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# Hegel's First Attempt to Re-Philosophize Natural Law: Undistorted Intuition, Dead Laws and Ethical Life in 'On the Scientific Ways of Treating Natural Law'

Seán Molloy

## Abstract

Hegel's 'Natural Law' essay is widely discussed but its substance and the implications of its argument are misunderstood. Hegel's essay is most often read via other philosophers. Interpretations of this kind are useful but only illuminate those parts of Hegel's text that intersect with other philosophers' concerns. This article takes a different approach by focusing on the entirety of the essay and exploring the implications of its two primary arguments: firstly, that there has been a breach between philosophy and natural law; secondly, that without philosophy natural law is thrown back on its own resources, producing two schools of post-philosophical thought—empiricism and formalism—neither of which is adequate to serve as its foundation. I argue that in response to this inadequacy Hegel sublates empiricism and formalism to develop undistorted intuition as a way of thinking designed to effect the re-philosophization of natural law.

The essay, 'On the Scientific Ways of Treating Natural Law, on its Place in Practical Philosophy, and its Relation to the Positive Sciences of Right', plays a key role in the development of Hegel's efforts to theorize the relationship between philosophy, natural law, and the legal institutions and laws that predominate within a state.<sup>1</sup> The essay 'helps us to clarify Hegel's attitude towards natural law and natural law theory. It also helps us to understand the importance which the concept of natural law has for the mature expression of Hegel's political thought' (Burns 1996: 46) and thus represents 'a crucial "moment" in Natural Law, in Hegel's development, and in European intellectual history on the whole' (Dickey 1987: 219). The essay has generated considerable scholarly attention, most of which has been concerned with establishing connections between

Hegel's positions and those of other philosophers (Clarke 2011; Burns 1996; Cruysberghs 1989; Smith 1991), especially Immanuel Kant (Guyer 1993; Fine 2003; Sedgwick 1996; Couzens-Hoy 1989; Zhe 2006). The insights gained from these studies have value, however, they have come at the cost of attention to Hegel's argument in the essay, resulting in 'surprisingly few discussions of what Hegel actually said—or meant to say—about law' (Hoffheimer 1995: 824).<sup>2</sup>

This article addresses the lack of attention to what Hegel says about law by arguing that the essay is best understood not as an intramural debate between philosophers but rather as an inquiry into ways of thinking about natural law and how these ways of thinking determine the laws that emanate from them. A renewed focus on the text enables greater attention to be paid to the essay's radical arguments, i.e. that the *separation* of natural law from philosophy prevents it from fulfilling its proper function of informing the legal and political practices of a well-managed state and that natural law and its attendant theorization of laws and institutions within and between states should be re-integrated with philosophy. Only the return of natural law to philosophy can restore the necessary reflexivity and rounded thinking to natural law and the laws and institutions consistent with genuine ethical life.<sup>3</sup> I argue that the under-theorized role of *undistorted* intuition is central to Hegel's efforts to re-philosophize natural law. Undistorted intuition emerges as an authentic and philosophical way of thinking about natural law and the wider legal and ethical dimension through a process of sublation; while critically dismantling the claims of empiricism and formalism, Hegel draws together the fragments of philosophy contained within them to argue the case for undistorted intuition as a basis for thinking about natural law and to re-integrate it into practical philosophy. Undistorted intuition is the culmination of a dialectical process that both cancels and preserves elements of empiricism and formalism. Undistorted intuition is defined negatively as a way of thinking that does not elevate one determinacy over others, instead it is characterized by fluid adaptivity, i.e. that determinacies should be employed as reason and the specific context require.<sup>4</sup> Hegel's re-philosophized natural law provides a richer account of the relationship between philosophy, ethics and law than either empiricism or formalism can provide and is crucial to the early development of Hegel's theorization of natural law and the laws that exist within political communities.

The first part of the article examines Hegel's claim that natural law has become separated from philosophy and must be reintegrated to escape the dead-ends of empiricism and formalism. The second part examines Hegel's critique of empiricism, which is presented as a response to the separation of natural law from philosophy. For Hegel, this empiricism is *not* philosophy; the empiricists have taken philosophical concepts and theories and employed them *ad hoc*

in immediate reaction to experience. The third section investigates formalism, which Hegel negates in turn as a theory no less inimical to effective theorization of natural law than empiricism. Formalism is identified with Kantian and Fichtean presuppositions about the form natural law should take without regard for content. Hegel's primary target is not Kantian or Fichtean philosophy *per se*—only how aspects of formalism have been employed by formalists within natural law after its separation from philosophy (Deligiorgi 2011: 35). The fourth section examines the development of undistorted intuition as an explicitly philosophical alternative to empiricism and formalism that opens up new ways of thinking about what natural law is and how it might be rethought in Hegelian fashion. The final section explores the contrast between forms of law that emerge from formalism and undistorted intuition; whereas undistorted intuition informs ethical life in the development of laws that exhibit an organic lifecycle in which determinacies are selected by reference to reason and prevailing social conditions, formalism's rigid adherence to its own idea of moral perfection leads it to abstract from social conditions and insist that its principles are permanent. The result of this abstraction is the persistence of laws without real connection to the society of which they are part, dead laws kept in place by dogma, inertia and the vested interests of a sector of society that benefits from their stifling the emergence of new laws better fitted to the good of the whole society.

### **I. Natural law: 'an essentially philosophical science' cut adrift from its mooring**

Hegel asserts that natural law is 'an essential part of philosophy' that has become separated from it because of contemporary philosophy's overriding obsession with metaphysics. Severed from philosophy, natural law embraced as its 'scientific principle what is commonly called experience', reducing itself to 'a collection of empirical knowledge', a *non-science* (NL: 102). To regain scientific status, natural law must return to philosophy as only philosophy can legitimize its claim to objectivity and credibly establish its relation to the *absolute*—the 'distinctive principle' that makes a science genuine (NL: 103).<sup>5</sup> Philosophy legitimates natural law by holding it to a level of scrutiny it cannot achieve through its own means; subjecting 'the ideas of the will that legitimate and formulate claims of right to a universal examination, it determines the limits of these ideas with regard to one another, and it reveals their necessary character in the context of the social whole' by translating 'the content of these ideas into the dimension of speculation and thus to counter the inadequate representations [*Vorstellungen*] in which such ideas present themselves' (Fulda 2004: 32). Outside philosophy, natural law can 'take only an empirical attitude towards its limits' (NL: 103–104), merely responding

to events and without critical insight to provide the correct tools to determine its form, function or limits.

Hegel attributes the divorce of natural law and philosophy largely to critical philosophy's dismissal of previous natural law for not meeting its strict standards of objectivity and for occupying an 'intermediate realm between nothingness and reality' (NL: 104). Hegel agrees with Kant that works in this vein were problematic in that they 'no more contain the purely positive than they do the purely negative, for they are mixtures of both'. The sole useful purpose pre-critical efforts to express natural law serve is as a basis for comparison with

the absolute Idea and to perceive in their very deformation the necessity with which, distorted by a determinate principle, the moments of absolute form present themselves [...] and *secondly*, in order to see the empirical condition of the world reflected in the ideal mirror of science. (NL: 105)

Hegel disagrees, however, with Kant's exclusion of empirical content from moral philosophy (Sedgwick 1996: 565). For Hegel the empirical is an ineliminable part of ethical life because it is the source of 'the desires that actually determine an individual's conception of happiness and its fulfillment' (Guyer 1993: 197). The removal of the empirical content of human life and exclusive focus on the individual divorced from the social context are serious problems with Kant's abstract approach, which 'breaks persons into atomic entities with atomic qualities, and loses their concrete unity' (Couzens-Hoy 1989: 212). Kant's approach is dangerous because 'too much abstraction from context, and too much abstract reflection, will lose or destroy the perception and understanding of the demands of moral obligation in concrete situations' (Couzens-Hoy 1989: 221). Hegel's theorization of the ethical as *inherently* concrete and social requires him 'to do justice to the ancient idea that practical philosophy is concerned in the first place, with the general ethical life of a people. The ethical life of the individual can only be the pulse beat of this general ethical life and never something independent' (Cruysberghs 1989: 81). Kant's insistence on the centrality of the isolated individual's conscience in the abstract, viewed from a rationalist, asocial perspective is the move that decisively severs natural law from practical philosophy.

