customary independence of the individual and the subnational groups to which he belongs, or sufficiently observant of the principle of political exchange, and careful of the sense of the virtuous responsibility for and the idea of commitment to the deeds of the community which that principle engenders, to furnish the French people with enduring institutions sustained by a well-disposed political culture. In this respect, it makes great sense to doubt whether France, and in general any 'machine-state' which neglects to civilise or to cultivate its 'roots', is organised on a 'modern model' or has the capacity to make the changes which it proposes endure in the hearts of men. For such a State lacks in its very centre the most important characteristic inherited from the feudal system, namely, an internal constraint upon the tendency of any majority to pursue its interests to the detriment of others not in agreement with it. Nor could the provision of a mechanical system of external constraints, for example, the means of a constitutional court (*juri constitutionnel*) ²⁸⁴, or, in general, by a separation of powers ²⁸⁵ be held to furnish the appropriate conditions for the limitation of state activity. For the effect of such a system could be to paralyse the majority rather than to enable it to act effectively in the pursuit of ends in which all

citizens can feel themselves to have an interest.

The decisiveness in the public interest which Hegel believed to be peculiar to States organised on the 'modern model', that of a political system within which power is distributed among authorities having the same centre, as opposed to one in which immobilism is all but guaranteed by the dispersal of authority among eccentric powers, is what distinguishes those States which had been able to civilise the feudal practice of representation. Only those States were modern which had relied upon traditional mixtures of maiestas in order to contain the centrifugal forces of political particularism, and to prevent the force of 'necessity', which Hegel identified with the prevalence of public law, from emasculation by the growing pressure of 'chance', which he regarded as the characteristic of civil society that Praxis had, through insistence upon the right to subject political authority to forensic treatment, elevated to the status of a 'political principle' ²⁸⁶. Only those could claim to be able to effect the erection of a durable foundation for civilised ethical life which were constituted upon the basis, inherent in representation, of regard for the cultivation of the independence of the customary life of quotidian practical effort and industry, as well as for its enlightenment by the torch of law.

It is in the section on the power of the estates ²⁸⁷, in tandem with that on religion ²⁸⁸ which precedes it, that is to be found Hegel's theory of representation in its most exoteric form. Here is to be found the definitive point of departure, in 1801, and return, in 1802-1803, of the whole of the VSN. Here is their thematic as well as their editorial axis. Here we may discover a summary statement of most of the arguments with whose archaeology ²⁸⁹ we have been occupied throughout this study.

In these sections, Hegel argued most emphatically that in

the modern world of the bourgeoisie, togetherness or the existence of a people as the ethical totality which it used to be, must depend on the intelligible bonds of law rather than the inarticulate threads of custom and manners ²⁹⁰, whose 'potencies' it is nevertheless the business of law to cultivate and civilise. His view was that the inwardness and want of articulation of pre-modern ties of mutual obligation rendered them inadequate to hinder the disintegrative effects of incipient possessive particularism ²⁹¹. He believed, further, that only genius, a quality exhibited in the modern world by men of power, whose force must not, however, be alien or foreign to the customary material to which it seeks to impart the form of law, is fit to bring law to birth ²⁹². He attributed to the consolidation by the Peace of Westphalia of the power of the opponents of the Emperor ²⁹³ the fact that while their barbarisation of the Empire was quite legal, according to its foreign sanction, they were enabled to act as criminals ²⁹⁴. He held that only Austria's feudal resources had so far saved the Empire from the emasculation of its potential for statehood by the long standing private right of primogeniture in Electoral dynasties, the original cause of territorial consolidation and of the infiltration by foreigners of the membership of the Empire ²⁹⁵. He was convinced that, just as the feudal system had, in most of Europe, been a fit basis for the emergence of the modern State ²⁹⁶, so it could have been in Germany save for the delivery of the public interest out of the hands of a potential majority and into the forensic sphere of private right ²⁹⁷. For he argued that Germany's situation was originally no less favourable to the development of the State than that of France, Spain or England, and that it was among the German people that arose the foundation of European States, namely the spirit of trust ²⁹⁸ in which Hegel discerned the larval material out of

which might be spun something like the virtuous cloth, woven from habitable and intelligible texts, of public relationships in ancient Greece, where political community had coexisted with social difference thanks to the articulation in the very soul of the citizen of the image of the State's activity as the immortal embodiment of his own. While Hegel was aware that the warping of the bourgeois spirit had everywhere eroded this foundation, he believed that it had prepared another, which consisted in the fact that the wish of the bourgeois to concentrate upon his own affairs had at least one beneficial effect ²⁹⁹, on which modern or formal as opposed to primitive or trustful representation depends, that there is no presumption on the part of the individual intemperately to intrude his presence upon the doing by the whole of its own business, but a readiness, akin to that of the Greeks, to mind his own and to abide by the terms of political exchange.

Hegel doubtless felt that it was a matter of history, about which it would be pointless to complain, that a representative system was substantially but not formally extant in primitive Germany ³⁰⁰ and that the practice of representation had therefore evolved without deliberate design and hence with no assurance that the concentration in Monarch and Estates of absolute yet limited authority ³⁰¹ could, in the face of casual events, resist abuse of the terms of political exchange. But this is not to say that he did not hope that the maintenance by the princes of the spurious appearance of identity between theirs and the interests of their people, so long manipulated, to the end of preventing the erection of a genuine State-power, in the name of the drive of the 'German character' for freedom ³⁰², might be about to succumb to the necessary principle of the unity of the State. For he believed that there had emerged, thanks to the religious divisions which the princes had wittingly exploited,

but whose consequences were ultimately beyond their control, a distinction between the peoples as merely subject to their princes and the people, insofar as they came to be represented on their own account, as participants with the monarch in the joint exercise of Herrschaft 303.

Hegel's view was that the system of representation of which this distinction is characteristic, and which alone deserves to be called modern, whereas that is merely novel which has not a durable foundation in customs civilised by the form of law, had a capacity lacking in political systems which had dispensed with the trusty principle of sovereignty at once distributed and concentrated, to repress the pretensions of the powers of particularity. In Austria and England in particular, the representative system had ensured that none could claim effectively to be, entirely in their personal capacity, indistinguishable from their estates and thus to have interests identical with their subjects, who would if that were allowed be unworthy of representation 304. There, as not in Germany as a whole, the aristocracy had been kept entirely in a relation to the authority of the State of utter dependence and so had been adapted to military and civil service 305.

Such States as these, in whose 'firm, universal structure of civilization' 306, in whose gracious and concentric sovereignty is inherent durable modernity, as opposed to the high-pitched and energetic but doubtfully persistent and merely ephemeral novelty of France and Prussia 307, were regarded by Hegel as exhibitions of the model for the kind of political organisation which Germany as a whole must adopt in order to escape from the condition of barbarity to which the antagonists of its imperium had brought its people. Before we consider the question whether he really believed in the possibility of the ultimate modernisation of Germany, by which he clearly meant nothing other than its

civilisation (Bildung), the making whole of its people through law, it is worthwhile to quote in extenso what is probably the most important paragraph in the VSN. For it expresses pithily most of the points itemised above. Besides, it may give an impression, to any reader who is unaware of the implication in the idea of the objective necessity of laws of history, that there is always available an opportunity for the realisation of the need for self-given laws, that Hegel was ultimately uncertain whether Germany was capable of political modernisation. In this passage it is written that 'Representation is so deeply interwoven with the essence of the feudal constitution, in its development side by side with the rise of the bourgeois, that we may call it the silliest of notions to suppose it an invention of the most recent times. By the transformation of free men into masters, the feudal constitution, i.e. in modern countries a State, has been developed in which each individual no longer has a direct voice himself in any national affair; on the contrary, all obey a whole founded by themselves, i.e. a State and its branches and particularisations (the laws), an abiding, fixed centre to which each individual has a mediate relation derived from representation. All modern States subsist by representation and its degeneration alone, i.e. the loss of its true essence, had destroyed France's constitution, though not France as a State. It came out of Germany; but there is a higher law that the people from which the world receives a new universal impulse perishes in the end before all the others, while its principle, though not itself, persists' 308.

This germinal statement of Hegel's philosophy of history, according to which Spirit progressively discards its passionate instruments, by definition ineligible to be regarded as if they had the cognitive or pragmatic competence of themselves to devise,

much less preserve, the principles of their social and political organisation, might appear to suggest that Hegel doubted whether the German people had any future at all. It might seem that when Hegel wrote that though representation arose from the German forests but did not exist there in the constituted form which it began to take under the feudal system, a system whose beginning depended upon the diluvian departure of the Germanic nation from the dwelling-place which contained them as a people, and presupposed that its founders had for ever run their course as a people ³⁰⁹, he meant that they could never be a nation once again. But suppose that, as early as 1801, Hegel regarded law as the objective form in which Spirit would condescend to take shape, so as to give individuality to a multitude not of itself fit to assume identity as an ethical totality. Suppose that he thought of law as the expression of an identity whose capacity for autonomous action, superior but not alien to mortal agency ³¹⁰, needs to be postulated in order to make good the want of ordinary men, who are indecisive so long as they do not put their trust in such a Being ³¹¹, of the capacity to share an intention with others and to perform it as one. In that case, it need not be supposed that Hegel thought that there was no hope for Germany as a national political entity. Rather, he thought that there is hope for a people which could once live together upon the basis of customs and common interests that gave their community the 'likeness of a State' ³¹², only if it translate its valuable customs into laws. The custom of 'representation' based upon familial trust ³¹³, which arose without formal institution ³¹⁴ in the forests of Germany would have to be enacted or constituted as a system according to which no socially privileged group or individual has immediate or advantageous access to the use in its own interests of the power of the public authority ³¹⁵.

This system of integrative mediation ³¹⁶ between the public authority and individuals is, of course, a system of representation properly so-called. Its constitution is alone fit to contain the avid pursuit of self-interest ³¹⁷ and to ensure that its laws are so made as to be above the reproach that private interest has invaded that concentric whole ³¹⁸ which no individual can feel himself obliged to obey if he cannot regard it as if it were founded by himself, as if it were the product of his own activity ³¹⁹. The political culture which reinforces the authority of the constitution and laws must, to the end that he regard them thus, involve a cult ³²⁰ of representation, a system of devotion to a 'God' that is neither arbitrary nor partial to the present interests of any suppliant, neither jealous nor hostile to the autonomy of any subject ³²¹, a celebration in sensible and intelligible terms of an image of commonwealth and common activity, congenial to rather than repressive ³²² of the powers of men of all stations. Such a cult (whose object is to promote the cause of a harmonious political relationship among men different in their social capacities, to advance civilisation ³²³ in the face of the tendency of the powers of particularity to disorganise the integrity of the whole and to barbarise ³²⁴ the life of custom, making of it a habit in which none can dwell but a multitude, which is not a people, of idiotic ³²⁵ or atomic ³²⁶ self-seekers) we encountered earlier in the guise of a 'new mythology', which, by inhibiting intemperate ³²⁷ pretensions to invade the affairs of the whole with the muddles ³²⁸ of private business, discourages any inclination on the part of individuals or groups to have a direct voice in any national affair. This is the very aspiration which, it was argued above, Hegel denied to have been effectively suppressed by the mythos of the French Revolution ³²⁹, the conceited pretence of which to be able to

invent a new political world regardless of the customs of the old encouraged men to suppose that they may fashion that world in their own image and according to their own ends, in contempt of the custom-built law that might present them the image of that alone which has the cognitive and pragmatic competence to become what it intends to remain.

Though the German people had perished as a customary entity, it might yet live again as a legal community. It was the source of the political principle of modern freedom. It had only itself to revert to that source. For all the modish appearance and the iconoclastic style of the French Revolution, it could not supply that principle, anymore than could Prussia.

The machine-state is not organised on the modern model. The kind of State which Hegel did deem to be the vehicle of political modernity was instantiated in 'all the European States that have not experienced a revolution in recent times'³³⁰ and have by that token preserved the system of representation which is the 'system of all modern European States'³³¹. Among such States should clearly be included England and Austria. Of these two States, despite anomalies in their systems of representation, Hegel clearly believed that they had the capacity to accommodate the diversity of culture and manners which he held to be a 'necessary condition of the stability of modern States'³³². If Germany as a whole was to become a modern State, a possibility not precluded by the 'disparate multiplicity' prevailing there in matters of civil laws, administration of justice, imposition and collection of taxes etc., language, customs, education and religion³³³, it would have to develop for itself, and find in it a support for itself, the principle of representation which it had given to the rest of the world but had hitherto, because of the ascendancy of vassals against the feudal lordship of the

Emperor, failed to civilise, succumbing instead to the barbaric fate of possessive particularism. To this end the best means available to the German people would be to rally to the standard of Austria and to repudiate the new politics, the politics of motion without measure of Prussia and revolutionary France alike.

There is, therefore, not at all present in Hegel's pre-systematic writings what Hans Maier has ventured to call a 'logic in his (Hegel's) train of thought' which 'ought' to have led Hegel to give the palm to the territorial Machtstaat ³³⁴. Maier's admission that it does not and that Hegel was constantly drawn in the opposite direction should give pause to those who glibly suppose that by political modernity Hegel meant a condition, or progress towards a condition, where customs which serve to aid men to live together in trust, love and joy, as an ethical totality rather than in an atomized heap are eradicated in favour of mechanical efficiency in the pursuit by the State of ends which are not its business. For by modernity Hegel meant nothing but the eternal process of the civilisation of custom, in other than matters of opinion, by law, wherein custom does not cease to be such but is enabled, if life remains in it, to persist under conditions that would otherwise be adverse to it. Its vitality is not thereby taken away from it. Rather continued life is invested in it ³³⁵. That polity is not modern, according to Hegel's lights, which constructs 'a legal system with a novel content' ³³⁶. Modernity, rather than being held to consist in change from one determination to an utterly other, is taken to be identical with the capacity of any civilised people to resist its tendency to decline. The power of a constitution, strengthened by the dedication of the people to it on account of the inherence in it of their customs, to put a term to the principle of decadence with which time is instinct, is that which

qualifies a political system to be called modern, or fit to endure by its constant adaptation to and adjustment of the variety of custom in time. We have seen at length that the virtue of representative government is that it provides a medium of political exchange through which it is possible, given that the practical subjectivity of the individual in his quotidian activity is on the whole afforded scope to develop in the customary or spontaneous form appropriate to it, that whatever action the State may take besides should be felt by the individual as if it were his own deed, for which he is responsible and to which he is committed come what may. It is this virtue, that it is best designed to engage the commitment of the modern denizen of civil society to the state, that led Hegel to the conclusion that representation of a kind which favours no estate deserves, above all other kinds and above all non-representative systems of government, to be called modern. For without this commitment, all political change is hazardous, while it is the will and ability to change themselves, even in order to remain the same, upon which depends a people's modernisation or, what is the same, its remaining civilised under new circumstances.

