

Cesaroni, Pierpaolo. "Hegel: Habit, Custom, and Government", *Conceptos Históricos*, Año 6, N°. 9, pp. 86-109.

## RESUMEN

El propósito de este artículo es comprender la relación que existe, en la filosofía de Hegel, entre su concepción del "hábito" y la de "el mundo del derecho", en tanto ambas son definidas por Hegel como "segunda naturaleza". En primer lugar, nos centraremos en la concepción hegeliana del hábito, tal y como fue formulada en su antropología (la primera sección de la filosofía del espíritu subjetivo). A continuación, expondremos la conexión entre el concepto de hábito y el de costumbre, tal y como fue formulado en la filosofía del derecho. Finalmente, sobre esta base, ofreceremos un análisis de algunas de las estructuras fundamentales de la concepción hegeliana del Estado como "realidad efectiva de la idea ética".

**Palabras clave:** *Hegel, hábito, costumbre, gobierno.*

## ABSTRACT

The aim of this paper is to understand the relationship that exists, in Hegel's philosophy, between his conception of "habit" and that of "the world of right", insofar as both are defined by Hegel as "second nature". First of all, we will focus on the Hegelian conception of habit, as it is formulated in his anthropology (first section of the philosophy of subjective spirit). Secondly, we will show the connection between the concept of habit and that of custom, as it is formulated in the philosophy of right. Finally, on this basis we will provide an insight into some of the fundamental structures of the Hegelian conception of the State as the "actuality of the ethical idea".

**Keywords:** *Hegel, Habit, Custom, Government.*

Recibido el 27 de marzo de 2019

Aceptado el 19 de noviembre de 2019

# Hegel: Habit, Custom, and Government<sup>1</sup>

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The social and political world, regarded from the point of view of its objective consistency, is defined by Hegel as “custom” and works to all intents and purposes as a second nature: “in simple identity with the actuality of individuals, ethical life [das Sittliche] appears as their general mode of conduct, i.e. as custom [Sitte], and the habit [Gewohnheit] of ethical living appears as a second nature” (GPR, §151). Virtue is then the individuals’ capacity to act according to their own customs, i.e. to be accustomed to social life (GPR, §150), in a way that, from the point of view of the individual, always appears as a task and therefore implies

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<sup>1</sup> Abbreviations used (where not indicated, the translation is mine):

GPR= *Outlines of Philosophy of Right*. Oxford, Oxford University Press, 2008 [*Grundlinien der Philosophie des Rechts*, in *Gesammelte Werke* (from now on GW). Hamburg, Meiner, 1968 sgg., Vol. 14,1, 2009].

Enz2= *Philosophy of Nature*. Oxford, Oxford University Press, 2004 [*Philosophie der Natur, Enzyklopädie der philosophischen Wissenschaften im Grundrisse* (1830), in GW. Vol. 20, 1992].  
Enz3= *Philosophy of Mind*. Oxford, Clarendon Press, 2007 [*Philosophie des Geistes, Enzyklopädie der philosophischen Wissenschaften im Grundrisse* (1830), in GW. Vol. 20, 1992]. For reasons of uniformity, I modify the translation of “Geist” from “mind” to “spirit”.

Rph 24/25= *Philosophie des Rechts nach der Vorlesungsnachschrift K.G. v. Griesheims 1824-25*, in *Vorlesungen über Rechtsphilosophie*. 4 Vols. Stuttgart-Bad Cannstatt, Frommann-Holzboog, 1973-1974, Vol. 4, pp. 67-752.

PhG1= *Vorlesungen über die Philosophie des subjektiven Geistes. Wintersemester 1827/28. Nachschrift Stolzenberg*, in GW. Vol. 25,2, 2011.

PhG2= *Lectures on the Philosophy of Spirit 1827-8*. Oxford, Oxford University Press, 2007 [*Vorlesungen über die Philosophie des subjektiven Geistes. Berlin 1827/28*, in *Vorlesungen. Ausgewählte Nachschriften und Manuskripte*. Vol. 13., Hamburg, Meiner, 1994].

a dimension of unavoidable contingency.<sup>2</sup> This essay aims precisely to determine the relationship, which Hegel establishes in this passage of his philosophy of right, between habit, custom and ethical life. On this basis, it will be possible to elucidate some of the fundamental aspects of Hegel's conception of the State, with special regard to the meaning he attributes to political government. We will begin with the analysis of the Hegelian conception of habit, through which man's "second nature" is constituted (Enz3, §410 Anm.). The concept of habit finds its systematic collocation in the philosophy of subjective spirit: to it, then, we will now turn our attention.

## 1. Habit

The philosophy of subjective spirit is subdivided into the sections of anthropology, phenomenology and psychology, respectively dedicated to the soul, the consciousness and the spirit (theoretical and practical).<sup>3</sup> It is on the first section, anthropology, that we must focus, because it is there that the concept of habit appears, playing a leading role (Enz3, §§409-410).<sup>4</sup> The "strange beauty" that Catherine Malabou recognises in Hegelian anthropology<sup>5</sup> can be ascribed to its problematic character: this section, which should show the separation of spirit from nature, is in fact the point of their maximum indistinction. Hegel says indeed that "even animals have souls [in a sense]" (PhG2, 71; PhG1, 577).<sup>6</sup> Hence the paradoxical situation whereby what should constitute the specificity of the study of man (*anthropology*) is precisely what man has in common with the animal. This paradox can be understood if one takes into account what Hegel means by "soul": he does not refer to the Cartesian *res cogitans*, nor to the eighteenth-century rational psychology, much

2 The ethical relationship exists, that is, it has its "erscheinende Gestalt" (GPR, §145), in the action of individual self-consciousness, which will know how to achieve it better or worse; on this matter, however, philosophy has nothing to say. Here we touch on one of the fundamental aspects of the logic of the philosophy of objective spirit (as finite spirit); see Nicolò Fazioni. *Il problema della contingenza. Logica e politica in Hegel*. Milano, Franco Angeli, 2015, in particular pp. 211-231.

3 In this way, Hegel breaks up with tradition: psychology traditionally dealt with the *Seele* (soul), while for Hegel it is addressed to the *Geist*.

4 Among the endless critical literature on Hegel's anthropology, I limit myself to mentioning, in addition to the texts that will be cited below, Luca Corti. *Pensare l'esperienza. Una lettura dell'antropologia di Hegel*. Bologna, Pendragon, 2016.

