Sovereignty in Ruins

Mladek, Klaus, Edmondson, George

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In this essay I argue that the central issues raised by recent discussions of the state of exception are best explored in the context of Hegelian dialectics. The essay proceeds in three stages. In the first, I argue that there is a deep ambiguity in the idea of the state of exception regarding the kind of category or concept that is in question. Specifically, it is unclear whether the idea of the state of exception is a practical or a logical one. Is it simply a historical fact that every (known, or politically or philosophically significant) system of rules relies upon or generates exceptions that cannot be captured by those rules? Or is this an a priori truth about rules as such? I argue that the majority of the extensive work being done in this area by philosophers and literary critics is incompatible with the former, as almost no one working in this area has anything to say about the relative success of actual institutions and practices that might avoid gaps in law and legitimation; instead, they devote their energies to the consideration of conceptual conflict. In a discussion of two examples of this tendency, William Rasch and Giorgio Agamben, I argue that there are good reasons to be skeptical that the Ausnahmezustand and the sovereignty with which it is associated are best understood as problems in logic that happen to express themselves in politics. I then turn to the consideration of Hegel, who clearly influences Agamben’s analysis, but whose own understanding of the logical issues surrounding the exception is quite different from his. The consideration of Hegel’s work in this context is complicated by the fact that, on many readings, there is simply no place in it for the logical problem of the exception to emerge. I argue that these readings are mistaken, and that Hegel offers us one of the best accounts of why the exception appears to be the problem that it does, and what the true significance of that problem might be. In the third and final section I discuss
Hegel’s own treatment of sovereignty and argue that, initial appearances notwithstanding, it is significantly different from and superior to that propounded by Schmitt or Agamben.

That idea of the state of exception as an essentially ambiguous one is already apparent in Carl Schmitt’s 1922 Political Theology, the text with which this concept is most closely associated. Schmitt famously provides a reciprocal definition of sovereignty and the Ausnahmezustand in which each is a Grenzbegriff or “borderline concept.”¹ For Schmitt, the state of exception is not a concept defined by preexisting, stable criteria—it is not recognized by the sovereign, but rather produced, in a performative fashion, by the sovereign’s decision.² The decision concerns nothing but the exception, and the exception is nothing but the object of the decision.³ The liminal quality of each is most obvious in the sense that the exception marks the limit of the legal order, a limit that is neither within nor without that order. No law or rule can justify, interpret, or apply itself, and when a community can no longer agree on a natural mode of interpretation and application of the law, the highest political authority must dictate one. “What characterizes an exception is principally unlimited authority, which means the suspension of the entire existing order. In such a situation it is clear that the state remains, whereas law recedes. Because the exception is different from anarchy and chaos [Chaos], order in the juristic sense still prevails even if it is not a legal kind.”⁴ The need for exceptions and decisions on them is a hard truth that Schmitt argues liberalism has consistently denied and avoided. But it cannot be avoided forever.⁵ Why this is so is not entirely clear, however. Is it simply a historical fact that no given community’s sense of what is legitimate and appropriate can be sustained forever, given the economic, military, and social instabilities and developments each must confront over time? Or is this an a priori truth about rules as such? Is every rule derived from and based upon the exception such that the explicit emergence of the exception is not just the inevitable unraveling of the rule but an integral part of its very functioning?⁶ Posing these questions reveals a second, deeper ambiguity in the idea of the state of exception that undergirds its explicitly liminal nature, an ambiguity concerning the kind of category that the exception is. Is it an essentially practical one, or a logical one?

If the state of exception is a practical matter, sovereign decisions of the sort celebrated by Schmitt might well be required only very infrequently,
and only under extreme circumstances that are in principle identifiable and largely avoidable (plague, civil war, natural disasters, constitutional crises, and so on). The central question on this account would not be that of investigating the abstract relation between rule and exception, but that of determining the conditions that most readily lend themselves to avoiding such crises. Here it is striking that Western capitalist liberal republics have a relatively good track record in this area. Whatever their deficiencies—and there is no denying that they have a great deal—they do offer at least a large percentage of their citizenry a relatively stable legal and political order (if a tumultuous economic one). And they do so without, as Schmitt argues they must, resorting to a nondiscursive, supreme centralized sovereign authority. Though they have encouraged a huge set of extralegal administrative bodies in which largely unregulated decisions are made, even in the aggregate these bodies and these decisions hardly amount to a Schmittian sovereign. If the rule of law does not extend to the disposed and those who are the objects of the society’s most virulent discrimination, this is less the result of a failing in the law as such than it is a failing either in those who administer it or in the policies to which they commit themselves (such as, in the American case, empire).

However, if law in Schmitt’s discussion is taken to mean any rule at all, the state of exception becomes an essentially logical problem, one that inevitably emerges as rules are applied and interpreted over time. Here the problem has nothing to do with historical change and the specific difficulties of holding together a political community’s understanding of the legitimate and the normal, but rather the internal reliance of the rule upon the decision and the exception. The structure of the decision of a private agent is the same as that of a sovereign. Of course, one might put these two positions together and argue that the internal, logical limitations of rules as such are put under greater pressure when the rules are political laws subject to the vicissitudes of history and internal and external conflict. But the two positions remain nonetheless distinct. One way to bring this out is to observe that those who embrace what I have referred to as the logical reading of the Schmittian exception are committed to the strict inevitability of the emergence of the Ausnahmezustand, and, for this reason, are in a rather weak position from which to criticize the excesses of either the Bush-Cheney administration or the current administration.

Whatever Schmitt’s own views on this matter, it is safe to say that the majority of people working on the state of exception today are not inclined to
adopt the former, practical approach to it. Instead, they tend to see the state of exception as a philosophical, logical matter. This is reflected in the fact that most people working in this area focus less on the relative success of actual institutions and practices that might avoid gaps in law and legitimation and more on the analysis of conceptual conflict. A good example of this would be William Rasch, who, in his volume *Sovereignty and Its Discontents*, defends a conception of “the political” as “the ineliminable antagonism [that] serves as the condition of possibility for the limited and channeled struggles of both domestic and international politics.” On Rasch’s account, such struggle demands and revolves around sovereign decisions regarding who is and is not a member of a given group and what commitments define that membership. And the attempt to suppress and eliminate this conflict and this decision can only result in the return of the repressed: “When one excludes the political, one has to guard the borders vigilantly against those willful intruders who deviate from God’s will” and the order of peace, a defense that inevitably assumes a violent form. No doubt, at points Rasch argues that the assertion of “the primacy of the political . . . merely registers a pragmatic insight, namely, that assuming incommensurable conflict as an ineradicable feature of social life leads to more benign human institutions than the impossible attempt to instantiate the shimmering City of God.” But this is belied by his claims concerning the inevitability of the return of the repressed. It is not surprising, then, that the emphasis of the analysis in Rasch—as in similar studies of the political—is placed heavily upon the logical claim.

Rasch defends and explicitly embraces the logical necessity of Schmitt’s sovereign decision in appealing to Bertrand Russell’s well-known paradox of the village barber who shaves all and only those men in the village who do not shave themselves. The paradox here is that if the barber does not shave himself, he does not fulfill the first condition, that of shaving all of the men in the village; while if he does shave himself, he does not fulfill the second, that of shaving all those men in the village who do not shave themselves. Rasch argues that this exemplifies the logical limitations of the rational perception of order, as it shows that “for the law of the excluded middle to operate, it must be the excluded middle, neither true nor false.” The decision for logic is itself a logically ungrounded decision and hence, correctly understood, supports the decisionist critique of logic. As Rasch puts it,

In a word, the barber is sovereign, for the paradox [that Russell identifies] is the neat trick of sovereign self-exemption, which makes a neat
asymmetry out of an impossible symmetry. The sudden emergence of this figure—the figure of the sovereign—at first seems arbitrary and mysterious. When personified as an individual, an institution, or a general will, sovereignty appears as if it precedes the law, giving the law its force. Yet, the sovereign is simply the name given to a logical effect. Rather than prior or opposed to the law, the sovereign is the law’s shadow, its included and excluded double. In the set we call “Sicilian village,” law is universal. All are equal before the law. Whoever applies the law is also subject to the law. But the law itself is not subject to the law.\(^{15}\)

This looks compelling on first blush. But on reflection it becomes evident that, in his eagerness to provide a logical basis for Schmitt’s model of sovereignty, Rasch has overlooked the empirical assumptions built into his analysis. For the barber’s paradox assumes that there is a barber who shaves all and only the villagers who do not shave themselves. But, as logicians after Russell have noted, there may be no such barber, and if there is, it may be a woman.\(^{16}\)

A somewhat different tack is taken by Giorgio Agamben, without a doubt the central figure in the current debate concerning the state of exception.\(^{17}\) In the first volume of his *Homo Sacer*, Agamben makes explicit his commitment to the logical reading of the exception in his discussion of the relation between exceptions, examples, and rules. Agamben argues that “exception and example are correlative concepts that are ultimately indistinguishable.”\(^{18}\)

