

ESSAYS

HOBBSIANISM AND JACOBINISM: TWO SIDES OF HEGEL'S CRITIQUE OF THE CONTRACT THEORY

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Abstract. *In the article I examine and compare two different sides of Hegel's critique of the modern contract theory. The first one encompasses Hegel's critique of Hobbes' Leviathan, while the other includes the contractarianism of Jacobinism, which, according to Hegel, had Rousseau's The Social Contract for its theoretical background. As I will show, Hegel regards both the Leviathan and Jacobinism as a misguided attempt to found the state on the arbitrariness of the subjective will. In the first place, I argue that both of Hegel's critiques rest on his sharp distinction between civil society and the state. However, in his criticism of Hobbes and Jacobinism Hegel reveals two different approaches. The former type of contractarianism results in a contingent union of individual wills presided over by transcended political authority that secures property and alleviates the natural fear of death, the latter is characterized by an attempt of the subjective will to lay claim to political authority itself, resulting in the exacerbation of mistrust and fear among individual wills. I show that, based on this critique, Hegel turns to Roman antiquity, and specifically to Roman virtue of 'courage', which is conceived of as an alternative foundation of state sovereignty. The background for this interpretation is Hegel's requirement to locate forms of trust that can serve as the basis of a political union and would not be reducible to a contract.*

Keywords. *Hegel; Contract Theory; Courage; Trust; Hobbes; Rousseau; Jacobinism*

1. Hegel and the Contract Theory

Hegel is well known for his critique of the modern contract theory. Some of the central passages from the *Philosophy of Right*

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criticize the contractarian tradition for what Hegel regards as a misguided conception of the state. This theory, according to Hegel, bases the state on «arbitrary will and opinions», which «destroy the divine [element] which has being in and for itself and its absolute authority and majesty»¹. For these reasons, as Patrick Riley has pointed out, Hegel regarded this tradition «with loathing»², something which is reflected in his references to Fichte, Rousseau and Hobbes.

At the same time, Hegel is not opposed to the idea of the contract as such. For example, when referring to Hobbes, Hegel does claim that this author was the first one to base the state on «principles which lie within us»³. Indeed, in the *Philosophy of Right* Hegel argues that the contract forms «the true distinctive ground in which freedom has its *existence*»⁴. The reason for this statement lies in the fact that the contract signifies the expression of the subjective will, the form of freedom which demarcates modernity from premodern conditions in which freedom still had only limited existence. The subjectivity of the will represents the «*higher ground*», which has been «determined for freedom»⁵. In distinction to the ancient world, where only the objective will counted, modernity presupposes relations and recognition between autonomous individual wills, whose expression is the contract⁶. This is why for Hegel the contract must form a constitutive part of

¹ W 7, p. 400, § 258; trans. by H. B. Nisbet, *Elements of the Philosophy of Right*, Cambridge, CUP, 1991, p. 276. The German edition of Hegel's works I am referring to here is *Werke*, ed. by E. Moldenhauer and M. Michel, Frankfurt am Main, Suhrkamp, 1986, and will be quoted in the following way: W number of the volume, number of page.

² P. Riley, *Hegel on Consent and Social-Contract Theory: Does He 'Cancel and Preserve' the Will?*, «The Western Political Quarterly», XXVI (1), 1973, pp. 130-161, p. 157.

³ Quoted from Riley, *Hegel on Consent and Social-Contract Theory*, p. 157. Cf. W 20, p. 226.

⁴ W 7, p. 152, § 71; *Elements of the Philosophy of Right*, p. 102.

⁵ Ivi, p. 204, § 106; trans. p. 135.

⁶ Cf. Ivi, p. 152, § 71; p. 102.

the modern state. The state cannot rely on religious or mythological foundations anymore, since now it includes the free activity of the subjective will.