5 See Catherine Malabou. *The Future of Hegel: Plasticity, Temporality and Dialectic*. London, Routledge, 2005, p. 23.

6 The addition "in a sense" (*gewissermaßen*) appears in PhG1, that is a new edition of the same lectures of PhG2, based on another *Nachschrift* (Stolzenberg).

less to physiognomy or phrenology, but to the terminology of Aristotle: "Aristotle's books *on the soul* [...] are [...] still the most admirable, perhaps even the sole, work of speculative interest on this topic" (Enz3, §378). Hegel's philosophical operation consists therefore in preserving a human character for the soul (in so far as it is the object of anthropology), while at the same time developing its exposition against the background of Aristotle's *De anima*, where, as is known, *psyché* defines the principle of the living being as such.<sup>7</sup> All the moments of Hegel's anthropology, including habit, can "more or less" or "in a certain sense" be ascribed also to the animal; however, they come at the same time to bring out the specificity of the properly human world, i.e. its "second nature". The consequences of this approach are critical. Hegel's anthropology, inasmuch as it brings forth the transition from the living being to custom, as we shall see, leaves no room for the emergence of the figure of man. In this sense, it follows an alternative path with respect to Kant's anthropology and thus avoids that anthropological illusion which, according to Foucault, Kant leaves as a heritage to a considerable part of contemporary thought.<sup>8</sup>

It is to be started from Hegel's conception of the highest manifestation of the "first" nature, that is the living organism and more precisely the animal (Enz2, §§ 350 ff.).<sup>9</sup> According to Hegel, the living being is a sort of folding of nature onto itself, an exterior that has become interior: a unity "which is fulfilled (*erfüllt*), and as self-related negative unity, has essentially developed the nature of self

7 The well-known reference is to Aristotle. *De anima*. A, 1. On the Hegelian concept of soul, see Bernard Bourgeois. "Les deux âmes: de la nature à l'esprit", in Jean-Louis Vieillard-Baron (ed.): *De Saint Thomas à Hegel*. Paris, Presses Universitaires de France, 1994, pp. 117-151.

8 Malabou rightly states that "the Hegelian man is above all a man of habits, and that means, paradoxically, a disappearing subject". She goes even further and sees in the habit "the death of man" (Catherine Malabou. *The Future of Hegel...*, pp. 75-76). In my opinion, these statements acquire their meaning if they are read with reference to the Foucauldian reading of modern *episteme* as the age of man (I refer to Michel Foucault. *The Order of Things: An Archaeology of the Human Sciences*. London-New York, Routledge, 2002). Foucault's interpretation finds its starting point in his reading of Kant's *Anthropology* (see Michel Foucault. *Introduction to Kant's Anthropology from a Pragmatic Point of View*. Los Angeles, Semiotext(e), 2008). In this respect, one can agree with Žižek when he states that "Hegel provides the immanent corrective to Kantian modernity" (Slavoj Žižek. *Less Than Nothing: Hegel and the Shadow of Dialectical Materialism*. London, Verso, 2012, p. 341). In addition to Aristotle, Hegel is evidently inspired, in his anthropology, by the reflection of the German *Spätaufklärung*; on the Hegel-Herder report see the works of Michael N. Forster (*After Herder. Philosophy of Language in the German Tradition*. Oxford, Oxford University Press, 2010; "Bildung bei Herder und seinen Nachfolgern", in Klaus Vieweg and Michael Winkler (eds.): *Bildung und Freiheit. Ein vergessener Zusammenhang*. Paderborn, Schöningh, 2012, pp. 75-89).

9 On the Hegelian conception of the living being, I refer to the works of Luca Illetterati (*Natura e ragione. Sullo sviluppo dell'idea di natura in Hegel*. Trento, Verifiche, 1995; "Vita e organismo nella filosofia della natura", in Franco Chiereghin (ed.): *Filosofia e scienze filosofiche nell'Enciclopedia hegeliana del 1817*. Trento, Verifiche, 1995, pp. 337-427).

[*selbstische*] and become subjective [*subjektive*]” (Enzz, §337). While a stone simply is there, in the way of a *Ding*, of a thing, the being of the living organism has a different quality, since it is identified with a process: “It is only as this self-reproductive being, not as a mere being (*nicht als Seiendes*), that the living creature is and preserves itself” (Enzz, §352). When this no longer happens, that is, when its being coincides with the result and no longer with its continuous reproduction, then the living being becomes “the corpse of the life-process” (Enzz, §337) and re-joins the immediacy of the geological nature. Again, it was Aristotle who produced the deepest understanding of the living being (which “has in modern times been almost forgotten”), this time accompanied by Kant, who, in the *Critique of Judgement*, “in his own way revived this concept” (Enzz, §360 Anm.). Keeping these two main references in the background, Hegel distinguishes three aspects of the animal organism. The first one is the internal differentiation of its figure, which continuously produces itself while maintaining the ideality of its members. Secondly, the animal is defined by its having an environment,<sup>10</sup> from which it differs qualitatively as the interior from the exterior and with which it comes into some determined contact (lack and impulse).<sup>11</sup> Finally, copulation is interpreted by Hegel as the moment in which the animal searches externally not for its alterity (for example, food), but for its identity; that is, he aims to produce an identification starting from the difference of himself from himself (in two individuals). This process also defines the limit of the animal, since the unification falls out of the two individuals in relation, that is, it becomes existing in a third individual (the offspring): this is what Hegel calls “the process of the genus”. The animal is not able to make this second fold: it continuously unfolds in the uninterrupted flow of generation, this “bad infinity” that “preserves itself only through the destruction of the individuals” (Enzz, §370) – although, evidently, it is at the same time their condition of possibility.

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10 Of course Hegel does not use this term, which acquires a specifically biological meaning (and not physical, as it is in Newton and again in Lamarck) only afterwards, with Comte and especially with Darwin: see Georges Canguilhem. “The Living and its Milieu”, in Paola Marrati and Todd Meyers (eds.): *Knowledge of Life*. New York, Fordham University Press, 2008, pp. 98-120.

11 Slavoj Žižek (*Less Than Nothing...*, pp. 192-196) states, with reference to the studies of Valera and Maturana, that “the language of contemporary biology starts to resemble, quite uncannily, the language of Hegel”. For a more in-depth analysis in this direction see Francesca Michelini. “Thinking Life. Hegel’s Conceptualization of Living Being as an Autopoietic Theory of Organized Systems”, in Luca Illetterati and Francesca Michelini (eds.): *Purposiveness: Teleology Between Nature and Mind*. Frankfurt am Main, Ontos, 2008, pp. 75-96.