As the one is an inclusive exclusion—eine Ausnahme—so is the other “an exclusive inclusion.” “The example,” he writes, “is truly a paradigm in the etymological sense: it is what is ‘shown beside,’ and a class can contain everything except its own paradigm. . . . What the example shows is its belonging to a class, but for this very reason the example steps out of its class in the very moment in which it exhibits and delimits it. . . . If one now asks how the rule applies to the example, the answer is not easy, since the rule applies to the example only as a normal case and obviously not as an example.”\(^{19}\) Agamben has described the logic in question here as an “analogical logic” that cannot be separated from its context and the objects that bear it.\(^{20}\) This analogical logic, however, retains the necessity and universality of the logic it replaces. Every example and every exception as such “suspend” and at the same time “expose their belonging” to the class they exemplify or from which they are excepted.\(^{21}\) The problem of the exception is, on this account, hardly a political or legal matter; for the problem appears every time one claims that
something is presented as being an example of a rule—or an exception to a rule. The exceptional status of the example (as something taken outside the class in order to demonstrate that class) is a necessary feature of classes as such, be they classes of the product of artistic genius or classes of rules. As Agamben puts it, “In every logical system, just as in every social system, the relation between outside and inside, strangeness and intimacy, is this complicated.” In every case, “belonging to a class can be shown only by an example.” Examples precede classes just as, for Schmitt, decisions precede norms. This has problematic implications for Agamben’s own analysis, in particular his central claim that “today it is not the city but rather the camp that is the fundamental biopolitical paradigm of the West.” For the clear implication of this analysis is that in claiming a paradigmatic or exemplary status for the camps, Agamben is and can only be making an unregulated decision that cannot be justified to his readers in a nonauthoritarian manner. Since the example precedes and defines the rule, Agamben cannot appeal to an independent rule or standard to justify his claim that the camps are exemplary of anything. The determination that the camp is representative of the rule is one that is made and not in any substantive sense recognized.

Given this, it is perhaps unsurprising that Agamben’s own justifications for the logical reading of the state of exception are neither extensive nor terribly convincing. To argue, as Agamben does, that “the rule applies to the example only as a normal case and obviously not as an example” essentializes the categories of the normal case and the example or exception. If we take a group of things that are subsumed under the same rule—say, three species of a particular bird genus—have we really treated one of these species as an example and (for this reason) not as a normal case when we present it as an example of the genus, or as an exception to the standards of the genus? Some may object that such a taxonomical example is too trivial to be useful here or is otherwise inappropriate. But recall that Agamben claims that there is an isomorphism between the exception and the example or paradigm and that “in every logical system, just as in every social system, the relation between outside and inside, strangeness and intimacy, is this complicated.” Moreover, problems remain even if one sets aside questions of species and genus and takes up what surely is Agamben’s real interest, the question of paradigmatic language. In the chapter “What Is a Paradigm” of his book The Signature of All Things, Agamben repeats almost word for word the claim cited above concerning the difficulty of applying the rule to the example. Immediately before doing so, he writes, “What is essential
here is the suspension of reference and normal use. If, in order to explain the rule that defines the class of performatives, the linguist utters the example ‘I swear,’ it is clear that this syntagma is not to be understood as the uttering of a real oath. To be capable of acting as an example, the syntagma must be suspended from its normal function, and nevertheless it is precisely by virtue of this nonfunctioning and suspension that it can show how the syntagma works and can allow the rule to be stated.”

To evaluate this argument, let us consider a pair of philosophers attending the criminal trial of one of their colleagues. When the first witness is sworn in, the first turns to the second and says quietly, “You were asking what J. L. Austin meant by ‘performative.’ Well, that oath there is an example of it: the fellow swearing to tell the truth, the whole truth, and nothing but the truth doesn’t report on or describe a performance or act; it is the performance.” Now, I imagine that Agamben might reply that citing even an immediately present performance like this is not “normal use.” Normal use would then be the actual use of the phrase—“the uttering of a real oath,” as Agamben puts it—and not a quoting of it or comment upon it. But if Agamben were to take this line, he would be effectively equating not just examples and exceptions but examples, exceptions, and a whole slew of criticisms, praises, and queries. Statements such as the following are completely unremarkable: “Did you really say, ‘I swear he did it?’” or, “How dare you say to her, ‘You’re an old fool?’” or, “I wouldn’t exactly call what he’s doing ‘self-assertion’—it looks more like a cry for help.” In none of these cases is the speaker taking the word or phrase she cites as an example of or an exception to a rule, and each of them is perfectly normal.

Agamben’s general position might be more compelling if we took examples the identification of which requires a large degree of judgment. Think, for instance, of excellent student essays. Here there is a rule that determines the class, but it is a rule that not all observers or participants will agree upon, as it requires training and sensitivity to apply. Hence students regularly complain that grading in humanities courses is subjective and for that reason unfair. The philosopher of science Paul Feyerabend embraced this skepticism when he gave all of his students at Berkeley the same grade—first, I believe, a C, and then, after the Berkeley administration complained, an A. But even if one shares our students’ skepticism regarding the rules used in the grading of their papers, it seems misleading at best to say that anything like this is true of rules as such. To claim otherwise would effectively mean denying any distinction between cases involving the rote application of rules and cases.
involving discretion or fine judgment. This is not to deny that rule application may require judgment, only to insist that these broad categories are not completely meaningless.\textsuperscript{28}

If Rasch’s and Agamben’s approaches to the exception are as problematic as I have argued, it hardly follows that we are any better off turning to Hegel. Hegel’s claim to speak from the perspective of Absolute Spirit—a culmination of intellectual and moral life in which there are supposedly no more mysteries left and our duties are plain to see—is not one that appears open to anything like a decision on the exception. Nonetheless, I shall argue that the passage through rather than around the decision is one that Hegel feels we moderns must make, for both political and philosophical reasons. I shall further argue that Hegel’s position on this matter provides a helpful contrast to the currently fashionable views of Schmitt. Where Hegel anticipates the critique of romanticism laid out in Schmitt’s \textit{Political Romanticism}, he is clear that the moment of the “sovereign decision” is a moment in a larger process, and not, as Schmitt would have it, an ever-present abysmal ground of political life that might, by virtue of its status as ground, legitimately if not legally swallow all it supports. What for Schmitt remains a decision, albeit one that ought to be made by the sovereign of a hierarchically organized political unity, is in Hegel a moment of the free will. Hegel thus promises both to allow us to integrate irony into a meaningful, coherent life, and to address the dangers of Schmitt’s decisionism without ignoring Schmitt’s insight that no system of rules can apply or ground itself.

As Schmitt notes, what he describes as occasionalism is termed \textit{irony} by Hegel: the conception of freedom and subjectivity that allows for and even demands the emergence of the exception is one that celebrates the ironic detachment of the free individual.\textsuperscript{29} Hegel’s depiction of this is, on the face of it, unremittingly negative. Irony is an evil radicalization of the modern, Kantian conception of the free will. As such it seems an unlikely suspect to play a central role in the articulation of any modern political life worth affirming.\textsuperscript{30} But, on Hegel’s account, such a role is just what it does and must play in the \textit{Philosophy of Right}’s account of the limitations of the critical philosophy of Kant and Fichte, and hence the necessity of Hegel’s own contributions to political thought. This is clearest in Hegel’s discussion of irony and evil in §§138–41 of the \textit{Philosophy of Right}. These sections are the central hinge of the book in that they depict both the transition from Mo-
ralität to Sittlichkeit and the transition from the historical unfolding of the free will in the previous half of the book to the outline of the structure of a rational modern society in the second. Hegel argues that morality as Kant and Fichte conceive of it is too subjective, and fails to accord sufficient ethical significance to the community and the roles it assigns us or makes available to us. Ultimately, Hegel’s predecessors are painted as being too Cartesian, too willing to jettison tradition and the wider culture in the hope that the isolated individual can alone develop an adequate morality. But unlike the more conservative of today’s communitarians, Hegel’s presentation of his alternative conception of Sittlichkeit or ethical life is meant to be a further development of Kantian morality, one that that morality itself calls forth in a process of immanent critique. Hegel makes no appeal to external authority, or contingent, given norms; instead, he claims to present the autonomous, internally driven unfolding of the will, from its initial objectivization of itself in private property to its adequate realization in a complex, articulated modern state that incorporates nuclear families, promulgated legal codes, a capitalistic economy, corporate mediations between the individual and the state, and a constitutional monarchy with a version of the traditional branches of government as conceived since Cicero. This process is one of immanent critique in the sense that it is driven by negation, a fact that comes more prominently into view in the later stages of the process, and in particular in the transitions from one stage to another. Each stage reveals its limitations in the form of internal contradictions that can only be resolved by rising to a higher and more fully articulated form of the free will.