Kant's expulsion of natural law from practical philosophy poses a problem for its legitimacy. Hegel is clear that although natural law and the positive sciences of right can develop on their own terms and in their own ways, ultimately they rely on philosophy to determine the validity of their claims because '[p]hilosophy alone can establish whether something is a subjective view or an objective idea [*Vorstellung*], an opinion or truth'. The appeals of 'positive' science to actuality and experience are ultimately unsatisfactory without philosophy because experience of actuality is inherently ambiguous and positive science is ill-equipped

to deal with ambiguity. The ambiguity lies in the fact that experience does not inform the subject immediately; experience is subject to an intellectual process whereby it is 'conceived by thought [*gedacht*] and explained, divested of its singularity [*Einszelheit*], and expressed as a necessity' and only after this process is completed can experience be said to have imparted knowledge of the object of experience to the subject. Hegel insists that as an intellectual process operating in the 'field of thought' any opinion formed by experience and intuition 'must yield to the truth of philosophy' (NL: 165). Philosophy serves as the regulator of science and natural law because it 'stands above the parts in the Idea of the whole, and thereby keeps each part within its limits; and by the loftiness of the Idea itself, it prevents the parts, in their further subdivision, from proliferating into endless minutiae' (NL: 171). Kant's cancellation of natural law by his inability or refusal to integrate it into the critical philosophy led to this proliferation as natural law, denied a berth in philosophy, sought a substitute in immediate experience.

## II. Hegel's critique of empiricism as a foundation for natural law

The proliferation into minutiae is the focus of Hegel's negation of empiricism. The problem is that empiricism produces content but has no *form* or ordering principle. Due to its claim that 'all that we are given in perception is "multiplex being": sense content without unity [...] perception itself can provide no basis for privileging one feature of experience over another' (Sedgwick 1996: 569). Empiricism's working principle is an unsatisfying one of 'relations and mixtures of empirical intuition with the universal' leading to a profusion of arbitrarily identified 'determinacies' that play important, but not always justified, roles in natural law (NL: 106). The targets of Hegel's critique are the *proliferation* of these determinacies and empiricism's unphilosophical, arbitrary fixing of relations between them. The fixing of a determinacy as *the* determinacy, the central proposition around which the other determinacies must revolve, is empiricism's unsatisfactory response to the problem of profusion: a solution not developed in accordance with universal reason, but rather an arbitrary and post hoc effort to make sense of conditions. Arbitrarily elevating one determinacy to the status of 'essence and end' while subordinating the others misunderstands 'the totality of the organic'. As the arbitrarily chosen determinacy has no *necessary* connection to the other determinacies, any one of which might also be chosen as the defining determinacy, there can be no agreement regarding natural law's foundations, with the result being 'endless agonising [...] to discover their necessary relationship or the dominance of one over the others' (NL: 107).

The arbitrarily chosen principle can *per force* only reveal a fraction of the organic whole of natural law because it can only reflect that part of the whole of which it can plausibly be identified as the decisive determinacy. The necessity it illuminates is a limited necessity, ‘a formal, analytic necessity which pertains only to the form of an identical or analytical proposition in which the determinacy may be presented’ but one for which ‘an absoluteness of content is likewise falsely claimed’. Confronted with a multiplicity of determinacies, each capable of reflecting part (but only part) of the organic whole, reason demands a resolution of this problem of many determinacies claiming primacy within the absolute whole. Empirical natural law, however, has no effective or convincing means to solve the problem of multiplicity, it can only represent the absolute as *dogma*: ‘unquestioning, universally valid thoughts whose nullity criticism must point out in order to justify science in ignoring them’ (NL: 108–109).

Hegel demonstrates empiricism’s shortcomings by illustrating its limitedness in the face of the absolute unity that alone can serve as the foundation for a sufficiently universal natural law. Regarding this absolute unity, Hegel stresses that

empiricism can have nothing to do with it [...] in the essential [kind of] unity, the manifold is immediately annihilated and nullified; and because manifold being is the principle of empiricism, the latter is denied the [possibility of] pressing on to the absolute nullity of its qualities, which for it are absolute [...] and infinitely many. (NL: 110)

Hegel is convinced that in relation to genuine unity, empiricism, ‘can only signify—as far as possible—a simple and small number of qualities, which it believes are sufficient for it to attain knowledge [*Erkenntnis*] of the rest’; this small number reduces to what Hegel calls a *chaos*, represented by the imagination ‘as the *state of nature*’ and by empirical psychology as ‘an enumeration of the capacities encountered in man—i.e. as the *nature and destiny of man*’ (NL: 110).

By reference to either the state of nature or the nature and destiny of man, the *common* understanding (‘which sticks to the obscure mixture of what is in itself [*was an sich ist*] and what is transient’) believes it can discover the core of the ethical realm by ‘removing all arbitrary and contingent elements from the composite image of the state of law [*des Rechtszustandes*], and that by means of this abstraction, it should at once be left with the absolutely necessary’ (NL: 111). This process of abstraction, however, ‘lacks any criterion whatsoever for drawing the boundary between the contingent and the necessary, between what must be retained and what must be left out in the chaos of the state of nature or the abstraction of the human being’. Empiricism’s claims about the state of nature in particular are unsound and exhibit a ‘complete lack of method’, which ‘leads scientific

empiricism to mistake its own creations for first facts and then to use the latter to construct fictional representations of both the state of nature and of social life' (Chernilo 2013: 135). In empiricism, legal status is gained by speciously demonstrating a 'connection with the original and necessary' (NL: 101) fictional core and thereby acquiring necessity in relation to this supposed source of legitimacy. The projection of atomized individuals existing in a state of nature is merely 'an abstraction disguised as an empirical observation' that subordinates 'practical experience to conceptual unity' creating 'a negative concept of nature [...] [f]rom the negative unity of these determinations—the state of nature on the one side and human nature on the other—it is not possible to deduce the positive unity of the ethical state from which they have been abstracted' (Riedel 1984: 78).<sup>6</sup> The guiding principle of the empiricist way of thinking about natural law is problematic therefore because the determining factor for selecting what its basis should be—the state of nature—is derived from prevailing actuality, i.e. the *a posteriori* determines the *a priori* (Burns 1996: 47). 'The argument appears irrefutable', George McCarthy observes, 'because conclusions are already included in the initial premises. The state of nature is not the beginning of the argument, but its end', i.e. to justify 'the appearances of an existing social system' (McCarthy 2018: 83–84).