If we now ask where we can find this ability of life to fold back onto itself, the answer is clear: *der Geist*, the spirit. On the determination of this threshold it seems that Hegel has never stopped interrogating himself. In the *Phenomenology of Spirit* (which, however, is a work that responds to other problems), this role is occupied by self-consciousness: “life points to something other than itself, viz. to consciousness, for which life exists as this unity, or as genus”.<sup>12</sup> The recognition, that the animal fails by being continuously re-displaced in the whirlpool of reproduction, is made possible only in the relationship between two consciousnesses. This solution, however, limits itself to the acknowledgment of the irruption of an irreducible principle (the consciousness, the spirit) that would sanction in advance, from above, the abyss that separates man from the animal. But already in the first edition of the *Encyclopaedia* (1817) the discourse takes a different turn: between organic physics (which is addressed to life) and phenomenology (which is addressed to consciousness) anthropology is inserted, which is addressed, as said, to the soul.<sup>13</sup> The latter concept therefore has the fundamental task of showing how life’s folding back onto itself takes place.

According to the ordinary way of thinking, which empirical psychology shares with ordinary representation, “the soul is presupposed as a ready-made subject” (Enz3, §387 Anm.) that takes possession of the body. Instead, the point of view of the concept is inverted: the soul is nothing more than the process through which the body takes possession of itself, that is, determines its norm of life. It is precisely because of this that it is difficult to attribute the soul’s determinations exclusively to man: even if Hegel presents them in this way, it is clear that they also concern other living beings and especially animals, although this does not mean that they concern them in the same way.

At first, the course of the body is conditioned in the most general way by natural characteristics: on the one hand, its own living environment (climates, seasons, ...), race differences and individual peculiarities (“the *mode* of the varying temperament, talent, character, physiognomy”, Enz3, §395); on the other hand, the course of the ages of life, sexual difference and the alternation between sleep and wakefulness. The first contraction of this trend is given by sensation, immediate union of internal and external, the simplest form of presence of the body

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12 Georg Wilhelm Friedrich Hegel. *Phenomenology of Spirit*. Oxford, Oxford University Press, 1977, p. 109.

13 On the genesis of anthropology as a philosophical science, see Franco Chiereghin. “L’antropologia come scienza filosofica”, in Franco Chiereghin (ed.): *Filosofia e scienze filosofiche...*, pp. 429-454.

to itself (Enz3, §400). The fundamental point, however, is that the living being never limits itself to experiencing sensations, but remains within himself in the incessant flow of sensations, which are precisely its own. In this sense the soul is “*simple ideality*, subjectivity of sensation” (Enz3, §403) that doubles and folds the living subjectivity. The first two forms in which this unity manifests itself are those which in man appear as illnesses: on the one hand, the dizziness of an immediate and all-pervasive feeling, which Hegel reconnects to the forms of “animal magnetism” or “somnambulism” of which Mesmer speaks; on the other hand, the fixation on a single type of sensations from which the subjective unity is totally absorbed, in which Hegel recognizes madness (Enz3, §408). But if we overcome these manifestations and look for the way in which the subjectivity of the soul becomes effective, that is, makes itself the negative unity of its sensations, we finally arrive at the thematization of habit.

Hegel attributes absolute importance to this concept and this is the real watershed that separates his anthropology from that of Kant or, more precisely, that shows their belonging to two alternative epistemic orders. This is not only because Kant, in the brief treatise he dedicates to habit (in §12 of the first book of *Anthropology*), conceives it only negatively as a “mere mechanism of applying power” that deprives actions of their moral worth and that must therefore be clearly distinguished from virtue.<sup>14</sup> Even more important is what Kant affirms in the preface, when he identifies in the very existence of different customs and human habits one of the major obstacles to the elevation of anthropology to the rank of science: “Conditions of time and place, when lasting, result in habits which, it is said, constitute second nature, which makes man’s judgment of himself more difficult”.<sup>15</sup> The “second nature” constituted by habits and customs tends to cover up the true human nature, that is, it hinders the emergence of the figure of man to which anthropology aims. For Hegel, such a distinction is impossible, because the “nature” of man coincides with his capacity to acquire habits (with his “second nature”), which means that there is, strictly speaking, no “nature of man”.<sup>16</sup>

14 “Virtue [...] is moral strength in pursuit of one’s duty, a duty which should never be a matter of habit, but should always proceed, fresh and original, from one’s mode of thought” (Immanuel Kant. *Anthropology from a Pragmatic Point of View*. Carbondale, Southern Illinois University Press, 1996, p. 32). For a more comprehensive interpretation of the concept of habit in Kant, see the contribution of Giulia Valpione in this same volume.

15 Immanuel Kant. *Anthropology...*, p. 101.

16 This is why the Hegelian notion of habit has sometimes been associated with that of Félix Ravaisson. (*De l’habitude*, 1837): see for instance Catherine Malabou. *The Future of Hegel...*, pp. 57-58, and Jan van der Meulen. “Hegels Lehre von Leib, Seele und Geist”, *Hegel-Studien*, Vol. 2, 1963, pp. 251-274, here p. 263. Malabou, in the preface to the English edition of

The topic of habit, which gains more and more space in the various encyclopaedic expositions, is for Hegel “a hard point in the organization of spirit”, indeed “it is one of the most difficult determinations” (Enz3, §410 Anm.).<sup>17</sup> This is probably due to the fact that “we are habituated to the *representation* of habit [*wir sind an der Vorstellung der Gewohnheit gewöhnt*]; nevertheless to determine the concept of habit is difficult” (Enz3, §410 Zusatz). If we wanted to take the pun seriously, we could say that the difficulty lies in the fact that men are primarily habituated to having habits, or even that they are nothing more than their own habits. In the usual representation it is believed that it is always “someone” (a given subject) who contracts a habit as a result of his decision (such as learning to play an instrument), or for his weakness (such as the gambling habit) and so on. The point of view of the concept, instead, forces us to look at the thing in the opposite direction, because it is precisely through the acquisition of habits that is constituted that very same subject that the representation takes as a presupposition: “habit is the greatest power [*Macht*] in the individual; it is the individual himself” (PhG2, 157; see PhG1, 735). Habit is a process of appropriation of the body. However, this does not mean that someone (the soul) appropriates it; it is rather the body itself that appropriates itself, that shows itself to itself as its negative unity and that produces itself as a subjectivity different from its own immediate corporeity, which is pushed back into ideality.