The crucial juncture in this internally driven unfolding of the will is the transition from Kantian morality to Hegelian ethical life. Irony plays a central role in this transition, just as crime does in the transition from Abstrakte Recht to Moralität, as a negation of a negation. Crime makes morality possible in that the criminal who violates the contractual conditions of abstract right can only be judged from a perspective that respects but nonetheless transcends that right—in Schmitt’s terms, one that has a “juristic element” but nonetheless defies “general codification” in the system of right. The judge who merely takes an eye for an eye (and thus engages in a “fair exchange”) is no judge at all.31 To punish rationally, and hence preserve the principle of abstract right, requires a mode of judgment that is not yet developed in that sphere, and that comes into its own only in the next section on morality. Essentially the same is and must be the case with irony, which is the truth of morality as crime is the truth of right, and which signals the need for ethical
life as crime signals the need for morality. This means that ethical life can be understood only as the sublation or Aufhebung of irony, which is to say, its negation and fulfillment. On Hegelian grounds, then, it is impossible to simply dismiss irony as childish or self-indulgent or evil. But at the same time, it is difficult to see how irony might play the large and productive role Hegel assigns to it. Hegel presents irony as dissolving everything it touches into the arbitrary whim of the subject. All rules lose their validity, and each judgment becomes a manifestation of the individual’s sovereign power to decide on the exception. Once this is done, how could anything as substantial and systematically articulated as ethical life ever emerge? The challenge here is much greater than in the case of crime, which operates in a normative world that still lacks, as it were, the depth of a third dimension, a depth supplied by moral judgment. This is not the case with irony, as Hegel himself signals: with the discussion of irony, the development of the free will charted by the first half of *The Philosophy of Right* ends, and the depiction of the social world adequate to that will begins. The dialectical unfolding of the free will ends, then, with the mystery of an exception avant le lettre.32

In order to engage with these issues in a helpful way, one needs to appreciate the extent to which Hegel is profoundly concerned with our subjective embrace of the objective truth of modern political life. *The Philosophy of Right* is, among the canonical works of modern political thought, rivaled only by those of Rousseau in the centrality of its concern with alienation and reconciliation. Hegel writes for a world that supposes the spiritual universe to be “god-forsaken . . . According to this atheism of the ethical world, truth lies outside it, and at the same time, since reason is nevertheless also supposed to be present in it, truth is nothing but a problem.” While Hegel presents this as a philosophical radicalization of Kant’s excessive caution, it also expresses an alienation found more widely in the general culture.33 As he puts it in the *Encyclopedia*, “The sickness of our time, which has arrived at the point of despair, is the assumption that our cognition is only subjective.”34 In both critical philosophy and the modern age more generally, the fact that truth is simultaneously included and excluded from the world produces a demand that “every thinker . . . take his own initiative, though not in search of the philosopher’s stone,” which all assume they already have, albeit in a disfigured form (*EL* §22; *PR*, 14). Rather, a sincere decision and assertion of self is demanded: the “self-styled philosophy” of the romanticism that pervades the modern world “has expressly stated that truth itself cannot be known, but that truth consists in what wells up from each individual’s heart” (*PR*,
This produces a world in which “the arbitrary will of the subject” determines what will count as right and true (PR §140). Modernity, in short, experiences itself as being more or less, as Schmitt’s teacher Weber describes it a hundred years later in “Science as a Vocation,” a “godless” (gottfremden) time in which life “knows only of an unceasing struggle of . . . gods” (jener Götter), a struggle that ends only with a manly decision to commit oneself to one’s personal demon (Dämon) and that demon’s values.

The paradox in Weber’s formulation is matched in Hegel, where his readers are pictured as being alienated from reality in an essentially unreal way. Their experience of alienation, that is, is a false experience of the world, one Hegel intends to correct. But since the world from which they are alienated is the world of their social and spiritual activity, this alienation is objective as well as subjective. Social alienation can be dismissed as nonactual, as the “superficial outer rind” or “brightly colored covering in which consciousness first resides” only insofar as it does not inhibit the will’s realization in the forms of social life outlined in the Philosophy of Right (EL §6; PR, 21). But to the extent that alienation does hold us back from finding ourselves in the family, in civil society, and in the state, that alienation is, if not actual, then something like a rupture within actuality. This way of putting the matter will strike some as being far too paradoxical to be true to Hegel’s insistence that the rational is actual and the actual rational (PR, 20). In his study of Hegel’s “project of reconciliation,” Michael Hardimon, for instance, presents what I think most would see as a claim more in keeping with Hegel’s intentions: according to Hardimon, Hegel, unlike Marx, does not see the problem of alienation as an objective one, a feature of reality that must be contested and overthrown. Citizens “are subjectively alienated because they feel estranged from its arrangements. . . . But their subjective alienation is pure (unaccompanied by objective alienation) because, contrary to appearances, the world they inhabit is in fact a home.” But a page after writing this, Hardimon notes, “People who are subjectively alienated are not at home in the social world; for . . . being at home in the social world includes an essentially subjective element, and not being at home in the world is to be alienated.”

We are not at home at home, then. As Hardimon does not acknowledge the contradiction here, he does not see that Hegel, like Nietzsche or Pindar, is engaged in the uncanny task of helping us to become what we are.

“The state,” Hegel argues, “is the actuality of concrete freedom. But concrete freedom requires that personal individuality [Einselheit] and its particular interests . . . should, on the one hand, pass over of their own accord into
the interest of the universal, and on the other, knowingly and willingly acknowledge this universal interest even as their substantial spirit, and actively pursue it as their ultimate end. The effect of this is that the universal does not attain validity or fulfillment without the interest, knowledge, and volition of the particular [and its] conscious awareness” (PR §260). If Sittlichkeit is a matter of the community’s customs or Sitten, these are not followed simply because an external authority says they must be, but because the subject affirms them. The importance of the “conscious awareness” of this subjective affirmation is indicated by the fact that Hegel makes the cure of alienation one of his central tasks. In contrast, he quite pointedly does not find it necessary to address every existent but unreal failing. In English, to realize something is both to make it real and to understand it. Both of these are required by Hegel’s notion of actualization. As Hegel puts it in the preface, “The truth concerning right, ethics, and the state is at any rate as old as its exposition and promulgation in public laws and in public morality and religion. . . . What it needs is to be comprehended as well.” The rational matter needs to be given an appropriately rational form; the Begriff must be grasped, begreifen. It is this comprehension that makes possible “reconciliation with actuality” (PR, 22). The other side of the unreality of our alienation from the world is the world’s failure to be what it really is, rational. Failing to see what we are, we fail to be what we are. The Philosophy of Right and the logic that stands behind and gains political expression in it will correct this. It is not, I think, misleading to describe this work as therapeutic.

There is a variety of ways in which we might be alienated from the modern world. We might be repelled by the conflict and selfishness characteristic of the—for Hegel—relatively new forms of civil society. More specifically, we might conclude that the prevalence of poverty—and Hegel’s inability to recommend a solution to it—is evidence that civil society is irrational and destructive. More specifically still, we might take the existence of the rabble or Pöbel that on Hegel’s own account characterizes the marginalized, superfluous poor who see the social world as making promises of rights and dignities that it systematically denies as evidence that that world is dehumanizing, and hence no proper home for humans. But the main danger Hegel sees is that we will reject modern political society because we do not recognize it as a place in which we can be free. “The fetter of some abstraction” forged by Hobbes, Kant, or Fichte might lead us to believe that our freedom is opposed to the duties and commitments of that society, and that true freedom is found in the abstract decisions of the isolated subject. The result is
nihilism, be it Jacobi’s or Weber’s, according to which the denatured self is fulfilled only in the act of decision itself. The logical extreme to which modern moral consciousness is drawn is evil in the form of irony: the “last and most abstruse form of evil, whereby evil is perverted into good and good into evil and the consciousness, knowing it has the power to accomplish this reversal, consequently knows itself as absolute, is the greatest extreme of subjectivity from the point of view of morality. It is the form to which evil has advanced in our time—thanks to philosophy” (PR §140). Pure choice takes the form of irony, as only irony displays the simultaneous emptiness and quasi-divine power of the decision. A just decision, say, would reveal me as just, but, as such, as bound by the tenets of justice. Only an empty, ironic choice allows for the assertion of the ultimate mastery of the self, unbound by any commitment or any defining characteristic. As Hegel puts it, for the ironist, “It is not the thing which is excellent, it is I who am excellent and master of both thing and law” (PR §140).

In Hegel’s discussion in both the Lectures on Aesthetics and the Philosophy of Right it is clear enough that Friedrich Schlegel’s romanticism epitomizes for Hegel the sickness he seeks to ward off and correct. Schlegel is the fulfillment of a process begun in Fichte’s philosophy of subjectivity, whereby the abstract, simple, and formal I becomes the absolute principle and foundation of all knowledge and all philosophy. Subjectivity is the absolute self-certainty (Gewißheit) that Hegel identifies with conscience (Gewissen) (PR §136), the “abstract self-determination and pure certainty of oneself alone” that is the “judging power” (PR §138). In Fichte this subjectivity takes center stage, and the I or ego (Ich) becomes

lord and master of everything, and in no sphere of morals, laws, things human and divine, profane or sacred, is there anything that would not have to first have been laid down by the ego, and that therefore could not equally well be destroyed by it. Consequently everything genuinely and independently real becomes only a show [Schein], not true and genuine on its own account or through itself, but a mere appearance due to the ego in whose power and caprice and at whose free disposal it remains. To admit or cancel it depends wholly on the pleasure of the ego, already absolute in itself simply as ego.

Because the subject of Fichte’s philosophy decides not just what is the case but by what means and according to what standards such judgments are to be made, everything is what it is by virtue of its decisions.
Fichte himself, however, only systematizes a conception of abstract subjectivity that is uncovered well before him; and in the *Philosophy of Right* Hegel identifies such subjectivity with a far less easily vilified figure than the Schlegel Fichte makes possible: Socrates. Immediately before beginning his discussion of evil in *PR* §139, Hegel discusses the “subjectivity, as abstract self-determination and pure certainty of self alone [that] evaporates into itself all determinate aspects of right, duty, and existence, inasmuch as it is the power of judgment which determines solely from within itself what is good” (*PR* §138). This is obviously the basis upon which evil is, as Hegel claims in §139, “necessary.” Hence it is confusing when Hegel refers to Socrates in both the Remark and the Addition to §138. This is made all the more confusing as Socrates is presented as doing something that may be appropriate for others as well. Where Fichte’s (and, before him, Kant’s) formalism is simply a limitation of an incomplete idealism, one with disastrous consequences that Fichte himself did not anticipate, Socrates is presented as a potential model for us. That is, Fichte was a step on a road we have taken. Socrates looks like a potential way forward.

