Right, Justice and Freedom in Hegel

Direito, Justiça e Liberdade em Hegel

THADEU WEBER*

ABSTRACT – This paper aims to explain the conception of justice in Hegel's Philosophy of Right. It binds the conception to the idea of freedom in its different ways of determination. It starts from the notion of person of right and indicates the fundamental rights that derive from the expression of this legal capacity. It highlights the right of necessity as a right to make an exception in favor of itself aiming at the realization of justice. It shows how the administration of justice takes place through the Law in civic society.

Keywords – Justice. Freedom. Fundamental rights. Civic Society. State. Law.

RESUMO – O texto procura explicitar a concepção de justiça na Filosofia do Direito de Hegel. Vincula-a à ideia da liberdade nas suas diferentes formas de determinação. Parte da noção de pessoa de direito e indica os direitos fundamentais decorrentes da expressão dessa capacidade legal. Destaca o direito de emergência como direito de abrir uma exceção a seu favor em vista da realização da justiça. Mostra como, pela lei, na sociedade civil, se dá a administração da justiça.

Palavras-chave – Justiça. Liberdade. Direitos Fundamentais. Sociedade Civil. Estado. Direito.

* Doctor of Philosophy by Universidade Federal do Rio Grande do Sul (UFRGS). Currently a tenured professor at Pontifícia Universidade Católica do Rio Grande do Sul (PUCRS), in the philosophy undergraduate program and the philosophy, law, and social work graduate programs, Porto Alegre/RS – Brazil. *E-mail*: weberth@pucrs.br
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By devising principles of justice to be applied to society's basic structure, Rawls understood Hegel's criticism of the excessive formalism in Kant's morals and the consequent appreciation of the ethical system and its social institutions. Reclaiming their importance is essential for a theory of justice, because it is in them that justice's own content, i.e. freedom, is actualized.

Freedom if the guiding, grounding principle of Hegel's Philosophy of Right. Speaking about justice means indicating the ways through which it materializes. More specifically: doing justice means ensuring freedom in all instances where it mediates the legal and social structures. Therefore, the system of right is "the kingdom of actualized freedom" (Rph §4)[1].

In such setup, although any and all *Philosophy of Right* may be considered a theory of justice, two moments are especially important in the aforementioned text: one refers to the "abstract right" and the other to civil society. They are two levels in which Hegel directly addresses the topic of justice connected to the idea of freedom as a Conception of Right. The state could be referred to as a third moment, considering it is the actualization of the "ethical substance". However, it lacks an explicit reference to the concept of justice, considering justice is above all a duty belonging to the civic society, considered the "external state". It is essential to show how, at the ethical system level, individual self-actualization is ensured by making rights, duties and freedoms effective in social institutions. Therefore, justice is fundamentally social justice.

We should keep in mind that Hegel's *Philosophy of Right*, as announced in its first paragraph, aims at explaining the guiding line of the internal logic of legal and social structures as realizations of the Conception of Right. Hegel rebuilds the rational course of the internal logic to the determinations in the Idea of Freedom. In turn, the Science of Right is a part of Philosophy to the extent the former searches the latter for its guiding principle. Hegel posits a "philosophic science of right" whose object is the "idea of right," that is, the philosophical idea of freedom. Hence, explaining the internal structures of Right means showing how the Conception of Right unfolds as a realization of the idea of freedom[2].

Justice permeates all those configurations. It is actualized as freedom materializes. That is the "content of the idea of justice". [3] In abstract right, it is discussed at the level of individual wills; in morality, as the right of subjectivity; in the ethical system, it focuses on the individual/society/state relationship. The challenge is to show how it is possible to reconcile justice and freedom at these mediating instances. In other words: how to materialize freedom in the legal and social structures under acceptable standards of justice? How to reconcile individual interests and freedoms with those of the group? Ultimately, the guarantee of such actualization is found at the ethical system level. However, isn't it typical of the conception's dialectic motion to weaken or even eliminate individual wills towards affirming the substantial will? In the end, isn't freedom recognition of the necessity? Isn't the individuals' freedom subordinated to the state's ethical authority? Isn't the criterion of justice justified as a result? The purpose is to refute such suspicion and show that Hegel's theory of justice is grounded on the principle of equal individual freedom mediated by everyone's freedom. Self-determination and mutual recognition are key categories.