Habit consists of a process of repetition [*Wiederholung*]: “This self-incorporation of the particularity or bodiliness of the determinations of feeling into the being of the soul appears as a *repetition* of them, and the production of habit appears as *practice*” (Enz3, §410). The notion

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Ravaissón’s text (*On Habit*. London, Continuum, 2008), distinguishes two basic ways of speaking of habit: “Initiated by Aristotle, continued by Hegel and taken up by a certain current of French philosophy (Maine de Biran, Ravaissón, Bergson), the first sees in habit a primary ontological phenomenon. [...] The second way, initiated by Descartes and continued by Kant, sees in habit the epitome of inauthenticity, a simulacrum of being, an imitation of virtue” (Catherine Malabou. “Preface”, in Félix Ravaissón: *On Habit...*, vii). This partitioning is perhaps too schematic (for an accurate reconstruction of the history of the concept of habit see Gerhard Funke. “Gewohnheit”, *Archiv für Begriffsgeschichte*, N° 3, 1958, pp. 9-606, in particular 496-518). However, it is undeniable that on many aspects the handling of habit in Hegel and Ravaissón has strong similarities; they depend however on the common reference to Aristotle rather than on their overall philosophical approach, which is instead completely incompatible (as known, Ravaissón considered himself anti-Hegelian and pupil of the last Schelling).

17 In the 1830 edition, the paragraphs referring to habit are entirely rewritten compared to those of 1827, which clearly shows Hegel’s continuous work on this section. On Hegelian concept of habit see John McCumber. “Hegel on Habit”, *The Owl of Minerva*, Vol. 21, N° 2, 1990, pp. 155-165; Christoph Menke. “Autonomie und Befreiung”, *Deutsche Zeitschrift für Philosophie*, Vol. 58, N° 5, 2010, pp. 675-694; Filippo Rancho. *Dimensionen der zweiten Natur. Hegels Praktische Philosophie*, Hamburg, Meiner, 2016, pp. 189 sgg.



of repetition acquires here an entirely singular significance in Hegel's system. In general, in fact, repetition is the universal sign of impotence, a run around that reveals the inability to assume the speculative point of view. Whether it is the repetition of an experience of consciousness, in the *Phenomenology*, or the reappearance of the same category, in the *Science of Logic*, we always have to deal with the failure of dialectical advancement, with the prison in which the intellect is locked up. Repetition, in this way, is always *only* (*bloß*, nur, ...) repetition, "empty unrest of a progression",<sup>18</sup> in which "the progress is neither an advance nor a gain but rather a repetition of one and the same move, a positing, a sublation, and then again a positing and a sublation".<sup>19</sup> In other words, where there is *Wiederholung* there is no *Aufhebung*. In the case of habit, instead, repetition appears as a productive force. It cannot be said that in these paragraphs a different logic is introduced surreptitiously into the Hegelian system; rather, we must recognise that repetition is at this point *the determined form that the Aufhebung assumes*:<sup>20</sup> the liberation of the subject from his immediate identification with the body, the capacity to maintain the sensations in their ideality, is produced through their repeated exercise.

This process has first of all a formal or negative meaning: it frees us from the immediate adherence to vital needs (mediated by sensations), which, by virtue of their being exercised (and not denied: "monkish renunciation and forcible repression do not free us from them", *Enz3*, §410 Anm.), are internalised to the point of becoming indifferent. Repetition here coincides with getting used to something in such a way as to weaken its impression, a bit like when one no longer notices a background noise, or like one's eyes do when, on awakening, they quickly become accustomed to light. This is the side where habit coincides with hardening (*Abhärtung*, *PhG2*, 154) with regard to external sensations and to the appetites and impulses proper to the living being. As a result, the latter are no longer the main occupation (they are performed "without thinking about it") and the soul makes itself available "to other activity and occupations, in the sphere of sensation and the spirit's consciousness in general" (*Enz3*, §410).

Now, the key point is that even these "other activity and occupations" from which the hardened subject has freed himself, whatever they may

18 Georg Wilhelm Friedrich Hegel. *The Science of Logic*. Cambridge, Cambridge University Press, 2010, p. 113.

19 Georg Wilhelm Friedrich Hegel. *The Science of Logic...*, p. 192.

20 On this point I disagree with Catherine Malabou. *The Future of Hegel...*, p. 26: "the transition from nature to spirit occurs not as a sublation, but as a reduplication, a process through which spirit constitutes itself in and as a second nature".

be, still require habit in order to reach effective existence. This is the side whereby habit is not hardness, but adroitness or dexterity (*Geschicklichkeit*: Enz3, §410 Anm; PhG2, 156). Here repetition is revealed in its productive side: in the exercise the body becomes an instrument, that is, it acquires its faculties, which become immediately its own and can be reproduced at any time.<sup>21</sup> Habit is thus the retroactive creation of the faculty that manifests itself in it, insofar as it constantly produces its own presupposition. From this point of view, “habit is a form that embraces all kinds and stages of spirit’s activity” (Enz3, §410 Anm.) and in fact even “*thinking*, though wholly free, and active in the pure element of itself, likewise requires habit and familiarity” (Enz3, §410 Anm.). In other words, according to Hegel, habit is not only liberation from what one is habituated to (in this case, to be habituated to thinking would be equivalent to having finally freed oneself from thought), but it is also a condition for the exercise of freedom, a productive force that makes the body capable of possessing a capacity on a permanent basis. Obviously, this does not mean that for Hegel thought, as well as any other activity of spirit, can be reduced to habit: the latter is only a formal element that is *aufgehoben*, maintained and exceeded (as is the case for all other determinations: when I think, I am also alive, conscious, etc.). Nevertheless, within habit emerges in all its strength a decisive characteristic of spirit, which Catherine Malabou rightly defines as its *plasticity*. Spirit, that is, is not an expression of an essence or content given in advance, like an infinite reserve of meaning that awaits to be revealed, but is entirely resolved into the process of its manifestation. In Hegel’s words: “[spirit] does not reveal *something*; its determinacy and content is this very revelation” (Enz3, §383). It can therefore be affirmed that habit itself (or rather the habituated body: the subject as “actual soul”, Enz3, §411) constitutes the true threshold that separates spirit from nature. Repetition, which in the living subject continually unfolds in the bad infinity of the process of generation, here makes a fold and contracts into productive repetition.