The self-consciousness which has managed to attain this absolute reflection into itself knows itself . . . as a consciousness which cannot and should not be compromised by any present and given determination. In the shapes which it more commonly assumes in history (as the case of Socrates, the Stoics, etc.), the tendency to look *inwards* into the self to know and determine from within the self what is right and good appears in epochs when what is recognized as right and good in actuality and custom is unable to satisfy the better will. . . . This will no longer finds itself in the duties recognized in this world and must seek to recover in ideal inwardness alone that harmony which it has lost in actuality. (*PR* §138r)

It is tempting to assume that the hypothetical nature of this remark eliminates any problem. We do not live in dark times, but in a world that is actually rational—at least if we see it as such. Socrates however did not share our moral luck. But this only exacerbates the difficulty: how does Socrates avoid becoming (as evil as) Schlegel if his world is even more impoverished than Schlegel’s? It is tempting to answer that Socrates is simply a better person than Schlegel. But making any such appeal to contingent (*zufällig*) differences between the two men would mean accepting that Hegel’s argument is not about the logic of a particular conception of freedom as it arises in the realization of the idea of right. And this in turn would make hash of
the central claim of the *Philosophy of Right* to be an immanent development of the free will: if evil does not follow from the abstract self-certainty of the moral consciousness as crime follows from the assertion of abstract right, the *Philosophy of Right* runs out of gas just as it approaches the gates of the Hegelian state, leaving us stranded more or less where we started. Hence we must find another ground upon which Hegel might distinguish Socrates from Schlegel, while at the same time noting as he does their essential similarity.

In an essay on this topic, Robert Williams provides some help here. Williams notes that a great deal hinges on the correct interpretation of Socratic irony. With Schlegel we begin the turn away from Xenophon to Plato as the privileged source of our understanding of Socrates; and the reason for this is Xenophon’s inability to understand Socrates’s irony—in Schlegel’s view, “the only involuntary and yet completely deliberate dissimulation.” In this paradoxical mix of the voluntary and the involuntary “everything should be playful and serious, guilelessly open and deeply hidden. . . . It originates in the union of *savoir vivre* and scientific spirit, in the conjunction of a perfectly instinctive and a perfectly conscious philosophy. It contains and arouses a feeling of indissoluble antagonism between the absolute and the relative, between the impossibility and the necessity of complete communication.” Schlegel argues that his own irony and Socrates’s are the same. As we have seen, this is a claim that Hegel must contest. Williams sees him doing so by distinguishing between destructive and constructive irony. This is right—the question is, how does Socrates manage to make this distinction? The central line of Williams’s discussion is that he does so by virtue of his commitment to “substantial interests.”

Pace Schlegel and Kierkegaard, Socrates’s irony is more or less as Gregory Vlastos has described it: a mask that in announcing itself to be a mask reveals the positive commitments it playfully conceals, such as Socrates’s care for his friends and interlocutors, and his pursuit of the good, which Williams argues is only comprehensible given some knowledge of the good. All of this is in stark contrast to Schlegel’s destructive and unsubstantial irony, which “results in a substanceless subject” and “can dissolve any substantive content and regard it as null and void. . . . Hegel believes irony is directed at everything, including substantive interests.”

There is, no doubt, some evidence for this. Immediately after the passage cited above from the *Lectures on Aesthetics*, for instance, Hegel proclaims that “genuine earnestness enters only by means of substantial interest, something
of intrinsic worth [in sich selbst gehaltvolle] like truth, ethical life, etc. But Hegel’s commitment to the intrinsic, substantial content of ethical life is not a commitment to the substantial as opposed to the subjective; indeed, as we have already seen, “the universal [ethical life] does not attain validity or fulfillment without the interest, knowledge, and volition of the particular [and its] conscious awareness.” The same is also true in Hegel’s aesthetics and his logic. Hence the contrast cannot be drawn quite as starkly as Williams suggests. Indeed, Hegel suggests that the contrasting terms themselves are the product of the subject’s mediation—not its limitation. As he puts it in PR §138, “The subjectivity, as abstract self-determination and pure certainty of itself alone evaporates into itself all determinate aspects of right, duty, and existence, inasmuch as it is the power of judgment which determines solely from within itself what is good in relation to a given content, and at the same time the power to which the good, which is at first only an Idea [vorgestellt] and an obligation, owes its actuality.” And in the Addition he emphasizes that “everything which we recognize as right and duty can be shown by thought to be null and void,” and says of Socrates, “He evaporated the existing world.” This implies both that Socrates practices something like destructive irony, and that his relation to “substantive interest” is much more ambivalent than Williams makes it out to be. Williams’s interpretation leaves unexplained how it was that Socrates was able to develop and maintain his commitment to the substantive interests that supposedly distinguish him from the Sophists. Williams is quite right to say that Hegel sees Socrates’s conception of the good as overly abstract. But the question remains, how did Socrates manage to develop even an abstract conception of the good, given that his was an evaporating subjectivity in which the Greek world and its substantive interests dissolved?

The answer lies in Socrates’s relation to the Sophists. Williams comes close to articulating this, particularly when he writes that Socratic irony “is a determinate negation directed against the Sophists.” But this is not quite right: Socratic irony is not “a determinate negation directed against the Sophists”; it is “a determinate negation of the Sophists.” The difference is hardly trivial. As the determinate negation of the Sophists, Socrates was the negation of the negation, not the reassertion of what was initially negated. What does this mean? Williams writes that “the sophist view is that knowledge is impossible” while “Socrates assumes that once the debris of confused and misleading ideas (such as sophism) is cleared away, knowledge and virtue will be attainable in principle.” And he confidently asserts that
Socrates was no Sophist.\(^{51}\) But as the determinate negation of the Sophists Socrates was very much a Sophist. Indeed, as Plato already hints, he was nothing else.\(^{52}\) His truth is the truth of sophistry, which, pace Williams, is hardly “debris” for Hegel. Williams refers to the *Lectures on the History of Philosophy*, but only to the section on Socrates. Hence his recollection is perhaps rusty of Hegel’s glowing description of the Sophists as the students of Anaxagoras, the agents of the Idea who brought *Bildung* to Greece, and who in dissolving (*Auflösung*) the false, nonspeculative ideas of common sense introduced philosophy to the Greeks.\(^{53}\)

Socrates is not a defender of the status quo in opposition to the Sophists. As Hegel puts it in the *Encyclopedia Logic*, “Socrates fought the Sophists on all fronts; but he did not do so by setting authority and tradition against their abstract argumentation, but rather by exhibiting the untenability of grounds dialectically, and by vindicating . . . the concept of willing” (*EL* §121a). Rather than a vague or abstract version of maligned substantive interests, we have the undoing of sophistry via sophistry. The two are simply two moments in the progress of the Idea, and that progress is always a negative one—one might say, a skeptical one. “Socrates directed his dialectic first against ordinary consciousness in general, and then, more particularly, against the Sophists” (*EL* §81a). Against ordinary consciousness first, because that was the step taken by Anaxagoras and the Sophists, the step that made Socrates possible. Hegel identifies the essence of sophistry as “making one sided and abstract determinations valid in their isolation . . . in accord with the individual’s interest of the moment and his particular situation”; “the decision as to what grounds are to count as valid falls to the subject”—a nihilism that obviously anticipates that which Hegel attributes to Schlegel (*EL* §§81a, 121a). Hegel associates this with a particular reading of Protagoras’s dictum, man is the measure: “in this . . . as in all their [maxims] lurks an ambiguity, since the term ‘Man’ may denote Spirit in all its depth and truth, or in the aspect of mere caprice and private interest.”\(^{54}\) Williams says repeatedly that Socrates opposes the principle that man is the measure.\(^{55}\) But Hegel says that he opposes only the false interpretation of the principle: “Protagoras’ assertion is in its real meaning a great truth. . . . The same statement is brought forward in Socrates and Plato, but with the further modification that here man, in that he is thinking and gives himself a universal content, is the measure. Thus here the great proposition is enunciated on which, from this time forward, everything turns.”\(^{56}\) The correct interpretation is in fact Hegel’s own doctrine, as laid out in the *Encyclopedia* and the
Philosophy of Right. The state is the actualization of the will, the concept by which we have seen Socrates “vindicated”; and “the will is a particular way of thinking” (PR §4A).

It is the collapse of the false interpretation of Protagoras’s dictum that demonstrates the necessity of the true interpretation. This collapse transpired in both a political and philosophical setting. In his discussion of the Sophists in the Lectures on the History of Philosophy Hegel writes, “The end of the state is the universal [Allgemeine],” and a half page later he writes, “Thought seeks universal [allgemeine] principles.” The polis as a discursive community realized itself in the teaching of the Sophists; but that teaching undermined the common world even as it realized it. As Thucydides shows, as the Peloponnesian war progressed, the false reading of Protagoras’s dictum took hold of the city, and “private ambition and private profit led to policies which were bad both for the Athenians and their allies.” It is in this corrupt city, and in conversation with the Sophist Gorgias, that Socrates claims that he is “one of the very few among the Athenians, not to say the only one, engaged in the true political art.” This art looks forward to an assertion of self as public or universality. As Hegel puts it in the 1817–18 Lectures on Natural Right and Political Science, “My genuine conscience is universal conscience.”