The abstraction to an original core has the benefit of providing a 'dim inkling of an original and absolute unity' and removes 'a large mass of particularities and oppositions' but leaves natural law in an unsatisfactory condition as 'there still remains an indefinable mass of qualitative determinacies which likewise have only an empirical necessity for themselves and have no inner necessity for one another' (NL: 112). Bereft of ordering principle or necessary unity, the competing ideas of the multiplicity 'are destined to be mutually opposed and in absolute conflict with one another'. The result of this perpetual conflict is the cancelling out of ideas; no progress is possible as, instead of incremental growth from a sound foundation, each phase of argumentation about the core and its relation to current natural law leads to a replacement of 'the many atomic qualities with further manifold complications of the simple isolated [elements of a] multiplicity which was assumed to be original' (NL: 112). A mass of superficial connections and partial combinations does not constitute a genuine system of natural law.

In response to the non-systematic character of empiricism, in which the various parts cancel each other out, 'the positive unity, expressing itself as absolute totality, must, for empiricism, be added on to this multiplicity as a further and alien factor' (NL: 112). Empiricism is only capable of conceiving of unity as a whole in concepts like society and the state, formless external harmonies that hover 'above the multiplicity without penetrating it' (NL: 113). God may also be brought into play as an external authority to 'rule' over the multiplicity. The



key point, however, is that one-sided empiricism, like its opposite, formalism, cannot achieve Hegel's ultimate solution to the problem of natural law's foundation, i.e. 'the absolute unity of the one and the many' (*NL*: 33). By offering a false solution, empiricism impedes natural law by overlaying and obscuring the *correct* solution provided by undistorted intuition. The discovery of the bogusness of empiricism's claim to consistency, however, 'immediately nullifies the absoluteness previously attributed to a single determinacy' (*NL*: 114) which thereby creates the possibility for the eventual recognition of undistorted intuition as an effective and philosophical way of thinking about natural law.

Ultimately, the fundamental problem with empiricism is that it is corrupted at source: 'what professes to be empiricism is merely weaker in abstraction' than formalism and debased by its failure to select, distinguish and fix 'its own limited concepts', instead allowing itself to be 'tied to concepts which have become firmly entrenched in general culture [*Bildung*] as 'sound common sense,' i.e., by *direct* experience without examination and reflection. Empiricism in which *intuition* is dominant—what Hegel refers to as 'its unconscious inner nature' is its *legitimate* mode; where empiricism went fatally astray was in its embrace of an 'intermediate term between this inner nature and its external expression—i.e., consciousness'. It is 'conscious' empiricism that works against intuition and genuine science by being one-sided in nature and operating with an 'incomplete link with the concept (with which it only just makes contact and is merely contaminated in the process)' (*NL*: 117).<sup>7</sup> Empiricism's deficiency ultimately 'derives from the necessity that multiplicity and finitude should be absolutely submerged in infinity or universality' (*NL*: 117–18).

### III. The negation of formalism as a foundation for natural law

Significantly, Hegel's negation of empiricism ends by recounting the areas in which it is *preferable* to formalism, thereby opening the second phase of his critique of existing natural law. Hegel's preliminary negation of the negation reveals much about his preferred version of natural law. First, Hegel claims empiricism is correct relative to formalism to insist that direction should be taken from experience. Empiricism's opposition to formalism's 'contrived framework of principles' is also correct. Empirical inconsistency (which at least hints at a complex whole) is preferable to formalism's inflexibility. Even empiricism's confusion regarding 'ethical life, morality, and legality' is preferable to formalism's rigid adherence to an inflexible moral code separate from the wider context of ethical life. Hegel goes further than the empiricist criticism that formalism 'has no application and contradicts practical necessity' when he insists that in relation to its non-applicability 'there is nothing absolute, no reality, and no truth in the

theory and philosophy in question'. The implication is that the absolute, reality and truth *are* the qualities Hegel seeks in natural law and although empiricism is limited to traces of these qualities, this is more than formalism possesses. Hegel's final endorsement of empiricism is that it provides formalism with the very concepts it needs to operate. The complex combination of determinacies empiricism employs is—however imperfectly cognized and represented—'essentially an organic and living whole' that is preferable to formalism's 'elevation of insubstantial abstractions and details to absolute status'.

The key difference between empiricism and formalism is the latter's orientation towards *infinity*, 'which constitutes the principle of that apriorism which sets itself against the empirical' (NL: 118). Hegel highlights infinity's essence as being movement and change such that, if unchecked, any position within formalism becomes the unmediated opposite of itself. Formalism's relentless abstraction can only be halted 'by fixing one of its aspects (namely reality, or the subsistence of the opposites) and abstracting from the opposite of this (namely the nullity of this substance)'. Hegel considers it inherently problematic that it is only by the halting of its restless, infinite movement (its most essential characteristic) that formalism can claim to be a suitable basis for thinking about natural law. The primary opposition of formalism to empiricism therefore 'consists, on the one hand, of manifold being or finitude, and on the other, of infinity as the negation of multiplicity (or, in a positive sense, as pure unity)' (NL: 118).

If empiricism is content without concern for form, formalism is form without concern for content. The opposition of pure unity and manifold being plays out in one of two ways: either they subsist or nullify each other. *Complete* subsistence or total nullification would, however, be to end the relationship. Two possible types of relationship remain: a positive relationship of *partial* subsistence and a negative relationship of *partial* nullification. Pure unity (which may also be represented as reason), the core of formalism, is negative and ideal when viewed from the perspective of the (irrational) many *if* the many is subsistent with pure unity; *if* the many is posited as negated or that which should be negated, pure unity will appear more subsistent and real. At this point Hegel introduces an accompanying opposition between *nature* (an expression of the irrational many) and *reason* (as an expression of pure unity); this opposition allows Hegel to demonstrate that designating nature as 'irrational' is dependent on formalism's abstraction of the many as non-essential. The opposition also allows Hegel to introduce an important category through which he mediates empiricism and formalism, *the absolute unity of the one and the many*. In the absolute unity of the one and the many, contrary to formalism's insistence, the 'many is just as much absolute unity of the one and the many as unity is'. Formalism's dismissal of nature, the many and theoretical reason is therefore mistaken 'and nature, or theoretical reason (which is the many), must, as the absolute unity of the one and

the many, conversely be defined rather as real reason'. Hegel makes another distinction between *real* reason and *ethical* (ideal) reason, which is the reason of the absolute unity of the one and the many. Ethical reason as *ideal* reason is linked with identity and unity while reality belongs with multiplicity; the two opposing reasons, ethical and real, are joined in the unity of the one and the many (*NL*: 119).

Formalism's 'science of the ethical' is problematic because, although it 'talks of the absolute identity of the ideal and the real', it 'does not do what it claims to do: its ethical reason is, in truth and in its essence, a non-identity of the ideal and the real' (*NL*: 120). For Hegel, 'such a dualism of reflection that separates the natural and the normative must be rejected' (Nance 2017: 36). In essence, the problem with formalism is its exclusion of everything that does not meet its standard of purity. The excessive strictness of its demands leads to a perverse form of absoluteness that produces a morality so pure that it is inapplicable, a one-sided morality that has, in effect, become its opposite, immorality, because it cannot offer any moral insights or guidance in relation to human actions (*NL*: 122).<sup>8</sup> Hegel attributes this error to contemporary philosophy (especially Kant), which had mistakenly 'imagined that it had [found] the genuine absolute in negative absoluteness or infinity' (*NL*: 122).

