

## BOOK REVIEWS

### **Hegel's Laws: The Legitimacy of a Modern Legal Order**

By William E. Conklin, Stanford: Stanford University Press, 2008. 400 pp. \$65.00 (Cloth). ISBN 10-0804750300

Hegel distinguishes between humans and animals on the basis that animals, like barbarians, lack self-reflection, and are driven by appetite rather than will or spirituality. The will, reason, and self-reflection are all different aspects of consciousness which enable it (and are enabled by it) to leave its state as an alienated thing in-itself and to reconcile its particularity with the universal. This reconciliation, which essentially takes place through intersubjective recognition, is for Hegel, what grounds the law's authority and legitimacy. In other words, what lends law its authenticity and legitimacy for the subject is the way in which it unfolds as a part of consciousness' own becoming in relation to others. Other *human* subjects that is, and the tenaciousness of the divide between humans and animals, between barbarian and civilised subjects, between man and woman in Hegel's thought provides an entry point into a series of questions about how to read Hegel, and the implications of our choices for considering the significance of Hegel's theory of law to current political circumstances.

*Hegel's Laws* offers a wonderfully accessible account of Hegel's philosophy of law as it simultaneously emerges from and is grounded in this phenomenology of consciousness. Conklin renders this account by situating Hegel's philosophy of law and the state firmly within Anglo-American jurisprudence. Raz, Hart, and Dworkin are positioned by Conklin as Hegel's interlocutors with regards to the fundamental question at the heart of Conklin's exposition of Hegel's thought: what authority grounds the law?

Conklin provides the answer to this question by unfolding key aspects of Hegel's dialectical logic as it pertains to the relationship between self-consciousness and the realisation of authentically universal laws and the organic formation of Hegel's ideal state form. Conklin emphasizes the significance of intersubjective recognition, and the fundamental refusal of *a priori* concepts (of "law" or "right" for instance) to Hegel's schema of law and the state. One of the many strengths of the book is that Conklin explicates in very clear detail how for Hegel, the notion that the legitimacy of law could be grounded in concepts such as virtue, a notion of the Good, or (even) rights, as external to human experience is anathema (56). This is the central plank of Conklin's positing of Hegel as a strong critic of legal formalism.

The legal rule (or the law) is posited in the consciousness of the individual through successive movements of consciousness, through its own becoming. Conklin explains this phenomenon through an examination of *The Philosophy of Right*, although his reading is informed by Hegel's philosophical work much more broadly. Conklin sets out the transitions from the abstract rights of property and contract law, to the realms of the family and civil society,

to ultimately, the organic constitution of the ideal state form. By showing the reader how individual self-consciousness is embroiled within and shapes each of these institutions and sets of relations, Conklin is able to illuminate how Hegel's theory of law, reflected in Hegel's particular use of the word *Recht*, embodies as a totality "[t]he whole social, religious, moral, political and *les lois* (in the sense of particular rules) elements [sic] of the ethos." (44)

The central problematic of law's legitimacy and the force that authorises the law is manifest, quite crucially for Hegel, in the opposition between the romanticist emphases on the communal will of the *Volk* as the grounds for law and the Kantian idealism that posits legitimacy as external to legal phenomena (149). Hegel's attempts to shatter the abstract idealism of Kant and Fichte with a notion of consciousness that uncovers and actualizes its own objectivity is what underlies Hegel's rejection of a formalist position that places the grounds for law's legitimacy as external to the realization of those very laws. Some other framework of the individual's relation to the legal rule, custom or policy was required, in Hegel's view, to account for how law could be binding on the individual in a rather more authentic way than through mere force or violence. Conklin emphasizes that for Hegel, reciprocal recognition of consciousness with "the" or "a" stranger is what grounds this other framework, this alternate account (150). In order for the law to reflect values that the individual accepts as authentically or genuinely binding, the laws must "presuppose social recognition amongst strangers" (150).