This result suggests that habit is a capacity peculiar only to humans, from which animals, as simple living beings, are excluded. Nevertheless, Hegel seems to be singularly undecided in this regard. In the Lectures on the Philosophy of Spirit of 1827–1828, he states: “another observation can be made on animals, which in turn have habits, in the sense of adroitness [*Geschicklichkeit*]” (PhG1, 735–736; see PhG2, 130). Hegel

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21 See PhG2, 156 (PhG1, 733–734). Žižek gets the point very well: “Hegel emphasizes again and again that there is no freedom without habit: habit provides the background and foundation for every exercise of freedom” (*Less Than Nothing*..., p. 342).

refers here to the practice of training [*Abrichtung*], which “can go pretty far in approaching the miraculous, even the human sphere” (PhG2, 157-158). However, training always requires external intervention that extrinsically connects the animal’s sensation to the activity to be learned (e.g. a food reward). In any case, the animal’s ability to be trained tells us that the animal is structurally capable of habit, if by this term we mean, in general, the ability to actively and creatively interact with the environment. According to Hegel, the animal “is a Self [*Selbst*]”, not only in the sense of the vital process mentioned above, but also because it is able, in a certain way, to bring sensations back to their ideality and thus differentiate from them a subjective dimension (a soul in the Hegelian sense). The animal is not a machine that reacts automatically to the environment, but is able to move autonomously in it, that is, to invent new ways of satisfying its own needs. From this point of view, Catherine Malabou is right in stating that “habit is not essentially a property of man” but is indeed proper to every living being. The inevitable consequence is that “for Hegel nature is always second nature”.<sup>22</sup>

If, however, we stick close to Hegel’s precise conceptual determination of habit, then the matter changes. It is true that living subjectivity is always duplicated in a subjectivity that we could define as “normative”, because it connects sensation and activity; however, the animal “does not make this connection apart from its instincts [*Instinkte*]” (PhG2, 157<sup>23</sup>). When the animal seems to come out of it, for example if you train it to imitate human activities, it is actually an external intervention that orients the instinctual connection (food reward, etc.). In other words, it must certainly be recognized that the animal is able to actively produce differentiated behaviours, in the sense that instinct can be satisfied in many ways (there is not a “natural” one). However, these behaviours will always be declinations of the satisfaction of the same instinct, from whose circle the animal does not come out. In this sense, the “habit” of the animal does not really take it away from the genre that in its instincts manifests itself: not by chance, Hegel calls this the “habit of living” (Enz3, §410 Anm.; see Enz3, §375). *Gewohnheit* in the strict sense, on the other hand, indicates precisely the human capacity to get out of this circle, in the double movement that has been seen: on the one hand, *Abhärtung* frees from vital impulses by means of habituation; on the other hand, *Geschicklichkeit* is the capacity to contract completely new habits, regardless of any instinctual pre-determination, i.e. strictly spiritual manifestations. As much as we can speak in both cases, in a broad

22 Catherine Malabou. *The Future of Hegel...*, respectively pp. 64, 58 and 57.

23 In this case the version of PhG1 differs, as it does not include the corresponding excerpt.

sense, of “habit”, we must distinguish the instinct of animals [*Instinkt*] from habit [*Gewohnheit*] properly said. The upright position, speaking, thinking, etc., precisely because they are (also) habits, are in no way conceivable as “human instincts”: Hegel’s anthropology, which avoids any rigid and abstract presupposition of the nature/spirit divide, at the same time prevents any form of naturalisation of the spiritual world.<sup>24</sup>

## 2. Custom

According to Hegel, humans have no instincts, but they contract habits. This means that humans do not even have a true “environment” of life, but rather move within a spiritual world that they have constituted on their own: their “second nature” is society (for the moment let us be satisfied with the wider and more general use that can be made of this word). All in all, Hegel would subscribe, in spirit if not in the letter, the words of Gilles Deleuze: “humans have no instincts, they build institutions”.<sup>25</sup> It is now a matter of understanding the passage from the first formulation (“humans have no instincts, they contract habits”) to the second one (“humans have no instincts, they build institutions”). In other words, it is necessary to understand the link between the two thresholds that separate the spiritual [*das Geistige*] from the instinctual, that is, habit and the world of right – a link highlighted by Hegel himself in so far as he attributes the qualification of “second nature” to both of them (Enz3, §410 Anm.; GPR, §§ 4 and 151) –.

Habit, in the subjective spirit, is referred to the individual (“it is the most essential feature of the *existence* of all spiritual life [*aller Geistigkeit*] in the individual subject”, Enz3, §410 Anm.). However, in its actuality, habit is always something intrinsically shared with others: “habit is already the habit of many” (Rph 24/25, 408). To contract a habit, in its *Wirklichkeit*, is not a process through which any empirical and accidental content is elevated to necessity, but already presupposes a developed spiritual world. The latter constitutes at the same time the result and the condition of possibility for the development of habits themselves.<sup>26</sup>

24 This fundamental point may be missed by any so-called “naturalistic” reading of Hegel’s philosophy: see for instance Guido Seddone. “The Conception of Habit as a Stage of Hegel’s Naturalistic Theory of Mind”, *Open Information Science*, Vol. 2, 2018, pp. 75-82.

25 Gilles Deleuze. “Instincts et institutions (1955)”, in *Desert Islands and Other Texts 1953-1974*. Los Angeles, Semiotext(e), 2004, pp. 19-21, here p. 21. Deleuze would never approve such a reference to Hegel (whom he is careful not to include in his extensive collection). The reason is clear: his main philosophical reference is here David Hume, who articulates in another way the same theme of the relationship between habit and institution.

26 The Hegelian concept of habit is therefore completed in the political concept of custom.

Turning something into habit means becoming able to manifest (at the most different levels) a spiritual content, in the plastic sense that we have seen: the very essence of my habit is that it is never only mine, because, as we have seen, the ability to say *mine* is, if anything, the result and not the starting point. In this sense, habit is generally realized in the form of *custom*.