The root of the problem of practical reason is that 'whatever goes beyond the pure concept of duty and beyond the abstraction of a law, no longer pertains to this pure reason' (*NL*: 123). Anything outside formalism's conceptual framework is explained away 'as accidents with no real significance' (Chernilo 2013: 35). Hegel identifies Kant as the ultimate source of this way of thinking, one in which 'practical reason is completely lacking in any content of the [moral] law' and for which the 'formal appropriateness' (*NL*: 123) of the will's maxim was the goal. Formalism's 'excessively individualistic' approach leads to the permissibility of intrinsically wrong acts 'provided only that this is done conscientiously [...]. To adopt such a position, Hegel suggests, is to undermine all morality and hence also the existing social order' (Burns 1996: 60–61). Additionally, for all its vaunted sublimity, the actual capacity of formalism or pure practical reason is limited to the production of tautologies.<sup>9</sup> A key reason for this shortcoming is that Kantian practical reason 'abstracts completely from all material [aspects] of the will; any content presupposes a heteronomy of the arbitrary will [*Willkür*]'. As pure practical reason is predicated on the removal of heteronomy and arbitrariness of will, it would be 'self-contradictory to look to this absolute practical reason for a moral legislation—which would have to have a content—because the essence of this reason consists in having no content at all' (*NL*: 124).

Hegel 'recognizes the attraction of the Kantian notions but thinks they are inadequate without a fuller, more concrete social-historical philosophy' (Couzens-Hoy 1989: 209). Hegel's key move in relation to formalism and pure

practical reason is to argue that 'the analytic unity and tautology of practical reason is not only superfluous' but when it introduces a determinacy and raises it to the status of a universal concept in order to supply its content—and Hegel argues it must import a determinacy to do this—then practical reason is 'false, and it must be recognised as the principle of immorality [*Unsittlichkeit*]' (NL: 125). The necessary consequence of raising 'a determinacy or individual quality' to the status of 'something in itself' is that 'irrationality and (in a moral context) immorality [*Unsittlichkeit*] are posited' (NL: 125–26). Hegel's reasoning is that the transformation of the conditioned and unreal into something unconditioned and absolute is illegitimate, but the illegitimacy is obscured by the powerful illusion created by the *form* of pure practical reason: 'the absoluteness of the form is imposed by stealth on the unreal and conditioned character of the content, and this inversion and sleight of hand lies at the heart of the practical legislation of pure reason' (NL: 126). Behind the cover of pure practical reason's form, the

arbitrary will can choose between opposing determinacies [...] for any [particular] action, some ground could [...] be found which not only possessed the form of probability [...] but also acquired the form of right and duty; and this moral formalism is no better than the moral artifice of the Jesuits or the principles of eudaemonism. (NL: 126)

As in empiricism, the succession of determinacies elevated to universal status merely annul each other and the whole basis of natural law and morality they are supposed to serve. A 'maxim which refers to a determinacy of this kind, which is annulled when thought of in terms of universality, would be incapable of becoming the principle of a universal legislation, and would consequently be immoral' (NL: 127). A further problem presents itself in formalism's fixing of infinity and its divorce from the absolute, which again summons, but does not acknowledge, its opposite, absolute finitude. Reflection is stymied by this opposition and formalism is reduced to a 'powerless form' within which content runs riot.

Formalism ultimately produces a similar problem to empiricism: 'abandoned by the genuinely nullifying power of reason; it takes up and accommodates determinacies without annulling them, but rather perpetuating them' (NL: 130). Instead of protecting the will from contamination 'by empirical determining grounds' the formality of Kant's practical reason 'results in a surreptitious conditioning of the will by the very empirical material the formality requirement is supposed to exclude', with the result that within formalism 'there lurks a positivity all the more insidious in that it masquerades as the very thing that blocks the movement to positivity' (Roupa 2020: 138–39).

Significantly, formalism's *fixed* absolute concept encompasses pure unity and its own opposite, multiplicity. As a multiplicity, the absolute concept is 'a mass of subjects' but is opposed as such by 'the form of pure unity [...] as its own qualitative and posited being' (NL: 130). In principle, and as understood by Kant and Fichte, this mass of subjects and right and duty are combined in oneness. Under formalism this relationship divides into two possibilities: firstly, that right and duty have reality independent of the multiplicity of subjects, and from which subjects are separate; secondly, that right and duty are linked to the multiplicity of subjects (and vice versa). This separation is the basis for, respectively, *morality* (oneness of the pure concept and subjects) and *legality* (non-oneness of pure concept and subjects) (NL: 131).<sup>10</sup>

The formalist system of legality is based on the 'possibility that the pure concept and the subject of duty and right are *not* one', which must be 'posited unalterably and without qualification'. This possibility allows examination of the fundamental opposition in formalism between *pure self-consciousness*, which produces the 'empty law of ethics [*Sittengesetz*]—the universal freedom of all', and *real consciousness*, the consciousness of 'the subject, the rational being' that concerns itself with 'individual freedom'. Formalism's attempt to bridge the gap between the empty law of ethics and individual freedom through *coercion* to 'reconstruct the lost loyalty and faith' of the individual in the society of which he or she is part, fails because the fixing of the relation around the determinacy of coercion makes any movement between pure self-consciousness and real consciousness impossible. More than any other issue, it is this unbridgeable gap that calls formalism as a way of thinking into question as a basis for natural law: the attempts to do so are doomed to failure because the transition from conditioned to unconditioned cannot succeed because 'if something of this kind is posited, it is [merely] a formal indifference which has the conditioned and the different outside it; it is essence without form, power without wisdom, quantity without inner quality or infinity, rest without movement' (NL: 132).

#### IV. Undistorted intuition and absolute ethical life: returning natural law to philosophy

'The conflict between such entrenched distortions of intuition and the newly fixed abstractions', writes Hegel of empiricism and formalism, 'offers a spectacle which is necessarily as motley as the combatants themselves' (NL: 117). To escape the motley conflict, Hegel develops a third, more authentic and genuinely philosophical way of thinking about natural law that I refer to as *undistorted* intuition.<sup>11</sup> Hegel's comprehensive negation of the negation (formalism) represents

a turning of the dialectical wheel as Hegel's re-philosophized natural law rehabilitates aspects and elements of empiricism that have been tempered or purified by the process of sublation, most importantly intuition itself. The key difference between intuition in empiricism and intuition in this reformed and rehabilitated sense is that whereas the former is nullified by empiricism's illegitimate efforts to 'preserve the unity' of natural law by subordinating determinacies, 'great and pure intuition can [...] express the genuinely ethical in the purely architectonic qualities of its exposition' (NL: 115). The expression of the ethical by undistorted intuition is incomplete and imperfect but it is a suitable starting point for thinking concretely and organically about the ethical that can evolve in a reflexive manner.

Undistorted intuition is a genuine way of thinking about natural law because it is able to employ determinacies in a fluid manner informed by reason and the prevailing conditions within society as opposed to empiricism and formalism which can only work when one determinacy is raised arbitrarily to a status higher than the others.<sup>12</sup> Undistorted intuition is able to achieve this mastery over determinacies due to Hegel's dialectical moves that negate the distortions of empiricism and formalism *en route* to its articulation. Undistorted intuition is difficult to pin down precisely as it emerges *negatively* and indirectly throughout the text as part of the sublation of empiricism and formalism. Hegel's clearest expression of undistorted intuition is a brief statement late in the text: 'it is not immediate intuition itself, but intuition raised to an intellectual level, conceived by thought [*gedacht*] and explained, divested of its singularity [*Einzelheit*], and expressed as a necessity' (NL: 165). What becomes apparent through the gradual development of undistorted intuition as a way of thinking is that it has the advantage over one-sided and unphilosophical empiricism and formalism in that while they can grasp aspects or glimpses of the absolute, undistorted intuition engages it as a *whole* via the unity of the one and the many.