Universality is the truth of the abstraction of the subjectivity of the Sophists, and of Schlegel. Socrates does not reprimand his interlocutors for pursuing their own interest; instead he teaches them that they do not know what that is—nor, in the end, who they really are. It is the desire to assert themselves as the measure that drives them on. Instead of clearing away sophistic debris, Socrates radicalizes this sophistic project and transforms it into its other.

But what would it mean to will the self as universal or general as opposed to abstract? To put the question somewhat differently, if the autonomous self is one that passes through the moment of abstraction, how can it ever become concrete again? Hegel’s answer is found in his account of the will. Hegel describes the will as “particularity reflected back into itself and so brought back to universality, i.e., it is individuality” (PR §7). Such formulations are dense and extremely abstract, and they open themselves up to a number of interpretations. One way of approaching this problem is to focus on Hegel’s later discussion of the way one can purify one’s impulses, give them the form of reason, and make them one’s own (PR §19). This is a process in which I become what I am by making myself at home in the world—making my world my world, making it one in which I can recognize myself. I do this by taking up (some of) the impulses and relationships that
characterize that world as contingent facts and making them things that I choose. This requires me to step back from the things themselves and to ask if I really want them, if they really satisfactorily express who I am. In doing this I apply universal categories to the particular impulses and relationships my history has left me with—categories that are not simply my own invention, but social products. Instead of simply feeling what I do for, say, the people with whom I have close relations, I reflect upon those people and relations in general terms. In realizing that what I feel is best characterized under the general rubric of love, for example, that feeling is deepened—it becomes self-conscious, itself an object of my esteem (as opposed to the person for whom I feel this love). This in turn adds worth and stability to my relationship. When times are hard, and my feelings of love appear to have been replaced by ones of, say, anger and impatience, I do not lose track of the general truth of our relationship as a loving one. I am no longer a prey to my passing feelings—here anger and impatience. But none of this means that I am not an individual who feels specific, individual feelings for another individual. Quite the opposite: I can be such an individual, rather than a Humean bundle of impulses and sensations, only by virtue of passing through these three moments of the will and making some feelings or impulses structural features of my world, or who I am.

This is a dangerous transition, as it may easily happen that I choose to remain abstracted from all concrete relations, and to make this abstraction itself a way of life. This is Hegel’s diagnosis of the Terror of the French Revolution: “Only in destroying something does this negative will possess the feeling of itself as existent. Of course it imagines that it is willing some positive state of affairs, such as universal equality or universal religious life, but in fact it does not will that this shall be positively actualized, and for this reason: such actuality leads at once to some sort of order, to a particularization of organizations and individuals alike, while it is precisely out of the annihilation of particularity and objective characterization that the self-consciousness of this negative freedom proceeds” (PR §5r). The difficulty of the transition through and out of this moment of “negative will” has led some to infer that Hegel himself does not in the end think it possible. Slavoj Žižek, for instance, argues in the second and central chapter of The Ticklish Subject: The Absent Center of Political Ontology that the only alternative to this “fury of destruction” is the return to particularity as such. On this account, Schmitt as decisionist is the true heir of Hegel, rather than those who claim to be following Hegel in asserting the satisfactory resolution of this dilemma.
in the ultimate recognition of a concrete universal that somehow magically unifies the demands of universality (I am nothing) and individuality (as this nothing I recognize that I am these things, that I now choose and hence willingly embrace). And no doubt it is true that if all that were going on was the turning off and on of one’s feelings and commitments, it is difficult to see why one should choose to turn back on the particular feelings and commitments with which one began. One might well choose any set of relations rather than remain in the psychotic loneliness of utter nonrelation; but one’s reasonable horror of such a state would not lend any special advantage to the particular set of relations that had initially been set aside.

An analysis such as Žižek’s, however, takes the moment of abstraction profoundly out of context, and leaves unexplained why one abstracts oneself from one’s relations to begin with. One simply refuses particularity and then accepts it again—or not. On Hegel’s account, in contrast, one initially refuses pure particularity on Rousseauian grounds: the utter contingency of particularity as experienced in contingent impulses is not a sphere in which one can affirm oneself as a free individual. Hence one seeks a mediated mode of universality that will allow one to affirm oneself as willing the particular (these people, these relations) at least in part on conceptual or universal grounds. In these relations the subject is able to experience camaraderie in the form of friendship, or desire in the form of love. Precisely such a mode of abstraction and commitment is enacted in the Philosophy of Right itself, which asks the reader to set aside her immediate political commitments in favor of a commitment to the universal free will, a commitment that shall ultimately take as its object the manifold institutions and modes of life that both characterize modernity and make possible the (concrete) free will. As Hegel puts it, “The free will . . . wills the free will” (PR §27); but this is, of necessity, a mediated willing in which the free will wills the institutions that make it possible and sustain it.

If Socrates fails to make such a commitment, and tarries in ironic abstraction, it is not because he, like Schlegel, finds freedom in abstraction as opposed to the passage through universality to individuality, but because there is as yet no such set of institutions and forms of life adequate to his will that he might affirm. As is well known, in his discussion of the Greek political work of art in The Philosophy of History lectures, Hegel relates the Socratic moment of moral reflection to the rise and collapse of democracy in Athens, and argues that the appearance of subjective freedom with the Sophists and Socrates “plunged the Greek world into ruin, for the polity
which that world embodied was not calculated for this side of humanity—did not recognize this phase; since it had not made its appearance when that polity began to exist. Of the Greeks in the first and most genuine [wahrhaften] form of their Freedom, we may assert that they had no conscience.” 66 This is often taken as suggesting that the Greeks somehow lacked the interiority of moderns—that they did not and (for some bizarre and wholly unexplained reason) could not question their customs, and ask themselves what was really right and wrong. Hegel’s fondness for Sophocles’s Antigone alone should be enough to indicate that this is not his view. Hegel’s point is rather that they could not do this in any but a “destructive” fashion, as their polity was not yet equal to such questioning. 67 The Greeks had no conscience because their political constitution or Verfassung was not adequate to the demands of subjectivity, and hence did not allow for the mediation of subjective reflection.

Irony hence works quite differently in the modern world than it did in the ancient. For moderns, irony, if not properly disciplined, becomes a rejection of a world that one might well make one’s own. Ironists like Schlegel or Jean-Luc Nancy see their irony as a way to ensure their freedom. 68 Hegel is often taken as reacting to this with reactionary fury, as if to say, “Don’t think so much about yourself, you petty egoist, think about something important, think about the state!” While his language of “evil” no doubt encourages such an interpretation, it is nonetheless profoundly wrong to attribute this response to Hegel. Hegel’s point is that this sort of irony is a failure on its own terms. Hegel’s consideration of irony in the context of the questions of freedom and self-assertion is meant to draw out the way that irony is an attempt to assert the self as free. But the self that is thus asserted is too closely bound up with the event of its self-assertion to allow the ironist to recognize himself in his deed. Hence even the boldest self-assertion will only leave the ironist unsatisfied, like someone flipping through the channels on TV late at night. Hegel doesn’t deny that this can seem to promise real satisfaction—one need only think of the lord in the dialectic of lordship and bondage to see that one might well choose a form of life that fails to satisfy one’s own will and its need to recognize itself in its worldly deeds. Nor does Hegel attempt to get the ironist to pull back to the realm of “substantial values”; he urges him instead to recognize that he has already embraced nihilism, and that the only way forward is to radicalize the self-assertion this involves, to tread “the path of despair [Verzweiflung]”—or, as Hegel also says, the “path of doubt [Zweifel].” 69
These lines are of course from the *Phenomenology*, where Hegel lays out the approach of that book. He continues, “For what happens on [this path] is not what is ordinarily understood when the word ‘doubt’ is used: shilly-shallying about this or that presumed truth, followed by a return to the truth again, after the doubt has been appropriately dispelled—so that at the end of the process the matter is taken to be what it was in the first place.” Instead, the “thoroughgoing skepticism” he calls for is one in which one has “the resolve, in Science, not to give oneself over to the thoughts of others, upon mere authority, but to examine everything for oneself and to follow only one’s own conviction, or better still, to produce everything oneself, and to accept only as one’s own deed what is true.”

If political autonomy is to be justified scientifically, it will require a science that is our own; anything else could only end in an appeal to authority that denies the very autonomy it attempts to justify. In the terms of contemporary politics, this means that, if authoritarianism thrives on the ironic detachment of the populace, the proper response is not to bemoan that irony, but to take it seriously, and to push it into its other. If people seek freedom in fleeing from politics while at the same time embracing it, it is the desire for freedom that must be embraced and encouraged. This is profoundly counterintuitive, as the modernity in which everything solid melts into air seems best opposed by clinging to substantive moral commitments, such as the moral values many claim to defend. But these values are, from the Hegelian perspective, archaic. For moderns, morality is not so much a matter of substance but of form: the form of autonomous willing. Subjective reflection is an absolutely essential moment in this willing, but as part of a process. Evil is the result not of the turn to the subject, but of forgetting that subjectivity seeks a concrete home in which it might recognize itself, rather than a set of objects it can affirm and discard according to its whims and fancies. That the return to the world adequate to the will is not a mere return to archaic substance is revealed in the fact that these institutions are not valued for their alleged inherent value, but because they make possible the realization of our autonomy. Irony, and the subjective decision it celebrates, is the central and most difficult stumbling block on the way to that realization in both in the *Philosophy of Right* and contemporary America. But it is necessary, and passable, for all that.