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Notes to Chapter One

1. By the term *Verfassungsschriften* is meant Hegel's essay on the German Constitution, all its drafts and notes and the fragmentary piece on the domestic affairs of his native Wuerttemberg. Not meant, and not dealt with in this study because Hegel was merely their editor and nothing certain can be made of his attitude to their author, are the Confidential Letters of J.-J. Cart 'On the former constitutional relationship of Wadtland to the City of Bern'. The VSN are collected in Hegels *Saemtliche Werke* Band 7 hrsg. Georg Lasson, Leipzig (1923); some of them, unfortunately not including either the very important fragmentary material or the invaluable text of the account by Rudolf Haym, in his *Hegel und seine Zeit* Berlin (1857), of the no longer extant conclusion of the piece on Wuerttemberg, but only what remains of that essay, are available in translation by T. M. Knox as *Hegel's Political Writings*, with an introductory essay by Z. A. Pelczynski Oxford (1964). These editions will henceforth, in the notes, be referred to thus: VSN eds. cit., followed, where appropriate by page numbers from both the German and the English texts respectively, e.g. VSN eds. cit. p. 111; 219. In case Knox has not furnished a translation, all references should be taken to relate only to Lasson's edition, and will appear thus, for example: VSN ed. cit. p. 141. Should any such page reference appear in brackets, e.g. VSN ed. cit. p. (11), it is to be understood to relate to the draft material printed by Lasson below the main text, from which it is clearly segregated by a line and distinguished by small type.
2. By the term *theologische Jugendschriften* is meant Hegel's four major essays on matters related to the cultural circumstances of Greek, Jewish and Christian religions, the Tuebingen Essay, and the so-called 'Leben Jesu' (LJ), 'Positivitaet der christlichen Religion' (PCR) and 'Geist des Christentums und seine Schicksal' (GCS), along with drafts more or less parallel to them. The JSN are collected in Hegel's *Theologische Jugendschriften* hrsg. von Hermann Nohl, Tuebingen (1907). Only the last two named are available in select translation, again by T. M. Knox, as *Hegel's Early Theological Writings* Chicago (1948). The same system of reference will be used for the German and English texts, respectively, of the JSN as for those of the VSN e.g. JSN eds. cit. p. 205; 135 or JSN ed. cit. p. 97.
3. *Briefe von und an Hegel*, hrsg. von Johannes Hoffmeister, Hamburg (1952) Band 1 (1785-1812) p. 59, letter 29.
4. *ibid.*
5. *ibid.*
6. The conversation report in question is to be found in *Dokumente zu Hegels Entwicklung* (DzHE) hrsg. von Johannes Hoffmeister, Stuttgart (1936), p. 396.
7. *Briefe* ed. cit. p. 60, letter 29.
8. Before April 1801, according to Heinz Kimmerle's *Zur Chronologie von Hegels Jenaer Schriften*, *Hegel-Studien* Band 4 (1967), pp. 125-176, Hegel wrote a piece known, as is the style with Hegel's chronological index, by its opening words, *Menschenliebe Freundschaft* (Jena chronological index, item 7, art. cit. p. 138).
9. In case any English translation is available which completely exhausts the definitive German edition of its original, as is the case of the translation of the *Differenzschrift* by H.S. Harris and Walter Cerf as *The Difference between the Philosophical Systems of Fichte and Schelling* Albany (1977), no reference will be made to the German edition.
10. The same applies to the *Naturrechtsschrift*, translated by T. M. Knox as *On the Scientific Ways of Treating Natural Law* Penn. (1975), as to the DS.

11. Briefe ed. cit. pp. 59-60, letter 29.
12. ibid p. 60.
13. see below p. 7 n. 34.
14. Cited by Otto Poeggeler in Hegels Option fuer Oesterreich, Hegel-Studien Band 12 (1977), p. 111.
15. Briefe ed. cit. pp. 20-23, letter 10.
16. ibid. pp. 15-18, letter 8.
17. ibid. p. 14, letter 7.
18. ibid. pp. 17-18, letter 8.
19. ibid. p. 21, letter 10.
20. ibid.
21. ibid.
22. ibid. p. 22.
23. ibid.
24. ibid. p. 24, letter 11.
25. ibid. pp. 23-24.
26. ibid. p. 24.
27. ibid.
28. ibid. p. 18, letter 8.
29. ibid. p. 15, letter 7.
30. ibid. p. 19, letter 9.
31. ibid. p. 24, letter 11.
32. ibid.
33. ibid. p. 28, letter 13.
34. ibid.
35. ibid. p. 24, letter 11.
36. ibid.
37. ibid. p. 32, letter 14.
38. ibid. p. 28, letter 13.
39. ibid. p. 27, letter 13.
40. ibid.
41. ibid. p. 31, letter 14.
42. ibid. pp. 31-32.
43. ibid. p. 12, letter 6.
44. Hegel's first sustained critique of Fichte and review of his Science of Rights occurs in the DS.
45. Cf. DS trans. cit. pp. 146-7.
46. Briefe ed. cit. p. 24, letter 11.
47. J.C.F. Schiller Werke Band 20, p. 452.
48. JSN eds. cit. p. 146; 176.
49. ibid.
50. With Schelling's attitude, exemplified above, p. 4 n. 14, may be contrasted Hegel's at the beginning of his VSN eds. cit. p. 4; 144.
51. Hegel, The Phenomenology of Spirit, trans. J. B. Baillie, London (1931).
52. Briefe ed. cit. p. 59, letter 29.
53. On this matter, see Brecht/Sandberger Hegels Begegnung mit der Theologie in der Tuebinger Stift, Hegel-Studien, Band 5 (1969) pp. 47-81
54. H. S. Harris Hegel's Development, Oxford (1972), p. 59.
55. Dokumente zu Hegels Entwicklung (DzHE) ed. cit. p. 24.
56. See below pp. 307-8.
57. Cf. Hanns Gross Empire and Sovereignty: a history of the Public Law literature in the Holy Roman Empire 1599 to 1804, Chicago (1973) p. 400
58. Cf. F. M. Barnard, The 'Practical Philosophy' of Christian Thomasius, Journal of the History of Ideas, 32 (1971), pp. 221-46 and P. H. Reill, The German Enlightenment and the Rise of Historicism Los Angeles/London (1975), p. 108.
59. DzHE ed. cit. pp. 110-111.
60. In the words cited at n. 59, Hegel was summarizing J. G. Sulzer's Kurzer Begriff der Gelehrsamkeit (1759). See DzHE ed. cit. pp. 109-115
61. ibid. p. 112.
62. Cf. Reill op. cit. p. 107.

63. DzHE ed. cit. pp. 114-115. Cf Gross op. cit. 384-8.
64. DzHE ed. cit. p. 113.
65. *ibid.* p. 112.
66. See the title page of the NRS.
67. Christian Garve Versuch ueber Pruefung der Faehigkeiten (1769), excerpted by Hegel 14-18 March 1787, DzHE ed. cit. pp. 115-136.
68. *ibid.* p. 126. Garve was probably thinking above all of Christian Wolff, whose views on natural law as a species of eternal truth independent, like mathematics, of temporal and topical circumstance, had long been the object of criticism by followers of Thomasius Cf. Reill op. cit. pp. 113-4.
69. *ibid.* p. 125
70. *ibid.* p. 126 As well as Wolff, Garve probably had in mind his follower Alexander Baumgarten, the founder of aesthetics in 18th century Germany.
71. *ibid.* p. 123.
72. *ibid.*
73. *ibid.* p. 135.
74. *ibid.*
75. *ibid.* p. 115.
76. G. A. Kelly Idealism, Politics and History, C.U.P.(1969),pp.22, 293.
77. *ibid.* p. 240.
78. DS trans. cit. p. 144.
79. *ibid.* p. 139.
80. *ibid.*
81. *ibid.* p. 145.
82. DzHE ed. cit. pp. 37-8.
83. *ibid.* p. 37.
84. *ibid.* p. 47.
85. *ibid.* p. 48.
86. *ibid.* p. 47.
87. Moses Mendelssohn Was heisst aufklaeren? (literally, but awkwardly in English, What is it to enlighten?), Berliner Monatsschrift (September 1784), pp. 193-200. See DzHE ed. cit. pp. 140-143.
88. Friedrich Nicolai Beschreibung eine Reise durch Deutschland und die Schweiz vol. 5, section 14. See DzHE ed. cit. pp. 145-6.
89. *ibid.* vol. 4, section 12. See DzHE ed. cit. p. 147.
90. See above pp. 8-10.
91. DzHE ed. cit. p. 143.
92. *ibid.* p. 140.
93. *ibid.* p. 143.
94. *ibid.* p. 141.
95. *ibid.* p. 142.
96. *ibid.*
97. *ibid.* p. 141.
98. *ibid.*
99. *ibid.*
100. *ibid.* p. 142.
101. *ibid.*
102. *ibid.* p. 141.
103. *ibid.*
104. JSN ed. cit. p. 30. See below.
105. DzHE p. 142.
106. *ibid.*
107. *ibid.*
108. *ibid.*
109. *ibid.* p. 143.
110. *ibid.* p. 140.
111. *ibid.* p. 142.
112. *ibid.* p. 140.
113. *ibid.* p. 143.
114. Garve Sammlung einiger Abhandlungen (1779) pp. 116-197.

115. Whoever is interested in the details of Hegel's plagiarism should refer to DzHE ed. cit. pp. 407-13 or to an account less tedious than Hoffmeister's in Harris op. cit. pp. 35-40.
116. Garve op. cit. 131 and 177, cited in DzHE ed. cit. p. 413.
117. DzHE ed. cit. p. 50.
118. *ibid.* p. 49.
119. *ibid.*
120. *ibid.*
121. Garve op. cit. p. 185, cited in DzHE ed. cit. p. 409.
122. Nicolai op. cit. vol. 5, section 14, cited in DzHE ed. cit. p. 146.
123. DzHE ed. cit. p. 49.
124. Nicolai op. cit. vol. 4, section 12, cited in DzHE ed. cit. p. 147.
125. See DzHE ed. cit. pp. 147 and 146.
126. Cf. Otto von Gierke Natural Law and the Theory of Society translated by Sir Ernest Barker Cambridge (1958) pp. 154-9.
127. Karl Rosenkranz G.W.F. Hegels Leben Berlin (1844) p. 14.
128. See DzHE ed. cit. p. 422.
129. *ibid.* pp. 38-9.
130. Rosenkranz op. cit. p. 15.
131. DzHE ed. cit. p. 422.
132. *ibid.* pp. 9-10.
133. *ibid.* p. 7.
134. Johann Matthias Schroek Abbildungen und Lebensbeschreibungen beruehmter Gelehrten vol. 2, p. 247 cited by Reill op. cit. p. 42.
135. Johann Christoph Gatterer Allgemeine Historische Bibliothek von Mitgliedern des Koeniglichen Instituts der Historischen Wissenschaften zu Goettingen vol. 1, pp. 85-6, cited by Reill op. cit. p. 230. Cf VSN eds. cit. pp. 4-5; 144-5.
136. JSN eds. cit. p. 148; 178.
137. Cf. Herbert Butterfield Man on his Past Cambridge (1955), pp. 48-50
138. DzHE ed. cit. pp. 54-5.
139. August Ludwig von Schlözer was to publish in 1793 and 1794 the first and second parts of his Stats-Gelarthheit, Allgemeines Stats Recht und Stats Verfassung and Theorie der Statistik nebst Ideen ueber das Studium der Politik ueberhaupt. As we shall see below, pp. 308-9 and 321 ff, Hegel probably knew of the progressive development of the Gelarthheit tradition by such 'professorial statisticians' as Schlözer and his colleague Gottfried Achenwall.
140. VSN ed. cit. p. 15.
141. DzHE ed. cit. p. 51.
142. *ibid.*
143. *ibid.*
144. Rosenkranz op. cit. p. 15.
145. DzHE ed. cit. p. 10.
146. *ibid.* pp. 86-7.
147. Ueber einige Vorteile welche uns die Lektuere der alten Klassischen griechischen und roemischen Schriftsteller gewaehrt, DzHE ed. cit. pp. 169-172.
148. The so-called Tuebingen Essay of 1793, JSN ed. cit. pp. 3-29, is available in translation by H.S. Harris in an appendix to his Hegel's Development pp. 481-507. In the case of the Tuebingen Essay, this is to be understood to the the English edition cited in tandem with the JSN, to both versions of which reference will be made as follows, for example: JSN eds. cit. p. 3, (481), the brackets being intended to signify that Knox's edition is not meant.
149. Joachim Ritter in his Hegel und die franzoesische Revolution Frankfurt (1965) readily concedes that the revolution was regarded by Hegel as incapable of producing anything 'firm in institutional terms' See p. 21.
150. It is most probable that Hegel's nickname was meant to convey the impression of a fellow not inclined to mortify the flesh and

- totally to subordinate, as if he had undergone damascene conversion like Saul of Tarsus to St. Paul, his sentient to his intelligent nature. Hegel enjoyed life too much to 'put off the old man and take on the new'.
151. See below, chapter 2, section 5.
 152. See below, chapter 4, section 3.
 153. VSN eds. cit. pp. 6; 145-6.
 154. Gatterer Allgemeine Historische Bibliothek vol. 5, pp. 18-9, cited by Reill op. cit. p. 54.
 155. Cf. Hegel's Philosophy of Right, paragraph 211.
 156. See below, chapter 2, section 3.
 157. Kant, of course, advocated, throughout his Religion innerhalb die grenzen der blossen Vernunft (1793), that men must undergo a conversion from old to new in order to be fit to obey the categorical imperative.
 158. See below, chapter 3, section 1.
 159. JSN ed. cit. p. 30.
 160. ibid. pp. 33 and 34.
 161. ibid. p. 33.
 162. ibid. p. 30. Cf DzHE ed. cit. p. 49.
 163. JSN ed. cit. p. 33.
 164. ibid. Cf DzHE ed. cit. p. 50 and above, p. 26.
 165. JSN ed. cit. p. 34.
 - 165a. ibid. p. 32.
 - 165b. Jenaer Literarische Zeitung no. 117 (1792), see DzHE ed. cit. p. 174.
 166. ibid.
 167. JSN ed. cit. pp. 34 and 35.
 168. VSN eds. cit. pp. 111-116 See below,
 169. Niccolo Machiavelli The Discourses Book 3, chapter 31.
 170. On the influence of Machiavelli upon Montesquieu's Considerations on the Causes of the Grandeur and Decadence of the Romans see R. Shackleton art. cit. passim.
 171. JSN ed. cit. pp. 33-34.
 172. ibid. p. 57.
 173. ibid. p. 58
 174. ibid.
 175. ibid.
 176. ibid. p. 57.
 177. ibid. p. 55.
 178. ibid. p. 54.
 179. ibid. p. 52.
 180. ibid.
 181. ibid. p. 59. In a contemporary piece, Hegel attacked as a subterfuge resorted to by theologians in order to persuade men of the necessity of faith in another's rather than confidence in their own virtue, the view that human nature cannot attain morality through its own resources. Where humanity has not been degraded by 'bad government', experience, Hegel insisted, contradicts this pessimistic view of human nature Cf JSN ed. cit. p. 63.
 182. ibid. p. 52.
 183. ibid. p. 53.
 184. ibid. p. 59.
 185. ibid. p. 55.
 186. ibid.
 187. ibid. p. 34.
 188. ibid. p. 57.
 189. ibid. p. 34. The last of these phrases is from Schiller's 'Resignation'.
 190. See above, p. 47.
 191. JSN eds. cit. pp. 222 and 223; 154 and 157. See below,
 192. ibid. p. 222; 154.

193. *ibid.* p. 61.
194. *ibid.*
195. *ibid.* p. 55.
196. DzHE ed. cit. p. 115.
197. JSN ed. cit. p. 61.
198. *ibid.*
199. *ibid.* pp. 61-2.
200. *ibid.* p. 363.
201. *ibid.* p. 61.
202. *ibid.*
203. *ibid.* p. 36.
204. *ibid.*
205. *ibid.* p. 61.
206. *ibid.* p. 37.
207. Harvey C. Mansfield Jr. *Modern and Mediaeval Representation in Pennock and Chapman (eds.) Representation* New York (1968) pp. 72-3.
208. JSN ed. cit. p. 356. The reference is to Moses Mendelssohn's *Jerusalem* (1783) vol. 1. p. 121. This rabbinical doctrine is to be found in the *Talmudic Encyclopaedia* ed. S.Y. Zevin, Jerusalem (1956), vol. 7 pp. 354 ff and 376 ff.
209. JSN ed. cit. p. 355.
210. *ibid.* p. 357.