Undistorted intuition is Hegel's vehicle for *re-joining* philosophy and natural law. Hegel first mentions 'pure and felicitous' intuition to invoke its capacity to register and represent the 'self-sufficient and complete image' of a science; the purity and felicity of this reformed intuition being marked by avoidance of 'contamination by fixed concepts' that produce stagnation *à la* empiricism and formalism. Undistorted intuition is a way of thinking that can incorporate flux and change into its theorization of natural law without destabilizing itself. Hegel emphasizes undistorted intuition's sufficiency and completeness in contrast to the inadequacy of empiricism and formalism and by doing so makes the case for re-imparting philosophical depth and breadth to natural law.

The primary advantage undistorted intuition possesses over empiricism and formalism is its superior capacity to form knowledge due to its flexibility in relation to determinacies. Hegel acknowledges the limits of undistorted intuition in

this regard, calling attention to its weakness regarding the use of concepts, its distorted shape in consciousness, and occasional incoherence and contradictoriness; unlike formalism and empiricism, however, ‘the disposition of the parts and of the determinacies in their modifications does give an indication of the invisible but rational spirit within, and in so far as this manifestation [*Erscheinung*] of the spirit is regarded as a product and result, it will, as a product, correspond perfectly with the Idea’ (NL: 115). Undistorted intuition’s commitment is to find the rational spirit and create a society with moral and legal codes aligned to it as opposed to constraining the rational spirit within a form that ultimately rests on an arbitrary elevation of one determinacy over the others. The society and the legal and moral codes undistorted intuition builds in emulation of the rational spirit will embody that spirit imperfectly but they have a greater capacity to develop towards it than a society based on empiricism or formalism, which, promoting their arbitrary premises instead of the rational spirit, are destined to stagnate into a condition of lifelessness saturated by dead concepts preserved by inertia and dogma as opposed to genuinely living expressions of the Idea.

#### *IV.i. Undistorted intuition and ethical life*

Hegel’s key move in relation to undistorted intuition is his argument that it can correspond to the Idea because of *how* it deals with determinacies: unlike empiricism and formalism, determinacies in undistorted intuition are not ‘separate and opposed, but integrated and objectivised’ (NL: 128).<sup>13</sup> Hegel’s contrast of formalism and undistorted intuition in relation to freedom is instructive. Hegel presents the one-sided formalist view of freedom as one of making a ‘choice between opposite determinacies (so that if +A and -A are given, freedom consists in determining oneself *either* as +A *or* as -A, and is completely tied to this either-or)’. The theorization of freedom as the choice between opposite determinacies, however, must, according to Hegel, ‘be utterly rejected’ as nothing more than ‘empirical freedom, which is the same thing as ordinary empirical necessity and is completely inseparable from it’ (NL: 136). Undistorted intuition cognizes freedom differently, as ‘the negation or ideality of the opposites, of +A as well as -A’ (NL: 136–37). Where formalism becomes embroiled in treating determinacies ‘under the form of infinity’, which locks them into oppositional pairs, undistorted intuition avoids this problem by viewing these determinacies as part of an *absolute* whole; the pairs are not so much irrevocably opposed as they are part of a living relationship. Undistorted intuition, by permitting determinacy to be cognized in this manner supersedes the form of infinity; by reinjecting vitality into how determinacies are understood to interrelate and the restlessness of critical reason into how ethical life is cognized, Hegel achieves the re-philosophization of natural law.

Cognizing ethical life as a *living* relationship leads Hegel to declare that the positive aspect of ethical life is the external *relationship* between individuals. The living relationship between external individuals cannot be subject to the dead laws of formal perfection because as a living relationship the individuals concerned and their contexts are constantly changing and the societies in which they live are in flux, which is incompatible with the fixedness of determinacies that formalism insists upon. It is because of this incompatibility that formalism comes

up against incommensurability; it also necessarily [*schlechthin*] encounters endless contradictions, because it remains wholly within [the sphere of] determinacy and yet cannot abstract as geometry does, but—since it is dealing with living relationships—is necessarily [*schlechthin*] always faced with whole bundles of such determinacies. (NL: 143)

Undistorted intuition escapes the paralysis that determinacies pose to formalism by its indifference to the formalist *rule* of determinacies; it is this indifference that allows Hegel to bring together 'the two forms of causality that critical philosophy had sought to keep apart, namely the causality of reason that frames morality and the causality of nature that operates mechanically, Hegel points *both* to the existence of a contradiction *and* the resolution of that contradiction' (Roupa 2020: 145). Effectively, because undistorted intuition does *not* accept a single master-determinacy, it is free to make use of determinacies as reason and nature require. The key for intuition is the use of *judgment* in relation to determinacies rather than the elevation of one determinacy over others.

#### IV.ii. *Undistorted intuition, lawmaking and ethical life*

Undistorted intuition's subjugation of determinacy enables the possibility of justice in a manner that is not possible for a formalism hamstrung by its veneration of law *qua* law as a master-determinacy (a most *unnatural* way of thinking about law for Hegel). Hegel explores the implications of this breakthrough by means of an extract from Plato's *Statesman*, which he regards as a statement of the proper relation between the exercise of political judgment and the law. The extract begins unequivocally: 'It is clear that lawmaking belongs to the science of kingship; but the best thing is not that the laws be in power, but that the man who is wise and of kingly nature be ruler'. Plato continues by making an important distinction between law's function, i.e. to determine 'exactly what is noblest and more just for one and all', and that of the wise ruler, who is to 'enjoin' among individuals 'that which is best'. Plato (and by extension Hegel) argues that law is unsuited to the task of *determining* what to do in any given instance because 'the



differences of men and of actions and the fact that nothing [...] in human life is ever at rest, forbid any science whatsoever to promulgate any simple rule for everything and for all time'. Law when elevated to the status of master determinacy as in formalism, however, tries to insist on applying rules it mistakenly takes to be universal to circumstances it no longer fits, 'like a stubborn and ignorant man who allows no one to do anything contrary to his command, or even to ask a question, not even if something new occurs to some one, which is better than the rule he has himself ordained'. The simple, Plato (and Hegel) concludes, 'is inapplicable to things which are never simple' (*NL*: 143–44).

Hegel develops a system that eschews simplicity by moving beyond the limited sphere of pure abstraction in which formalism operates. Any a priori Idea 'and the hope for a better future derived from it, are inherently null and void [...] a perfect legislation, together with true justice in accordance with the determinacy of the laws is inherently impossible in the concrete realm of judicial authority' (*NL*: 144). Here Hegel simultaneously topples formalism and introduces a distinction between it and the 'concrete realm of judicial authority' wherein its rule does not run. Hegel's most significant task in relation to natural law is to address the question: if formalism, with its clear structure and rules derived from Kantian practical philosophy, does not provide the basis for thinking through the 'concrete realm of judicial authority', then what way of thinking can perform this task? Hegel again takes the *via negativa*, arguing that the examination of formalism and its 'system of reality has shown that absolute ethical life must adopt a negative attitude towards this system' and thereby map a route to an alternative basis by a critique of the dominant system of thought.<sup>14</sup>