Justice and the immediate determinations of freedom

The explanation of the idea of justice as the idea of freedom materializes in "abstract right," as the first part of the *Philosophy of Right*, is based on a fundamental assumption: the person of right. A person is a subject conscious of himself; it implies "legal capacity". Being a person means being the subject of subjective rights and implies the duty of being seen as such. It is the most abstract, undetermined manifestation, and as such establishes the fundamental equality of all human beings. It indicates that man is worthy as man. He is entitled to having rights. He must be seen and respected as free and equal. Hence the categorical statement: "Be a person and respect others as persons" (Rph §36). However, that does not some mean equal distribution of property, because "wealth depends upon

application" (Rph §49). Equality refers to the fact they are people; it regards their legal capacity, albeit a potential one. It means, for instance, that each person should have property in order to satisfy their basic material needs and express their free will. However, justice does not require properties to be equal. Hegel says: "In my relation to external things, the rational element is that it is I who own property. But the particular element on the other hand is concerned with ends, wants, caprices, talents, external circumstances etc" (Rph §49). The emphasis is on the distinction between what is necessary and what is contingent when developing the Conception of Right. The issue is qualitative instead of quantitative. That becomes an important criterion for the realization of justice. "What and how much I possess is from the standpoint of right a matter of indifference" (Rph §49). This paragraph clearly shows that justice does not require equality, especially with respect to the realization of the right to property. The particularity includes different skills. It is fair to allow and encourage their development. Such is the source of inequality between property owners, and it is not unfair.

Hegel's idea about the right to alienate property is suggestive. In addition to the right to possession and the right to use, the right to alienation is also an element that makes up the right to property. However, while this is an alienable asset, there are others which are not. It is the case of personality rights. The author refers to "those substantive determinations that comprise my inner personality and the universal essence of my consciousness of myself, and are personality in general, freedom of will in the broadest sense, social life and religion" (Rph §66). Hegel refers to the "disposal of personality" and cites slavery, inability to own property or lack of complete control over it. This right to the "inalienability of personality" does not perish through lapse of time. Therefore, there is no right to dispose of or sacrifice life.

This notion of person of rights is imbued in the entire process of materializing the idea of freedom in legal and social structures, and therefore, also the idea of justice. Hence, it needs to be explained as an expression of freedom. Being a person means that before justice and freedom the person is inviolable. The person needs to be respected and protected. Honneth maintains that the determination of free will in "law" is the "core of a theory of justice meant to universally guarantee the inter-subjective conditions for individual self-actualization".[4] Fulfilling those conditions is a requirement imposed upon the ethical system, as we are going to examine later on.

The first legal form for a person to materialize his free will is possession, from which the fundamental right to use derives. It is the most immediate form through which the person addresses the world. As the materialization of his legal capacity, it is the "external sphere of his freedom" (Rph §41). However, this right needs to be recognized to become a right to property which, in turn, includes another right: the right to exchange. Such recognition takes place via the contract. The contract is the mutual acknowledgement of rights and duties. That shows that Hegel's idea of justice, already at the level of immediate determinations, is based on self-determination and mutual acknowledgement.

A contract is required in order to guarantee the ownership and its possible transfer to someone else. It is established at the level of inter-personal wills. The free will of those involved is what matters the most, instead of the thing and its quality. It is free will that gives the contract its legitimacy. The acknowledgement of property is the acknowledgment of free will. It is the mutual granting of rights and duties. This idea of free will is connected to "the idea of individual autonomy or self-determination".[5]

Now, contracts are entered into between "immediately independent people" who state their individual wills. It is such statement that legitimizes them. It stems from the immediate will; there is no social mediation yet. That is why contracts are located at the abstract right level. People state immediate wills which, as such, are contingent. "The particular, independent will is caprice and erratic choice" (Rph §81). That means the independent will may not coincide with the "will existing in itself," the "universal will," that is, at the abstract right level we cannot prevent the possibility of someone imposing their will on another's, thereby repressing it. Hence the injustice. Breaking the pact is wrong, given it is the expression of free wills. In the contract, "so long as people are direct and incomplete, it is a matter of accident whether their particular wills accord with the general will" (Rph §81). While particular, the will is

different from the "universal will" and, according to Hegel, "it is led by caprice, random insight and desire, and is opposed to the general right. This is wrong" (Rph §81). The wrong stems from the caprice of the particular will, which is contingent.