On the level of the state as a whole this conclusion may not be immediately obvious, as Hegel at times seems to embrace positions that sound much
closer to those of Schmitt in the 1920s than one would expect after working though his account of evil and subjective reflection. This is particularly true in Hegel’s discussion of Die Souveränität gegen außen (PR §§321–29), where the monarch is linked to the necessity of war and to the ability of a soldier who gives his life on the battlefield to attain the status of the universal class that otherwise is limited to the members of the enlightened bureaucracy.71 The main difficulty here concerns Hegel’s treatment of sovereignty. In general, Hegel describes sovereignty as being made up of three moments: the monarch, the legislature, and the executive. Sovereignty is constituted by ideality (PR §278, §278r), and Hegel refers us to PR §7’s discussion of the “abstract concept of the will” as “self-relating negativity” (as addressed above) to understand this relation between part and whole. But in “a situation of exigency,” which Hegel contrasts with one of peace, “the organism [the state] of which these particular spheres are members fuses into a single concept of sovereignty, and the monarch as it were becomes the sovereign of which it is usually only a moment” (PR §278r). Hence the monarch is the sovereign to which Hegel refers when he argues that, at such times, “the sovereign is entrusted with the salvation of the state at the sacrifice of those particular authorities whose powers are valid at other times, and it is then that that ideality [of the sovereign] comes into its proper actuality [Wirklichkeit]” (PR §278r, §323). Using language that plainly evokes his earlier discussion of subjectivity, irony, and evil, Hegel argues that the crown is “the moment of ultimate decision as self-determination” (PR §275), “the moment of individuality” (Einzelheit), and the I that results from the internal dialectic between the universal and the particular, as opposed to a natural identity that is simply contrasted to a negating alternative located in an external realm (PR §275a). Sovereignty as found in the monarch is “the will’s abstract and to that extent ungrounded self-determination in which finality of decision is rooted” (PR §279); and in alternate versions of the lecture notes that make up the main body of the Philosophy of Right, this same monarch is described in terms later used by George W. Bush: “It is a turning in the history of the world, that man locate infinity in themselves; that is done especially by the Christian religion, according to which human and divine nature is the same. In the state the monarch is such a maker of decisions.”72

All of this sounds terribly like the Schmitt of Political Theology and The Concept of the Political. But Hegel’s arguments in favor of the monarch’s exclusive right to assume sovereign power à la Schmitt are hardly consistent with the main tenets of his political and legal theory. If, as in Plato, there
is an isomorphism between the individuality of the person and the individuality of the state, this in itself does not legitimate the former standing in for the latter. The only grounds upon which this might be validated is the ideality of the state; and this is one in which “each of these powers is itself the totality of the constitution” (*PR* §272, emphasis added). If Hegel nonetheless claims a special privilege for the monarch here, this can only be, as above, on the grounds that in a “moment of exigency” the “ideality [of the sovereign] comes into its proper actuality,” an actuality that somehow favors the monarch over the other two moments of the constitution. But the *Philosophy of Right* as a whole is devoted to the explication of the actuality of the state. (Recall Hegel’s remark in the preface: “Nothing is actual except the Idea.”) It is absurd to suggest that the state becomes somehow more actual in a state of emergency. If the monarch, as the supposed concrete moment of individuality (as opposed to the moments of particularity and universality) has a priority over the legislature and the executive, it enjoys this in peace as well as war. 73 And Hegel is quite plain that this is not the case. This has led some to claim that the older Hegel opportunistically altered his political-philosophical position in order to ingratiate himself with the Prussian authorities. Most influentially, K. H. Ilting has advanced this interpretation and argued that Hegel’s turn to the monarch represents a “betrayal” of Hegel’s own principles. 74 Schnädelbach, too, argues that a comparison between the *Philosophy of Right* and the notes to these lectures that were delivered before the 1819 Karlsbad decrees shows that Hegel made substantive changes that invite the charge of political opportunism in his teaching regarding the monarch. 75 Given that Hegel already held similar views about the privileged position of the hereditary monarch in his Jena *Realphilosophie*, this may not be quite fair. Nonetheless, it is clear that Hegel’s strong claims for the priority of the monarch are not justified by his claims about the ideality of the state. 76 Once one acknowledges this, it is no surprise to find Hegel regularly writing disparagingly of the talents of the average sovereign monarch (e.g., *PR* §281A), and in *PR* §280A taking back many of his bolder claims. Defending the institution of monarchy from the suggestion that it makes the welfare of the state overly reliant upon chance—the good fortune to have a monarch who is worthy of his or her position—Hegel says that such fears exaggerate the role of the monarch’s particular character: “In a completely organized state, it is only a question of the culminating point of formal decision, and one needs for a monarch only someone who can say ‘yes’ and dot the ‘i.’ . . . In a well-organized monarchy, the objective aspect belongs to the law alone, and
the monarch’s part is merely to set to the law the subjective ‘I will.’” Hence though Hegel grants that “there may be circumstances in which it is [the monarch’s] private character alone which has prominence,” he insists that “in that event the state is either not fully developed, or it is badly constructed” *(PR §280a).* Though the monarch may (be said to) be the abstract self of the will and the “subjective certainty” of itself that makes the state a real unit (*ein wirkliches Eins*), its “empty, last deciding” is sharply distinguished from the “objective decision” for which the ministers or counselors are responsible. “In this way the element of the capricious is limited.”

In short, when Hegel criticizes Hobbes in the lectures of the history of philosophy for granting the sovereign a godlike authority in which the sovereign’s will replaces law, he might well have been speaking of Schmitt.

This is borne out by Hegel’s suggestion in *PR* §279r that in ancient times “oracles, the entrails of sacrificial animals, and the flight of birds” fulfilled the role that is today played by the monarch’s sovereign decision. What is significant here is the manner in which divination worked. In the second book of the *Odyssey*, for instance, when Telemachos is trying to get rid of his mother’s suitors, Zeus sends two eagles who fly along together then turn on one another and tear at each other before finally flying away. This is accurately read as a portent of coming disaster by Halitherses, who is said to be far beyond the men of his generation in understanding the meaning of birds and reading their portents, and falsely denied by one of the suitors. It is important to note here that the portent does not itself make a decision, but signals that a decisive act is coming: the purging of the suitors. If this is analogous to the monarch’s “final decision,” one has to conclude that Hegel misspoke when he described it as such, as the comparison suggests that the monarch only encourages the acceptance of the decisions of the council by giving them his stamp of approval. When we consider that in the ancient world when people did reach a decision in defiance of portents it led to disaster, Hegel is best read as signaling an anxiety that the sovereign remain passive and ceremonial. In this light, it is significant that Hegel in *PR* §279r compares ancient oracles to Socrates’s *Dämon*: as Socrates reports in the *Apology*, his Dämon (unlike that of Weber) never says “yes,” only “no.”

If the monarch is sovereign, he does not, as such, decide.

On neither the level of the subject nor that of the state does Hegel suggest that norms will somehow apply themselves. If we are to follow Schmitt so

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far as to acknowledge that “real life” inevitably “breaks through the crust of a mechanism that has become torpid by repetition,” this life will be addressed not by an “absolute,” “self-supporting” decision, but by a will that, as “active thought,” moves through particularity, through universality, to individuality. To move through particularity entails a confrontation with the exception, but makes that confrontation part of a larger process in which what is sought for is a set of universal concepts that will allow us to become the individuals that we are. As in Schmitt, universality is not affirmed in its own light, but only once we have stepped outside it. But that step is not a step back to mere particularity—the decision of the sovereign leader—but a step forward, into an individuality that retains the mark of the universal. Rather than a choice between rule and exception, we have a dialectic of assertion, abstraction, and realization. No doubt, this logic is not one that produces deductive arguments in favor of a specific form of individuality in any case. But there will be a range of criteria (as laid out in the Philosophy of Right but not, say, Political Theology) that allows for the elimination of some possibilities and the reasonable evaluation of others. Hegel is under no illusion that we shall necessarily appreciate the validity of the ethical, political, and legal relations he lays out in the Philosophy of Right. Indeed, he writes the book precisely because most of us, most of the time, fail to do so. And the account he lays out is not a deduction (in the sense of the “Understanding”) from indubitable premises, but one that requires our interpretation and affirmation. Hegel’s text does not compel us in this sense. But perhaps the greatest failure of the decisionist view lies in the assumption that the only alternative to discretion is compulsion. The Hegelian account of autonomy, and hence of the will, is meant to point us toward another alternative. No doubt, Hegel himself does not go far beyond this. The fact that his own discussion of the necessary role of Socratic, skeptical subjectivity in the dialectic of modern politics is as cryptic as it is—the fact that it requires the level of interpretive work we have given it here—itself demonstrates that Hegel himself does not, in the end, provide all of the resources we need to understand it. He does, however, provide the framework within which we might begin to do so.
Notes


1 When the sovereign decides on the exception, he “decides whether there is an extreme emergency as well as what must be done to eliminate it. Although he stands outside the normally valid legal system, he nevertheless belongs to it, for it is he who must decide whether the constitution needs to be suspended in its entirety.” Schmitt, Political Theology, 5, 7; I silently modify the translation throughout when accuracy demands. German references are from Politische Theologie.

2 The Schmittian sovereign is he who decides on the exception; this decision must be made by a single person because there is no common sense among members of the community as to when the constitution needs to be suspended in its entirety. Hence Schmitt does not write, “We are sovereign when we agree to decide upon the exception.”

3 “It is precisely the exception that makes relevant the subject of sovereignty, that is, the whole question of sovereignty.” Schmitt, Political Theology, 6.