The negative attitude derived from absolute ethical life directed towards formalism's system of reality is *not* one of simple opposition and elimination. The point is not to produce -A opposed to +A, anti-formalism opposed to formalism; rather it is to produce A, a position *indifferent* to both -A and +A: 'the unity which is the indifference of opposites, and which nullifies and comprehends them within itself. The indifferent unity of formalism and its negation combines two parts within *one* ethical whole: one part 'is taken up absolutely into indifference, and another part in which the real as such is subsistent'. The *relation* between the two parts encompasses the *twofold* character of ethical life: 'in one case, unity or the ideal comes first and predominates, and in the other, it is the many or the real which does so' (*NL*: 145). In this relation that which is nullified continues to exist: 'nullification posits something which it nullifies, i.e., the real, so that there must be an actuality and difference which cannot be overcome by ethical life [...] individuality is actually in opposition, and it would not be possible for it to purge itself of difference and be taken up into absolute indifference' (*NL*: 146). This realization leads Hegel to a decisive realization:

If both [aspects], the supersession [*Aufgehobensein*] of the opposition and its subsistence, are to be not just ideal but also real, we must at all events posit a separation and selection whereby reality, in which ethical life is objective, is divided into one part which is taken up absolutely into indifference, and another part in which the real as such is subsistent (and hence relatively identical), and embodies only the reflection of absolute ethical life. What is posited here is a relation between absolute ethical life, as the essence of individuals and wholly immanent within them, and relative ethical life, which is no less real within them. (NL: 146)

The distinction between absolute ethical life and relative ethical life paves the way for the distinction between *Moralität* and *Sittlichkeit*.

## V. *Moralität* and *Sittlichkeit*

The route by which aspects of *Moralität* became embedded in society as the foundation for natural law begins in ancient Rome, when the 'classical' absolute ethical life of service to the community of the Roman noble class (ultimately depending on the courage to risk death fighting for the public interest) was eclipsed by the *unfree* class, which displaced the ethos of the formerly dominant class with its own overriding concern with universal *rights*. A third class, of 'unalloyed totality and indifference', which lacked 'the differentiated understanding of the second class', was instrumental in the victory of the second class because although it maintained 'its capacity, in body and spirit, for formal and absolute ethical life and for courage and a violent death' it worked with the second class to reorient 'reality' towards property, possession, and work (NL: 147). The debasement of the Roman nobility eventually led to the disappearance of slavery but also led to the demise of freedom as understood by the noble caste as both classes finally merged into one.

### *V.i. The emergence of the law of contract as primary form of law*

As a result of this melding of the classes, universal private right became the dominant model for formal legal relationships, a development not welcomed by Hegel: 'it was indeed out of such corruption and universal debasement that the most comprehensive development of legislation relevant to this relationship grew and evolved' (NL: 149). Centred on property and right, and underlaid by individualism, a system devoid of the 'absolute and eternal but wholly in the finite

and formal' expanded throughout the social sphere. Hegel uses another extract from Plato to make the point that *contracts* took the place of honour in society and thereby introduced a sickness into the body politic, which is now concerned with regulation and prescriptive and proscriptive laws in relation to property rights instead of living well according to a good constitution. The contract-led society descends into unfreedom as laws of this sort gain ground, with the formerly free and unfree alike falling into a situation where laws and justice are imposed from above (NL: 150). As this system of laws becomes universal it 'must destroy free ethical life whenever it is combined with such circumstances and not separated from them and their consequences from the outset'. Nullified politically, the bearer of rights nonetheless gains 'the fruits of peace and of gainful employment [*des Erwebes*], and in the perfect security, both as individuals and as a whole, in which they enjoy them' (NL: 151).

The modern era witnessed the intensification of the distinction between ethical life and morality, to the point where in contrast to the ethos of ethical life as a *collective, social* enterprise,

the newer systems of ethics, which make a principle out of individuality and being-for-itself, cannot fail to reveal their allegiance [*Beziehung*] in [their use of] these words [...]. [I]n order to define their own enterprise [*Sache*], these systems were unable to misuse the words in question and adopted the word 'morality' instead and although the latter's derivation points in the same direction, it is more of an artificial coinage and consequently does not so immediately resist its debased meaning. (NL: 159)

The debasement of ethical life by its reflection, *Moralität*, lies in the latter's rootedness 'in firmly established reality—in possession and property as distinct from courage [...] the formal positing of the determinacies of the relation as indifferent, as in the ethical life of the bourgeois or private person, in which the difference [*Differenz*] of relations is fixed, and which depends on them and is in them' (NL: 160–61).

Hegel's severest criticism of *Moralität* is that it mistakes what it identifies as most important (property, possession, individual rights) for the universal and timeless core of ethics when in fact it is based on tautologous reasoning and its content contradicts its form. The tautology 'this relation is only this relation', unravels the pretension of *Moralität* as 'if, in actions which have reference to this relation, you do not act with reference to it, you will nullify and cancel [*aufheben*] this relation', which calls into question the absoluteness of the relation's claim to universality 'and consequently that the morality [*Moralität*] which is based on it is also relative [*etwas Abhängiges*] and not truly ethical'. The form of the concept

is absolute, but the content, 'which is determinate, contradicts the form' (NL: 161).

Hegel's most important conclusion regarding *Moralität* is that 'it is futile and inherently impossible to strive for an ethical life of a distinct and positive kind' (NL: 162) based on its principles. Ethical beings are born into societies and develop their ethical faculties over time and in a particular context; such 'a philosophical theory of society must proceed not from the actions of isolated subjects but from the ethical connections within the framework in which subjects already coexist' (Honneth 1992: 205). Hegel again invokes the 'wisest men of antiquity', whose words 'are alone true: the ethical consists in living in accordance with the ethics [*Sitten*] of one's country; or (with reference to education) as a Pythagorean replied when someone asked him how best to educate his son: "make him the citizen of a well-managed nation [*Volk*]"' (NL: 162). The key to understanding *Sittlichkeit* lies in this description of a nation as 'well-managed': the state itself is only part of the equation—for ethical life, the state must embody certain principles and achieve particular ends. The 'absolutely ethical has its proper organic body in individuals', Hegel observes, 'and its movement and life [*Lebendigkeit*] in the common being and activity of everyone is absolutely identical in its universal and particular forms'. Although absolute ethical life has a role for legislation, to legislate is *not* an end in itself, rather it must express 'reality, or the living customs [*Sitten*] of the present' (NL: 162). In this regard, the constitution should express the people's will so well that it becomes an object of devotion.

The *organic* character of ethical life leads Hegel to emphasize its *un-fixedness* and refusal to insist on eternal verities in any area of law:

On the contrary, just as ethical life eternally expands them, it just as absolutely breaks them down and annuls [*aufhebt*] them and enjoys itself in undeveloped unity and clarity; and as far as the [specific] areas [*Potenzen*] are concerned, secure in its own inner life and indivisible, it now diminishes one by means of the other, now passes over entirely into one and destroys the others, and in turn withdraws altogether from this movement into absolute rest, in which all are annulled [*aufgehoben*]. (NL: 169)<sup>15</sup>

The various parts of law, e.g. constitutional, international and civil law, should find themselves in such an organic relationship in which the influence of each is felt on the other, with no one organ of the body of laws being dominant. Civil law, however, the law of bourgeois right, has disturbed the internal economy of the legal system by gaining 'special predominance over constitutional and international law. The form of a relationship as subordinate as that of contract has intruded upon the absolute majesty of the ethical totality' (NL: 170).