Notes to Chapter Two

1. JSN ed. cit. pp. 12-16; (489-93)
2. *ibid.* pp. 17; (494-5).
3. *ibid.* p. 19; (497).
4. *ibid.* pp. 21; (499-500).
5. *ibid.* p. 26; (505).
6. *ibid.* p. 61.
7. *ibid.* p. 8; (486)
8. *ibid.* p. 355.
9. Cf. G. W. Leibniz Discourse on Metaphysics, translated by P.G. Lucas and L. Grint, Manchester (1961), section 9.
10. JSN eds. cit. pp. 4-5; (482).
11. *ibid.* p. 5; (483).
12. *ibid.* p. 7; (485).
13. *ibid.*
14. *ibid.* p. 8; (486).
15. *ibid.* p. 8; (485).
16. *ibid.* pp. 8-9; (486).
17. *ibid.* p. 9; (486).
18. This term, meaning a pedantic observer of the letter rather than a sensitive performer of the spirit of the law - be it of God, reason or the land - originated with none other than Mendelssohn.
19. JSN eds. cit. pp. 16-17; (494).
20. *ibid.* p. 17; (495).
21. *ibid.* pp. 17; (494-5) Harris infers from the metaphorical shift 'from new dwelling to familiar inheritance, a shift which in any case he presents confusedly, that Hegel 'is not clear in his own mind what point he wishes to make' op. cit. 140. On the contrary, it is clear that Hegel meant that through complementary practical and theoretical subjectivity the individual can 'know his place'.
22. *ibid.* p. 9; (486). Cf. *ibid.* p. 18; (496).
23. *ibid.* p. 16; (494). Cf. *ibid.* pp. 19 ff.
24. *ibid.* p. 12; 400.
25. Cf above, p. 43 and below p. 84.
26. JSN eds. cit. pp. 19-20; (497).
27. Cf. above p. 47.
28. JSN eds. cit. p. 20; (499).
29. *ibid.* pp. 21; (499-500).
30. *ibid.* p. 23; (502).
31. *ibid.*
32. Cf. *ibid.* pp. 8-9; (486).
33. *ibid.* p. 23; (502).
34. *ibid.* p. 20; (499).
35. *ibid.* pp. 24; (502-3).
36. Leibniz Theodicy trans. E. M. Huggard London (1951), p. 49.
37. JSN eds. cit. p. 24; (502).
38. *ibid.* p. 24; (503).
39. *ibid.* p. 26; (504).
40. *ibid.* p. 20; (499).
41. *ibid.* p. 26; (505).
42. *ibid.* p. 9; (486).
43. *ibid.* p. 27; (505).
44. *ibid.*
45. *ibid.* p. 9; (486)
46. Harris op. cit. p. 125.
47. JSN eds. cit. p. 17; (495). Cf DzHE ed. cit. p. 169, for a related passage in the rehash, the first essay which he wrote in Tuebingen, of his piece 'On some characteristic differences of ancient (poets from modern)', in which Hegel wrote of the Greeks that from 'the study of their political constitution and systems of education we learn still more (than from their poetry) that the knowledge of each (concerning God, nature and human obligations).

was far removed from

"the cold book-learning, which stuffs
the brain with dead signs"

To this might be added, what followed in the earlier version, DzHE
cit. p. 49, that 'of all they knew, they could say

"How, when and where they had learnt it" '

48. JSN eds. cit. p. 27; (506).

49. *ibid.* pp. 27-8; (506).

50. *ibid.* p. 28; (506).

51. Cf. NRS ed. cit. p. 115.

52. JSN eds. cit. pp. 27-8; (506-7).

53. Hegel's Philosophy of History trans. J. Sibree New York (1956)
pp. 75-6.

54. JSN eds. cit. pp. 27-8; (506-7).

55. *ibid.* p. 28; (506).

56. *ibid.* p. 9; (486).

57. *ibid.* p. 28; (507).

58. *ibid.* Cf. Hegels NRS pp. 115-6 where likewise it is argued
that there should be promoted a cult of the state as the 'nation's
God' which thus acquires the quality with which, in agreement with
Plato, Hegel endowed the nature of the Divine: 'It is an immortal
animal whose soul and body are eternally born together' *ibid* 109.

See further, below Chapter 6, section 3.

59. JSN ed. cit. pp. 6; (483-4) Cf. DzHE ed. cit. p. 6.

60. JSN eds. cit. p. 6; (484).

61. DzHE ed. cit. p. 430.

62. *ibid.* pp. 195-216.

63. *ibid.* p. 200.

64. *ibid.*

65. We shall see below how it is possible that Hegel should also
have betrayed elsewhere an animus towards Rousseau for the oppos-
ite reason, which is due perhaps to contradictory traits in
Rousseau's political philosophy rather than Hegel's, namely that he
was too ready to envisage destruction of the identity of the old
for the sake of the introduction of an utterly opposite determina-
tion, the General Will.

66. JSN ed. cit. p. 237.

67. Kelly op. cit. pp. 14-15.

68. JSN ed. cit. p. 31.

69. *ibid.* and DzHE ed. cit. 174.

70. Cf JSN eds. cit. p. 27; (505).

71. *ibid.* p. 23; (502).

72. Cf. note 68 above.

73. Cf. JSN eds. cit. p. 9; (486) and DzHE ed. cit. pp. 141-2.

74. JSN ed. cit. p. 65.

75. *ibid.* p. 30.

76. *ibid.* p. 65.

77. Cf DzHE ed. cit. p. 50.

78. JSN ed. cit. p. 65.

79. *ibid.*

80. *ibid.* pp. 65-6.

81. The phrase is that used by Schiller in his 'Naive and Senti-
mental Poetry' by way of criticism of the nostalgic outlook of
Rousseau. See Schiller Gesammelte Schriften (N.A.) vol. 20
p. 452. As M. C. Ives has pointed out, Schiller, like Hegel was
strongly influenced by Ferguson, the translation of whose Principles
of Moral Philosophy by Garve Schiller, according to Ives The
Analogue of Harmony p. 17, certainly read and from whose Essay on
the History of Civil Society he may, like Garve, have got the idea
upon the basis of which he preferred to uniformity the 'harmony of
a completely accomplished civilization' That was the idea that
the development of mankind as a whole is, like that of the individual,

- composed of stages of childhood and maturity which cannot recur. Schiller's 'Inquiry into the connection between the animal and the spiritual nature of Man', as well as his Naive and Sentimental Poetry, was, according to Hoffmeister ed. cit. p. 408, heavily influenced by Ferguson and Garve.
82. See above, p. 54.
83. Cf. Hegel's excerpt from Mendelssohn's What is Enlightenment DzHE ed. cit. pp. 140-143.
84. JSN eds. cit. p. 223; 156.
85. Cf. note 58 above, p. 66.
86. JSN ed. cit. p. 34.
87. *ibid.* p. 365.
88. *ibid.* p. 366.
89. *ibid.* p. 364.
90. *ibid.* pp. 364-5.
91. See below, pp. 93-4.
92. 'Das Leben Jesu' (LJ), JSN ed. cit. pp. 75-136. There is as yet no published English translation of this essay.
93. Die Positivitaet der christlichen Religion (PCR) *ibid.* pp. 139-239; 67-181.
94. Der Geist des Christentums und sein Schicksal (GCS) *ibid.* pp. 243-342; 182-301.
95. PCR. JSN eds. cit. p. 150; 180.
96. *ibid.* p. 363. For an outline of Hegel's reasons for taking this view see above, p. 53.
97. PCR, JSN eds. cit. p. 150; 180.
98. See below, pp. 81-8.
99. PCR, JSN eds. cit. pp. 149-50; 180
100. GCS. *ibid.* p. 325; 282.
101. *ibid.* pp. 325; 281-2.
102. LJ, JSN ed. cit. p. 76.
103. *ibid.* pp. 75 and 76 The use of a like distinction between a 'Volk' and a 'Menschenmenge', a people and a multitude, occurs in the VSN eds. cit. p. 17; 153.
104. LJ, JSN ed. cit. p. 94.
105. *ibid.* p. 76.
106. *ibid.* p. 81.
107. *ibid.* p. 99.
108. *ibid.* p. 114.
109. PCR, *ibid.* p. 139; 167
110. *ibid.* p. 155; 71.
111. JSN ed. cit. p. 3.
112. PCR, JSN eds. cit. pp. 159-61; 77-9.
113. *ibid.* pp. 162-3; 81-2.
114. *ibid.* pp. 161-2; 80.
115. *ibid.* pp. 153; 68.
116. GCS, *ibid.* p. 325; 282.
117. *ibid.* p. 153; PCR, *ibid.* p. 153; 69.
118. *ibid.* p. 148; 177-8.
119. *ibid.* pp. 206-7; 137-8.
120. *ibid.* p. 207; 138.
121. *ibid.* pp. 206-7; 137-8
122. GCS, *ibid.* pp. 267-8; 214.
123. *ibid.* pp. 268-70; 214-17.
124. *ibid.* p. 269; 215.
125. *ibid.* pp. 269; 215-6.
126. *ibid.* p. 267; 214.
127. Kant Idee zu einer allgemeinen Geschichte in weltbuergerliche Absicht, Gesammelte Schriften, Band 8, pp. 22-3.
128. GCS, JSN eds. cit. p. 270; 217.
129. *ibid.*
130. *ibid.* pp. 277-81; 225-30.

131. *ibid.* p. 283; 232.
132. *ibid.* p. 296; 247.
133. Cf. *ibid.* p. 276; 224.
134. *ibid.* p. 294; 245.
135. *ibid.* pp. 293-4; 244-5 Cf. p. 276; 224.
136. *ibid.* p. 295; 247.
137. LJ, *ibid.* p. 87.
138. *ibid.* p. 78.
139. *ibid.* pp. 82-3.
140. *ibid.* p. 18. For Kant, of course, love was nothing but a pathological principle of action Cf. Kant, *Gesammelte Schriften*, Band 5, pp. 75-6.
- 140a. Kant Critique of Pure Reason B284.
141. *ibid.* p. LJ, JSN ed. cit. p. 95.
142. *ibid.* pp. 94-6.
143. GCS *ibid.* pp. 253-4; 195-6.
144. *ibid.*
145. PCR *ibid.* p. 139; 167.
146. *ibid.* p. 237.
147. LJ, JSN ed. cit. p. 182.
148. PCR *ibid.* pp. 207-9; 138-40.
149. *ibid.* pp. 209; 140-41.
150. *ibid.* p. 208; 140.
151. *ibid.* p. 368.
152. GCS *ibid.* p. 245; 184-5.
153. *ibid.*
154. *ibid.* pp. 243-5; 182-5.
155. *ibid.* p. 369. Cf. pp. 246-7; 185-7.
156. *ibid.*
157. *ibid.* pp. 369-70.
158. GCS *ibid.* p. 247; 187.
159. *ibid.* p. 369.
160. *ibid.*
161. GCS *ibid.* p. 247; 187. Cf. p. 369.
162. *ibid.* p. 372.
163. GCS *ibid.* p. 243; 182.
164. *ibid.* p. 370.
165. GCS *ibid.* p. 248; 189.
166. *ibid.* p. 370.
167. GCS *ibid.* p. 249; 189.
168. *ibid.* p. 370.
169. GCS *ibid.* p. 249; 190.
170. *ibid.* p. 370.
171. GCS *ibid.* pp. 249-50; 190-1.
172. *ibid.* p. 252; 194.
173. *ibid.*
174. *ibid.* p. 253; 195.
175. *ibid.* p. 254; 196.
176. *ibid.* p. 255; 198.
177. *ibid.* pp. 254-5; 197-8.
178. *ibid.* p. 255; 198.
179. *ibid.* p. 370.
180. *ibid.* p. 364-5.
181. PCR *ibid.* pp. 221-3; 154-7.
182. *ibid.* pp. 223; 156-7.
183. GCR *ibid.* p. 256; 200.
184. *ibid.* p. 259; 203.
185. PCR *ibid.* p. 150; 180.
186. *ibid.* p. 151; 181.
187. *ibid.* p. 174; 97.
188. *ibid.* pp. 163-4; 82-3.
189. *ibid.* p. 192; 119.
190. *ibid.* pp. 191-2; 118-9.

191. *ibid.* p. 192; 119.
192. *ibid.* p. 194; 121.
193. *ibid.* p. 192; 119.
194. *ibid.* p. 192; 120.
195. *ibid.*
196. *ibid.* pp. 157-8; 74.
197. *ibid.* p. 177; 100.
198. *ibid.*
199. *ibid.* p. 166; 86.
200. *ibid.* pp. 169-73; 91-5.
201. *ibid.* pp. 166-9; 87-91.
202. *ibid.* pp. 173-4; 95-7.
203. *ibid.* p. 183; 107.
204. Cf. VSN *passim*.
205. PCR, JSN eds. cit. p. 184; 109.
206. *ibid.*
207. *ibid.* p. 187; 113.
208. *ibid.* pp. 189; 115-6.
209. *ibid.* p. 184; 109.
210. *ibid.* p. 185; 109.
211. *ibid.* p. 185; 110.
212. *ibid.* p. 173; 95.
213. It was from Ferguson that Mendelssohn and Hegel ultimately derived, via Garve's translation of his *Grundsätze der Moralphilosophie* cf. esp. p. 414 f., the argument that associations other than the state could oblige the individual imperfectly only, leaving him entirely free to do, for instance, charitable works, or not.
214. PCR, JSN eds. cit. p. 191; 118.
215. *ibid.*
216. *ibid.* p. 174; 97.
217. *ibid.* p. 183; 107. These distinctions may be traced through Mendelssohn's Jerusalem to the work of J. H. Boehmer, with which Hegel was familiar as a product of the tradition of *Gelartheit*.
218. See below, chapter 3, section 3.
219. PCR, JSN eds. cit. p. 223; 156.
220. *ibid.* p. 365.
221. See below, chapter 5, sections 1 and 2.
222. See below, p. 276 and VSN eds. cit. p. 92; 202.
223. PCR, JSN eds. cit. p. 221; 154.
224. *ibid.* p. 70.
225. *ibid.*
226. PCR, *ibid.* p. 175; 98.
227. Cf. *ibid.* p. 186; 112.
228. Cf. JSN eds. cit. pp. 26-8; (505-7).
229. See below, chapter 6, section 3.
230. PCR, JSN eds. cit. p. 175; 98.

Notes to Chapter Three

1. PCR, JSN eds. cit. 215; 146.
2. *ibid.*
3. *ibid.* 214; 145-6.
4. *ibid.* 215; 147.
5. *ibid.* 216; 147.
6. *ibid.* 215; 146.
7. *ibid.* 215; 147.
8. *ibid.* 217; 149.
9. *ibid.* and 215; 147.
10. See below, p. 292.
11. PCR, JSN eds. cit. 215; 146 Cf VSN eds. cit. 135, 241.
12. This is an interpolation based upon the like complaints of the VSN. See below chapter 4, section 3.
13. PCR, JSN eds. cit. 215; 146.
14. *ibid.* 221; 154 Cf. VSN eds. cit. 92; 202.
15. Cf. below.
16. The ASP was not for certain Hegel's own work but one which he may merely have copied out from a manuscript originally written by Schelling or Hoelderlin. The question of who was its author is exhaustively discussed in an issue of Hegel-Studien, Beiheft 9 (1973) entirely devoted to it. For our purposes, the parallels of the ASP with other essays by Hegel to be discussed in this chapter furnish sufficient reasons to attribute it to him. It is to be found in DzHE ed. cit. 219-221 and in appended translation by H. S. Harris op. cit. 510-512. References to it will be made according to the following form, for example: DzHE ed. cit. 221; trans. cit. 512.
17. DzHE ed. cit. 221; trans. cit. 511.
18. Plato The Republic 464
19. DzHE ed. cit. 221; trans. cit. 511-12.
20. This title, here invented for the first time, is based upon the opening words of a fragmentary essay published by Lasson VSN ed. cit. 139-141 as Freiheit und Schicksal. It begins thus: Der immer sich vergroessernde Widerspruch ...
21. It is beyond the scope of this study to consider the statistical evidence deployed for or against the arguments in favour of attribution of this essay to Hegel Hoelderlin or Schelling. An excellent study of this evidence has been made by Francois-Xavier Tilliette in his article Schelling als Verfasser des Systemprogramms? in Das aelteste Systemprogramm: Studien zur Fruehgeschichte des deutschen Idealismus hrsg. von Ruediger Bubner, Hegel-Studien, Beiheft 9, 1973
22. DzHE ed. cit. p. 219; trans. cit. 510.
23. *ibid.* pp. 219-20; 510.
24. Kant, Anthropologie in pragmatischer Hinsicht, in Gesammelte Schriften/Werke, hrsg. von die Koeniglich Preussische Akademie der Wissenschaften zu Berlin, volume 7 (1913) pp. 157-8.
25. DzHE ed. cit. pp. 219-20; trans. cit. 510.
26. JSN eds. cit. pp. 223; 156.
27. *ibid.* pp. 215; 146.
28. Hans Maier Vorbemerkungen zu Hegels politischer Philosophie, Hegel-Studien Beiheft 9 (1973), pp. 157-8.
29. Schleiermacher's Monologue, cited by Friedrich Meinecke in Machiavellism, translated by D. Scott, London (1957), p. 362.
30. JSN eds. cit. pp. 223; 156-7.
31. VSN ed. cit. p. 141.
32. *ibid.* p. 139. Neighbourliness, an attitude which may be said to encompass the meaning of the phrase 'Bestreben der gegenseitige Annaeherung' is the political value which Hegel hoped might be realized as the issue of the political stresses of his time.
33. See below pp. Chapter 4, section 3.