We should keep in mind that will is an (immediate) moment of freedom. That is why the right/wrong presupposes free acts. It should be noted that the contract or covenant includes the "right to demand performance". However, that once again depends on the particular will which, in turn, may act in opposition to the general abstract right. Therein lies the wrong. Hegel speaks of the need to "purify the will of its abstract simplicity" (Rph §81). That means is needs to undergo the process of mediation and acknowledgement. It needs to rid itself from this "affliction of indeterminacy". Now, that does not eliminate the wills but, because they are mediated, they are overcome and kept at a higher level. Ridding oneself from indeterminacy means stepping into the dialectic motion of mediations and determinations.

At this first level of actualizing freedom, justice and its materialization are in the hands of interpersonal relationships, and therefore, individual wills. Hence the need for rule-making, guarantee-providing instances at other levels of mediation. In the contract, the participants "still retain their particular will," which is a necessary moment although insufficient to materialize freedom and justice. We are in the stage of caprice (immediate wills) and its exercise is subject to wrong. Other instances of mediation and determination become necessary. We need to do away with this indeterminacy of immediate wills and seek ethical substance via mediation in social institutions. It is through them that freedom materializes and justice is done.

It should be noted that wrong is the product of free will. The damage is caused by the conflict originating from the clash of a particular will against the universal will, herein represented by the right itself. This clash is caused by a caprice of the particular will that is completely vulnerable. As the materialization of the idea of freedom in its most immediate figure, the contract is the product of an agreement between two contingent wills, and as such it may be terminated at any time. The ability to be terminated is in the nature of contracts between contingent wills. In addition, these wills may not necessarily coincide with the universal will. According to Hegel, that belongs to the very logic of the conception. The particular will may impose its individual right. Although it may seem there is too much emphasis on the negative aspect of contingent particular wills, it should be noted that it is from these same wills that give rise to creative acts capable of changing the process through which the right's necessary structures are internalized. It is the transition from indeterminacy to determination, mediated by the individuals' free wills.

At the abstract right level, the main problem revolves around a contractual relationship between two wills still unable to respect each other, because they have yet to mediate their individual interests. They are still stuck to their immediacy. At this level, the conception is considered previously to its process of determination and its materialization. The wills have yet to be overcome and conserved in the universal will, right itself. The possibility of wrongs emerges from this relativity of abstract right. Wrong is a mere semblance of what "should be", right itself (the essence). "Semblance is existence that is not adequate to the essence" (Rph §82). Wrong is a semblance that should disappear, making room for right as something fixed and valid. The relationship between right itself and the particular will is a relationship between the essence and its appearance. The essence is the necessary and the true; the semblance, when inadequate to the essence, is wrong. This is an indeterminacy from which one needs to free oneself.

Hegel posits there are three levels of this semblance of right, while particular, before its "universality existing in itself" (Rph §83). In other words: there are three levels of wrong (three intensity levels of wrong) that a particular will, giving in to caprice, may cause:

a) Unpremeditated or civic wrong

At this first level, the will of one party is wronged involuntarily, because the wrong is seen as a right. The semblance is seen as the essence. The wrong caused is not voluntary. Possession and contract are the "legal grounds". However, several different persons may have a right to one and the same object. Each may consider the object to be his based on their "right at law". Thus arise collisions. At this first level, in the case of collisions, "the law is recognized as the universal arbiter. The thing is admitted to belong to him who has the right to it" (Rph §85). This first form of wrong negates only the particular will, but pays respect to the general right. It is the slightest of all forms of wrong. The right is acknowledged. The person wants and should have what is rightfully his. It just so happens that in this first level of wrong the right is taken for the contingent particular will. The will is yet to free itself from the immediacy of interest. The right is acknowledged, although the person "wrongfully holds that what he wills is right" (Rph §86).

