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Abstract

A review of:

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Keywords

Hegel's laws, Violence, Conflict, Philosophy, Law

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Hegel's Laws: The Legitimacy of a Modern Legal Order. By William E. Conklin. Stanford: Stanford University Press, 2008. 381pp.

Like his predecessors Hobbes, Locke, and Rousseau, Hegel began at the proverbial beginning: with the primitive, pre-historical “first man” living in a state of nature. But far from being motivated into community (if not communion) with others by fear, Hegel’s “first man” most desires recognition as an independent being. Unfortunately, this desire leads him into violent conflict with others—a Herculean battle to make others recognize the self—which compels some to genuflect before their fear of violent death and thus become slaves, while those who persevere become masters. In the end, this arrangement proves unsatisfactory for each, and the slave is eventually emancipated and becomes a free person.

This basic struggle for recognition, which is the root of Hegel’s famous dialectic, repeats itself (in his view) in different ways, in different contexts, and on different levels—from the local to the international and the transnational. William Conklin’s erudite and engrossing *Hegel's Laws* engages the theme of inter-subjective recognition—that is, recognition of the Other and, importantly, the cultivation of self-awareness “through institutional universals shared with strangers” (11)—and argues that it alone provides the legitimacy of modern legal orders. Put differently, and contra many works of jurisprudence, Conklin argues that for Hegel, law’s legitimacy and authority stem not from external, *a priori* concepts or appeals to “historicism, original intent...,[or] the social contract” (319) but from subjective experience and consciousness: that is, from one’s recognition that one’s will, one’s life projects, and one’s individuality are bound up with others in an intersubjectively based legal order that connects individuals through shared norms that are ultimately reflected in the self’s own consciousness.

Conklin begins with a succinct but substantive overview of Hegel’s life. Chapter One provides an accessible, rich account of Hegelian vocabulary, while Chapters Two and Three explore the general problematic of obedience and provide a survey of Hegel’s legal reasoning. Mirroring Hegel’s own dialectic, Chapters Four through Ten ground more abstract reflections by focusing on aspects and moments of an individual’s reconciliation with the various legal orders that confront the self, including property, contract, criminal, family, civil, constitutional, and international law. But it is in Chapters Five and Six that Conklin compellingly examines “an original element of Hegel’s legal philosophy: the notion of ethicality” (24), or recognition of the stranger through social relationships.

Recognition is useful shorthand to explain the problematic for the legal philosopher: why do autonomous subjects perceive legal systems as legitimate and hence binding? The answer, Hegel maintained, lay not in coercion or fear, but “in the subjective experiences of the inhabitants” (16). At each level of social life, whether in the household, civil society, the state, the international, or, as Conklin expertly demonstrates in Chapter Ten, the transnational, autonomous actors come to recognize that the freedom of their particular wills and existences is ultimately contingent upon the reciprocity of others. Each level of reflection at each level that law confronts the self engenders recognition both of others and of living in community with them, and motivates advancement to another, higher level of consciousness: cognition of shared norms upon which the structures of living with others is built. The entire Hegelian system

reaches its zenith (while simultaneously turning back on itself, returning “full circle to the self-consciousness of the individual human subject” (288)) in the international-cum-transnational. At this level, states “come to accept shared [peremptory] norms that guide and render void their own arbitrary wills” (*Ibid.*). Put differently, “the ethicality of a state-centric international law vis-à-vis the human subject becomes a possibility...[which is] actualized when the will displaces nationalism, xenophobia, exclusionism, racism, and sexism” (298). Importantly, shared norms (or universals) “protect the individual human subject from the state,” and thus constitute the “pillars of the consciousness of world history” (*Ibid.*). In this regard, Conklin affirms Hegel as the preeminent philosopher of freedom and individuality.

The continuity of legal orders, Hegel and Conklin insist, owes not to coercive enforcement of “arbitrary values” but to construction upon the presupposition that the law’s content reflects “social recognition amongst strangers” (150). Legal orders must on this view be framed around a set of intersubjective norms and values, and around judicial authority and state institutions that preserve and protect this most foundational of suppositions. In this regard, we might thus understand why Hegel championed state regulation of the economy, which he understood as blind to human and social needs, and thus diminishes human life.

Here Hegel and Conklin seem to stumble. The will referred to in the quotation above about the ethicality of a state-centric international law is arguably the will of *Geist*, of an ineffable Spirit that guides History, and which stands simultaneously coincident with and apart from the subjective consciousness upon which the legitimacy of the laws rests. If subjective consciousness is virtually equable with *Geist*, and if the will of *Geist* is ultimately reflected in the will of individual subjects, then why embark on the charade of arguing that authoritative, legitimate legal orders are predicated on self-consciousness in the first place? The argument appears to contain an element of determinism that both Hegel and Conklin supposedly disposed of (319) in favor of a consciousness-based, intersubjective account of the development of law. However, the stumble might be in appearance only: intersubjectively-based orders cultivate, as the term denotes, conscious awareness of others, which in turns cultivates awareness of the kinds of wrongs done to others and what must be done to ameliorate them. *Geist* on this view is nothing more than a name given to “collective” and unfolding recognition of the humanity of others.

Extremely well-written and generally lucid, the book is nonetheless intellectually demanding. Undergraduate students will find this book incomprehensible, though it would be an eminent addition to any graduate (theory or human rights) seminar in which Hegel’s *Philosophy of Right* is assigned. Be assured, though, that Conklin’s command of this German master will challenge even those familiar with Hegel, escape at times those whose reading of Hegel is marginal, and occasionally stupefy those unexposed to Hegel. And yet Conklin does what few authors can do: he brings Hegel to life in the most arresting of ways, perhaps because in part the book connects so closely to contemporary immigration and human rights-oriented debates, trends in global governance and the expansion of international and transnational law. Readers not familiar with or uninterested in Hegel will most likely dismiss the book as tangential at best to human rights and human welfare discourse. But that, I urge, is a superficial response to this extraordinary tome, for at the very root of human rights, at the very root of contemporary constitutionalism, lies a conception of recognition: not simply recognition of the existence of the other, but also the internalization of responsibilities associated with such recognition.

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