34. VSN ed. cit. 140.
35. *ibid.* pp. 150 15 ; 242-5. Knox, unfortunately, did not think fit to translate what Lasson thought worthy of publication, in the absence of the primary material, namely Rudolf Haym's account of the conclusion to the *Wuerttembergsschrift*.
36. *ibid.* 150; 243.
37. See below, this chapter, section 3.
38. VSN 150; 243.
39. *ibid.*
40. *ibid.*
41. *ibid.* The idea of enactment is used here in antithesis to that of a heart passionately 'moved' to 'variance' with actuality but without intention towards a definite object.
42. *ibid.*
43. *ibid.*
44. *ibid.*
45. *ibid.* 151; 243.
46. See Franz Rosenzweig *Hegel und der Staat*, Munich (1920), vol. 1 p. 62.
47. Haym *op. cit.* pp. 53-4.
48. Harris *op. cit.* pp. 432-3.
49. Cf. Rosenzweig *op. cit.* pp. 54-5.
50. VSN eds. cit. pp. 150 and 151; 243 and 244.
51. *ibid.* p. 151; 244.
52. *ibid.*
53. *ibid.*
54. *ibid.* 150; 243.
55. *ibid.* 151; 244.
56. That Hegel was the editor of these letters was realized only in 1909 with the publication by Hugo Falkenheim of an article entitled *Ein unbekannte politischen Druckschrift Hegels*, in the *Preussischen Jahrbuecher*, Berlin (1909) pp. 193-210. Falkenheim, unlike successive commentators such as Rosenzweig, gave great emphasis to the evidence that Hegel sympathised with Cart's dependence of his defence of the rights of his countrymen on the authority of their customary practice, and that he was not an 'abstract radical' inclined to follow Rousseau's prescriptions for utter renewal of political life but what we may call a radical in the precise sense of one who cares for the customary roots of civilised life. Radicalism of this 'concrete' variety inclined Hegel to be an admirer of Montesquieu's attention to the customary circumstances of the political 'principes' which he identified, rather than of Rousseau's contempt for the constraint put by customary associations upon the naked power of a General Will intent upon bringing to pass a future in which they would have no political significance Cf. Falkenheim *art. cit.* pp. 204 ff.
57. Rosenzweig *op. cit.* pp. 50 ff., most notably, prefers the view that Hegel showed himself in his editorial comments to be a follower of Rousseau and therefore disinclined to support, except for pragmatic reasons, the traditionalist political outlook of Cart which depended political rights not at all upon a concept of natural justice but entirely upon prescriptive grounds. It need not, of course, be supposed, as Rosenzweig seems to have done, that Hegel's greater sophistication than Cart must have precluded sympathy on his part for an attitude that took too little care reasonably rather than on merely historical grounds to press the claims of custom. Some writers have tried to show that Hegel was an abstract radical, even a 'rationalist', by flying so high in the face of facts as to try to present Cart himself as merely for expedience a protagonist of traditional rights but in truth one whose sympathies are, as Pelczynski, in his *Introductory Essay* to Knox's edition of the VSN p. 32, tortuously tries to persuade us, 'all with the French Revolution'.

58. VSN eds. cit. p. 150; 243.
59. ibid. p. 151; 244.
60. ibid. p. 152; 244.
61. The Republic 425-6.
62. VSN pp. 152; 244-5.
63. The Republic 425.
64. VSN eds. cit. pp. 152-3; 425.
65. Haym op. cit. pp. 153-4 and 65-67.
66. ibid. 153.
67. Roland Mousnier, cited by Gerhard art. cit. in SPICHRPI (1965).
68. F. L. Carsten Princes and Parliaments in Germany Oxford (1959) p. 146.
69. Cf. Dietrich Gerhard Problems of Representation and Delegation in the 18th century See the International Commission for the History of Parliamentary and Representative Institutions vo. 27 (1965)
70. See below, Chapter 6, section 5.
71. Cf. Carsten op. cit. p. 143.
72. Haym op. cit. pp. 153-4.
73. ibid. p. 154.
74. ibid.
75. ibid.
76. ibid.
77. ibid.
78. ibid. p. 65.
79. ibid. p. 67.
80. ibid. p. 66.
81. VSN eds. cit. p. 150; 243.
82. See below, chapter 4, section 1.
83. The meaning of these terms should not be confused with that of the distinction in revolutionary France between active and passive citizenship. For their detailed specification see Hartmut Lehmann Die wuerttembergischen Landstaende in studies presented to the International Commission for the history of Representative and Parliamentary Institutions volume 37 (1969), pp. 186-7.
84. ibid.
85. Haym op. cit. p. 66.
86. Hegel, The Philosophy of Right paragraph 308.
87. Haym op. cit. p. 66.
88. ibid.
89. See Carsten op. cit. p. 147 and Gerhard art. cit. p. 141.
90. Cf. DzHE ed. cit. p. 9 and The Philosophy of Right paragraph 203.
91. DS trans. cit. p. 139.
92. ibid. pp. 145-6.
93. VSN ed. cit. pp. 138 and 139.
94. ibid. p. 138. Cf. ibid. p. 150; 243.
95. That is to say, they feel a need ibid. p. 139.
96. ibid. p. 138.
97. ibid. p. 139.
98. ibid.
99. Briefe ed. cit. p. 24, letter 11.
100. ibid.
101. DzHE ed. cit. p. 221; trans. cit. pp. 511-12.
102. i.e. for timid men to turn to men of nobler wishes and purer enthusiasm, VSN eds. cit. pp. 152 and 150; 244 and 243.
103. ibid. pp. 138-9.
104. ibid. p. 139.
105. ibid. p. 150; 243.
106. DzHE ed. cit. p. 219; trans. cit. p. 510.
107. VSN ed. cit. p. 138.
108. DzHE ed. cit. p. 219; trans. cit. p. 510.
109. ibid. p. 220; 511.
110. ibid. p. 219; 510.
111. VSN ed. cit. p. 139.

112. *ibid.*
113. F. Schiller. *Die Freundschaft.*
114. Rosenzweig op. cit. pp. 92-101
115. F. Hoelderlin *Hyperion* N.Y. (1965) translated by W.R. Trask
116. Cf. *Briefe* ed. cit. p. 53, letter 24.
117. VSN ed. cit. p. 139.
118. *ibid.*
119. *ibid.*
120. VSN ed. cit. p. 139.
121. Harris op. cit. p. 441.
122. VSN ed. cit. p. 139.
123. NRS trans. cit. p. 103.
124. DzHE ed. cit. p. 219; trans. cit. p. 510.
125. VSN ed. cit. p. 139.
126. See below, Chapter 6, section 1.
127. DS trans. cit. p. 93.
128. NRS trans. cit. p. 99.
129. *Briefe* ed. cit. p. 24, letter 11.
130. *ibid.* p. 22, letter 10.
131. *ibid.* p. 24, letter 11.
132. DS trans. cit. p. 139.
133. VSN ed. cit. 139.
134. *ibid.*
135. *ibid.*
136. *ibid.*
137. *ibid.*
138. Cf. DS trans cit. pp. 136-7.
139. VSN ed. cit. p. 139.
140. *ibid.*
141. *ibid.*
142. JSN ed. cit. p. 6.
143. Harris op. cit. pp. 442-3.
144. VSN ed. cit. p. 139.
145. *ibid.*
146. See below, Chapter 4, section 3.
147. VSN ed. cit. p. 140.
148. *ibid.*
149. *ibid.*
150. *ibid.*
151. DzHE ed. cit. p. 221; trans. cit. p. 512.
152. VSN ed. cit. p. 140.
153. *ibid.*
154. DzHE ed. cit. p. 221; trans. cit. p. 512.
155. VSN ed. cit. p. 140.
156. *ibid.*
157. *ibid.*
158. *ibid.*
159. *ibid.*
160. *ibid.*
161. *ibid.* p. 141.
162. See below, Chapter 4, sections 3 and 4.
163. VSN ed. cit. p. 141.
164. *ibid.*
165. *ibid.*
166. *ibid.*
167. *ibid.*
168. *ibid.*
169. *ibid.* p. 140.
170. *ibid.*
171. *ibid.*
172. For the significance of this term see below p. 150
173. VSN ed. cit. p. 140.

174. Gyorgy Lukacs The Young Hegel London (1975) pp. 141-3 and Harris op. cit. p. 444.
175. Harris ibid.
176. E. J. Sieyes Qu'est-ce que c'est que le Tiers Etat translated by M. Blondel and edited, with historical notes, by S. E. Finer, London (1963) pp. 67 ff.
177. ibid. p. 126.
178. Cf. Hildegard Trescher Montesquieu's Einfluss auf die Geschichts- und Staatsphilosophie bis zum Anfang des 19. Jahrhunderts in Schmollers Jahrbuch fuer Gesetzgebung, Verwaltung und Volkswirtschaft in deutschen Reich vol. 42.1. pp. 267-304.
179. VSN ed. cit. p. 140.
180. Montesquieu L'esprit des Lois 3. 1. Cf. Briefe ed.cit.p.24, letter 11.
181. Montesquieu ibid. 4. 3.
182. VSN ed. cit. p. 140 Cf. Montesquieu ibid. 5. 5.
183. Briefe ed. cit. p. 31, letter 14.
184. VSN eds. cit. pp.26-32;159-64. See below pp.341 ff.
185. Montesquieu op. cit. 19. 5.
186. ibid. 11. 5.
187. ibid. 1. 3.
188. ibid. 1. 1.
189. ibid. 5. 1.
190. NRS trans. cit. p. 115.
191. ibid. pp. 128-9.
192. VSN eds. cit. p. 150; 243.
193. NRS. trans. cit. pp. 112-116.
194. Haym op. cit. p. 66.
195. Hegel, The Philosophy of History trans. cit. p. 449.
196. ibid.
197. ibid. p. 450.
198. Ritter op. cit. p. 21.
199. VSN eds. cit. pp. 31, 95, 112; 164, 205, 220.
200. ibid. p. 152; 244.
201. JSN eds. cit. p. 302; 254.
202. DzHE ed. cit. p. 221; trans. cit. p. 512.
203. Jean Hyppolite Introduction a la Philosophie d'histoire d'Hegel Paris (1948) p. 10.
204. See below pp.
205. JSN eds. cit. p. 322; 278.
206. Briefe ed. cit. pp. 49-58.
207. ibid. p. 54.
208. NRS trans. cit. p. 116.
209. Rolf Hocevar Staende und Repraesentation beim jungen Hegel Muenchen (1968).
210. ibid. pp. 28-9.
211. Otto Poeggeler art. cit. p. 118.
212. ibid. p. 123.
213. ibid. pp. 121-2.
214. Cf. Eberhard Schmitt Repraesentation und Revolution Munich (1969) p. 284.
215. Poeggeler art. cit. p. 123.
216. See above pp. 153-4.
217. JSN eds. cit. p. 302; 254.
218. VSN ed. cit. pp. (70-1).
219. Hocevar op. cit. p. 31.
220. VSN eds. cit. p. 60; 181.
221. ibid. 96; 206.
222. Hocevar op. cit. 33-4. Rudolf Smend's Verfassung und Verfassungsrecht; Muenchen (1928) p. 97. is the source of the following quotation. The reference to Trescher relates to her article, Montesquieus Einfluss auf die philosophischen Grundlagen der Staatslehre Hegels in Schmollers Jahrbuch 42. 2. pp. 49-114.

223. VSN eds. cit. pp. 26 and 28; 159 and 161.
224. See above pp. 157.
225. Mansfield art. cit. p. 80.
226. VSN ed. cit. pp. (70-1). See above pp. 161-2.
227. Mansfield art. cit. p. 77.
228. Montesquieu op. cit. 3. 1.
229. Trescher art. cit. Schmollers Jahrbuch 42.2. p. 105.
230. *ibid.*
231. See below, chapter 6, sections 3 and 4.
232. VSN eds. cit. p. 28; 161 Cf. Mansfield art. cit. p. 77.
233. Mansfield *ibid.* p. 67.
234. Direction towards great objects, which Hegel extolled in the DS trans. cit. p. 146 as the alternative to oppression of innate energies, can be argued, by reference to the demand in the ASP for an end to the repression of such energies, to the greater end that each may represent himself to himself as an absolutely free being, to be the very condition of true subjectivity. See DzHE ed. cit. pp. 221 and 219; trans. cit. pp. 512 and 510.
235. Mansfield art. cit. p. 72.
236. *ibid.* p. 73.
237. *ibid.*
238. *ibid.* p. 80.
239. *ibid.* p. 58.
240. *ibid.* p. 56.
241. *ibid.*
242. *ibid.*
243. VSN eds. cit. p. 96; 206.
244. Mansfield art. cit. p. 57.
245. *ibid.*
246. *ibid.*
247. *ibid.* pp. 58-59.
248. *ibid.* p. 58.
249. JSN eds. cit. p. 302; 254.
250. Hegel, The Philosophy of History trans. cit. p. 23.
251. DzHE ed. cit. p. 219; trans. cit. p. 510.
252. DS trans. cit. p. 139.
253. VSN ed. cit. p. 139.
254. Cf. DzHE ed. cit. p. 219; trans. cit. p. 510 where the representation of self is treated as a practical postulate.
255. Mansfield art. cit. p. 80.
256. *ibid.* p. 72.
257. JSN eds. cit. p. 302; 254.
258. Mansfield art. cit. p. 77.
259. See below, chapter 4, section 5.
260. VSN eds. cit. p. 28; 161.
261. Mansfield art. cit. p. 73.
262. Throughout the VSN, Hegel relies for the most part on the context to discriminate between Estates that we would now call *Laender* and those 'that we would still call *Staende*, though occasionally he calls the latter 'immediate estates' e.g. VSN ed. cit. p(41).
263. *ibid.* p. (8).
264. *ibid.* pp. 10-11; 149.
265. Hocevar op. cit. p. 31.
266. Heinz Eulau The Politics of Representation London 1978 p. 42.
267. Cf. Hannah Fenichel Pitkin The Concept of Representation, in Pitkin (ed.) Representation, N.Y. (1969) p. 2.
268. See below, chapter 6, section 2.
269. A. P. Griffiths How can one person represent another?, in Pitkin ed. cit. p. 144.
270. *ibid.*
271. *ibid.*

272. VSN eds. cit. p. 132; 238 Cf. above, p. 168 note 234.
273. *ibid.*
274. Pitkin op. cit. 19.
275. *ibid.*
276. *ibid.*
277. *ibid.*
278. B. J. Diggs. Practical Representation, in Pennock and Chapman
ed. cit. p. 30.