b) Fraud

The wrong has greater intensity. In this case, "the wrong is not such for general right, but by it I delude another person. For me, the right is a mere semblance" (Rph §83). In this case I am wrong. A deception is caused in order to set up a contract. Information is concealed by the seller in order to sell some merchandise. The right is acknowledged, but even so one acts against it.

c) Crime

The most intense form of wronging someone else's will. The wrongdoer desires the wrong. Neither right in general nor someone's personal right is respected (cf. Rph §90). The other's right is not acknowledged, because the purpose is to hurt someone's freedom. Violation of a contract, or violation of the legal duties toward the family and the state are examples of violence. A. Valcárcel talks about crime as a form of violence: "crime is violence against right, and for balance to be restored, this violence must be annulled by the violence implicitly brought by right, which violence, furthermore, is only manifested in this case". [6] That is why right is authorized to coerce. The punishment imposed on the wrongdoer is a form of restoring the pact and redressing the damage caused. Punishment is not revenge by society but should be understood as a way to bring wrongdoers to justice. It is meant to restore the established legal order. Crime is objective, and as such it must be annulled via the application of the punishment. It is not something irrational, but the "expression of a free particular will that freely opposes the crime".[7] That is why it can be punished. The difference between fraud and crime lies in the fact that in the former the right is still acknowledged, which does not happen in the latter. In the latter, the right is not acknowledged and one acts with the purpose of being wrong.

In the three cases of wrong, the acting agents' free will is assumed. Their responsibility stems from that. This collision of wills requires an instance in which they are managed. This is the role of right as law. That takes us to the civic society.

The right of necessity

From the standpoint of the right of morality, we should highlight Hegel's criticism of the formalism in Kant's morals, especially through the "right of necessity" (*Notrecht*).[8] The Königsberg philosopher believes that recognizing the moral law is universally valid and making an exception on its behalf means incurring in a contradiction.[9] The law's aprioristic validity is defended, regardless of the circumstances. In opposition to that, Hegel defends a right to make an exception in one's favor in case of extreme need. A threat to life is at stake. It is a right and not a concession. That is to say that "only the

need of the immediate present can justify a wrong act, because the agent, abstaining from it, would commit the highest wrong, namely, the total negation of his realized freedom" (Rph §127). Situations of necessity do not invalidate the law but show the degree of its relativity in view of justice. Defending life justifies any action against the law. From this right of necessity flows "the benefit of competence by virtue of which there is allowed to the debtor some of his tools, clothes and means generally, all of which are of course the property of the creditor. The allowance covers so much as is deemed sufficient for the possible maintenance of one in the debtor's class" (Rph § 127). The dignity of human life is inviolable. There is no other right that may be above it. The conditions necessary to sustain it must be preserved at all costs. The right to property may obviously be sacrificed on its behalf.

The right of necessity is in fact a recourse against injustice or against the unfair consequences from the enforcement of the law. The conflict of rights as they are effectively exercised requires pondering and prioritizing. Guaranteeing and protecting life justify any exception to the law. Under the notion of right, the necessity is current and requires a decision for the immediate present, because the future remains exposed to accidents. This is a hard blow against the formalism of Kantian morals, which does not accept exceptions. Kant does not recognize the rights of equality and necessity, although he refers to them as assumed rights. The backdrop for the exercise of this right is the distinction between laws and principles. When the enforcement of the former brings unfair consequences, we should resort to the principles, which may not even be written. The situation of the rule of the precedent is the same: that similar cases should be treated equally may not apply when the consequences of enforcement are unfair. A judge only enforces an unfair law if he so wishes. Of course the right of necessity refers to situations in which life is gravely threatened. In fact, it is a right that completes the right of morality, that is, the right of knowing and wanting as conditions of subjective responsibility. The issuance of a moral judgment cannot disregard these rights or fail to evaluate them.

Also noteworthy with respect to the conditions of subjective responsibility discussed by Hegel in the figure of morality is the right of intention. Knowing and wanting to do are conditions for the issuance of a moral judgment. However, "an intention to further my well-being and that of others [...], cannot justify a wrong act" (Rph §126). Here, a wrong act would be an act against right. This shows that, in the logic of materializing the principle of freedom, morality and the ethical system surpass and keep the rights guaranteed by private law (abstract right). Morality does not stand in opposition to abstract right but indicates its insufficiency. That also shows the very lack of completeness of Kant's morals. In the ethical system, the individual frees himself from the affliction of indeterminacy: abstract right and morality.