The book is structured as a progression through the various chapters of *The Philosophy of Right*. If this structure sounds linear and teleological, as Hegel's own dialectical logic is often understood to be, Conklin reminds us that for Hegel, the experience of time-consciousness is central to the activity of thought for consciousness (56). We could go further and observe, as Malabou does, that the Hegelian subject actually temporalizes itself through this experience of time-consciousness; on this view, recognition, for instance, becomes a momentary event which is then surpassed rather than functioning as an end point or final objective in and of itself.<sup>1</sup> In any event, it is the role of the philosopher to understand this temporal aspect of becoming, its experiential dimension, and to acknowledge that the experience of previous states of being remains as an impression, or germ, within subsequent moments of being and becoming. On this basis, Conklin argues that for Hegel, unlike Hart, the "prelegal' bodily and ritualistic character [of] a prelegal tribal culture is continued and concealed in the formalism of legal culture" (62).

Thought is the primary form of action and the means of giving shape and substance to history, justice and the law (62), which means that forms of the prelegal, barbarism and animality co-exist with higher forms of development and civilization. Africans and Native American tribes exist as inferior,

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1. Malabou, *The Future of Hegel: Plasticity, Temporality and the Dialectic*, tr. Lisabeth During (London: Routledge, 2005).

“physically and spiritually impotent” and passive beings, more like animals than humans (65). While the African, or the slave have the *capacity* to become more fully conscious, and barbarism was not confined to the world outside of Europe, the way in which Hegel’s attribution of barbarity and animality to the non-European world was mapped spatially onto the globe during the history of colonialism and imperialism does beg at least a few questions about the relationship between the rather obvious problems with Hegel’s account of the development of consciousness and the architecture of his concepts.

To paraphrase Ferreira da Silva,<sup>2</sup> how could the mutual and self-recognition of consciousness(es) as beings that are constituted by their relation to the Universal (*Spirit*) be confined to “particular human beings located in a rather small corner of the globe?” (86) Ferreira da Silva offers an answer to this question through a novel exploration of the way in which Hegel’s philosophical subject (affected by interaction with Kant, Herder, and others) relates to the social subject of a post-Enlightenment scientific apparatus that employs the tools of the racial and cultural in such a way so as to literally write the differences between the civilised subject and the barbarian onto different parts of the globe. In Ferreira da Silva’s view, interiority and exteriority (the inner and particular versus the external and universal) are analytical tools employed to delimit the spatial-temporal boundaries within which consciousness achieves its reconciliation with the Universal. The positing of consciousness that temporalizes itself in a non-linear telos yet coincidentally finds its home in post-Enlightenment Europe is a masterful example of the cunning or ruse of Hegel’s reason.

While the figure of the slave has the capacity to throw off his chains, Hegel’s account of Universal History and the hierarchy of civilizations discussed by Conklin reveals the flaws in the architecture of Hegel’s concepts of consciousness and being. This interjection is not of course about pointing out the banal Eurocentrism or patriarchal aspects of Hegel’s treatment of non-European men and (all) women; it is about his concepts of consciousness and being in themselves, and raises the question of how to read Hegel. Do we accept the stage that he has set up to unfold his unique and complex drama of becoming as given, or do we examine the mirror image held up by the likes of Marx, Nietzsche, Derrida, Deleuze, Butler and others, which reveal the set up as a ruse of sorts? And, what does this primary question have to do with Hegel’s theory of law?

Returning to the invocation of the human/animal dichotomy noted at the beginning of the review, which is central to Hegel’s conception of self-consciousness, how does remaining faithful to Hegel’s conceptual apparatus continue to render particular beings and non-beings invisible? How does a certain distribution of sense<sup>3</sup> that seems embedded in Hegel’s thought

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2. Ferreira da Silva, *Towards a Global Idea of Race* (Minneapolis: University of Minnesota Press, 2007).

3. Rancière, *The Politics of Aesthetics, The Distribution of the Sensible*, trs Gabriel Rockhill (London: Continuum, 2008).

prolong the life of a conceit of reason? How might we *laugh* at Hegelianism, as an expression of rupture (albeit an anguished one) with his “techniques, ruses, strategies, texts” once we have fully acknowledged and ingested them?<sup>4</sup> In other words, might we, in light of these critiques, consider how to read Hegel against Hegel?