At first sight, custom may appear as a sort of power over the individual similar to that of the genus over the living being, that is, custom could be identified with a “social instinct” proper to the human species. One would thus associate custom with the national character of a people [*Volksgeist*], in continuity with the teaching of the German anthropology of the time (it suffices to think of Herder). In short: if animals are distinguished into species, with their specific instincts, men would be that species that in turn is distinguished into nations, with their specific customs. However, this interpretation abolishes precisely that gap between instinct and habit which, on the contrary, as we have seen, is essential for Hegel. In fact, he places the treatment of the diversity of national characters, as well as of races, in the subjective spirit, at the beginning of the chapter on the natural soul (Enz3, §§ 393-394). These concepts, therefore, still concern an immediate naturalness (Hegel speaks of *Naturgeist*) and not habit (or actual soul). The national characters are, indeed, an objective determination, but they still appear as a natural datum on a par with the temperament or the individual physical conformation; they still have nothing of that plasticity which is the sign of the spiritual world.<sup>27</sup>

This is confirmed by Hegel’s controversy with Savigny and the historical school of law. The latter, as is well known, invoked customary law [*Gewohnheitsrecht*] against the modern idea of codification. Such an opposition, however, appears to Hegel to be completely wrong precisely because it crushes the custom into instinct. In the note to §211 of the *Outlines*, Hegel writes: “Since it is only animals which have their law as instinct, while human beings alone have law as custom, even customary

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The limit of Malabou’s interpretation (*The Future of Hegel...*) lies precisely in the fact that she does not focus on this relationship. Žižek seems to grasp the problem, because he extends Malabou’s discourse on habit in a political direction; however, he associates the concept of habit in Hegel (as concrete universality) with that of hegemony in Laclau (“Habit is the outcome of a struggle for hegemony” [*Less Than Nothing...*, p. 437]). This interpretation appears quite arbitrary in that it does not take into account the specific way in which Hegel takes up the concept of habit (as custom) in the *Outlines of the Philosophy of Right*.

27 With regard to the relationship between customs and law, Hegel identified in Montesquieu “the genuinely philosophical position” (GPR, §3 Anm.). Paolo Slongo (*Il movimento delle leggi. L’ordine dei costumi in Montesquieu*. Milano, Franco Angeli, 2015) shows how Montesquieu, like Hegel’s later work, understands the relationship between laws and customs in an alternative way with respect to both “nomocentrism” and “ethocentrism” (see pp. 18-19).

rights contain the moment of being thoughts and being known” (GPR, §211 Anm.). To think of customs as opposed to laws means, in short, to reduce them to the natural dimension of instinct, to abolish that difference which is manifested instead in the intrinsic capacity of customs to be able to be elevated to the form of the law. This means precisely that customs are expressions of a spiritual life which in no way can be traced back to a natural datum.

If habit is not instinct, then habit, as a social habit, cannot be a social instinct. This means that the costume is not identified with the *Volkgeist*, but with *das Sittliche*, the ethical life. When Hegel speaks of “ethical life”, he means nothing more than these objective relationships, which permeate and constitute subjects. The ethical life is neither a “nature” (i.e. the customs and practices of a people) that imposes itself on all individuals in the same way (as it is for the abstract universality of genus), nor an ideal or a moral duty to which the individual is called to correspond. Rather, the ethical life is, for the individual, the set of his concrete ways of leading and acting. It is therefore not by chance that *Bildung* is defined in the same way as habit: a process of liberation through which “immediacy and individuality, in which spirit is absorbed” are eliminated [*weggearbeitet*] and the individual obtains “the rationality of which it is capable” (GPR, §187 note).

This brings us to the keystone of Hegel’s philosophy of right: such customs have to come into existence in institutions. Custom is objective not only because it is shared, but because this sharing takes on a concrete existence. We have seen that social habit consists in making oneself capable of a universality, that is to say, in being part of a shared ethical element. To say that this process constitutes the basis of society means that this *Bildung* does not remain a purely subjective quality, but that it becomes objective in regulated social structures. It is in this very sense, then, that humans, since they are not confined to instincts but acquire habits, realise institutions. In other words, if “costume exists essentially as the ethicality of many individuals”, if therefore “habit is already the habit of many” (Rph 24/25, 408), then this “common” [*Gemeinsames*] must find its specific mode of existence: it must institute itself. It is here, in conclusion, that we can understand the Hegelian concept of right: it is the institutional realization of ethical relations, that is, of customs.<sup>28</sup>

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28 On the relationship between ethical life and institution see Jean-François Kervégan. “La razionalità normativa. Spunti hegeliani”, *Filosofia politica*, Vol. 20, N° 1, 2016, pp. 59-74, in particular pp. 71-74. The proximity, which Kervégan suggests, between Hegel and the institutionalism of Maurice Hauriou should be further discussed.

Right is therefore realised in the ethical institutions that articulate the “rich inward articulation” and the “determinate distinctions between the circles of public” (GPR, 9): first of all the family, an ethical structure that organises immediate or intimate relationships; then, above all, the corporation, that organises the relationships that are mediated by the system of needs and work (the State will be discussed later). When Hegel speaks of corporation and community [*Gemeinde*],<sup>29</sup> he does not have in mind what will later be called “corporate state”, that is, a top-down organisation based on a vaguely organicistic inspiration. The concept of corporation, in Hegel, has a well-defined meaning: in it comes into existence something that is in common among some individuals [*das Gemeinsame*] (GPR, §251), that is, the specific shared spaces that inevitably emerge within the system of needs (precisely in the second *Stand*). This “common” is neither an economic interest<sup>30</sup> nor an extrinsic moral ideal that should be opposed to individual selfishness; rather, Hegel defines it as the sharing of a “way of life” (*Lebensweise*, GPR, §253 Anm.). Consequently, corporations cannot be established from above, by the State, which will, if anything, be called upon to recognize them, but are produced from the very same subjects involved. The subjects are called to activate what could be defined as their intrinsic instituting power, that is, the capacity to recognise their own ethical relations and bring them into existence. The logic that inspires Hegel’s discourse on the corporation, even beyond his letter, is that of a self-institution of the social, of a continuous proliferation of ethical institutions. Evidently, this means that the corporation (like all the other figures of right) exists only as a process, never as a simple being: if the shared habit that enlivens it becomes “entirely objective”, that is, if “the spiritual activity has disappeared”, then what remains is only an empty and dead simulacrum (Rph 24/25, 407-408).