Justice and civic society

Speaking of the civic society, as well as of family, means referring back to the institutions that mediate free will in society. The instances that mediate the idea of freedom are fully materialized and actualized in the ethical system, the third part of the *Philosophy of Right*. To Honneth, one of the minimum conditions the ethical system must fulfill in order to rid itself of the "affliction of indeterminacy" is to make "generally available accessible possibilities for individual fulfillment, self-actualization, whose use may be experienced by every individual subject as the practical realization of his freedom". [10] Given the ethical system addresses the social mediation of free will, individual actualization includes "mutual recognition". The inter-subjective actions in the ethical sphere "express determinate forms of mutual recognition" [11] and individual actualization.

In the ethical sphere, it is in the civic society that the administration of justice is set up. Therefore, the judiciary is a branch of the civic society instead of the state. This shows that the civic society must undertake to guarantee its conditions of possibility. Therefore, there is a second moment in the Philosophy of Right where the topic of justice plays a vital role. Along with the family, the civic society

(corporations) makes up an ethical basis of the state. Two principles make it up: the "concrete person," as particular interests, and the social context. Considering that the civic society is a place of conflicts resulting from the fulfillment of needs, the challenge we find is how to reconcile private interests with those of the group. Hegel characterizes the civic society as the "arena for the contest of the private interests of all against all" (Rph §289). The pursuit to have personal interests fulfilled is many times placed above collective interests. Corporations are associations of individuals and motivated by a "system of needs" which, to be fulfilled, requires that the others' wills be mediated. It is the inter-subjective role that the ethical system must play and, through that, do justice. Through the administration of justice, Hegel focuses on, among other things, the protection of property and personality by justice. This is the instance meant to ensure reciprocity (mutual recognition) when it comes to fulfilling needs. It is the exercised right.

Paragraph 209 reiterates a basic premise: "man must be accounted because he is a man, not because he is a Jew, Catholic, Protestant, German, or Italian". This is the common grounds on which the topics of justice and freedom are discussed. Based on that, explaining justice in the civic society means talking about right as law before which all are equal. "What is in essence right becomes in its objective concrete existence constituted, that is, made definite for consciousness through thought. It, having right and validity, is so recognized, and becomes law" (Rph §211). The objective actuality of right must fulfill two basic conditions: being known and being valid, and therefore, as written by Hegel, "being generally recognized as having the validity and force of a reality (Rph §210). This role is played by law. It becomes known as the thing that counts and is right. Law is the criterion for purposes of the administration of justice at the civic society level. However, it is not the actualization of the conception yet.

As it becomes law, right receives its "truest character" and becomes binding. It positively defines what is right, which does not mean it is conceptually right. However, it should be noted that contingency is present whenever the idea of freedom is determined. D'Hondt says: "The dialectic Hegel cannot conceive an absolute negation of the contingent". [12] That means "the contingency of caprice and other particularities" may influence the determination of right as law which, on that account, may not coincide with what the right in itself is. What is "right" is given to us by the law, although that does not mean that the law is always in accordance with the Conception of Right (what should be). From that we conclude that justice is given by the right itself and not necessarily by the law. As this is a determination of the conception, and as contingency may take part in this determination, the law may distance itself from the conception. Through the "administration of justice," Hegel means to explain the application of the law to the particular case. There must be an acquaintance with the direct facts of the case, and the act must be brought under the law for the restoration of right (cf. Rph §225). That which is according to the law, in positive right, only tells us what is right. Hence, "the conception furnishes only a general limit, inside of which there is room for considerable uncertainty" (Rph §214). Positive law says what is lawful, or unlawful, but not what is just.

It should be noted that the realization of justice encompasses various levels where wills are mediated in the ethical system institutions. At the civic society level, the law is the parameter. At the state's, it is the conception. Law is the determination of the conception in the civic society. Besides applying to the particular as a whole, the constituted law "applies to the special case" (Rph §214). The "purely positive in law" lies in this immediate application of it. The difficulty in this application of the law to the individual case is to achieve justice (originating from the conception). In other words: how can we tell whether a punishment is just considering, on the one hand, a determination stemming from the Conception of Right, and on the other, the contingent nature of the individual case?

