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Review

Alfredo Bergés. *Der freie Wille als Rechtsprinzip: Untersuchungen zur Grundlegung des Rechts bei Hobbes und Hegel*. Hegel-Studien Beiheft 56, Hamburg: Felix Meiner Verlag, 2012. ISBN 978-3-7873-2164-3 (pbk). Pp. 396. €112.

Perhaps because Hegel rarely mentions Hobbes as an important precursor to his own philosophy of right, the systematic relation between Hobbes and Hegel has not been thoroughly investigated so far. In his fine book, Alfredo Bergés aims to show that Hegel's philosophy of right can best be understood as operating within the philosophical space opened up by Hobbes, and as responding to the problems that beset Hobbes. For Bergés, Hobbes is a 'radical' thinker who for the first time systematically formulates a 'new legal thought' appropriate for modern times. The radicalism of Hobbes only gets 'stabilized', Bergés holds, in Hegel's philosophy of objective spirit, which is finally able to provide an adequate conceptual foundation for modernity. To show the conceptual development from Hobbes to Hegel, Bergés also includes a discussion of Kant's conception of 'rational law', which he regards as a necessary stage in this development. The book consists of thirteen chapters, six on Hobbes and six on Hegel, as well as an introductory chapter and a conclusion. Given the space of a review, I have to be very selective.

According to Bergés, in modernity 'the activity of the free will is the ultimate origin of all legal relationships', and indeed its sole origin (17). Because this point is the central theme in Bergés's interpretation, it is worth emphasizing that his account of free will is much broader than the contemporary Anglophone discussion of the topic in analytic philosophy. In the Introduction, he consciously characterizes his work 'in opposition to the contemporary dominance of preoccupation with the abstractions of ethics and ahistorical conceptions of reason' and sets as his aim an analysis of the objective structure of legal institutions that shows 'the necessity of including history in the immanent logic of law' (16). Bergés identifies two major elements in the modern conception of law, which frame his approach towards Hobbes and Hegel. Both are centred upon the activity of free will. (1) Whereas in pre-modern conceptions of law obligation is central, in modernity right is not dependent upon the fulfilment of some obligation, but logically and politically precedes obligation. The *exclusive* source of obligation in modernity is the free will. The obligation based on freedom is in

accordance with right, Bergés suggests, since free will in itself is already 'rightful' (19). (2) Whereas the mode of being of the sphere of law before modernity is considered to be that of 'givenness' [*Vorhandensein*], in modernity law is considered to have the form of 'validity' [*Gelten*]. There is no longer any 'given' authority, be it God or nature, but authority is produced through the spontaneous activity of free will. In modernity the *sole* instance of givenness, i.e., the *only* 'fact', is the free will itself (19). In Kant's pithy formulation, which Bergés invokes, freedom is the 'only innate right', and as such it is 'inherently' legitimate (44, 312).

According to Bergés, Hobbes is the first philosopher who puts free will at the centre of his analysis and, by doing so, radically breaks with pre-modern conceptions of 'natural' law. The very basic dialectic of the state of nature, which Bergés articulates in a clearly Hegelian language, establishes the centrality of free will. 'The state of nature', he writes, 'is a manifold of natural persons without unity or form' (65). In the state of nature, *every* individual has a 'natural' right to *every*thing (67), but this immediately means that *no* individual has *any* right to *any*thing. The state of nature, which is founded on 'natural' principles, proves to be merely 'the state of rightlessness' (68). The dialectic of natural will, therefore, necessarily produces its own negation—*exeundum esse e statu naturali* (68).

One might ask whether Bergés's non-naturalist interpretation is forced on Hobbes. After all, Hobbes does talk about 'natural laws' in *Leviathan*, and these laws do have an important role in his argumentation for demonstrating the necessity of the state. However, Bergés maintains that Hobbes's conception of natural law is a 'radical transformation' of the traditional conceptions, since Hobbes is concerned not merely with the rational content of these laws, but also, and more importantly, with the conditions of their validity and effectiveness (72). Hobbes's natural laws, properly speaking, are not laws, since they do not have 'binding character'; rather, they are merely 'rules of wisdom' [*Klugheitsregel*]. They become law *only* on condition that they are *taken* to be laws. In other words, the natural laws, if they are laws, are 'dependent upon our acceptance' of them as laws (72).