Notes to Chapter Four

1. VSN eds. cit. p. 132; 238.
2. *ibid.*
3. *ibid.* p. 133; 239.
4. *ibid.*
5. See below, pp. 199-200.
6. VSN eds. cit. p. 134; 239.
7. *ibid.* p. 133; 239. By this it would seem Hegel meant duties incident to trade, rather than military taxes.
8. *ibid.* p. 134; 240.
9. *ibid.*
10. DS trans. cit. p. 148.
11. VSN ed. cit. p. 141.
12. *ibid.* p. 142.
13. *ibid.* p. 73; 190.
14. See below, pp. 199-200.
15. VSN eds. cit. p. 74; 190.
16. *ibid.*
17. *ibid.* p. 77; 192.
18. *ibid.* p. 148.
19. Cf. DS trans. cit. p. 148.
20. VSN ed. cit. p. 147.
21. *ibid.*
22. *ibid.* p. 136; 242.
23. See below Chapter 6, section 1.
24. VSN eds. cit. p. 108; 216.
25. *ibid.* pp. 135-6; 241.
26. See below, Chapter 6, section 1.
27. VSN ed. cit. p. (71)
28. *ibid.*
29. See below Chapter 4, section 3 and Chapter 5, section 1.
30. VSN ed. cit. p. (7).
31. *ibid.* p. 7; 146.
32. *ibid.* pp. (70-71).
33. *ibid.* p. (72).
34. Haym op. cit. p. 66.
35. Rosenzweig op. cit. pp. 125-9.
36. *ibid.* p. 107.
37. *ibid.*
38. *ibid.* p. 129.
39. *ibid.*
40. *ibid.* p. 130.
41. Rosenzweig names Hobbes, Spinoza and Pufendorf for instance. It is not clear whether he means to claim that they exerted a detectable influence upon the VSN.
42. *ibid.* p. 124.
43. VSN eds. cit. p. 134; 239. See above p. 184 and note 7 for what Hegel deemed to be inessential to the state and so to be permitted to be conducted according to customs in which it is not necessary for law to take a strict hand. See Chapter 6, section 4.
44. See Chapter 5, section 3 and Chapter 6, section 3 in particular.
45. See Chapter 6, section 3.
46. Harris op. cit. p. 475. misrepresents the weight of Hegel's emphasis upon the elective principle in representation.
47. VSN eds. cit. p. 82; 195.
48. *ibid.* p. 142.
49. *ibid.* p. 134; 240.
50. *ibid.*
51. Hartmut Lehmann Die wuerttembergischen Landstaende im 17 and 18 Jahrhundert in Studies presented to the International Commission for the History of Representative and Parliamentary Institutions, vol. 37 (1969) p. 189 and F. L. Carsten op. cit. pp. 26 and 147.
52. VSN eds. cit. p. 135; 241.

53. *ibid.* p. 147.
54. *ibid.* p. 136; 242.
55. *ibid.* p. 147.
56. *ibid.* p. (71).
57. *ibid.* p. 140.
58. *ibid.* p. (70).
59. *ibid.* p. 141.
60. *ibid.*
61. *ibid.* p. 135; 241.
62. *ibid.* p. 140.
63. *ibid.* p. 135; 241.
64. *ibid.*
65. *ibid.*
66. *ibid.*
67. *ibid.* p. 136; 241.
68. *ibid.* p. 136; 242.
69. *ibid.*
70. *ibid.*
71. DzHE ed. cit. p. 219; trans. cit. p. 510.
72. VSN ed. cit. p. 147.
73. *ibid.* p. 136; 242.
74. *ibid.* p. 147.
75. *ibid.* p. 136; 242.
76. *ibid.* p. 140.
77. *ibid.* Cf. p. 135; 242.
78. Cf. *ibid.* p. 139.
79. DS trans. cit. p. 148. Cf. VSN eds. cit. p. 135; 242.
80. DS trans. cit. p. 93.
81. VSN eds. cit. p. 135; 241.
82. DS trans. cit. p. 149. Cf. VSN ed. cit. p. 140.
83. VSN *ibid.*
84. *ibid.* p. 135; 241.
85. *ibid.* Cf. DS trans. cit. p. 148.
86. VSN *ibid.*
87. *ibid.*
88. DzHE ed. cit. p. 263.
89. *ibid.*
90. See below Chapter 6, section 4.
91. VSN eds. cit. pp. 30-31; 163.
92. Carl Schmitt *The Concept of the Political* (1976) p. 62.
93. NRS trans. cit. p. 99.
94. VSN eds. cit. p. 122; 229.
95. *ibid.* pp. 10-11; 149.
96. J. G. Herder *Briefe zu Befoerderung der Humanitaet*, Berlin und Weimar (1971) volume 1 (1793 series), p. 330.
97. VSN eds. cit. p. 111; 219.
98. Herder op. cit. vol. 1. p. 330.
99. VSN eds. cit. pp. 113, 112, 115; 221, 220, 223.
100. *ibid.* p. 111; 219.
101. *ibid.* p. 113; 221.
102. *ibid.* p. 109; 217.
103. *ibid.* p. 110; 219. Cf. p. 116; 223.
104. *ibid.* p. 145. Cf. p. 68; 186.
105. *ibid.*
106. *ibid.*
107. *ibid.* p. (63).
108. *ibid.* p. 96; 206.
109. *ibid.* p. (63).
110. *ibid.* p. (42).
111. *ibid.* p. 109; 218. Cf. p. 3; 143.
112. *ibid.* p. 115; 223.
113. *ibid.* p. (86).
114. *ibid.* p. 36; 167.

115. *ibid.* p. 87; 197.
116. *ibid.* p. 59; 180. Cf. pp. 61-2; 182. A Gedankenstaat is one which, at one and the same time 'is a state and no state at all'. See immediately below for the explanation of this paradox.
117. *ibid.* p. 88; 198.
118. *ibid.* p. 110; 218.
119. *ibid.* p. 113; 221.
120. *ibid.* p. 116; 223.
121. *ibid.* p. 88; 198.
122. *ibid.*
123. *ibid.*
124. *ibid.* p. 113; 221.
125. Friedrich Meinecke *op. cit.* p. 358.
126. VSN eds. *cit.* p. 113; 220.
127. *ibid.* pp. 113-4; 221.
128. *ibid.* p. 113; 220.
129. *ibid.* p. 114; 221.
130. *ibid.* p. 113; 221.
131. *ibid.* p. 115; 222.
132. Niccolo Machiavelli *op. cit.* Book I chapter 7. Cf. Book I, chapter 33.
133. VSN eds. *cit.* p. 115; 223.
134. *ibid.*
135. *ibid.* p. (7). Cf. p. 7; 146.
136. *ibid.* p. 108; 216.
137. There had once been a whole, which was not in strictness a state, whose universality had disappeared. Cf. *ibid.* p. 141. Only through the principle of state unity could wholeness be restored.
138. *ibid.* p. 7; 146.
139. *ibid.* p. 136; 241.
140. See above, pp. 45-6.
141. Cf. JSN ed. *cit.* p. 58.
142. Machiavelli *op. cit.* Book I, chapter 18.
143. *ibid.* Book 3, chapter 9.
144. VSN eds. *cit.* 112; 220.
145. Rosenzweig *op. cit.* p. 129.
146. In his *Darstellung des Fuerstenbunds Leipzig (1787)* p. 63, von Mueller had written of Richelieu that he died as great a 'teacher of matters of state, as was Montesquieu of laws and Frederick the Great in war ... He must be the first interest of the student of statesmen, for his situation was in keeping with the times and his spirit was quite comprehensive and systematic'.
147. VSN eds. *cit.* p. 109; 217.
148. *ibid.* p. 108; 216.
149. *ibid.* p. 107; 216.
150. *ibid.* p. 108; 217.
151. For further use and treatment of this concept, see below, Chapter 5, section 3.
152. VSN eds. *cit.* pp. 108-9; 217. No words could express more clearly Hegel's approval of social individualism and disapproval, in the same breath, of political particularism.
153. A good treatment of this principle is to be found in James Viscount Bryce's *The Holy Roman Empire*, London (1928), p. 382.
154. As well as Bryce *ibid.* 378, see Hanns Gross *op. cit.* p. 296 for a useful account of the history of the prevalence of this principle.
155. See Bryce *op. cit.* 379 and K. O. Freiherr von Aretin *Das Heiliges Roemisches Reich 1776-1806*, Wiesbaden (1967) vol. 1. p. 61.
156. VSN ed. *cit.* pp. (85-6) and 145-6.
157. *ibid.* pp. (77-8).
158. *ibid.* p. 107; 216. Cf. Bryce *op. cit.* 383.
159. *ibid.* p. 109; 217.

160. *ibid.* p. 74; 190.
161. *ibid.* p. 142.
162. *ibid.* p. 8; 147.
163. *ibid.* p. 141.
164. *ibid.* p. 135; 241.
165. Rosenkranz *op. cit.* p. 236.
166. Wilhelm Dilthey *Die Jugendgeschichte Hegels, Gesammelte Schriften*, Stuttgart (1962) vol. 4, pp. 136-7.
167. Rosenzweig *op. cit.* 126-7.
168. As have Otto Poeggeler *art. cit.* p. 106, Knox VSN ed. *cit.* p. ; 145 note 1 and Harris *op. cit.* p. 476.
169. VSN ed. *cit.* p. (63).
170. According to Kurt Meist, co-editor of the forthcoming edition of the *Verfassungsschriften*, to be the fifth volume of the *Gesammelte Schriften*, Lasson VSN ed. *cit.* p. (64) mistook the word *Auf-rufungen* ('summons') for *Ausfuehrungen* (in context, 'preparations'). This, of course, detracts very significantly from the image of Archduke Karl as the kind of statesman to whom an 'appeal' might, if Hegel had been that way inclined, have been made - the more so as the Archduke had to issue his summons twice, in 1800 as well as in 1799. Poeggeler *art. cit.* p. 99. fails to draw the in any case obvious conclusion that Hegel did not regard the Archduke as a practical politician.
171. VSN ed. *cit.* p. (63-4).
172. *ibid.* p. 142.
173. *ibid.* p. 116; 223.
174. *ibid.* p. 112; 220.
175. *ibid.* p. 111; 219.
176. *ibid.*
177. The terms here used are ironically, those of an Austrian whom, among others, Poeggeler *art. cit.* pp. 85-7 seems to wish to dissuade from inveterate hostility to Hegel by persuading him of Hegels regard for a dead compatriot. But even if Popper could be swayed by such 'tribal' motives, it would be better to rely upon the much more substantial ground of the respects paid by Hegel to the 'firm universal structure' of Austrian civilization, cf. VSN eds. *cit.* p. 125; 231, and of the contempt in which he held the 'barbarity' of Prussia, cf. *ibid.* pp. 87-8; 198.
178. *ibid.* p. 135; 241.
179. Haym *op. cit.* p. 66.
180. DS trans. *cit.* p. 93.
181. VSN ed. *cit.* p. 139.
182. *ibid.* p. 109; 217.
183. *ibid.* pp. 126; 232 and 233.
184. *ibid.* p. 132; 237.
185. *ibid.* p. 130; 236.
186. *ibid.* p. 132; 237.
187. *ibid.*
188. *ibid.* p. 108; 217.
189. *ibid.* pp. 127; 233-4.
190. Cf. Bryce *op. cit.* pp. 380 ff.
191. *ibid.* p. 215
192. VSN eds. *cit.* p. 127; 233.
193. *ibid.* pp. 89-90 and 124; 199-200 and 231.
194. *ibid.* p. 91; 201.
195. *ibid.* p. 124; 231.
196. *ibid.* pp. 124-5; 231.
197. *ibid.* p. 126; 233.
198. *ibid.*
199. *ibid.* p. 124; 231.
200. *ibid.* p. 124; 230.
201. *ibid.* p. 117; 225.
202. *ibid.* pp. 118-122; 225-9.
203. *ibid.* pp. 122-3; 229.
204. *ibid.* p. 122; 229.

205. *ibid.*
206. *ibid.*
207. *ibid.*
208. *ibid.*
209. *ibid.* pp. 123; 229-30.
210. *ibid.*
211. *ibid.* p. 122; 229.
212. This term is derived from the idea of law as that in which life may 'concentrate itself' *ibid.* p. 7; 146, and of the state as 'an abiding, fixed centre' *ibid.* p. 96; 206.
213. *ibid.* p. 97; 207.
214. *ibid.*
215. *ibid.*
216. JSN ed. cit. pp. 294; 244-5.
217. VSN ed. cit. p. 98; 207.
218. *ibid.* pp. 76-7; 192.
219. According to Bryce op. cit. p. 430 the Peace of Westphalia, in that it gave recognition to a host of petty principalities as practically independent states, made urgently necessary a 'body of rules to regulate their relations and intercourse' such as Grotius and his successors began to compile 'out of the principles which they found in Roman law, then the private law of the Germanic countries'. When the time comes in the next chapter, section 1, to consider the significance of the status of Roman law in Germany the treatment of the question will be seen to be primarily indebted, as far as concerns the pre-Reformation period to Wolfgang Kunkel's *The Reception of Roman law in Germany*, in Gerald Strauss' *Pre-Reformation Germany*, London (1972) pp. 263-81. As for post-Grotian developments, the most useful account known to this writer is to be found in Gross op. cit. and in his article, *The Holy Roman Empire in Modern Times: Constitutional Reality and Legal Theory* in J. A. Vann and S. W. Rowan (eds.) *The Old Reich: Essays on German Political Institutions 1495-1806*, vol. 48 of *Studies presented to the International Commission for the History of Representative and Parliamentary Institutions*, Brussels (1974) pp. 1-29.
220. VSN eds. cit. pp. 76 and 31; 192 and 164.
221. *ibid.* p. 125; 231.
222. *ibid.* p. 96; 206.
223. Morals, in that, like religion, they are personal and private, are not on the same footing with public law, unlike ethics (*Sitten*) which are its substance *ibid.* p. 97; 207.
224. *ibid.* p. 123; 230.
225. *ibid.* p. 122; 229.
226. *ibid.* p. 123; 230.
227. *ibid.* p. 117; 225.
228. This phrase, always on the lips of the protagonists of German freedom, Haym op. cit. p. 69, did not prevent one of its chief users, Prussia, from abandoning the rest of Germany to the power of France VSN eds. cit. p. 119; 227.
229. *ibid.* p. 7; 146.
230. *ibid.* p. 122; 229.
231. Knox's translation of 'neue' as 'modern' is incompatible with Hegel's insistence that modern states are those whose 'firm universal structure of civilisation' *ibid.* p. 125; 231 is based upon a gracious legal concentricity inherited from the pre-modern feudal monarchy. For Hegel, modernity is synonymous with civilisation and antonymous to barbarism *ibid.* p. 131; 237.
232. *ibid.* p. 123; 229.
233. *ibid.* p. 13; 150.
234. See above pp. 202-4.
235. VSN ed. cit. p. (63).
236. Cf. Meinecke op. cit. pp. 134-149.