We can turn to a clarifying excerpt from the *Philosophy of Right*: "It cannot be determined by reason, or decided by any phase of the conception itself, whether forty lashes or thirty-nine, a [...] or imprisonment for a year or three hundred and sixty-four or three hundred and sixty-six days, be the just punishment for a crime. However, a lash (*zuviel*) [...] or a day too much or too little (*zuwenig*), is an injustice" (Rph §214). What is a lash too much? Who establishes it? Is it what goes beyond that which is set forth by law or beyond the conception? To what extent is that which is set forth by law in accordance

with the conception? What Hegel is saying is that it is not possible to quantify a punishment based on the conception (what should be). It then must be done by the law, which always implies some arbitrary decisions. But isn't the law the right? The law is a determination of right but does not restrict the latter to it. While on the one hand it is difficult to establish what a just punishment would be, on the other decisions must be made within a limit, although they are to some extent arbitrary. Conceding to the injustice of one imprisonment day too much may indicate two things: on the one hand, the need to set the punishment through the law requires the application of the law. It is contingent that a two-year prison sentence is set for a given crime, but it is a necessary contingency. The law tells the right, tells what should be done in this case. One day too much or too little from what was set is unjust. Here is a concept of formal justice. On the other hand, the law does not define what is just: the Conception of Right does. Here, the too much or too little is what goes beyond that which should or should not be. Although the function of the laws is to actualize the concept, they never fully fulfill it. It is right as law. Law is right placed in its objective existence. Hegel says, "reason itself recognizes that contingency, contradiction, and appearance have their sphere or right, limited though it is, and is not at pains to rectify these contradictions" (Rph §214). The essential thing is to actualize the Conception of Right as law, even though the latter fails to fully do that. To that end, we must determine and decide, within a limit. However, the conception (what should be) devised by reason is the regulating idea, while being a part thereof at the same time. An ambiguity remains: if the conception defines what is just, how can we state that what the law says is just?

The important thing here is to highlight the contingent aspect found in the administration of justice, which is recognized by reason. That is why the law must be "a general determination" to be applied to individual cases. The quantitative aspect of punishment always contains an arbitrary element. It is unable to adapt to the conception. However, a decision must be made, albeit from countless alternatives. Hence the contingency of right as law. That is why Hegel says: "this contingency is itself necessary" (Rph §214). From there we have it that it is impossible to achieve the completeness of legislation. "Undoubtedly the laws and the administration of justice contain in one of their aspects something contingent" (Rph §214). Now, that is typical of a normative science. It just so happens that there is no freedom without contingency. That is why freedom should be acknowledged as having its right, albeit a limited one. The Conception of Right, that is, the idea of freedom, determines itself in the contingent particularity as it is actualized. Hence the difficulty in doing justice. For all these reasons, the law must be a general determination to be applied to individual cases and situations. Hence the role of legal hermeneutics.

It should be noted that, above all, the mandatory compliance with laws requires that they are made known to all, that is, their becoming public is a condition of their compliance. Additionally, they must be clearly stated and capable of being applied to particular cases.

Justice and the State

The civic society is incapable of solving the conflicts inherent to iself. These antagonisms that stem from the satisfaction of a "system of needs" of individuals and groups, require the surveillance of another mediating instance: the state. Is the state capable of fully actualizing justice by guaranteeing and protecting freedom, that is, the individual autonomy or self-determination? Will it sacrifice individual and group interests and freedoms to ensure the substantive right, or are fundamental rights and freedoms surpassed and kept in the substantive right? What is exactly the limit of freedom in the state? Don't we run the risk of justifying a totalitarian state, considering the subordination of "individual freedom rights" to the state's authority? This is the suspicion raised against Hegel.[13]

The answer to these questions indicates the level of justice possible within the Hegelian state. Now, an affirmation implies a negation. Materializing the idea of freedom requires justice to be

actualized within the very limits where wills are mediated. Regulating the institutions does not mean eliminating or weakening freedom but making it inter-subjectively viable. The different forms through which free will is mediated in society and which make up the ethical system are different forms of mutual acknowledgement. According to Honneth, "the ethical system must encompass a series of inter-subjective actions in which the subjects may find both individual actualization and mutual acknowledgment". [14] The family and corporations are spaces to do that. The state is the upper instance. The actualization of justice travels a bumpy road between the "immediate ethical relationship," typical of the family, and the state's ethical substantiality. This substantiality is built through the process of mediating and acknowledging the individuals' free will. That is why the ethical is a universal way of acting. The mediated, recognized immediacy takes substance.