### 3. Man, Population, Police

The analysis that has been carried out so far is partial, as it does not take into account a typical phenomenon of modern societies: the

29 See Rph 24/25, 621-622.

30 The un-awareness of this difference leads to a misinterpretation of the corporation, according to which it is only referred to the problem of poverty: see for instance Joel Anderson. “Hegel’s Implicit View on How to Solve the Problem of Poverty: The Responsible Consumer and the Return of the Ethical to Civil Society”, in Robert R. Williams (ed.): *Beyond Liberalism and Communitarianism: Studies in Hegel’s Philosophy of Right*. New York, State University Press of New York, 2001, pp. 185-205; Frank Ruda. *Hegel’s Rabble: An Investigation into Hegel’s Philosophy of Right*. London, Continuum, 2011, chapter 3.

development of the “System of Needs”. According to Hegel, the development of such a system is connected to the emergence of the modern principle of subjectivity and is therefore an inevitable part of modern societies. It in turn establishes a “second nature”, however in a different sense from that which we have seen so far.

The system of needs is characterized, on the one hand, by the multiplication, abstraction and refinement of needs (GPR, §190–191); on the other, by the development of an even greater mutual interdependence in the ways of their satisfaction (GPR, §192). This process of unstoppable enlargement and refinement separates man from nature, that is, it elevates him above animal life. In fact, “an animal’s needs and its ways and means of satisfying them are both alike restricted in scope” (GPR, §190). Man, on the other hand, multiplies and transforms his own needs to the point that the natural element becomes secondary compared to the spiritual element of representation (GPR, §194). With a trivial example: clothing is less and less a means of defending oneself from the cold or the rain, and more and more a means of self-representation and social recognition. However, this process is still, in another way, bound to the horizon of naturalness: needs, however abstract and interdependent they may be, therefore free of any anchorage to the presupposed naturalness of a genus, are nevertheless still needs. From this point of view, the gap between “first” and “second nature” is reformulated as follows: man has no (pre-determined) instincts, he creates and produces his own instincts (as “social needs”, GPR, §194). What is produced is therefore, to use an expression of Hegel’s *Phenomenology*, a “spiritual animal kingdom”.

This system, inasmuch as it does not leave the dimension of need, produces a different subjectivation with respect to the ethical one: it produces *individuals* who act outside any space of sharing, that is, without customs (if the precise meaning attributed to this term is held firm). We have seen that Hegel’s anthropology, to the extent that it is centred on habit, leaves no room for the appearance of the figure of man (as a man “in general” endowed with his own nature). With the historical development of the system of needs, it is precisely this figure that instead appears on the scene: “this is the first time, and indeed properly the only time, to speak of the *human being* [*Mensch*]” (GPR, §190 Anm.). The huge process of multiplication and mediation of needs typical of modern societies produces a space for action which, from Hegel’s point of view, could appear paradoxical: it is occupied by abstractions (individuals without ethical relations, without customs) which, however, are concretely operative. Man is a historical product: it is born when the subject is separated from his structurally social dimension, made up of



habits (i.e. common elements assumed by the subject as shared) and reduced to a simple individual, i.e. a simple living being.

The “second nature” that identifies with the system of needs is therefore, after all, homogeneous with the first nature. Consequently, the system of needs will produce a universality that imitates the power of genus over the living beings: an extrinsic universality, a regulation that imposes itself from the outside, with its inflexible necessity, on the social actors and that, just like genus, “is maintained only through the ruin of individuals”. This abstract universality will come into concrete existence in the form of institutions. However, they will be very strange institutions, almost monstrous, because they will not be ethical institutions (they are not the objectification of common ways of life), but they will follow another logic, which differs from what we have seen so far. Hegel mainly identifies two of them.

The first of these institutions is the market itself, with its intrinsic mechanisms resulting from the representation of the free play of individual wills that participate in the general wealth of society (organization of factory work, machinery, accumulation of capital, competitive mechanism, etc.: all of these aspects were explored by Hegel in his lessons on the philosophy of right in the 1820s). In order to overcome the excessive inequalities deriving from the operation of the “blind” universality (GPR, §236 Anm.) of the market (in short, to regulate it), a second institution is required. However, it will operate in accordance with a logic that is indistinguishable from that of the first one: the *police* (GPR, §230). This term is used by Hegel in the sense of the eighteenth-century *Polizeiwissenschaft*, inasmuch as it concerns the administrative activity aimed at promoting the well-being of the individuals, that is, in Hegelian terms, “the possibility of sharing in the general wealth” (GPR, §237): economic policies aimed at regulating production and trade, general administration of the State, public health, and in part also social policies of wealth redistribution (although Hegel does not look kindly upon this last point: GPR, §245).

In the action of the police an unethical way of operating of the State emerges, which Hegel defines as *Notstaat* or *Verstandesstaat* (“the external state, the state based on need, the state as the understanding envisages it”: GPR, §183). Hegel also speaks of “police government” (*Regieren der Polizei*: Rph 24/25, 592) which has the double function of regulating the conditions for the participation of each person in the overall wealth and of supervising the dynamics of public utility. In other words, police government is exercised over *omnes et singulatim*, over each and every one. This way of existence of the modern State, articulated by the connection “system of needs – police”, does not consider the dimension of

habit properly said, not because it does not imply (and does not produce) individual norms of life, but because it abolishes the process of their subjective institution. If anything, then, we will speak of *Abrichtung*, training, more than of *Gewohnheit*, habit. The government of the police “operates in the way of a necessity of nature [*Naturnotwendigkeit*]” (Rph 24/25, 594): in short, it is that *government of the living* that Foucault will define as biopolitical governmentality.<sup>31</sup>

#### 4. Political Government

According to Hegel, the modern State necessarily develops within itself the system that we have schematically reconstructed: the system which is articulated into the concept of individual (alongside the correlative one of population), on the one hand, and into that of police, on the other. This is, in short, what Foucault in his analysis will define as “biopolitical governmentality”. Nevertheless, according to Hegel, this system, however necessary, cannot exhaust the actuality of the modern State. In it, only the “external or intellectualistic” side of the State (the *Notstaat*) is realized (GPR, §183); if the State identifies entirely with this device, then it loses its rationality, because ethical life is dissolved.

That is why Hegel insists on showing the need for corporations within the modern state. In his 1824/25 lectures, indeed, he states that “the task of the present time is to establish corporations” (Rph 24/25, 619). The sense of these institutions, as we have already noted, is not to “bridle” individuals within disciplinary mechanisms; on the contrary, the corporation plays the part of bringing out and realizing the customs, or shared ways of life, which, according to Hegel, also innervate modern societies. The representation of civil society as a pure and simple “system of needs”, populated by unrelated subjects (therefore disciplined as individuals and governed as a population), is in fact only an abstraction. In its *Wirklichkeit*, the system of needs always produces also customs, common spheres of action and life, which must find effective institutional existence. In other words, according to Hegel, the corporation carries out the task of articulating a form of subjectivation that differs from that which reduces men solely to a correlatum of disciplinary and liberal governmentality.