Bergés considers Hobbes a revolutionary thinker who renders the free will the sole principle of the sphere of law. Yet, because of his 'materialistic ontology' which regards the will as thoroughly determined by causality and motion in nature, his conception of law leads to inconsistency (49). The spontaneity of the will is considered as the sole principle of the production of the 'non-natural' sphere of law, yet this very spontaneity is regarded as a 'natural phenomenon' characterized by dependence on external influences (58). In other words, the will in Hobbes is reduced to an amalgam of natural drives, which as such does not have any unity; yet at the same time the will is purported to produce a 'system' of rights and obligations that must necessarily form a unity

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(62–63). According to Bergés, the conceptual confusion of the free will with natural determinations in Hobbes gets resolved in Kant's philosophy, as Kant clearly delineates the two from each other. The sharp dualism attained in Kant, Bergés suggests, is 'the condition of possibility of [Hegel's] mediation model' between nature and freedom in his conception of spirit, which conserves yet bridges the rift between the two (388).

The materialistic conception of Hobbes is crucial, however, insofar as it makes Hobbes immune to 'spiritualistic' conceptions of law that emphasize the 'ideal side of law' (383). Bergés includes a thorough discussion of Hobbes's 'theory of signs', clearly finding in Hobbes a precursor to Hegel's discussion of 'sign' in the *Philosophy of Right* and the *Encyclopaedia* (Chapter 2). The 'declaration of will', for Bergés, is constitutive of modern conceptions of law (29). The declaration of will is 'the unity of an internal subjective side (i.e. the will) and the external objective side (i.e. the declaration)' (30). It is therefore a sign, technically speaking, because it is a 'functional unity of thought and intuition' (39). The will that is only subjective *or* only objective loses its binding character. Hobbes holds that positive laws must be *both* the expression of the will of the sovereign (the subjective side) *and* publicly and physically promulgated (the objective side) (43). The will of the sovereign (the subjective side) must, moreover, be consistent with the 'immanent logic of law' (the objective side), otherwise it loses its validity and effectiveness (41).

According to Bergés, Hegel's conception of objective spirit is able adequately to ground modern legal relations. In Chapter 9, Bergés elaborately discusses Hegel's reconstruction of 'the path of the will to objective spirit' under the five rubrics of '(1) facticity and rightfulness (2) freedom and nature (3) universality and particularity (4) validity and effectiveness, and (5) truth and the good'. His aim is to show how the ultimate figure of this path, 'the free will which wills the free will' or 'the will which wills itself', in each case mediates between the two sides. The spirit qua *actus purus* is the activity of 'self-manifestation' which sublates all givenness (202). This, however, does not mean that there is no nature in Hegel; rather spirit qua being-with-itself [*Beisichsein*] requires nature as its integral moment.

According to Bergés, the conception of objective spirit qua unity of the 'concept of law' and 'its actualization' enables Hegel to integrate history as the actual side of law within the 'immanent logic of law'. For Hobbes, history cannot be an object of 'science' in the strict sense of the word, because in history there cannot be any apodictic demonstration (227). Hobbes reduces history, that is, to a mere report, i.e., a mere narration of facts which falls outside of *scientia civilis* (228). In contrast, for Hegel, who operates with an objective conception of reason, history is constitutive of reason. By conceiving history and reason in a dialectical interrelation, Hegel distinguishes himself from the 'historical school

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of law' which reduces reason to extant institutions, thereby divesting reason of its critical potential, as well as from Kant's 'rational law' which remains 'subjective' and beyond actuality.

Hobbes's conception of 'reason' remains entangled with the ambivalences of natural law thinking. On the one hand, there are some given *leges naturales,* which can be grasped with a subjective *recta ratio* (302). On the other hand, there is an 'artificial reason' (Hobbes's phrase), which is the 'logic of the production' of the sphere of law (70). In contrast, for Hegel, 'reason' is objective, in the sense that it is already actualized in the world. Reason, that is, is effective in the institutions of law, and governs them. The sphere of law is not 'invented' by the subjective attitude and the conscious decisions of individuals, but, as the embodiment of reason, works itself out 'behind the back of consciousness'.

In chapters 12 and 13, Bergés develops the elements of the logic of the sphere of law in Hegel. The term 'logic' in Hegel's philosophy is loaded, and Bergés is careful to distinguish his approach sharply from those who relate Hegel's *Philosophy of Right* immediately to the *Science of Logic*. As first philosophy, the *Logic* deals with 'pure thinking', but the logic that is involved here is a 'specific' logic, which deals with a 'specific subject-matter', namely, the 'objectifying activity of the free will' (287–91). The logic of law, therefore, does not apply Hegel's *Logic* to the sphere of law, but rather carves out the 'inherent laws of the spiritual being' [*Eigengesetzlichkeit des geistigen Seins*] (298). Invoking Marx's critique of Hegel, Bergés claims that what is at stake here is not 'the matter of the logic' [*die Sache der Logik*], but 'the logic of the matter' [*die Logik der Sache*] (291).