237. VSN eds. cit. p. 105; 214.
238. *ibid.*
239. *ibid.*
240. *ibid.*
241. *ibid.* p. 104; 213.
242. B. P. von Chemnitz *De ratione status in imperio nostro Romano-Germanico* Cf. Friedrich Hertz *The Development of the German Public Mind*, London (1962) vol. 2, pp. 91-2.
243. Cf. Gross op. cit. pp. 252-3.
244. *ibid.* 242.
245. VSN ed. cit. p. (63).
246. Gross op. cit. p. 277.
247. This preference was not absolute, however, as witness VSN eds. cit. p. 20; 155.
248. *ibid.* p. 131; 237.
249. *ibid.* p. 147.
250. Gross op. cit. p. 111.
251. *ibid.* p. 163. i.e. by C. J. Friedrich in his *Althusius Politica methodice digesta*, Cambridge, Mass. (1932).
252. VSN ed. cit. p. (63).
253. Otto Hintze *Calvinism and raison d'Etat in early 17th century Brandenburg*, in *The Historical Essays of Otto Hintze*, pp. 92-5.
254. VSN eds. cit. p. 105; 214.
255. *ibid.* p. 120; 227.
256. *ibid.* p. 127; 233.
257. *ibid.* p. 131; 237.
258. *ibid.* p. 132; 238.
259. *ibid.* p. 131; 237.
260. *ibid.* p. 128; 234.
261. *ibid.* pp. 128; 234-5.
262. *ibid.* p. 129; 235.
263. Cf. Gross op. cit. p. 304 for the decision of the Diet, negotiated on the principle of *itio in partes* rather than agreed by majority voting, which permitted this devious extension of, 'if you like to call it such' (VSN ed. cit. pp. 130-1; 236-7), German freedom.
264. *ibid.* p. 130; 236.
265. *ibid.* p. 129; 235.
266. *ibid.* This is the proper sense in which Prussian politics were 'new', for their intention was utterly to subvert the 'old'.
267. Cf. Aretin op. cit. vol. 1. pp. 22-31.
268. VSN eds. cit. pp. 122-3; 229.
269. *ibid.* p. 127; 234.
270. *ibid.* p. 138.
271. *ibid.* p. 137.
272. Since the days of Maximilian I, the heroism of Arminius, as related by Tacitus in his *Germania*, had served as a mythic rallying-point for those who bemoaned the perennial disarray of the military arm of the Empire. Conrad Celtis, for example, and Justus Lipsius found in Tacitus a powerful imaginative aid to their attacks on the military disunity of the Empire. Cf. K.C. Schellhase *Tacitus in Renaissance Political Theory*, Chicago (1976) pp. 30-37 and 118. Cf. also Meinecke op. cit. p. 25 where Lipsius' republication of Tacitus in 1574 is credited with having made the Roman historian the 'great teacher of Staatsraeson' It is interesting, for our purposes, to note that Hegel had long been interested not only in Tacitus' *Agricola* but also in his *Germania*, as witness JSN ed. cit. p. 358, and that as we shall see in Chapter 5, he was to follow other theorists of ratio status in their exploitation of Tacitus.
273. VSN ed. cit. p. 143.
274. Rosenkranz op. cit. p. 237.
275. VSN ed. cit. p. 143. Cf. p. (39) and pp. 38-9; 168.
276. i.e. of February-March 1801.

277. VSN ed. cit. p. (86).
278. *ibid.*
279. Hegel, The Philosophy of History trans. cit. p. 402.
280. *ibid.* p. 401 Cf. VSN ed. cit. p. (85).
281. Rosenkranz op. cit. p. 237.
282. VSN eds. cit. pp. 143, (37) and 37; 167-8.
283. *ibid.* p. 143.
284. *ibid.* p. 36; 167.
285. *ibid.* p. (35).
286. *ibid.* p. 35; 167.
287. *ibid.* p. (35)
288. *ibid.* p. 35; 167.
289. *ibid.* p. (37) Cf. p. 143 where Hegel distinguished between members and parts.
290. *ibid.* p. (35).
291. *ibid.* p. 35; 167.
292. *ibid.* p. 35; 166.
293. *ibid.* p. 36; 167.
294. *ibid.* pp. 142, (36) and 36; 167.
295. *ibid.* p. 142.
296. It is important to note that in the definitive text the phrase 'the dissolution of Germany into independent states' *ibid.* p. 34; 166 is not in apposition to the phrase 'its ceasing to be a state' which occurs only in the draft-version *ibid.* p. (34). For the significance of this see Chapter 5, section 3.
297. *ibid.* pp. 146, (34) and 34; 166.
298. *ibid.* p. 37; 167.
299. *ibid.* p. 146.
300. *ibid.* p. 147.
301. *ibid.*
302. See above pp. 235-6.
303. VSN ed. cit. p. (83).
304. *ibid.* p. 144.
305. *ibid.*
306. *ibid.* p. 145.
307. *ibid.*
308. *ibid.* p. 144.
309. *ibid.*
310. *ibid.*
311. *ibid.*
312. *ibid.*
313. *ibid.* p. (41). Cf. pp. 40-41; 169.
314. *ibid.* p. 24; 157.
315. *ibid.* p. (41).
316. *ibid.* p. 40; 169.
317. *ibid.* p. (39).
318. *ibid.* p. 39; 169.
319. *ibid.* p. (39). The word 'prominent' is abandoned in the definitive text in favour of the word 'essential' *ibid.* p. 40; 169.
320. *ibid.* pp. (42-3).
321. *ibid.* p. 43; 170.
322. In the drafts of February-March and June-July, 1801 Hegel did use the term 'pure feudal constitution', *ibid.* pp. 144 and (40). But in the definitive parallel he wrote only of the 'feudal system' *ibid.* p. 42; 170. This has the same significance as the change of expression noted above p. 238 note 296. He realised more and more clearly that Germany never had been a state. Its dissolution, not its ceasing to be a state, was due to the fact that it never, in strictness, had a constitution, never was a state but only a system. See chapter 5, section 3.
323. VSN eds. cit. pp. (43) and 43; 170.
324. *ibid.* p. 40; 169.

- 325. *ibid.* p. (40).
- 326. *ibid.* pp. (41) and 41: 169.
- 327. *ibid.*
- 328. *ibid.* p. (84) and 83; 195-6.
- 329. *ibid.* p. (45-6) and 45-6; 172.
- 330. *ibid.* p. (44), 42 and 44; 170 and 171.
- 331. *ibid.* p. 42; 170.
- 332. *ibid.* p. (44).
- 333. *ibid.* p. 148.
- 334. *ibid.* pp. 48 and 51; 173 and 175.
- 335. *ibid.* p. (48).
- 336. *ibid.* p. 147.
- 337. *ibid.* pp. (51) and 51; 175.
- 338. *ibid.* p. 147.
- 339. *ibid.* pp. (51) and 51; 175.
- 340. *ibid.* pp. (52) and 52; 175.
- 341. *ibid.* p. 148.
- 342. *ibid.* p. 148.
- 343. *ibid.* pp. 147-8.
- 344. *ibid.* pp. 146 and 145.
- 345. *ibid.* p. 86; 197.
- 346. *ibid.* pp. (83-4).
- 347. *ibid.* p. (84).
- 348. *ibid.*
- 349. *ibid.* Cf. p. (49).
- 350. *ibid.* p. (49).
- 351. *ibid.* p. 147.
- 352. *ibid.* p. 146. Cf. pp. 47-8; 173-4.
- 353. *ibid.* p. 36; 167.
- 354. *ibid.* p. 44; 171.
- 355. *ibid.* p. 46; 172.
- 356. *ibid.* p. 50; 174.
- 357. *ibid.* p. 49; 174.
- 358. *ibid.* p. (50).
- 359. *ibid.* p. 15; 152.
- 360. *ibid.* pp. 16 and 15; 152-3.

Notes to Chapter Five

1. VSN ed. cit. p. (63).
2. Cf. Friedrich Hertz op. cit. pp. 87-92.
3. VSN eds. cit. p. 50; 174. A good account of Puetter's repudiation of the translation theory is to be found in Reill op. cit. pp. 181-7. But too little emphasis is placed upon the nostalgic spirit in which Puetler criticised the Reception of Roman law which the theory served to justify and too little criticism is directed by Reill against Puetter's refusal to acknowledge the fact that Germanic *Gewohnheitsrecht* had become incompetent to contain civil relationships which were under growing pressure from economic development. Nor does Reill give Conring the credit he deserves for his much more trenchant and realistic critique of the translation theory and the Reception.
4. DzHE ed. cit. pp. 309-312. Lasson's edition of the VSN contains only Hegel's own views which precede his notes VSN ed. cit. p. 149. These views need not concern us until we come to the sixth chapter, section 3.
5. On Haeberlin see Rosenzweig op. cit. pp. 106 and 238, but, in particular, see Gross pp. 455-464. With this section on Haeberlin and a description of Hegel's voice as that of the 'new generation', Gross brings his excellent work to a conclusion.
6. Gross op. cit. p. 460.
7. *ibid.* p. 444.
8. *ibid.* p. 445.
9. *ibid.*
10. VSN eds. cit. p. 10; 148.
11. *ibid.* p. 131; 236.
12. *ibid.* pp. 50-51; 174 Cf. p. (50).
13. Gross op. cit. p. 455.
14. VSN ed. cit. p. (64).
15. Cf. Giuliano Procacci *Studi sulla Fortuna del Machiavelli*, Roma (1965), p. 279, Leonard Krieger *The German Idea of Freedom*, Chicago (1957), p. 47 und Gierke op. cit. p. 36.
16. Cf. Wolfgang Kunkel art. cit. pp. 270, 268.
17. Bryce op. cit. p. 361 and Gross op. cit. p. 35.
18. Kunkel art. cit. p. 276 and Georg Dahm *On the Reception of Roman and Italian Law in Germany*, also in Gerald Strauss ed. cit. pp. 282-314, esp. 284-294.
19. Cf. Gross op. cit. p. 272.
20. *ibid.* pp. 282 ff.
21. Krieger op. cit. p. 50.
22. Both Hegel and Conring were well aware that in its original environment Roman law had not been merely rational, but had been integral to its customary environment. It was Italianised Roman law that was rationalistic. Cf. Gross op. cit. pp. 266-7, G. Dahm, art. cit. p. 295 and G. Heiman *The sources and significance of Hegel's corporate doctrine in Z.A. Pelczynski (ed.) Hegel's Political Philosophy: problems and perspectives*, Cambridge (1971) pp. 111-135.
23. DzHE ed. cit. p. 269.
24. *ibid.* pp. 269-70.
25. VSN ed. cit. p. (63).
26. *ibid.* p. (64).
27. Daniel Chapter 7, verses 3-25.
28. Gross op. cit. p. 286.
29. See below, Chapter 6, section 1.
30. Cf. Eduard Fueter *Geschichte der neueren Historiographie*, Munich (1936) pp. 206 and 619 and Herbert Butterfield *Man on his Past*, p. 51 n. 2.
31. Gottfried Achenwall, *Staatsklugheit nach ihren ersten Grundsätzen*, Goettingen (1761), paragraph 4.

32. Roscoe Pound Jurisprudence, St. Paul, Minnesota (1959) volume 2, pp. 43-4.
33. Conring Animadversiones politicae in Niccolo Machiavelli De Principe, Helmstedt (1661), pp. 1-2, cited by Procacci op. cit. p. 282
34. Krieger op. cit. p. 48.
35. Gross op. cit. pp. 259 ff.
36. Procacci op. cit. p. 285 maintains that Conring 'latinised' Machiavelli's thought, yet also holds that he made 'the first correct philological analysis of the machiavellian terminology and concept of virtu'. He is also well aware of Conring's contempt for the legists and glossators *ibid.* p. 279.
37. e.g. Meinecke op. cit. p. 140.
38. Krieger op. cit. p. 50.
39. Cited by Procacci op. cit. p. 282.
40. Cf. Meinecke op. cit. p. 133.
41. Meinecke op. cit. p. 140 is right up to this point but he is wrong to attempt to prove it by subsuming Conring under the standard of Natural Law. Cf. Gierke op. cit. p. 36.
42. VSN ed. cit. pp. 139 and 140.
43. *ibid.* p. 140.
44. Clapmarius De arcanis rerumpublicarum (1605), cited by Meinoeko op. cit. p. 134.
45. The term comes from the paragraph of the Philosophy of Right cited at the beginning of Chapter 3.
46. Chemnitz cited the above passage in De ratione status in imperio nostro Romano-Germanico.
47. This striving was widely held to be a peculiar characteristic of the German people Cf. VSN eds. cit. pp. 7-8; 146-7.
48. Cf. Meinecke op. cit. p. 139.
49. *ibid.* p. 130.
50. Cited by Friedrich Hertz op. cit. p. 87.
51. *ibid.* p. 86-7.
52. Cf. Gross op. cit. p. 134.
53. *ibid.* p. 118.
54. Jean Bodin Methodus ad facilem historiarum cognitionem (1566), translated by Beatrice Reynolds, New York (1945), p. 174.
55. VSN eds. cit. 95-6; 205-6.
56. Gierke op. cit. p. 51.
57. C. J. Friedrich in his Introduction to Althusius' The Politics, Cambridge, Mass. (1932)
58. Montesquieu op. cit. ll. 6.
59. *ibid.* Cf. Otto Hintze The Preconditions of Representative Government in The Historical Essays of Otto Hintze edited by Felix Gilbert, New York (1975) p. 314.
60. VSN eds. cit. p. 9; 148.
61. *ibid.* p. 7; 147.
62. Gross op. cit. p. 265.
63. *ibid.* p. 267.
64. In 1635, Conring republished Lipsius translation of Tacitus' Germania *ibid.* 271-2.
65. DzHE ed. cit. p. 269.
66. VSN eds. cit. p. 3; 143.
67. See below Chapter 6, section 1.
68. Rosenzweig op. cit. p. 239.
69. Majer, cited *ibid.*
70. VSN ed. cit. pp. (7-9).
71. The earlier version, with the additions and amendments of 1801 relegated to the foot of the page, is to be found in DzHE ed. cit. pp. 283-284.
72. For an elaboration of this argument see Chapter 6, section 5.
73. VSN eds. cit. p. 97; 206.

74. *ibid.* p. 93; 203.
75. *ibid.* p. 8; 147.
76. *ibid.* p. 131; 237.
77. *ibid.*
78. *ibid.* p. 129; 235.
79. *ibid.* pp. 130-131; 236.
80. *ibid.* p. 148.
81. *ibid.*
82. *ibid.* p. 147.
83. *ibid.*
84. *ibid.* p. 88; 198.
85. *ibid.* p. 7; 147.
86. Gross op. cit. p. 237.
87. VSN eds. cit. 73; 189.
88. *ibid.*
89. *ibid.*
90. *ibid.* p. 74; 190.
91. *ibid.* p. 73; 190.
92. *ibid.* p. 74; 190.
93. *ibid.*
94. *ibid.*
95. *ibid.*
96. *ibid.*
97. *ibid.*
98. *ibid.*
99. Hans Maier Hegels Schrift ueber die Reichsverfassung in Pölitische Vierteljahrschrift vol. 4. (1963/4) p. 339.
100. *ibid.* p. 349.
101. VSN eds. cit. pp. 122-3; 229.
102. *ibid.* p. 74; 190.
103. *ibid.* pp. 7; 146-7.
104. *ibid.* p. 8; 147.
105. *ibid.* p. 7; 147.
106. *ibid.* p. 8; 147.
107. *ibid.*
108. *ibid.* p. 7; 147.
109. *ibid.* p. 8; 147.
110. *ibid.*
111. *ibid.* p. (63).
112. *ibid.* p. 9; 148.
113. This was the first draft of 1798/99. A continuous presentation of it is to be found in DzHE ed. cit. pp. 282-288. But all references will be made to Lasson's version despite its presentational discontinuity. Part of it is printed on VSN ed. cit. pp. 137-138, the rest on pp. (3-13).
114. *ibid.* p. (9).
115. The phrase cited is reported by Hegel, in the Preface to his Philosophy of Right, to have been uttered by J. F. Fries.
116. To Hegel's comment in paragraph 211 of the Philosophy of Right that custom does not cease to be such 'by being written and codified' and that the codification of custom is at first a 'mere collection ... formless, indeterminate and fragmentary' compare the following from SdR: 'The sure existence which possession gradually acquired produced a host of rights ... without unity, without principle ... rather a collection than a system ...' VSN ed. cit. p. (10).
117. *ibid.* p. (9).
118. Cf. Schellhase op. cit. p. 168.
119. VSN ed. cit. p. (7).
120. *ibid.* p. 3; 143.
121. *ibid.* p. 7; 146.
122. *ibid.* p. (7).
123. *ibid.* p. 8; 147.