Hegel refers to the state as the "realized substantive will" in which the "particular self-consciousness is raised to the plane of the universal" (Rph §258). He posits that in this substantive unity, "freedom attains its highest right" and the individual has the "highest duty of being a member of the state". We have before us the most absolute justification of the state. It is not possible to actualize freedom and justice outside the state. Although from a historic point of view the state precedes the civic society, the state comes after it in the logic of the actualization of the idea of freedom. That shows the need for an instance that handles the conflicts stemming from its ethical basis, especially civic society corporations.

The challenge is to show the extent to which the state actually ensures the actualization of freedom, and consequently, of justice. In paragraph 260 of his Philosophy of Right, Hegel says that "the state is the embodiment of concrete freedom". What does that mean? How do we ensure particular interests amidst social institutions? How do we ensure individual actualization and self-determination amidst reciprocity? A few paragraphs may be referred to whose core idea is to show, for purposes of actualizing freedom, it is possible and necessary to reconcile particular interests and those of the collectivity. The actualization of individuality is ensured by allowing the exercise of "a universal activity" (Rph §255). In paragraph 260, we read, "In this concrete freedom, personal individuality and its particular interests, as found in the family and civic community, have their complete development. In this concrete freedom, too, the rights of personal individuality receive adequate recognition. These interests and rights pass partly of their own accord into the interest of the universal. Partly, also, do the individuals recognize by their own knowledge and will the universal as their own substantive spirit, and work for it as their own end" (Rph §260). Therefore, concrete freedom means that particular interests are actualized in universality as they are reconciled, surpassed and kept, but not eliminated. Individual actualization requires mutual acknowledgement, and people thereby lead "a universal life" (Rph §258). Honneth is right when he says that the acknowledgement means "a coercion-free mutual affirmation of certain aspects of the personality that are related to each of the manners of social interaction". [15] The individual only deserves to be acknowledged if his behavior towards others may be universally valid. That is why the individual acts in a universal manner at the ethical system level. Inter-subjective actions are the expression of mutual acknowledgment.

The fair state is the one that develops and acknowledges the citizens' rights, while at the same time indicating the "general interest" as the limit for the exercise of such rights. That shows the mutual dependency of the particular and universal. The universal is not completed without the "particular interest, knowledge, and will," nor do individuals, as private persons, "live merely for their own special concern" (Rph §260). Concrete freedom requires the particularity to be acknowledged in the universality, and vice versa. The universality ensures the actualization of the particularity, given universality is the end-goal of particularity. That is why the family and civic society are the state's ethical bases. It is as a member (*Mitglied*) of a family and a corporation that the individual affirms himself in his particularity and reciprocity. What matters is that the individual may find his own interests, of course mediated and acknowledged, in the state. To the extent the state ensures the fundamental rights and freedoms, it actualizes justice. In paragraph 270, Hegel categorically states that the state's role is to "protect and ensure everyone's life, property and will" (Rph §270). It is at the three levels of the ethical system –

family, civic society and state – that the individual has his individuality ensured, exactly because it is mediated and universalized. "The individual subject is included in the 'state' when he is able to rationally form his 'skills', will and talents in a way that they can be used for the universal good". [16]

Paragraph 261 refers back to paragraph 155 and reiterates the identity of rights and duties at the level of the "ethical state". The duties towards the substantive reality are at the same time the realization of particular freedom, that is, "duty and right are bound together in one and the same reference" (Rph §261). An ethically-correct, that is, just, state presupposes an equality of rights and duties. If the slave has no rights, neither can he have duties. Therefore, slavery is by definition unjust. It is the most serious violation of human dignity. It breaches the principle "be a person and respect others as persons," a premise that defines the "person of right". Hegel insists the moment of particularity and its satisfaction is important. "In carrying out his duty the individual must in some way or other discover his own interest, his own satisfaction and recompense. A right must accrue to him out of his relation to the state, and by this right the universal concern becomes his own private concern" (Rph §261). Therefore, particular interests must be overcome and enclosed in the substantive reality. Substantive reality is the product of mediated particular interests. That which is required as a duty by the state is equally a right of individuality. This is the just, ethically-correct state.