The animal/human distinction that Conklin describes, for instance, does more than reflect a species-ism that is quite untenable in light of biotechnological un-doings of the human subject. The distinctions between man and woman, barbarian and civilized subject, are based on a dialectical logic that precludes a consideration of multiplicity; precludes a consideration of the gap between the *concept* of self-consciousness and actual beings. The crucial gap between the concept of this subject and its *ghostly* matter is swallowed up by, amongst other things, a very particular notion of mediation; one which binds the subject to a relentless oscillation between necessity and contingency, and continually seduces this subject into a competition for mastery that is always, already the game on offer.

The dialectical opposition of two beings, always a double signification for Hegel that is at the heart of his philosophy of recognition (we are in relation to each other but for me, this relation is also a self-relation reflected through you), is mediated by a concept. The third, or mediating concept, exists between the knower and the thing itself. Only a human being (the self-conscious being) can confer form on a thing. So for instance, “property is a concept that is superimposed (in thought) upon an external thing” (Conklin, p. 120). The person is the only legitimate subject who can confer or impose the concept of property on a thing, or more generally, confer meaning on a passive, external thing, considered to be a product of nature, *nullius*.

Thus, any sort of triangulation can only ever be productive with the *will* asserting form onto something. This concept of the will is premised on a particular understanding of human agency: driven by desire, constrained by necessity and subject to the whims of the contingent. To borrow from Latour, “[one] should never predetermine the weight of what counts and what does not, of what is rhetoric and what is essential, what depends on Cleopatra’s nose and what resists all contingencies!”<sup>5</sup> In other words, the dialectical motor-force that turns what appears to be necessary into something contingent and vice-versa, leaves little space for attributing power and agency to the porosity and the ambiguity of concepts that *make* facts and meaning.

This subject creates the conditions of his existence without risking the absolute (death), or shifting to a non-modern framework, without accounting for its radical inter-dependence and co-existence with non-human beings and matter. Rather, the Hegelian subject remains on territory in

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4. Derrida, “From General to Restricted Economy,” in *Writing and Difference* (London: Routledge, 2002), p. 319.

5. Latour, “Technology is society made durable” in J. Law, ed, *A Sociology of Monsters: Essays on Power, Technology and Domination* (London: Routledge, 1991), p. 116.

which a technology of mastery, of certainty (or absolute knowledge) is always already the end goal. To return to the primary question about Hegel's theory of law, we might want to ask how the subject who lies at the heart of his legal system confounds more radical forms of alienation that might account for the porosity (as Buck-Morss suggests<sup>6</sup>) that permeates our understanding and experience of the world.

*Brenna Bhandar*

*Kent Law School, University of Kent*

### **“Ruling the Agon.” Review of “Law and Agonistic Politics”**

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On the contemporary scene of political theoretical approaches to radical democracy the subject of agonism is much invoked of late. As a prominent founding theme around which myriad conference panels, journal articles, and book projects have recently orbited, agonism has emerged as a true force to be reckoned with. The likes of Ernesto Laclau, Chantal Mouffe, Bonnie Honig, William Connolly, Jacques Rancière, Alan Keenan, James Tully and David Owen, to name but a few, have each published recent accounts favoring, albeit in varying degrees and toward contrasting ends, something like an agonistic politics. Rich with provocative insight and sweeping consequence, the democratic agon to which so many have turned, has proved as suggestive as it has been commanding.

Signifying a democratic ethos that takes struggle, conflict, and *dissensus* to be categorically endemic to political life, agonism departs sharply from deliberative conceptions of radical democracy espoused by scholars such as Seyla Benhabib, Jürgen Habermas, and Amy Gutmann. These takes on what principles democracy ought aspire to, and what legitimizing factors should ground democratic procedures, are considered by the luminaries of agonistic thinking to over-estimate the political value of consensus building. Deliberative thinking underscores the idea that collective decision making is more legitimate to the extent that those who are affected by it are incorporated into a discursive exchange designed to help fashion a rationally determined and consensually (at least in theory) agreed upon verdict. Agonists emphasize instead the always already disputed and oppositional nature of political engagement. Indeed, the dynamism of conflict is itself considered the irreducible source of political agency in an agonist's world. Rather than lend the other an ear, here we are enjoined to civic enmity. What is held in common is considered contingent and thus perpetually disputed. The

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6. Buck-Morss, *Hegel, Haiti and Universal History*, (Pittsburgh, University of Pittsburgh Press, 2009).