However, if this is the case, why is the contract, as the relation between individual wills, not a viable foundation of the state for Hegel? To answer this question, one needs only to look at the basic argument he levels against the representatives of the contract theory. When writing on the relationship between the monarch and the people, he argues that the

contractual relationship between monarch and people, etc., bases itself on the will in the sense of the *caprice*, opinion, and arbitrariness of *the many* – a determination which, as we noticed some time ago, is of primary importance in civil society (or merely seeks to assert itself as such), but is not the [basic] principle of the family, let alone of the state, and is completely opposed to the Idea of ethical life.⁷

The important element in this passage is that for Hegel, contracts have ‘primary importance in civil society’, a sphere of life which he sharply distinguishes from the family and the state. Civil society is based on contracts, because in this sphere relations between individual persons form «a system of all-round interdependence»⁸. But these relations for Hegel have a specific content, which makes them inadequate to form the basis of the state. As Herbert Schnädelbach has pointed out, contractual bonds for Hegel presuppose relations between individuals as property owners⁹. As property owners individuals are primarily members of civil society. But when these property relations are applied to the state itself the result is a confusion whereby private relations make an «intrusion [...] into political relationships»¹⁰. For Hegel this would lead to a situation where state power itself then figures as a

⁷ Ivi, p. 453, § 281; p. 324.

⁸ Ivi, p. 340, § 183; p. 221.

⁹ H. Schnädelbach, *Hegel und die Vertragstheorie*, «Hegel-Studien», XXII, 1987, pp. 111-128, p. 117.

¹⁰ W 7, p. 157, § 75; *Elements of the Philosophy of Right*, p. 105.

form of private property. This is why as Schnädelbach continues, Hegel viewed the contract theory as a peculiar reversal of the feudal relations of power. Whereas in premodern times, the rule was to «regard political rights and duties as private property» (*politische Rechte und Pflichten als Privateigentum anzusehen*), contract theorists in Hegel's view «simply reverse this relationship» (*kehren nach Hegel dieses Verhältnis einfach um*) and claim, that the power of the state itself is a type of private property (*behaupten nun, die Staatsmacht sei selbst vom Typ des Privateigentums*)¹¹.

The problem with this confusion for Hegel is that it introduces arbitrariness of *consent* into political relations. As Alan Patten observes, a consensual union of individual wills for Hegel is based on «the decision to join and remain in any particular state» and would as a result amount to «a matter for individual choice and discretion [...] where nobody has any duties *vis-à-vis* a state until and unless he has given his consent»¹². Freedom reduced to consent of the subjective will would be plagued by arbitrariness, by passions and desires, which as Patten continues, are «no more a case of freedom than is submitting to an authority: both are cases of allowing something external to determine for one what one could think through for oneself»¹³.

This is the point where for Hegel a clear demarcation must be made between two things: civil society and the political state. Civil society is the contractually based aggregate of individual wills where «waves of all passions surge forth» and which Hegel for this reason denotes as an «*external state [...] of the understanding*»¹⁴. The political state, on the other hand, represents the rational unity of the people that presupposes, but cannot be constructed on the basis of individual, arbitrary wills. If the two are confused, then the political state would amount to «an arrangement dictated by necessity [*Not*]»¹⁵, in other words, by caprice and arbitrariness.

¹¹ Schnädelbach, *Hegel und die Vertragstheorie*, p. 117.

¹² A. Patten, *Hegel's Idea of Freedom*, Oxford, OUP, 2002, p. 112.

¹³ Ivi, p. 114.

¹⁴ W 7, p. 340, § 183; *Elements of the Philosophy of Right*, p. 221.

¹⁵ Ivi, p. 424, § 270; trans. p. 298.

In the following I will show that there are two different approaches in Hegel's attack on the contract theory based on this idea of caprice and arbitrariness. Specifically, I will focus on his criticism of Thomas Hobbes' *Leviathan* and his interpretation of the Jacobin phase of the French Revolution in the context of his critique of the contract theory. The two are obviously very different phenomena, one is a work of political philosophy, the other a historical event. However, the comparison between the two will reveal that there are in fact two sides to Hegel's attack on the contract theory, both of which find their correspondence in his *Philosophy of History* and specifically in his reading of ancient Roman history.