Of particular interest in this part of the book are the following two points. (1) Whereas Kant regards 'collision' or 'antagonisms' between obligations in the sphere of law as rationally 'unthinkable', Hegel 'integrates the collision of norms in the immanent logic of law' (296). This enables Hegel to reconstruct certain institutions of law through the collision between concrete forms of freedom, inasmuch as it allows him to conceptualize the higher forms of freedom which develop from such collision. For example, the institution of the 'right of necessity' [*Notrecht*] in Hegel results from the 'collision' between 'right' and 'welfare', which mandates the 'relativization' of both. This collision, for its part, allows Hegel to develop the 'idea of the good' conceptually (297).

(2) The talk of 'immanence' in the logic of law does not mean, Bergés emphasizes, that the institutions of law 'can be analytically derived from the concept of the free will.' Rather, it means that the sphere of law 'processes the triggers of alien systems and alien driving-forces according to its own internal laws' (346). Regarding this issue, there is a helpful comparison between Hegel and Marx on the concept of 'person' (322–24). The formation of the category of person for Marx results from the 'mirroring' [*Widerspiegelung*] of economic

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relations of exchange, which requires the personhood of economic agents. For Hegel, by contrast, personhood is a shape of subjectivity that results from the spontaneous activity of the free will. However, this does not mean, Bergés suggests, that economic processes do not have any impact on the development of personhood. While economic relations cannot 'determine' the shapes of law, they can indeed deepen or modify them. The sphere of law, that is, produces its own concrete form, but it does this by means of working through the 'demands of other spheres' of life (324).

Bergés has written a highly original and ambitious book, which interweaves various philosophers and various philosophical arguments to defend his thesis that the institutions of law in modernity are the manifestation of freedom. The strength of the book lies not merely in its analysis of the particular institutions of law, but also in its discussion of the deeper philosophical questions that underpin any such analysis. The detailed discussion of the structure of the will both in Hobbes and Hegel is most appropriate, as any adequate philosophical conception of law requires such ground-level analysis. There are thorough discussions of 'compatibility of freedom and necessity' as well as of 'freedom and force' in Hobbes (Chapter 3) and in Hegel (Chapter 11). These discussions are essential for a project that regards the free will as the 'sole' principle of law.

Moreover, the book is a good example of how to do history of philosophy. Hobbes and Hegel are not treated, to invoke Hegelian terms, as indifferent to each other, but there is a conceptual movement from one to the other. Bergés's strategy of using Hegelian categories and phraseology to discuss Hobbes is well-suited for attaining this purpose. Important discussions in Hobbes about the 'sign' (Chapter 2), about the 'systematic' character of the sphere of law (Chapter 5), and about the philosophical importance of 'cult' in religion (in Chapter 7), which are usually neglected in Hobbes scholarship, find an appropriate place in the book through the Hegelian lens that he adopts.

With all of its virtues, Bergés's work has one noticeable drawback. The book is marked, I believe, by an uncritical attitude towards Hegel. The authority of Hegel is simply treated as 'given'. Despite the lengthy discussion of Hobbes, he is not treated at all as a philosopher who might provide an alternative to Hegel. Rather, Hobbes is regarded as a precursor to Hegel, laden with inconsistencies that Hegel resolves. For example, Hobbes's denial of the category of purpose in his theory of action and his reduction of purpose to efficient causation are quickly dismissed, because Hegel regards purposiveness as an essential feature of freedom (59–61). Perhaps Hobbes's materialism could provide a genuine alternative to Hegel's idealist grounding of law, but this alternative conception is never discussed or even alluded to.

This uncritical attitude marks the discussion of Hegel too. For example, Bergés reiterates Hegel's thesis that the human being is 'inherently' or 'in-itself'

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free in all periods of history, and that this so-called hidden kernel gets actualized in modernity (323). This evolutionary story does not really seem very plausible today. Bergés also maintains that the increasing attainment of freedom in modernity is irreversible, and that freedom has become the 'eternal possession' of human society (306). This story, too—especially given the current rapid development of the sovereignty of capital over the lives of people—is unfounded and overly optimistic.

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