4 Schmitt, Politische Theologie, 12: “Besteht im juristischen Sinne immer noch eine Ordnung, wenn auch keine Rechtsordnung.”

5 Schmitt does not just argue that the political in the form of the sovereign decision must reemerge, but that it should do so. Politics in the sense of the individual’s existential commitment to a hierarchical ordering of the community in which the voice of the political Einheit has the authority to dispose of the individual’s life is, for Schmitt, a positive good that forestalls a nihilistic collapse of meaning. Or so I argue in Norris, “Carl Schmitt on Friends, Enemies and the Political.”

6 As Schmitt puts it, “The sovereign decision is the absolute beginning, and the beginning . . . is nothing else than a sovereign decision.” Schmitt, Über die drei Arten des rechtswissenschaftlichen Denkens, 23–24. Or, in Agamben’s terms, “The exception does not subtract itself from the rule; rather, the rule, suspending itself, gives rise to the exception and, maintaining itself in relation to the exception, first constitutes itself as a rule. . . . The sovereign decision on the exception is the originary juridico-political structure on the basis of which what is included in the juridical order and what is excluded from it acquire their meaning.” Agamben, Homo Sacer, 18, 19.

7 By “largely avoidable” I do not mean to suggest that we might yet live on a candy mountain in which such things cease altogether to plague us, but simply that, for us, today, they are exceptional events in the sense that they are unusual, and not day-to-day events such as adultery, theft, and trucking and bartering.

8 It will be pointed out that the Bush-Cheney administration hardly fit this rosy scenario. I assume here that one reason the actions of this administration were as reprehensible as they were is that they were not necessary. If one feels that
Guantánamo, secret prisons, forced extradition, the violent compromises of the U.S. Constitution and so on were necessary, it is hard to see what grounds one would have for complaint. I press this point in Norris, “Sovereignty, Exception, and Norm.” The same would obviously apply to the Obama administration’s deeply unfortunate embrace of many of its predecessor’s antiterrorist measures. Schmitt may point to this conception of the exception when he rigorously distinguishes the exception from a mere “construct applied to any emergency decree or every state of siege.” Schmitt, Political Theology, 5.

A clear contrast here would be Bruce Ackerman’s excellent book, Before the Next Attack, which attacks Schmitt’s Political Theology as “melodramatic” and takes care to give criteria of what is and is not an “existential threat” to the nation. Ackerman argues that states of emergency need to be addressed by an executive branch that is much more responsive to and limited by the other branches of government than the executive branch in the United States currently is. He proposes that the executive be given the ability to declare a state of emergency, but that this declaration must be ratified by the Congress at regular intervals, and each time by a supermajority with an increasing percentage of the vote. Ackerman, Before the Next Attack, 56, 21, and 171.

My discussion of Agamben here follows that in Norris, “The Exemplary Exception”; I discuss the echoes of Hegel in Agamben’s account of the paradigm and the example at 276 and 282.

Agamben, Homo Sacer, 21, emphasis added.

Agamben, Homo Sacer, 22.

Agamben, The Signature of All Things, 18 and 7. On page 19 of the same book, however, Agamben argues that what he is discussing “is not logic but analogy.” Compare Agamben, The Signature of All Things, 31.

Agamben, Homo Sacer, 22.

Agamben, Homo Sacer, 181.

Or consider an even more straightforward example. I could be an example of a political philosopher interested in both “analytic” and “continental” modes of philosophy. As an example, am I somehow distinguished from other such professors? Or do they, in the comparison, likewise become examples?

Agamben, Homo Sacer, 21.
27 Compare Agamben’s discussion of the members of an order following the example of their founder in Agamben, *The Signature of All Things*, 21–22. In such cases it seems perfectly fair to speak of “a form of knowledge that is neither inductive nor deductive but analogical. It moves from singularity to singularity.” Agamben, *The Signature of All Things*, 31.
28 Denying this is a mistake I myself once made. Norris, “Introduction,” 9.
30 Throughout this essay I use the term *modern* rather loosely. Hegel is concerned with modern Europeans, and there is no reason to believe that he would see his argument as applying to, say, Amazonian tribes or the miserable inhabitants of “failed states” such as Afghanistan.
31 Hegel, *Philosophy of Right*, §§101–2. All citations from the *Philosophy of Right* come from *Elements of the Philosophy of Right*, edited by Allen Wood and translated by H. B. Nisbet and from the Suhrkamp *Werke*. Subsequent references to this edition appear in the text as *PR*.
32 No wonder then that, as Herbert Schnädelbach observes, “Dieser übergang ist immer wieder als einer der schwächsten und unplausibelsten der ganzen [Philosophy of Right] kritisiert worden.” Schnädelbach, *Hegels praktische Philosophie*, 244.
33 In the *Logic* Hegel describes Kant’s appeal to a distinction between what can be thought and what can be known as a solution to the antinomies as being “like attributing to someone a correct perception, with the rider that nevertheless he is incapable of perceiving what is true but only what is false.” Hegel, *Introduction to Science of Logic*, 46; cited in Forster, *Hegel and Skepticism*, 177.
34 Hegel, *The Encyclopedia Logic*, §22. That Hegel seeks to confront this “sickness of his time” as such is signaled in the fact that he lectures on these matters repeatedly for huge numbers of students, most of whom would not themselves become professional philosophers. See Pinkard, *Hegel*, 436. Subsequent references to the *Encyclopedia* appear in the text as *EL*.
36 Hardimon, *Hegel’s Social Philosophy*, 133.
38 It is not only that, of course. As Terry Pinkard emphasizes in his recent biography, Hegel was a reformist liberal with a long-standing interest in the French Revolution and the Napoleonic reforms. And the *Philosophy of Right* of course outlines institutions that were not found in the Prussia of Hegel’s own day. But the emphasis of the *Philosophy of Right* is not on proposing changes, but on reconciling us to what is (actual), and thereby making it—our lives, us—what it really is. For a related account of the role of the therapeutic in Hegel, see Pippin, “The Absence of Aesthetics in Hegel’s Aesthetics.”
Many will protest that Hegel’s characterization of Schlegel is hardly fair or accurate. This need not concern us here, as the issue here is the status of irony and the subjective decision in Hegel, and not Schlegel’s own views.


This is somewhat misleading. Fichte does argue that what kind of philosopher one is is itself the expression of an existentialist decision that cannot be guided by reason; but he sees this decision as itself the expression of one’s true character. See Fichte, “[First] Introduction,” 18. But, as with Schlegel, the point here is not the accuracy of Hegel’s reading of Fichte, but his own position.

See Hegel’s contrast between ancient Athens and modern Europe in his *Lectures on the History of Philosophy*, vol. 1, 365. On the deficiencies of this text, to which one working on this topic must nonetheless refer, see Beiser’s introduction to *The Cambridge Companion to Hegel*, xxxi–xxxii.


Williams, “Hegel on Socrates and Irony,” 70, 74, 76, 79, 80.

See Vlastos, “Socratic Irony,” in *Socrates*. For an excellent critique of Vlastos’s reading, see chapter 3 of Nehamas, *The Art of Living*. The central text on the subject is of course Kierkegaard, *The Concept of Irony*. Considering the depth of Kierkegaard’s antipathy to Hegel, this early work is extraordinarily Hegelian in tone and content.

Williams, “Hegel on Socrates and Irony,” 73, 72.


In the *Aesthetics* Hegel argues that the experience of the beautiful art object is one in which the demands of the object and of the subject are brought into harmony with one another. The distorted perspective of “unfree” or “finite intelligence” presents us with a false dilemma in which we must choose between the freedom of the subject and that of the object. From this perspective, that of the Understanding, the cognitive freedom of the subject is hopelessly compromised by the given quality of the apparently independent object; the subject’s freedom is found only in the imposition of its will upon the object, and hence the denial of the object’s freedom in its reduction to an object of use. But for Hegel, “in both these relations, both sides are finite and one-sided, and their freedom is a purely supposititious freedom.” In contrast, in aesthetic experience the object is considered in its “subjective unity and life” as “an end in itself,” while the subject in his “liberal contemplation” of the object escapes both the cognitive subordination to the given and the practical reduction to unrealized intention. “His relation to the fulfillment of his subjective intentions is no longer the finite one of the mere ‘ought’; he has gone beyond it and what now confronts him is the perfectly realized Concept and end.” Hegel, *Lectures on Aesthetics*, 112–14. For an excellent and clear account of the necessary role of the subject in the presuppositionless science of Hegel’s logic, see Houlgate, *The Opening of Hegel’s Logic*.

Williams, “Hegel on Socrates and Irony,” 79.