2. Hegel's Critique of Hobbes

As shown above, despite his critique of Hobbes, Hegel does compliment the author for being the first one to have founded political authority on «human characteristics and inclinations»¹⁶, as opposed to transcended instances of religion or mythology. However, Hegel also claims that the *Leviathan* results in «complete despotism [*vollkommene Despotismus*]»¹⁷, a strange remark considering that this despotism arises from principles which lie within us. The remark becomes more clear, however, when one takes into account that it is one thing to recognize that the state must include the free activity of the subjective will and another to base political authority on the characteristics and inclinations of this will. Hobbes was «quite correct» to identify the state of nature as «a war of all against all», where these natural inclinations give way to «mutual fear» and the reign of «self-interest»¹⁸. Hobbes was also correct that the «general organization of the state ought to be established on the

¹⁶ W 20, p. 229; *Lectures on the History of Philosophy, The Lectures of 1825-1826, Vol. III*, trans. by R.F. Brown and J.M. Stewart, ed. by R.F. Brown, Berkeley, University of California Press, p. 182.

¹⁷ W 20, p. 228; *Lectures on the History of Philosophy, Vol. III*, p. 182.

¹⁸ Ivi, pp. 227, 228; *ibidem*.

foundation of human nature»¹⁹. However, the other side of the argument is that if the state were to be founded on such principles alone, it would then validate these mutual fears and self-interests. By validating them, the state would amount to an instance of coercion, which is precisely what happens in Hobbes. This is why the Hobbesian monarch in the transition to the social state preserves the natural fear of death as means of binding the members «by fear of punishment to the performance of their covenants»²⁰. By distinguishing civil society and the state, Hegel is able to avoid this reduction of political authority to a coercive apparatus. The validation of arbitrary and natural inclinations is permissible for him only in the 'external state', namely within civil society. This is why in Hegel's eyes, what *Leviathan* presents is not a rational state, but civil society. He makes direct allusion to Hobbes' 'war of all against all' when writing of civil society as the space where «conflict in which the private interest of each individual comes up against that of everyone else»²¹. Civil society is the space where everyone is «his own end» and regards others as their «means»²².

The parallelism which Hegel establishes between civil society and Hobbes' *Leviathan* can be extended with yet another social form from his *Philosophy of History*. Riley had observed that Hegel makes implicit connections between the Roman Empire, on the one hand, and the *Leviathan*, on the other²³. Similar observation is made by Leo Strauss, who references Hegel's view on the Empire as a system of relationships between «mutually repellent persons»²⁴. But as Strauss continues, «there is no bond between these property owners as property owners, each having the right to use and misuse his property»²⁵. The only bond which can hold these mutually repellent

¹⁹ Ivi, pp. 229; *ibidem*.

²⁰ T. Hobbes, *Leviathan*, ed. by J.C.A. Gaskin, Oxford, OUP, 1998, p. 111.

²¹ W 7, p. 458, § 289; *Elements of the Philosophy of Right*, p. 329.

²² Ivi, pp. 339-340, § 182; trans. p. 220.

²³ Cf. Riley, *Hegel on Consent and Social-Contract Theory*, p. 146.

²⁴ L. Strauss, *On Hegel*, ed. by P. Franco, Chicago, University of Chicago Press, 2019, p. 263.

²⁵ *Ibidem*.

persons together is «despotic power»²⁶. The Roman imperial world represents for Hegel the historical stage where individuals convert into legal persons, this is «the world of legal relations»²⁷. It is then no coincidence that the Hobbesian monarch, whose main role is to secure and guarantee the protection of property, would for Hegel come to represent a modern mirror image of this world.