## VI. Sick constitutions and dead laws

The eclipse of the other elements of law by contract law represents a danger inherent in formalism and *Moralität*. The primary danger of formalism is its potential to overturn ethics as a system of organic, living practices and instead to replace it with a series of prescriptions that are inherently limited and that leave nothing behind when superseded by the needs of society. Formalist law parallels the dogmatic ‘positive’ religion which Hegel criticizes as a pharisaic despotism based on unquestioning observance of the letter of the Mosaic law and typified by the ‘burden of statutory commands’ in which ‘the service of God and virtue, was ordered and compressed in dead formulas’ (*SC*: 68), resulting in a ‘miserable sort of culture [...] every man’s renouncing, for himself and his posterity, all right to decide for himself what is true, good, and right’ (*SC*: 101). Kant and Fichte’s moralism achieves the same effect in contemporary society as ‘their morality brings tyranny not freedom’ (Lukács 1976: 286) and the laws they insist subjects obey as dogma ‘had in the course of time, developed the symptoms of a lifeless “positivity”’ (Lukács 1976: 301).

Metaphors of health, sickness, lifelessness and death in relation to the status of law and constitutions proliferate through Hegel’s early texts. In the essay, ‘That Magistrates should be Elected by the People’, for example, Hegel describes the constitutional reform movement in Württemberg as ‘the effort of a still robust constitution to expel the illness’ of a polity labouring under a constitution no longer fit for purpose. Hegel draws attention to the blindness of those

who like to believe that institutions, constitutions, and laws which no longer accord with men’s customs, needs, and opinions, and from which the spirit has departed, can continue to exist, or that forms in which feeling and understanding no longer have an interest are powerful enough to furnish a lasting bond for a nation. (*ME*: 2)

He counsels the necessity of reform of institutions jeopardized by inertia caused by excessive faith in models that had become outmoded.

If ‘That Magistrates should be Elected by the People’ is an analysis of a polity in poor health, ‘The German Constitution’ is a postmortem of the arrangements that had until recently tied the German states together in the Holy Roman Empire. Hegel describes the German state ‘dissolved’ because its laws became divorced from the conduct of the states which together composed the Empire. Germany, Hegel argues, persists ‘only because it once was a state, and because those forms whose inner life has [now] departed are still with us’, i.e., the German state had entered a sort of undead condition, with the form but not the essence

of a state. Dead laws linger and inhibit the development of new laws more consistent with the political arrangements of a generation and culture that no longer assents to the worldview which articulated what are now zombie laws. The dead laws are 'isolated from the spirit of the world [...] these laws have lost their former life' and their presence has the further effect of ensuring that 'the vitality of the present age has not managed to express itself in laws'. Ultimately, the effect of the continued presence of a form of law that no longer has an actual content is fatal to a polity, in which 'the whole has disintegrated, and the state no longer exists' (*GC*: 9–10).

The 'Natural Law' essay extends the analysis of dead laws from specific instances of atrophy to the universally deleterious effect of fixing determinacies. The disintegration of ethical life by the separation of the parts of absolute ethical life from the whole is an occasion of '*sickness and the seeds of death*' (*NL*: 169) within a community. At the core of Hegel's critique is his opposition to the claims of permanence that formalism in particular makes for the structures it erects by the elevation of its preferred determinacies over the whole. Severing the elevated determinacy from custom and ethical life weakens the 'living unity' of an entity such as a state, leading inevitably to 'an internal contradiction' between one set of laws rooted in the past, and one set which has more recently emerged in the present. Historical laws are problematic because if the basis of a law lies 'only in bygone customs and in a now departed life' it lacks significance 'in the living present' and—in a manner similar to the discussion above—such a law could still retain 'power and authority because of its legal form, and because some parts of the whole are still in its interest and their existence is tied to it'. Such dead laws have merely 'uncomprehending' power that is 'shameless' and lacks 'all inner significance' (*NL*: 177–78).

Also problematic are 'laws of negativity and division' that promote 'dissolution and separation from the ethical totality'. These laws 'exempt individual parts and determinacies from the whole [...] are inherently negative, and they are signs of approaching death [...] the determinate representation [...] of death in the present' (*NL*: 177). Hegel's final verdict is that if 'laws which organise a whole have significance only for a past age, and refer to a shape and individuality which were cast off long ago as a withered husk' or 'if their interest extends only to [individual] parts and they have no living relation [...] to the whole, but constitute an authority and rule which are alien to it [...] the dissolution [of the whole] is immediately determined and consolidated, and it sets itself up in a negative system and thereby gives itself a formal semblance of knowledge [*Erkenntnis*], and of laws whose inner essence is nothingness' (*NL*: 178). From Hegel's perspective nothing is worse than the sclerosis caused by formalistic systems of law which are possessed by the dead spirit of the past and deny the opportunity for new laws to develop organically.

VI.i. *The promise of ethical life*

In contrast to formalism and *Moralität*, ethical life informed by undistorted intuition refreshes each of its parts, ‘revitalising each system for a time by strengthening its presence within it, and reminding all, in their separate existence, of their temporality and dependence’.<sup>16</sup> Ethical life is intrinsically *temporal*; awareness of temporality and the impermanence of laws is a further protection against the pretensions of formalism and *Moralität*. Ethical life (and the law it produces) continuously evolves: the current ethical life of any nation is merely one link in a chain, it is not the chain itself. Necessity determines the evolutionary leaps from one set of conditions and principles to the next; ethical life evolves and leaves parts of itself behind in a continual process of renewal in response to successive necessities.

In contrast to the negative effects of the extended existence of decaying law from a previous incarnation, Hegel extols the benefits of accepting metamorphosis and flux that ethical life provides. The new form is vigorous and effective in its novelty before ‘it gradually becomes open to the negative, and its downfall also constitutes a sudden break’; this cycle of death and rebirth is made comprehensible by a philosophy of ethical life that ‘teaches us to understand this necessity and to recognise the structure [*Zusammenhang*] and determinacy of its contents as absolutely conjoined with the spirit, and as its living body; and it is opposed to that formalism which regards as contingent and dead whatever it can subsume under the concept of particularity’ (NL: 179).

## VII. Conclusion

In the ‘Natural Law’ essay Hegel’s task is more fundamental than a dialogue with Hobbes or Kant about natural law. Hegel’s task is the re-philosophization of natural law, a task necessary to restore its capacity to think reflexively about the sources of its legitimacy, its practices and its foundations. Hegel determines that natural law properly understood should find a shape in which its opposed ways of thought may best be put to work in their *plurality*. Though Hegel insists on the necessity of developing a theory of natural law based on a revised concept of intuition, he nonetheless recognizes that the natural law of ethical life must *integrate* formalism. Surrendering a certain amount of natural law to formalism, ethical life by ‘sacrificing part of itself [...] purges its own life of the negative and [thereby] preserves it’ (NL: 180); ethical life is not concerned with eliminating formalism and *Moralität* but achieving unity of the various parts that constitute its whole, reaching an accommodation with its ‘other’ part is essential to this task.<sup>17</sup> Hegel is not ineradicably opposed to Kantian formalism as a body of

thought *per se*; he questions 'Kant's identification of the unconditional truth with the lawgiving form' (Zhe 2006: 532) but does not insist on the expulsion of Kantian ways of thinking from natural law. The aim of developing a "higher truth" of ethical life' is intended 'to provide the institutional foundations for the journey that is to leave abstract right behind, but intact' (Garza 1990: 397).