Final considerations

The concept of justice is directly connected to the actualization of the fundamental rights addressed in "abstract right". As the materialization of freedom, they must be protected and ensured as the expression of the person of right's legal capacity.

To the extent it examines the determinations and actualizations of the principle of freedom as an achievement of history, the *Philosophy of Right* may be considered a theory of justice. That is shown by the process of overcoming and conserving individual rights in this dialectic movement of actualization. Self-determination and mutual acknowledgement are imbued in these mediations. The suspicion that the *Philosophy of Right* carries "antidemocratic consequences," in the sense that "the individual freedom rights" would be "subordinated to the state's ethical authority," has been definitively weakened[17].

The right of necessity is a decisive milestone in the dialogue between Kant and Hegel to mark off the latter's headway when it comes to the actualization of justice in situations of extreme need. Guaranteeing the preservation of life and all that it entails (for instance, basic material needs) is the basic principle of any institution that wishes to ensure the minimum standards of justice.

If the state is the instance where the citizen's freedom is actualized, the state is responsible for ensuring both individual and social fundamental rights and freedoms are protected. In doing that, justice will be guaranteed. Hegel's contribution was decisive for placing the space where freedom is actualized inside the dialectic movement of social institutions. That obviously presupposes that the Conception of Right, whose subject is the idea of freedom, dialectically ties Right, Morality, and the Ethical System.

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[1] Rph is the abbreviation used for Rechtsphilosphie (Hegel – *Grundlinien der Philosophie des Rechts*).
[2] About this subject, see my book *Hegel: Liberdade, Estado e História*, chapter 2.
[3] SALGADO, Joaquim Carlos. *A ideia de justiça em Hegel*. São Paulo: Edições Loyola, 1996, p. 467.
[4] HONNETH, Axel. *Sofrimento de indeterminação*: uma reatualização da Filosofia do Direito de Hegel. São Paulo: Editora Singular, 2007, p. 52.
[5] HONNETH, Axel. *Sofrimento de indeterminação*: uma reatualização da Filosofia do Direito de Hegel, São Paulo: Editora Singular, 2007, p. 57.
[6] VALCÁRCEL, A. *Hegel y la Ética*. Barcelona: Anthropos, 1988, p. 338.
[7] VALCÁRCEL, A. *Hegel y la Ética*. Barcelona: Anthropos, 1988, p. 342.
[8] About the right of necessity in Kant, see *Doutrina do Direito*. São Paulo: Ícone, 1993.
[9] Cf. KANT, I. *Grundlegung zur Metaphysik der Sitten*. Frankfurt am Main: Suhrkamp, 1986, p. 55.
[10] HONNETH, Axel. *Sofrimento de indeterminação:* uma reatualização da Filosofia do Direito de Hegel, p. 106.
[11] HONNETH, Axel. *Sofrimento de indeterminação:* uma reatualização da Filosofia do Direito de Hegel, p. 109.
[12] D'Hondt, J. Hegel, Filosofo de la Historia Viviente, p. 207.
[13] Cf. HONNETH, Axel. *Sofrimento de indeterminação*: uma reatualização da Filosofia do Direito de Hegel, p. 48. See also POPPER, S. K. *A sociedade aberta e seus inimigos*. São Paulo: Itatiaia, 1974, p. 37.
[14] HONNETH, Axel. *Sofrimento de indeterminação*: uma reatualização da Filosofia do Direito de Hegel, p. 110.
[15] HONNETH, Axel. Sofrimento de indeterminação, p. 108.
[16] HONNETH, Axel. Sofrimento de indeterminação, p. 122.
[17] Honneth, p. 48. The author mentions this suspicion as one of the biases against Hegel's *Philosophy of Rights*.