There is one more element from Hegel's early work, which adds to this parallelism. In *The Positivity of Christian Religion*, Hegel writes on the transition between the Roman Republic and the Empire. During the Republic, Hegel writes, «republican's whole soul was in the republic; the republic survived him, and there hovered before his mind the thought of its immortality»²⁸. However, with the advent of the Empire «political freedom vanished» and «the citizen's right gave him only a right to the security of that property which now filled his entire world»²⁹. Hegel then continues how «death, the phenomenon which demolished the whole structure of his purposes and the activity of his entire life, must have become something terrifying, since nothing survived him»³⁰. Another, more specific observation is made in the text on the *Natural Law*, where Hegel writes on the disappearance of the republican «public courage», which was «nourished by the love of independence, the sense of national honor, the presence of danger, and the habit of command»³¹. The advent of the Empire brought

²⁶ *Ibidem*.

²⁷ W 12, p. 380; *The Philosophy of History*, trans. by J. Sibree, Kitchener, Batoche Books, p. 332. On Hegel's interpretation of the Roman Empire in terms of modern liberalism, see: F.R. Cristi, *Hegel and Roman liberalism*, «History of Political Thought», V (2), 1984, pp. 281-294, p. 281.

²⁸ W 1, p. 206; *Early Theological Writings*, trans. by T.M. Knox, Philadelphia, University of Pennsylvania Press, 1996, p. 157.

²⁹ *Ibidem*.

³⁰ *Ibidem*.

³¹ W 2, p. 492; *Natural Law: The Scientific Ways of Treating Natural Law, Its Place in Moral Philosophy, and Its Relation to the Positive Sciences of Law*, trans. by T.M. Knox, Philadelphia, University of Pennsylvania Press, 1975, p. 102.

about a change in the psychology of the citizen, where public courage of the republican, gave way to the solitary fear of death of the property owner³². Instead of readiness for sacrifice, property and self-preservation became the main concern of the individual – the very two elements that characterize the Hobbesian subject.

Hegel's references to courage as an alternative to the Hobbesian contract are also evident in his earliest conception of the idea of 'struggle for recognition'. As Ludwig Siep notes, authors like Leo Strauss mistakenly equated Hobbes' 'war of all against all' with Hegel's early conception of 'struggle for recognition' from the *System of Ethical Life*³³. Strauss, according to Siep, equated the two through the concept of «honor»³⁴. There are good textual reasons for making this equation, since Hobbes explicitly refers to «glory» as one of the three «principal causes of quarrel» between humans in the state of nature (the other two being competition and diffidence)³⁵. To present any «sign of undervalue» to a person is to harm their consciousness of superiority (glory) and dishonor them, thereby provoking a struggle between the two parties³⁶.

But as Siep shows, the ultimate aim of honor for Hobbes remains self-preservation³⁷, which is why the realization of the political union manifests in an «artful apparatus constructed for the self-preservation of the individual»³⁸. In distinction to this, the

³² I would thus argue against Terry Pinkard's claim that for Hegel the transition to the Empire did not involve «any great change in Roman political psychology». T. Pinkard, *Does History Make Sense? Hegel on the Historical Shapes of Justice*, London, Harvard University Press, 2017, p. 83.

³³ L. Siep, *The Struggle for Recognition: Hegel's Dispute with Hobbes in the Jena Writings*, in *Hegel's Dialectic of Desire and Recognition: Texts and Commentary*, ed. by J. O'Neill, New York, State University of New York Press, 1996, pp. 273-288, p. 273.

³⁴ Ivi, p. 274.

³⁵ Hobbes, *Leviathan*, p. 83.

³⁶ Ivi, pp. 83-84, see also p. 66.

³⁷ Siep, *The Struggle for Recognition: Hegel's Dispute with Hobbes in the Jena Writings*, p. 276.

³⁸ Ivi, p. 284.

«struggle for honor» in Hegel's early work, argues Siep, functions for those who are «not yet endowed with courage»³⁹ to transcend their own particularity. The resulting union in Hegel transcends the individual struggle for honor, it does not feature as a «universal protection of life», but represents an instance that raises the individual to the level of «freedom *from* his own life»⁴⁰.