Hegel's early theorization of natural law rewards study because it provides important critical perspectives that enable examination of the dogmas that underpin law detached from the social, political and philosophical contexts in which it operates. As Fulda argues, philosophy is vital in this regard because it 'helps to prevent the ethical consciousness from finding immediate and premature satisfaction in what has already been accomplished' (2004: 33–34) by 'revealing the contradiction between a determinate form that has become a limitation and its own immanent truth' (2004: 35).<sup>18</sup> Hegel's questioning of the foundations of natural law and commitment to discover what is living and what is dead in a state's laws remain essential for legal theorists and philosophers scrutinizing the law and prevailing conceptions about its use.<sup>19</sup>

**Seán Molloy**  
**University of Kent, UK**  
[s.p.molloy@kent.ac.uk](mailto:s.p.molloy@kent.ac.uk)

### Notes

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<sup>1</sup> Abbreviations:

*GC* = Hegel, 'The German Constitution', in *Political Writings*, trans. H. B. Nisbet (Cambridge: Cambridge University Press, 1999).

*NL* = Hegel, 'On the Scientific Ways of Treating Natural Law, on its Place in Practical Philosophy, and its Relation to the Positive Sciences of Right', in *Political Writings*, trans. H. B. Nisbet (Cambridge: Cambridge University Press, 1999).

*ME* = Hegel, 'The Magistrates should be Elected by the People', in *Political Writings*, trans. H. B. Nisbet (Cambridge: Cambridge University Press, 1999).

*SC* = Hegel, 'The Spirit of Christianity and its Fate', in *Early Theological Writings*, trans. R. Korner (Philadelphia: University of Pennsylvania Press, 1971).

<sup>2</sup> In this essay I employ the term 'natural law' when referring to Hegel's theorization of natural law. I use 'law' or 'laws' when referring to specific legal rules, institutions or precepts within a state.

<sup>3</sup> In this essay I focus on Hegel's argument for the re-philosophization of law as articulated in the Natural Law essay; it would be impossible in the space available to do justice to this



argument and to engage with Hegel's later efforts that culminate in *Elements of the Philosophy of Right*.

<sup>4</sup> In this essay 'intuition' refers to the relatively primitive form of thought associated with empiricism and 'undistorted intuition' refers to the re-philosophized way of thinking about natural law derived from Hegel's negation of empiricism by formalism and subsequent negation of formalism. Hegel does not use the term 'undistorted intuition' but use of the term is useful as it serves to distinguish the first form from of intuition from the second. Robert Stern (2012) offers a very useful reading of Hegel within a wider tradition of intuitionism.

<sup>5</sup> Philosophy should be dedicated to 'knowledge of the absolute [...] how this idea realizes itself as a world [...] how the absolute appears as nature and spirit' (Cruysberghs 1989: 89). Philosophy ultimately should become a 'scientific system in which the absolute and the world of phenomena are conceived in the essential coherence' (Cruysberghs 1989: 82).

<sup>6</sup> Hegel's primary criticism of the empiricists is methodological: their hypotheses regarding the state of nature 'are formed from psychological, economic, or political observations made within the civil state [...] there is no independent methodological justification for the features chosen in each instance' (Deligiorgi 2011: 34).

<sup>7</sup> Pinson (1988) explores the distinction between the two forms of empiricism identified in the 'Natural Law' essay.

<sup>8</sup> 'Hegel intends to demonstrate that such a form of normativity misunderstands the separation from nature implemented in it, fixates it ideologically as lacking any alternatives, and thus itself bears unethical consequences' (Loick 2014: 938–39). Loick identifies the danger inherent in excessive formalism as being 'blind to context' and the 'juridification' of politics as 'leading to a decay of the public sphere and to political agents withdrawing from the process of democratic deliberation by retiring to a legal standpoint instead of giving political or moral arguments' (2014: 949).

<sup>9</sup> 'The determination of the universalizability of a particular maxim is only possible, on his view, given substantive background assumptions about content [...] since that content is simply pre-supposed, the legislation of Kantian practical reason consists in no more than the production of tautologies' (Sedgwick 1996: 565). Or, as Cruysberghs argues: 'If Kant had maintained his formal principles, then his moral philosophy would have to remain without content [...]. A pure practical reason can only produce tautologies. If it does more than that, it becomes inconsistent and falls into contradiction' (1989: 99).

<sup>10</sup> It is important to note: 'It is not that one is the absolutely positive, and the other the absolutely negative; on the contrary, each is both [positive and negative] within their mutual relation, and since both are only relatively positive in the first instance, neither legality nor morality is absolutely positive or truly ethical' (NL: 130).

<sup>11</sup> 'At the end of the essay as a whole, what is emphasized is that because of this ultimate identity [between Spirit and Nature], philosophy must culminate in the same intellectual intuition of the whole from which it starts [...] philosophy can achieve a perfect intuition of the ideal social order (as the crown and perfection of the order or finite nature as a whole)' but

intuition must evolve to its highest point—undistorted intuition—to be capable of fulfilling its potential as a means of grasping Nature and natural law (Harris 1983: 553–54).

<sup>12</sup> The fluidity and unfixity of Hegel's position is a result of what Robert Stern describes as 'a doctrine that rejects the idea that morality has any single highest principle, and thus the view that there might be any "supreme principle of morality" at all' (2012: 78). Stern argues that this rejection remains a feature of Hegel's thought; even in *Elements of the Philosophy of Right*, 'there is no attempt to offer anything equivalent to a "supreme principle of morality"' (2012: 81). Hegel offers a dialectical way of thinking about ethics and law rather than categorical imperatives or commandments.

<sup>13</sup> Stern makes the important point that Hegel's philosophical task is to 'find a rational structure in what otherwise may appear to be a random set of phenomena' (2012: 81). Unlike the empiricists, who are content to select one from a 'heap' of duties and elevate it arbitrarily over the others, Hegel attempts to find 'necessary interrelations between the various duties in an organic manner that makes them amenable to rational and philosophical treatment, but without being committed to the search for a single "master" principle in order to do so' (2012: 81).

<sup>14</sup> Absolute ethical life can only be indicated negatively because Hegel 'could not provide any abstract statement of it apart from the presentations of the contradictions which imply it [...] an abstract statement would make manifest that this ethical life does not exist in the modern world [...] turn ethical life into an abstract ideal, an autonomous prescription' (Rose 2009: 54).

<sup>15</sup> 'Hegel sets out to conceptualize the path by which "ethical nature attains its true right" as a process of recurring negations by which the ethical relations of society are to be successively freed from their remaining one-sidedness and particularities [...] the history of human spirit is to be understood as a conflictual process in which the "moral" potential inherent in natural ethical life [...] is gradually generalized' (Honneth 1995: 15).

<sup>16</sup> Occasionally, all the parts of a system of natural law are upturned by philosophy, which 'destroys their prolific expansion and self-organisation by suddenly confounding them all on particular occasions, presenting them in their self-absorption and then releasing them, reborn from unity, with a memory of this dependence and an awareness of their own weakness whenever they try to exist on their own' (NL: 171–72).

<sup>17</sup> 'Hegel refuses to make the *Rechtsverhältnis* the founding principle of the state, but, instead, assigns to it a well delimited sphere, which has its place within the ethical totality but does not dominate it' (Roupa 2020: 141). A particularly important aspect of *Moralität* to preserve for Hegel 'was its universalistic morality' (Larmore 1987: 102).

<sup>18</sup> Fulda continues '[t]he critical task of philosophy [...] must restrict itself to the elimination of juridical claims that have become illegitimate, the correction of misconceived demands, and the clarification of aims and purposes that are being pursued in a largely unconscious or instinctive fashion' (2004: 42).

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