124. *ibid.* p. (8). All that is underlined in this and the last quotation is material that Hegel added in his revision in February-March, 1801 of SdR. SdpR.
125. *ibid.* p. (8).
126. *ibid.* p. (9).
127. *ibid.* p. 74; 190.
128. DzHE ed. cit. p. 408.
129. Cf. Krieger op. cit. p. 79.
130. VSN eds. cit. p. 92; 202.
131. *ibid.* p. 8; 147.
132. *ibid.* p. 73; 189.
133. Cf. above chapter 3, section 1 and *ibid.* p. 92; 202.
134. Cf. above Chapter 3, section 3 and *ibid.* p. 132; 238.
135. *ibid.* p. 73; 190. Cf. pp. 92-3; 202.
136. *ibid.* p. 93; 202.
137. Montesquieu op. cit. ll. 6.
138. VSN eds. cit. p. 93; 203.
139. Progressively heavy emphasis, as in note 124, indicates elaboration upon the first draft, SdR, in this case not only in the second, SdpR, but also in the definitive text. This, then, is a composite based upon VSN eds. cit. p. (8) and 8; 147.
140. *ibid.* p. (9).
141. *ibid.* p. (8).
142. *ibid.* p. 8; 147.
143. *ibid.* p. 132; 238.
144. Cf. Hintze art. cit. p. 317. In this article Hintze draws attention *ibid.* p. 310 to the 'cultic function' of Roman concilia. We shall have occasion to see in chapter 6, section 3, how the idea of a cult which Hegel developed in the NRS cannot but be a cult of representation.
145. Cf. The Philosophy of Right paragraph 252.
146. *ibid.* 255.
147. VSN eds. cit. 7; 146.
148. *ibid.*
149. G. A. Kelly's argument op. cit. 290 that the classical metaphor for custom, 'second nature', was appropriated by Hegel in order that it should stand for Duty or Sittlichkeit; instead of Sitten is in broad agreement with Hegel's argument in SdR that the condition of the sons of the German forests was natural but not so alone or, as we may put it, to the exclusion of a 'second nature', which is 'the condition in which laws prevail' VSN ed. cit. p. (9). Cf. Die Vernunft in der Geschichte ed. J. Hoffmeister, Hamburg (1955) pp. 115 ff: 'Sittlichkeit is Duty ... second nature as it has been rightly called; for the first nature of man is his immediate, animal being'.
150. VSN eds. cit. p. 93; 202.
151. DS trans. cit. p. 149.
152. VSN ed. cit. p. 140.
153. DzHE ed. cit. p. 269.
154. Cf. above, chapter 2, section 3.
155. Cf. above p. 279.
156. DS trans. cit. p. 178.
157. VSN eds. cit. p. 8; 147.
158. *ibid.* p. (8).
159. *ibid.*
160. *ibid.* and p. 9; 148.
161. *ibid.* p. (8).
162. *ibid.* p. (9).
163. *ibid.* p. 9; 148.
164. *ibid.* p. 8; 147.
165. *ibid.* p. 139.
166. *ibid.* p. (9).

167. *ibid.* p. (11)
168. *ibid.*
169. *ibid.* p. (86).
170. DS trans. cit. pp. 144-5.
171. VSN ed. cit. p. 140.
172. DS trans. cit. p. 144.
173. *ibid.*
174. *ibid.* p. 145.
175. *ibid.*
176. VSN ed. cit. p. (11).
177. DS trans. cit. p. 144.
178. VSN eds. cit. 9; 148.
179. DS trans. cit. p. 145.
180. JSN ed. cit. p. 302; 254.
181. DS trans. cit. p. 146.
182. *ibid.*
183. *ibid.* p. 149.
184. *ibid.*
185. DzHE ed. cit. p. 270.
186. See below, chapter 6, section 4 and VSN eds. cit. p. 32; 164.
187. *ibid.* p. 28; 161.
188. Of Hegel's no longer extant commentary of February or March 1799 on Sir James Denham Steuart's Inquiry into the Principles of Political Economy, this writer can only say that so to preserve or save the heart of man was said by Rosenkranz op. cit. p. 86, who saw the commentary, to be the end of his efforts to criticise Steuart's mercantilism.
189. DS trans. cit. p. 146.
190. DzHE ed. cit. p. 221; trans. cit. p. 511.
191. VSN ed. cit. p. 139.
192. DzHE ed. cit. p. 219; trans. cit. p. 510.
193. Compare especially *ibid.* p. 222; 512 and DS trans. cit. p. 146.
194. *ibid.*
195. Rosenzweig op. cit. p. 117.
196. DS trans. cit. p. 146. Cf. JSN eds. cit. p. 267; 214 for the meaning there of the making superfluous of law *ibid.* p. 269; 215: it is 'not that laws disappear but that they must be kept through a new kind of righteousness.' See chapter 2, section 3.
197. DzHE ed. cit. p. 220; trans. cit. 510.
198. DS trans. cit. p. 149.
199. Cf. above p. 278 note 144.
200. DS trans. cit. p. 149.
201. VSN eds. cit. p. 125; 231.
202. DzHE ed. cit. p. 220; trans. cit. p. 510.
203. DS trans. cit. p. 146.
204. *ibid.*
205. VSN eds. cit. p. 14; 151.
206. *ibid.* pp. (10 and 11).
207. *ibid.* p. 3; 143.
208. See above, p. 275, note 121.
209. VSN eds. cit. p. 7; 146.
210. *ibid.* p. 138. It would take too much space to show that this is as much an arrangement (Disposition) of material already composed as a plan (Disposition) of material yet to be written.
211. *ibid.*
212. *ibid.* p. (6).
213. Reill op. cit. p. 187. The trouble with both Puetter and Moeser was that both tended to ignore the inadequacy of *Gewohnheitsrecht* in the face of economic development Cf. above, pp. 250 note 3 and 276.
214. Hegel, The Philosophy of Right paragraph 211.
215. Such as Savigny, a pupil of Puetter, whom Knox contends to be the butt of Hegel's criticism in the above-cited paragraph. See Translators note 17, *ibid.* p. 307.

216. See below, chapter 6, section 4.
217. J. S. Puetter Staats-und Fuerstenrechte vol. 1 chapter 11 pp. 192-3.
218. VSN eds. cit. p. 9; 148 Cf. p. (9)
219. ibid. pp. 9-10; 148. Cf. p. (10).
220. ibid. p. (10).
221. ibid. p. 15; 152.
222. ibid.
223. ibid. p. 11; 149. Cf. p. (11).
224. Cf. Gross op. cit. p. 451.
225. Puetter, cited by Rosenzweig op. cit. p. 106.
226. Puetter Anleitung zu deutschen Staatsrecht vol. 1. pp. 65-6, cited by P. H. Reill op. cit. p. 94.
227. ibid.
228. VSN eds. cit. p. 74; 190. The use of these terms may be compared with that which occurs in Mendelssohn's Was heisst aufklaeren? in DzHE ed. cit. p. 140.
229. Puetter, cited by Rosenzweig op. cit. p. 106.
230. Puetter Neue Versuch einer juristischen Enzyklopaedie und Methodologie number 53, p. 29, cited by Gross op. cit. 448.
231. VSN eds. cit. p. 10; 148.
232. ibid. Knox's translation '...to maintain the state at all' is quite wrong.
233. ibid. p. 13; 150. Cf. p. (12).
234. ibid. p. (12).
235. ibid.
236. ibid. p. 16; 153.
237. ibid. p. (17).
238. ibid. p. 16; 153.
239. Heinrich von Treitschke Historische und politische Aufsaeztze cited by Fueter op. cit. p. 206.
240. e.g. De rebus gestis Fredericis Wilhelmi Magni and De robus Svecicus ab expeditione Gustavi Adolphi in Germaniam ab abdicationem usque Christianae.
241. VSN ed. cit. p. 141.
242. ibid. p. (13). (Cf. DzHE ed. cit. p. 288).
243. ibid. p. 13; 150.
244. ibid. p. (13).
245. See below, pp. 299-305.
246. Cf. Gross op. cit. p. 447.
247. A history summed up by Hegel in one paragraph VSN eds. cit. p. 3; 143 Cf. pp. (3-5).
248. Puetter Neue Versuch numbers 55-7, pp. 30-1, cited by Gross op. cit. 449.
249. According to Gross ibid. 352 Leibniz, no less than Pufendorf, impressed upon his writings on territorial sovereignty 'the marks of the hired hand of a territorial ruler'.
250. VSN ed. cit. p. (13).
251. See below, chapter 6, section 4.
252. VSN ed. cit. p. 142.
253. ibid.
254. ibid.
255. See above, chapter 4, section 1.
256. VSN eds. cit. p. 131; 237.
257. ibid. p. 142.
258. ibid.
259. ibid. p. 16; 153.
260. S. Pufendorf De republica irregulari (DRI) in Dissertationes academici selectiones Lund (1765) number 6, pp. 393-4. Cf. Gross op. cit. p. 323.
261. ibid.
262. Pufendorf De systematibus civitatum (DSC) ibid number 2 p. 266. Cf. Gross op. cit. p. 324.

263. Puettter Staats-und Fuerstenrechte vol. 1. chapter 2 pp. 20-25.
264. Pufendorf DRI number 18 and DSC number 18 ed. cit. pp. 423 and 314-5 Cf. Gross op. cit. p. 326.
265. DSC ibid. p. 314-5.
266. ibid.
267. Severinus von Monzambano ueber die Verfassung des deutschen Reichs edited and translated into German by H. Breslau, Berlin (1922).
268. ibid. chapter 6, number 5.
269. VSN eds. cit. p. 3; 143.
270. ibid. p. 7; 146.
271. ibid. p. (6).
272. ibid. p. (8).
273. ibid. p. (84).
274. Pufendorf DRI ed. cit. p. 393-4.
275. Severinus von Monzambano chapter 6, number 1.
276. ibid. chapter 3, number 4.
277. Gross op. cit. p. 13.
278. Painter, A History of the Middle Ages, London (1953), p. 398.
279. VSN ed. cit. p. (84).
280. ibid. p. (11).
281. ibid. p. 11; 149.
282. ibid. p. (11).
283. ibid.
284. Severinus von Monzambano chapter 6, number 9.
285. Gross op. cit. p. 321.
286. Gierke op. cit. p. 197.
287. Severinus von Monzambano chapter 6, number 5.
288. VSN eds. cit. p. 3; 143.
289. ibid. p. 16; 153.
290. ibid.
291. ibid.
292. ibid. p. 3; 143.
293. ibid. pp. 3-4; 143.
294. ibid. p. 3; 143 Cf. below, p. 311.
295. ibid pp. (3-5). See below chapter 6, section 1.
296. VSN eds. cit. p. 3; 143.
297. Cf. Gierke op. cit. p. 108.
298. ibid. p. 155.
299. ibid.
300. Cf. Gross op. cit. p. 318.
301. Cf. Gierke op. cit. p. 196.
302. VSN eds. cit. 3; 143.
303. J. J. Moser, cited by Gross op. cit. p. 408.
304. ibid. p. 406.
305. ibid. pp. 408-9.
306. Puettter Staats-und Fuerstenrechte vol. 1, chapter 2, pp. 20-25 and 29-31.
307. VSN eds. cit. p. 16; 153.
308. Cf. Gross pp. 412-19.
309. This mathematical analogy is here invented simply because it is naturally derivable from Hegel's characterisation of the wealth of the nobleman whom Austria resembles as 'not a sum' but a whole VSN eds. cit. p. 123; 229.
310. ibid. p. 142.
311. ibid.
312. Gierke op. cit. p. 143.
313. Krieger op. cit. p. 57.
314. VSN ed. cit. p. 142.
315. ibid. p. 138.
316. Gross op. cit. p. 451.
317. Hans Maier art. cit. in Politische Vierteljahrschrift vol. 4. pp. 336-7.
318. VSN eds. cit. p. 3; 143.
319. ibid.

Notes to Chapter Six

1. VSN *ibid.* p. 16; 153.
2. *ibid.* p. 3; 143.
3. See below, p. 314.
4. DzHE ed. cit. p. 282.
5. VSN ed. cit. p. 137.
6. *ibid.*
7. *ibid.* p. 138.
8. *ibid.* p. (4)
9. *ibid.* p. (5)
10. Severinus von Monzambano chapter 6, number 1.
11. VSN ed. cit. p. (6).
12. Cf. Fueter op. cit. pp. 206 and 619 and Butterfield op. cit. 51-2.
13. Cf. P. H. Reill op. cit. *passim*.
14. Cf. Gierke pp. 154 ff. The idea of the simulation by a sovereign entity of the agency of all its subjects, developed in chapter 3 in conjunction with the idea of communicative exchange between enlightened and unenlightened, without which that simulation is impossible, has, by sheer accident, an affinity with the view of the status mixtus deployed by Besold against Pufendorf and Chemnitz, both Bodinians. Besold argued that distributed sovereignty can remain undivided while participation in it is enjoyed by various subjects conjunctim, sharing communicata maiestatica potestas or, as Ulrich Huber put it, communicative seu simul, Besold *De statu reipublicae mixtae* ch. 1. and Huber *De iure civitatis* 1, 3, c. 1. paragraphs 21-3 etc. To recall that Besold was the first reinterpreter of ratio status who began to render it compatible with the idea of law, in other words to come up with the idea of a ratio status mixtus, and that, as we saw, it is just possible that in the WSS Hegel had it in mind to criticise the views of Clapmarius and Chemnitz, advocates of pure sovereignty, is to realise that Hegel's idea of neighbourly convergence of opposites in a communicative or simulative medium may, though hard evidence is lacking, have been indissolubly bound up with his knowledge of the history of German jurisprudence. At any rate, the whole purpose of the juridical concept of *communicatio maiestatis*, 'to preserve the conception of the mixed form of state while rejecting the doctrine of division of powers' Gierke *ibid.* p. 155, is well served not only by Hegel's *Philosophy of Right* paragraph 272 but by the NRS trans. cit. pp. 85-88, see below section 5. It was in Achenwall's work that exactly the same purpose was served Cf. Gierke *ibid.* 357.
15. Achenwall *Staatsklugheit* para. 4.
16. VSN eds. cit. p. 6; 146.
17. *ibid.*
18. *ibid.* p. 5; 145.
19. The idea of the Geist, System or innere Verhaeltnisse der Begebenheiten was most insistently promoted by Gatterer Cf. Reill op. cit. pp. 42, 102 and 116 and chapter 1, section 2.
20. VSN eds. cit. p. 5; 145.
21. *ibid.*
22. *ibid.* p. 137.
23. *ibid.*
24. *ibid.* p. 138.
25. *ibid.* p. 5; 145.
26. Cf. Reill op. cit. p. 267.
27. This resembles very closely Machiavelli's conception of *necessita* as it occurs, for instance, in *The Discourses* Book 3, chapter 12, where Roman generals are said to have promoted the virtue of their soldiers by restricting their options.
28. VSN eds. cit. p. 5; 145.
29. *ibid.* p. 4; 144.
30. *ibid.* p. 5; 145.

31. *ibid.* p. 5; 144.
32. *ibid.* p. 6; 146.
33. Cf. DzHE ed. cit. p. 143 and chapter 1.
34. NRS trans. cit. p. 129-31.
35. *ibid.* p. 112.
36. *ibid.* p. 129.
37. *ibid.*
38. *ibid.* p. 131.
39. The use of the terms negative and positive is here quite devoid of ulterior philosophical motives.
40. NRS trans. cit. p. 126.
41. *ibid.* p. 133.
42. *ibid.* p. 132.
43. *ibid.* p. 130.
44. *ibid.* p. 94.
45. VSN eds. cit. 6; 145.
46. DS trans. cit. p. 178.
47. Cf. VSN eds. cit. p. 136; 242.
48. *ibid.*
49. *ibid.* pp. 13-14; 150-1.
50. NRS trans. cit. p. 94 Cf. VSN ed. cit. p. (14).
51. VSN ed. cit. pp. 138-41.
52. NRS trans. cit. p. 131.
53. DS trans. cit. p. 93.
54. VSN ed. cit. p. 142.
55. Hermann Conring in his Introduction to Lipsius' translation of Tacitus' Germania, cited by Gross op. cit. p. 272.
56. Cf. Gierke op. cit. p. 321, note 181.
57. *ibid.* pp. 126 and 321, note 181.
58. *ibid.* p. 321, note 181.
59. *ibid.*, notes 181 and 182.
60. Reill op. cit. p. 99.
61. VSN eds. cit. pp. 73-4; 189-90.
62. *ibid.* pp. 132-3; 238-9.
63. NRS trans. cit. p. 67.
64. *ibid.* p. 79.
65. *ibid.* pp. 67 and 79.
66. *ibid.* p. 63 i.e. 'the abstraction of man with his essential potentialities'.
67. *ibid.* p. 92.
68. *ibid.* p. 93.
69. Cf. Gierke op. cit. p. 321, note 182.
70. NRS trans. cit. p. 93. Cf. VSN eds. cit. pp. 4; 143-4.
71. VSN eds. cit. pp. 92, 129, 133; 202, 235, 239.
72. *ibid.* p. 131; 237.
73. NRS trans. cit. p. 94.
74. *ibid.*
75. *ibid.*
76. *ibid.*
77. *ibid.*
78. *ibid.*
79. *ibid.* p. 95.
80. *ibid.*
81. *ibid.* Cf. VSN ed. cit. (10-11) and The Philosophy of Right, paragraph 211.
82. NRS trans. cit. *ibid.* p. 96.
83. DS trans. cit. p. 149.
84. NRS trans. cit. p. 96.
85. Cf. Sophocles Antigone 2. 450-7.
86. NRS trans. cit. p. 96.
87. *ibid.*
88. Conring cited by Gross op. cit. p. 272.
89. NRS trans. cit. p. 98.