This is clearly reflected in Hegel's mature work in the *Philosophy of Right*, where he rejects the conception of the state as means to «protect and secure the life, property, and arbitrary will of everyone»⁴¹. The juxtaposition between the idea of 'public courage', on the one hand, and the fear of death, on the other, is evident here as well. Instead of founding the state on the right to self-preservation and property, he bases sovereignty in the disposition of valour, which Hegel defines as the «highest abstraction of freedom from all particular ends, possessions, pleasure, and life»⁴². The significance of courage lies in «the true, absolute, and ultimate end, the sovereignty of the state. The actuality of this ultimate end, as the product of valour, is mediated by the surrender of personal actuality»⁴³. Whereas in Hobbes, the political unity arises through a contract predicated on the preservation of the natural fear of death, in Hegel the political union

³⁹ Ivi, p. 276.

⁴⁰ Ivi, p. 277. Siep's criticism of Strauss has its limits, since the fact that self-preservation remains the aim of honor in Hobbes does not invalidate the latter's equation of Hobbes's idea of natural war with Hegel's early conception of the struggle for recognition. Strauss himself confines his observations to the point that Hegel recognized that «Hobbes's philosophy was the first to deal with the most elementary form of self-consciousness», i.e. the form of consciousness that arises out of the struggle for life and death. L. Strauss, *The Political Philosophy of Hobbes: Its Basis and Its Genesis*, trans. by E. M. Sinclair, Chicago, The University of Chicago Press, pp. 57-58. I am indebted to the anonymous reviewer for pointing out to me that the relationship between honor, glory and recognition in Hobbes is more complex than it would appear from Siep's criticism.

⁴¹ W 7, p. 424, § 270; *Elements of the Philosophy of Right*, p. 298.

⁴² Ivi, p. 495, § 327; trans. p. 364.

⁴³ Ivi, p. 496; § 328; *ibidem*.

arises through courage as a form of wartime unity which overcomes the fear of death. Echoing his observations on Roman 'public courage', Hegel writes that in the modern state not «personal courage but integration with the universal is the important factor»⁴⁴.

Instead of mutual fear, the state for Hegel must be based on mutual trust⁴⁵. Contract, as Hobbes argues, is certainly a form of trust⁴⁶, but it cannot be equated with the trust which Hegel attributes as an essential element of 'political disposition'. Whereas the former type of trust rests on self-interest and the fear of punishment, political disposition signifies «*trust*» whereby the state «immediately ceases to be an other for me, and in my consciousness of this, I am free»⁴⁷.

Certainly, Hegel still regards civil society as the original blueprint for the modern state. The atomization which is generated within and the universal interdependence based on needs and work does lead to «self-determination»⁴⁸ of individuals and the formation of their discipline, which cultivates the merely natural being as a member of the state. But ultimately, the human being within civil society remains a natural being and as *bourgeois* the state

⁴⁴ Ivi, p. 495, § 327 Z; *Elements of the Philosophy of Right*, p. 364. Hegel uses similar words to describe Roman republican courage, what he calls «Roman *virtus*», which is not the «merely personal, but that which is essentially connected with a union of associates; which union is regarded as the supreme interest». W 12, p. 346; *The Philosophy of History*, p. 302.

This is an idea, which as Laurence Dickey points out, Hegel entertained in his earlier works as well. The «*Tapferkeit*-bourgeois juxtaposition», from Hegel's text on the *Natural Law* already takes courage as a «key to conversion» of the natural *bourgeois* into the political citizen and as a way to go «beyond the realm of nature». Cf. L. Dickey, *Hegel: Religion Economics Politics: Religion, Economics, and the Politics of Spirit, 1770-1807*, Cambridge, CUP, 1987, p. 226.

⁴⁵ W 7, p. 413, § 268; *Elements of the Philosophy of Right*, p. 288.

⁴⁶ Hobbes, *Leviathan*, p. 86.

⁴⁷ W 7, p. 413, § 268; *Elements of the Philosophy of Right*, p. 288.