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31 The main reference is here to Michel Foucault. *Security, Territory, Population: Lectures at the Collège de France 1977-1978*. London, Palgrave, 2007. On this point see Sandro Chignola. *Foucault más allá de Foucault. Una política de la filosofía*. Buenos Aires, Cactus, 2018.

However, Hegel's discourse does not limit itself to that. For politics to maintain its rationality, for politics to exist beyond its reduction to biopolitical governmentality, it is not enough to put into play, with the corporation, a political subjectivation that resists being reduced to a correlate of the action of police government. The real issue at stake in Hegel's philosophy of right lies in another reason: the need to conceive *government in another way*. If it is true, as Bruno Karsenti has pointed out, that the Hegelian conception of the State reveals a "literally unheard character" in relation to the modern representation of statehood,<sup>32</sup> then this unheard character concerns precisely the question of government. If, today, we reread Hegel's philosophy of right, we do not find any useful element to answer the question: "how is it possible to resist government?". However, we do find in it some useful resources in response to a more complex and radical question: "What is a political government?". In fact, when Hegel states that the State is in itself an ethical institution, he is saying that the State cannot be reduced to *Notstaat*, that is to say, to police government, to the external regulation of individuals and the population; on the contrary, the government constitutes itself as an ethical relationship.

In Hegel, the political State does not coincide with the expression of a sovereign will,<sup>33</sup> but with a process of mediation between the different circles that make up the *Verfassung*. Certainly, the State is also a subject (in front of the other States) and the power of the crown has precisely the role of making the State exist in this form. However, according to Hegel, the rationality of the State depends on the other two powers, which together define the mode of existence of a political government. The existence of different circles (mainly corporations) puts forth the need to continuously produce their ideality, that is, their being part of a whole. This process cannot obviously be produced within particular corporations and communities, but requires a specific space of existence, which is represented by the "legislative power" (GPR, §298). Evidently, this implies the existence of a specific institution, the power of government, that can assume such a leading function. If, however, this universal point of view must also be ethical, then it must

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32 See Bruno Karsenti. "Eticità e anomia", *Filosofia politica*, Vol. 20, N° 1, 2016, pp. 25-36.

33 The political institutions of today's democratic states (mainly modern parliaments) are not ethical institutions, because they are based on an abstract universality (the general will of the people) that inevitably stands against the will of individuals (individuals). From Hegel's point of view, the conceptual logic underlying modern democracy is still an expression of the *Notstaat*, not of the *politischer Staat*. On this crucial point, which here cannot be dealt with in its breadth, see Giuseppe Duso. *Libertà e costituzione in Hegel*. Milano, Franco Angeli, 2013 and Pierpaolo Cesaroni. *Governo e costituzione in Hegel. Le Lezioni di filosofia del diritto*. Milano, Franco Angeli, 2006.

present itself as inherent in the particularity in which it manifests itself. For this reason, this process cannot be reduced to the bare action of government, but implies a further institution (the assembly of the Estates, *ständische Versammlung*) which participates in the activity of unification, thus making it a shared process of mediation and consensus (the “continuous production of the State in general and of its constitution”, of which §541 of the *Encyclopaedia* speaks). The proper political value of particular institutions (corporations, communities), therefore, lies not so much in the conquest of spaces of autonomy or self-government (although this aspect is also present), but rather in the definition of a political dynamic in which the governed (the self-established institutions of the particular) are political subjects and acquire a capacity for action within the overall process, which thus qualifies as actual (ethical) mediation and unification.

Thus, in the Hegelian State, two different logics of government appear: on the one hand, the one in which governmental action is faced with corporations, which will necessarily configure a process of difficult search for mediation and consensus; on the other hand, the one in which governmental action is faced with unrelated individuals and which will therefore be configured as an extrinsic regulation. On the one hand the political State, on the other the State of necessity.<sup>34</sup> The way in which Hegel observes the political situation of his time suggests that he is concerned about the unilateral imposition of one logic to the detriment of the other. In his 1824/25 lectures he seems to grasp two main problems of the present time: on the one hand, the absence of corporations (Rph 24/25, 619); on the other hand, the fact that “police governance can go too far” because it does not contain any *Grenze*, any intrinsic limit (Rph 24/25, 592). The two phenomena are mutually supportive in that they contribute correlatively to the omni-pervasive imposition of the police State at the expense of the political one. In other words, the two logics of government are not only incompatible, but they are in a relationship of inverse proportionality: the more institutions there are, the less population there is; the more political government there is, the less police there is. There is no doubt that for Hegel the action of police government is to a certain extent necessary, because the development of some aspects of modern society intrinsically requires it (economic and health policies, infrastructures, etc.); it is equally certain, however, that

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34 Stephen Houlgate (“Right and Trust in Hegel’s *Philosophy of Right*”, *Hegel Bulletin*, Vol.37, N° 1, 2016, pp. 104-116) rightly states that, according to Hegel, freedom really only takes place within institutions, not against them. However, in his reading Houlgate does not bring out a fundamental point in this regard: this is possible only if institutions are ethical, that is, if they express an actual universality.

where there are no more corporations, where there is no longer a process of institutionalizing shared customs, then the State becomes simple *Notstaat* and loses its most proper rationality.

At this point it is well understood how the Hegelian indication that “the task of the present is to establish corporations” should be read (Rph 24/25, 619). It is not a question of administrative reforms or of the support for a corporate State, but of the capacity of subjects to activate (and to keep constantly active) what could be defined as their intrinsic institutional power, that is, to recognise and bring into existence their own ethical relations, the customs that constitute them, that is, their own common ways of life. The political stakes involved in these institutions are not to be understood as a claim for autonomy, as a withdrawal from the dynamics of government: in this case, the government would end up being identified entirely with the police. The point is rather the opening and widening of a different logic of government, which for Hegel constitutes the actuality, the *Wirklichkeit*, of the State: that in which the course of the constitution is articulated as a continuous process of mediation between the differentiated demands of the governed [*Ständever-sammlung*] and the demand for their fair unification [*Regierungsgewalt*].

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