90. VSN eds. cit. pp. 10-11; 148-9.
91. *ibid.* p. (8).
92. NRS trans. cit. p. 99.
93. *ibid.* p. 94.
94. *ibid.*
95. *ibid.* p. 99.
96. *ibid.*
97. *ibid.* p. 100
98. *ibid.*
99. *ibid.* Cf. VSN eds. cit. p. 9; 148.
100. *ibid.*
101. *ibid.* Cf. VSN eds. cit. pp. 150-53; 243-5 and 139-41.
102. NRS trans cit. p. 103.
103. *ibid.*
104. *ibid.* p. 114.
105. *ibid.* p. 108.
106. *ibid.* p. 108-9.
107. *ibid.* p. 115 Cf. chapter 2, section 1.
108. *ibid.*
109. *ibid.* p. 115-116.
110. *ibid.* p. 116.
111. *ibid.*
112. *ibid.*
113. Hegel, The Philosophy of Right paragraph 302.
114. *ibid.* paragraph 303.
115. *ibid.* paragraph 315.
116. NRS trans. cit. p. 115.
117. Hegel, The Philosophy of Right paragraph 302.
118. VSN eds. cit. p. 128; 234.
119. *ibid.* pp. (70-71).
120. *ibid.* p. (71).
121. NRS trans. cit. p. 116.
122. *ibid.*
123. VSN ed. cit. p. (70).
124. DS trans. cit. pp. 148-149.
125. *ibid.* p. 149.
126. NRS trans. cit. p. 109.
127. See above chapter 2, section 5, pp. 96-7.
128. VSN eds. cit. p. 25; 158.
129. *ibid.* p. 73; 189.
130. *ibid.* p. 75; 191.
131. See above, chapter 3, section 3.
132. VSN eds. cit. p. 79; 193.
133. *ibid.* p. 26; 159.
134. *ibid.* p. (76).
135. *ibid.*
136. *ibid.* p. 77; 192 Cf. p. (76).
137. NRS trans. cit. p. 95.
138. VSN ed. cit. p. 78; 193.
139. *ibid.*
140. *ibid.* p. (78). Cf. 78; 193.
141. *ibid.* p. (79).
142. *ibid.* p. 79; 193.
143. See above p. 335, note 132.
144. VSN ed. cit. p. (80) In the definitive version, 'much' is omitted. *ibid.* p. 80; 194.
145. *ibid.* p. (80) Cf. p. 80; 194.
146. *ibid.* p. 80; 194. Cf. p. (80).
147. *ibid.* p. 82; 193.
148. *ibid.* p. (80).
149. *ibid.* p. 81; 194.
150. *ibid.*
151. *ibid.* p. (81).
152. *ibid.* p. (80-1).

153. *ibid.* p. 81; 194-5. Cf. (81).
154. *ibid.* p. (82).
155. See above, chapter 3, section 2.
156. VSN eds. cit. p. 82; 195.
157. *ibid.*
158. *ibid.* p. (82).
159. *ibid.* Cf. p. 82; 193.
160. *ibid.* pp. (82) and (141-2).
161. See chapter 4, section 1.
162. VSN ed. cit. p. (82).
163. This was the term used by Achenwall and Schloetzer to denote a representative body governed by majority rule. Both intended thus to invest their ideal of status mixtus with decisive identity. Cf. Gierke op. cit. pp. 157 and 159; 357 note 23 and 360 note 142.
164. VSN ed. cit. p. 148.
165. *ibid.*
166. *ibid.*
167. DzHE ed. cit. p. 312.
168. VSN eds. cit. p. 79; 193.
169. See above, chapter 3, section 3.
170. *ibid.*
171. See above chapter 2, section 3.
172. See above chapters 1 and 2.
173. NRS trans. cit. p. 66.
174. *ibid.* 94. Cf. VSN ed. cit. p. (78).
175. See above chapter 2, section 3.
176. *ibid.*
177. Mansfield art. cit. p. 70.
178. VSN eds. cit. p. 79; 193.
179. *ibid.* 93; 203.
180. Hegel, The Philosophy of Right, paragraph 299.
181. *ibid.*, addition 177.
182. *ibid.*, remark.
183. VSN eds. cit. 74, 79, 82; 190, 193, 195.
184. Hegel, The Philosophy of Right addition 180 to paragraph 302.
185. NRS trans. cit. p. 67.
186. *ibid.* p. 108.
187. *ibid.* pp. 115-6.
188. VSN eds. cit. p. 19; 154.
189. *ibid.* pp. 20; 155 and (20).
190. *ibid.* pp. 20-25; 155-8 and (20-25).
191. Cf. Z. Pelczynski in his introductory Essay, Hegel's Political Writings, esp. pp. 29-34.
192. VSN pp. 21; 156 and (20-21).
193. Cf. Harris op. cit. p. 452.
194. VSN ed. cit. p. (21).
195. *ibid.* p. 20; 155.
196. *ibid.* p. (23).
197. Cf. Shlomo Avineri Hegel and the Modern State Cambridge (1972) p. 160.
198. VSN eds. cit. pp. 22; 156 and (22).
199. Cf. NRS trans. cit. p. 116.
200. VSN ed. cit. pp. 24; 158 and (24).
201. NRS trans. cit. p. 132.
202. Cf. Charles Taylor Hegel, Cambridge (1977) *passim*.
203. VSN eds. cit. p. 25; 158.
204. *ibid.*
205. *ibid.*
206. *ibid.* pp. 25-32; 158-164.
207. *ibid.* p. 25; 158.
208. *ibid.* p. 25; 159.
209. *ibid.* p. 26; 160.
210. *ibid.* p. 27; 160.
211. See above, chapter 4, section 3 and chapter 5, section 1.

212. VSN eds. cit. p. 27; 160.
213. *ibid.* pp. 96 and 25; 206 and 158.
214. *ibid.* p. 27; 160.
215. *ibid.* p. 19; 155.
216. *ibid.* p. 31; 163.
217. *ibid.*
218. *ibid.* p. 28; 161. Cf. NRS trans. cit. p. 94.
219. NRS trans. cit. p. 99.
220. *ibid.* p. 108.
221. VSN eds. cit. p. 27; 160.
222. *ibid.* Cf. NRS trans. cit. p. 116.
223. *ibid.* p. 29; 162.
224. *ibid.*
225. *ibid.* p. 30; 163.
226. *ibid.* p. 27; 160.
227. Mansfield art. cit. p. 72.
228. VSN eds. cit. p. 19; 155.
229. *ibid.* p. 30; 163.
230. See above, chapter 3, section 1.
231. VSN eds. cit. p. 28; 161.
232. *ibid.*
233. *ibid.* p. 30; 163.
234. DS trans. cit. 146.
235. *ibid.* 146-7.
236. NRS trans. cit. p. 85.
237. *ibid.*
238. DS trans. cit. p. 149.
239. VSN eds. cit. pp. 135; 241 and (70).
240. DS trans. cit. p. 149.
241. VSN eds. cit. 27; 160.
242. *Passim.*
243. DS trans. cit. 139.
244. VSN eds. cit. p. 29; 162.
245. *ibid.* p. 96; 206.
246. NRS trans. cit. pp. 85-8.
247. *ibid.* p. 87.
248. *ibid.* p. 88.
249. *ibid.*
250. VSN eds. cit. pp. 58-66; 179-185.
251. *ibid.* pp. 32-57; 164-179.
252. *ibid.* pp. 58-73; 179-189.
253. *ibid.* p. 61; 182.
254. *ibid.* pp. 64; 183-4.
255. *ibid.* p. 62; 182.
256. *ibid.* p. 62; 183.
257. *ibid.*
258. NRS trans. cit. p. 86.
259. VSN ed. cit. p. (63).
260. *ibid.* pp. (67), 67-73; 186-9.
261. *ibid.* pp. (62-65).
262. *ibid.* p. (63).
263. *ibid.* p. (66-7).
264. NRS trans. cit. p. 85.
265. VSN eds. cit. p. 26; 159.
266. *ibid.* pp. 30-31; 163.
267. *ibid.* pp. 31; 163-4.
268. *ibid.* p. 31; 164.
269. *ibid.*
270. Ritter op. cit. p. 21.
271. See above, chapter 3, section 3.
272. NRS trans. cit. pp. 123-4.
273. VSN eds. cit. p. 97; 207. Cf. *ibid.* p. 28; 161.
274. *ibid.* p. 95; 205.
275. *ibid.*

276. *ibid.* p. 96; 206.
277. *ibid.*
278. *ibid.* p. 83; 195.
279. *ibid.*
280. *ibid.*
281. NRS trans. cit. p. 99.
282. VSN *ibid.* p. 93; 203.
283. See above, chapter 3, section 3. It is not necessary to argue that Hegel was an 'enemy of the Revolution', which, of course, Ritter op. cit. p. 21. denies him to have been, if one is to maintain that his denial of the durability of its political experiments must be taken very seriously, in its appearances both in the VSN and The Philosophy of History. For both in his early period and in his maturity, he argued trust to be that without which with the deeds of a political system are unendurable by its members. In both the VSN eds. cit. pp. 136; 242, 141, (71) and 147 and in the Philosophy of History trans. cit. 450 he complained of the consequences of mistrust, loss of faith or disbelief in the power of laws, or plain ignorance of common social life under the law, in short of absolute mistrust, for the maintenance of the existence of a multitude as a people. Because they fail to take account of Disposition *ibid.* pp. 449-50, revolutionaries sow the suspicious seeds of antinomianism. Taken in addition to the somewhat unreliable evidence of the Philosophy of History, the attitudes to the French Revolution disclosed throughout the VSN, all of which indicate that Hegel doubted its modernity because he doubted its staying power, weigh much heavier in the scales than the apocryphal words of the Philosophy of History which precede the pages which have here been cited: 'Never since the sun had stood in the firmament and the planets revolved around him had it been perceived that man's existence centres in his head, i.e. in thought, inspired by which he builds up the world of reality ... not until now had man advanced to the recognition of the principle that thought ought to govern spiritual reality. This was accordingly a glorious mental dawn'. But Hegel added that the 'course which the Revolution took in France' *ibid.* p. 447, a course in mistrust and suspicious terrorism, must occupy our attention. As Hegel put the matter in the VSN eds. cit. pp. 95-6; 205-6, the French Revolution effected no gradual transition to a more satisfactory arrangement than that which had prevailed since 1614. The revolutionaries failed to recover the true essence of representation which, in the Philosophy of Right, addition 182 to paragraph 309, he specified as nothing other than trust: 'Representation is grounded on trust, but trusting another is something different from giving my vote, myself, in my own personal capacity. Hence majority voting runs counter to the principle that I should be personally present in anything which is to be obligatory on me.'
284. VSN ed. cit. p. (67).
285. See above, chapter 6, section 1, p. 314 note 14 and The Philosophy of Right paragraph 272.
286. VSN eds. cit. pp. 122-3; 229.
287. *ibid.* pp. 82-96; 195-206.
288. *ibid.* pp. 73-82; 189-195.
289. It should by now be quite evident why the procedure of this study has been called archaeological. For in the first place, with regard to the JSN, a beginning was made by excavating the meaning of the sometimes fragmentary, sometimes intact remains of Hegel's pre-systematic essays. This was done in the light of evidence dating from November 11th, 1800 that he was always inclined towards practical philosophy, which has a care for local and temporal values, and from September of the same year that he believed, without caring to go into a metaphysical treatment of the relation between finite and infinite, that man has a superordinate need, as well as his more subordinate needs, to 'recognise a Being which transcends our consciousness of human agency' JSN eds. cit. p. 146; 176. This became,

after consideration of the perversion of this need, the absolute presupposition in the light of which was put to the question a stratum of evidence dating from 1796 to 1800 whose core was the idea that the State, if only men devoted to the absent and the present will converge in the cause of neighbourhood, can serve as a congenial image of human agency, without whose infusion with an idea transcending mortal life no activity is more than an abstraction. Here, then, was found the archē of the Verfassungsschriften and contemporary texts: the idea that interest is truly served only through action in concert that springs from a readiness to let come to life the idea of necessity, so that life may become intelligent and hence fit to civilise the pursuit of satisfaction of subordinate needs.

Our archaeological inquiry then turned from the discovery of the chronological beginnings to an editorial perspective, proceeding to discover first the editorial terminus, the idea of a political system which might furnish the German people the means to satisfy such a transcendent interest or absent cause, with which drew to a close the 'second' half of the definitive version of the VSN, completed in 1801 before was completed in 1802/03 the definitive version of the 'first' half. We then followed this beginning through to the sections, which we now stand ready to treat, of the second half, which are in truth the very final cause of the whole of Hegel's pre-systematic writings, their intended point of departure and return.

290. VSN eds. cit. pp. 73; 189-90.
291. *ibid.* pp. 92; 201-2.
292. *ibid.* pp. 88-9; 198-9.
293. *ibid.* pp. 87-8; 197-8.
294. *ibid.* p. 88; 198.
295. *ibid.* p. 87; 197.
296. *ibid.* p. 83; 195.
297. *ibid.* pp. 83-4; 195-6.
298. *ibid.* p. 92; 202.
299. *ibid.* pp. 92-3; 202 (Cf. *ibid.* p. 149)
300. *ibid.* p. 93; 203.
301. *ibid.* pp. 92-3; 202-3.
302. *ibid.* pp. 74-82; 190-5.
303. *ibid.* pp. 79-83; 193-196.
304. *ibid.* pp. 94-5; 204.
305. *ibid.* pp. 95-6; 205.
306. *ibid.* p. 125; 231.
307. *ibid.* pp. 31; 163-4.
308. *ibid.* p. 96; 206.
309. *ibid.* p. 93; 203.
310. JSN eds. cit. p. 146; 176. Cf. above, p. 363, note 289.
311. *ibid.* Cf. above, p. 362, note 283.
312. VSN ed. cit. p. (8).
313. See above, chapter 5, section 2.
314. VSN eds. cit. p. 93; 203.
315. See above, chapter 2, section 5.
316. See above, chapter 3, section 3.
317. See above, this chapter 6, section 2.
318. See above, chapter 5, section 3.
319. VSN eds. cit. p. 96; 206 and JSN eds. cit. p. 223; 156.
320. See above, this chapter, section 3.
321. See above, chapter 2, section 4.
322. See above, chapter 1, section 2.
323. See above, chapter 2, section 3.
324. See above, this chapter, section 3.
325. Cf. JSN eds. cit. p. 136; 242.
326. Cf. DS trans. cit. p. 149.
327. See above, chapter 3, section 1.
328. NRS trans. cit. p. 103.
329. See above, p. 362 note 283.

- 330. VSN eds. cit. p. 83; 195.
- 331. ibid. p. 93; 203.
- 332. ibid. p. 25; 158.
- 333. ibid. p. 31; 164.
- 334. Maier art. cit. Hegel-Studien Beiheft 9 (1973) p. 160.
- 335. Cf. Hegel's Philosophy of Right paragraph 211.
- 336. ibid.