Williams, “Hegel on Socrates and Irony,” 80.
51 Williams, “Hegel on Socrates and Irony,” 77, 78.
52 At Plato, The Sophist, 268a–d, the Stranger describes what is plainly meant to be Socrates as “the real and genuine Sophist.”
53 Hegel, Lectures on the History of Philosophy, 354.
54 Hegel, The Philosophy of History, 269.
55 Williams, “Hegel on Socrates and Irony,” 68, 82.
57 Hegel, The Philosophy of History, 356.
58 Thucydides, History of the Peloponnesian War, 163.
59 Plato, Gorgias, 521d. The claim here is much stronger than that found in Xenophon, where Socrates suggests that he knows how to rule (as opposed to actually ruling) and that he prepares others for politics. Compare Xenophon, Conversations of Socrates, 162, 98.
60 Hegel, Lectures on Natural Right and Political Science, §66. Compare Hegel, Vorlesungen über die Geschichte der Philosophie, 405. And compare Pierre Hadot on the force of Socratic dialectic: “Caring for ourselves and questioning ourselves occur only when our individuality is transcended and we rise to the level of universality, which is represented by what the two interlocutors have in common.” Hadot, What Is Ancient Philosophy?, 28–29. Hadot does not recognize that Hegel shares his estimation of Socratic dialectic and attributes the standard view laid out by Williams to Hegel at 37.
61 Robert Pippin rightly argues that a central strand of this process involves the recognition of our sociality, the nature of which we distort if we “see social practices, conventions, and the like as results of simultaneously held individual commitments, as if the content of such commitments could be understood apart from, independently of, the expectations, possible reactions, oppositions, and so forth within a community of subjects.” Pippin, “Responses to Conway, Mooney, and Rorty,” 360–61 and passim. This is not exactly a turn from the self to society, but a recognition that the self is a social self.
62 This critique does not support the liberal alternative, as it also undercuts the sort of negative conceptions of liberty championed by liberals like Isaiah Berlin and by (quite different) liberals like Friedrich Hayek.
63 Žižek, The Ticklish Subject, 113, 114.
64 As Rousseau puts it in The Social Contract, “man acquires with civil society, moral freedom, which alone makes man the master of himself; for to be governed by appetite alone is slavery, while obedience to a law one prescribes to oneself is freedom” (65).
65 Alan Patten correctly argues that, for Hegel, freedom is “recursive: the determinations that give content to freedom turn out to be the ones the agents must pursue if they are to be in a position to deliberate and pursue the ends and determinations that give content to freedom.” Patten, Hegel’s Idea of Freedom, 100. For further critique of Žižek’s reading of Hegel, see Dews, “The Tremor of Reflection: Slavoj Žižek’s Lacanian Dialectics,” in The Limits of Disenchantment.
I discuss the role of irony in Nancy’s political thought in Norris, “Jean-Luc Nancy and the Myth of the Common.” I discuss his ironist reading of Hegel in Nancy, *Hegel*, in Norris, “Beyond the Fury of Destruction.” The celebration of irony is, of course, a central theme in contemporary modern society. Contemporary political culture requires a level of sophistication that often appears as the ability to ironically if not cynically engage and disengage with one’s fiercely held commitments: on one day the commitment to return integrity to politics in general or the White House in particular is everything, on the next a demand for consistency and an attack on public hypocrisy is dismissed as petty, legalistic, and naive. Our political culture is a part of our more general culture—and by “our culture” I mean American culture, the culture of Hollywood movies, television, pop music, and so on that is obviously hegemonic in more and more parts of the world. Here in its home in the States at least this culture is a profoundly ironic one, and ironic in a sense that fits well with Hegel’s claims: our endless regurgitation of the past—*Happy Days*, *Planet of the Apes*, *Charlie’s Angels*, *Starsky and Hutch*—demonstrates our culture’s collective embrace of the truth of that past and its meaning for us, while the smirking irony in which it increasingly comes clothed demonstrates our recognition of its essential falsity, its utter lack of meaning. Politically this finds a good match in the fact that in our time, “homeland” is a site of pervasive homelessness and compromised citizenship.


Compare the discussion of sacrifice and sovereignty in PR 324r and Hegel, *Natural Law*, 93: “the individual proves his unity with the people unmistakably through the danger of death alone.”


Hegel sometimes writes as if this is indeed the case. At PR §273, for instance, Hegel argues, “We begin with the power of the crown, i.e. with the moment of individuality, *since* this includes the state’s three moments as a totality in itself” (emphasis added). The legislature is the moment of universality, the executive is the moment of particularity, and the crown is the moment of individuality (PR §275). Of these three, individuality is privileged, as it alone contains the other moments: “Universality [and] particularity . . . are only abstractions; what is concrete and true is the universality which has the particular as its opposite, but the particular which by its reflection into itself has been equalized with the universal. This unity is individuality” (PR, 7R). Compare EL I, §163: “Jedes Moment des Begriffs ist selbst der ganze Begriff (§160), aber die Einzelheit,
beyond the state of exception

das Subjekt, ist der als Totalität 

ge setzte Begriff.” This obviously contradicts the claim, quoted above, that each moment contains the other two. Moreover, imagine if a state had only the “concrete” moment of the monarch, and lacked the supposed “abstractions” that surround it in the Philosophy of Right. In this light Peter Steinberger is quite right to argue that Hegel’s language of the dominance of one moment is not in keeping with his own thinking: “For Hegel, the state is in some sense an entity of sovereignty; but as the state is, so to speak, a monad, only it in its entirety can be sovereign. Of course, sovereignty may actively manifest itself in one or another of its members; hence, we can say that decisions come directly from this or that institution. But to say that the monarch or the majority is sovereign over against the rest of the state is to ignore the state’s fundamental unity.” Steinberger, Logic and Politics, 214.

74 Ilting, “The Structure of Hegel’s Philosophy of Right,” 105–6. For a history of this approach to the text, see Riedel’s introduction to Materialien zu Hegels Rechtsphilosophie; for critical evaluations, see Siep, “Vernunftrecht und Rechtsgeschichte”; and Pinkard, Hegel, 457, and chapters 10–12.

75 Schnädelbach, Hegels praktische Philosophie, 170–71. On the Karlsbad decrees and the censorship and political climate in which Hegel finished the Philosophy of Right, see Pinkard, Hegel, chapter 10.

76 Axel Honneth argues that Hegel’s commitment to the hereditary monarch in the Realphilosophie represents a retreat from a political to a metaphysical understanding of the state. Honneth, The Struggle for Recognition, 60.

77 From this Shlomo Avineri concludes that the sovereign is “a mere symbol of the unity of the state” and that it is “both essential—without him the ‘i’s go undotted—but also ultimately trivial.” Avineri, Hegel’s Theory of the Modern State, 188. Likewise, Allen Wood rightly concludes from PR §280a and §279a and other student lecture notes that “the state’s policies are not at the mercy of the individual judgment of the sovereign prince.” Wood, Hegel’s Ethical Thought, 282n5.

78 Hegel argues in PR §279A that the monarch is “bound by the concrete decisions of his ministers” and that he “may” not act capriciously. This “may” is repeated in PR §280A, and in each case one wonders how Hegel’s dürfen improves upon the Kantian sollen he consistently castigates. (In PR §280A Hegel also writes that “the throne must be such that the significant thing in his holder is not his particular makeup.”) Hegel repeats tirelessly that it is not the job of a philosopher to offer empty ideals or “oughts.” Is a state that is not “completely organized” one that is not fully real? Here it is helpful to recall PR §214r: “Reason itself requires us to recognize that contingency, contradiction, and show have a sphere and right of their own, restricted though it be, and it is irrational to strive to resolve and rectify contradictions within that sphere.”

79 Hegel, Die Philosophie des Rechts, 274, 164. Compare PR §278A, where Hegel clearly distinguishes sovereignty as he understands it from a despotic state where a particular will, be it that of the monarch or the people, “counts as law or rather takes the place of law.” This is consistent with Hegel’s discussion
of the limits of legal norms in his discussion “Right as Law” (PR §§211–14),
where he acknowledges that no law can apply itself to a particular case: “In this
sphere, the concept merely lays down a general limit, within which vacillation
is allowed. This vacillation must be terminated, however, in the interest of get-
ting something done, and for this reason there is a place within that limit for
contingent and arbitrary decisions [willkürliche Entscheidung]” (PR §214). Hegel
hardly sees this as leading to a suspension of law as such, à la Schmitt. In PR
§214 he admits, “Reason cannot determine, nor can the concept provide a
principle whose application could decide whether justice requires for an offense
(i) a corporal punishment of forty lashes or thirty-nine. . . . And yet an offense
is done if there is one lash too many.” The implication that justice is present
but indeterminable does not cause Hegel the worry that it does Schmitt and
Hobbes, that someone must make it present by declaring it to be correct, and
that it is only present in being so determined. The borders are vague but real,
and the judge’s decision, which “pertains to abstract subjectivity, to formal self-
certainty [formellen Gewißheit],” must stay “within a certain limit.”

80 Hegel, Vorlesungen über die Geschichte der Philosophie, 226.
81 Hegel is likely following Xenophon here; Xenophon, “Socrates’ Defense,” de-
picts Socrates himself making this comparison, to his own advantage. Xeno-
phon, Conversations of Socrates, 43–44; compare Hegel, The Phenomenology of
Spirit, 431.
82 Schmitt, Political Theology, 12; Schmitt, Politische Theologie, 19.
83 While space does not permit an adequate discussion of the matter, I would
suggest that we turn to figures such as Stanley Cavell, who give a more detailed
account of the role of individual subjectivity in the therapeutic “road of doubt”
that allows modern citizens the opportunity to become what they are in a world
that, despite its often hopeless appearance, offers them that possibility in a way
that previous societies did not. If the pairing of Cavell and Hegel seems odd,
one might recall (i) Cavell’s remark that one of the sources for the phrase “the
truth of skepticism” (a phrase that names the central teaching of The Claim of
Reason) is “Hegel’s use of the truth of x where x is a concept he has just sub-
lated, denied at one level but preserved at another,” and (2) his comment that he
can find no better term than Aufhebung for Wittgenstein’s mode of criticism, his
“most original contribution [to] philosophy.” Cavell, “Reply to Four Chapters,”