⁴⁸ Ivi, p. 359, § 207; trans. p. 238.

will always appear as a form of 'external necessity' to them⁴⁹. This is why Hegel still preserves the coercive measures that would guarantee and secure the validity of contracts. Only he does not assign these functions to the state, but places them within the sphere of civil society itself in the form of the law courts and the police⁵⁰. In this way, the political union is not reduced to these coercive measures, nor is it plagued by contingency and arbitrariness which these measures presuppose.

Hegel's criticism of Hobbes, therefore, rests on his sharp distinction between civil society and the state. Whereas the former is based on a contract, it can subsist as a realm of individual freedom only as part of the organic state. Without this higher instance of unity, one which is generated through courage as opposed to drive for self-preservation and the fear of death, civil society amounts to no more than an aggregate of mutual bondage between agents reduced to means of work and needs.

3. Hegel's Critique of Jacobinism

Hegel's critique of the Hobbesian contract rests on his view that the resulting political state serves not as a realization of freedom,

⁴⁹ One can also point to Robert B. Pippin's observation on the passage of struggle for life and death from the *Phenomenology*, which he compares to the pre-contractual natural state of Rousseau, Locke and Hobbes. The relationship of lordship and bondage resulting from the struggle must presuppose an agreement, in other words, a contract between the two parties, where one has *consented* to become a slave. Cf. R. Pippin, *Hegel on Self-Consciousness, Desire and Death in The Phenomenology of Spirit*, Princeton and Oxford, Princeton University Press, 2011, p. 61. This is in line with Quentin Skinner's observation that in Hobbes *consent* and *conquest* are in fact equivalent. Conquest, according to Skinner's reading of Hobbes, has same legitimacy as consent in terms of being a sources of political authority. However, the other side of this equivalence is that bondage is contingent, because «subjects are released from their oaths of allegiance as soon as their lawful rulers are conquered», which is precisely the problem with *consent* that Hegel criticizes. Cf. Q. Skinner, *Visions of Politics: Volume 3, Hobbes and Civil Science*, Cambridge, CUP, 2004, p. 305; Patten, *Hegel's Idea of Freedom*, pp. 110-111.

⁵⁰ W 7, p. 346, § 188; *Elements of the Philosophy of Right*, p. 226.

but as a form of external necessity in service of preserving the right to self-preservation and property.

However, there is another aspect to Hegel's critique of the contract theory. This aspect emerges in his observations on the French Revolution and more specifically, on its Jacobin phase. The first thing to point out is that although Hegel would come to regard both Hobbesianism and Jacobinism as results of contractarianism, he distinguishes these two events clearly. Already in the *Phenomenology*, the two phenomena occupy distinct phases in the development of spirit. Whereas Hegel deals with Jacobinism in the famous section *Absolute freedom and terror*, his interpretation of Hobbes, as Riley points out, is found in the section *The law of the heart and the frenzy of self-conceit*⁵¹. Hegel there regards the Hobbesian order as a «universal resistance and struggle of all against one another, in which each claims validity for his own individuality»⁵². The political order emerging out of the struggle represents a continuation of the state of nature, it is an order of «universal state of war, in which each wrests what he can for himself, executes justice on the individuality of others and establishes his own, which is equally nullified through the action of the others»⁵³. There is no true continuity and unity among the members, because the order established through the contract maintains everyone in their «absolute punctual atomicity»⁵⁴. This is why the Hobbesian «universal will»⁵⁵ can feature only as an instance that enforces peace. However, the important point to note here is that the Hobbesian regime for Hegel *does* result in a semblance of «public order»⁵⁶, despite the fact that it's maintained by force that quells the state of war among atomized individuals.

This stands in sharp distinction to the observations made in the chapter *Absolute freedom and terror*, where Hegel writes of a «fury of destruction», that «can produce neither a positive work nor a

⁵¹ Riley, *Hegel on Consent and Social-Contract Theory*, p. 146.

⁵² *Ibidem*. Cf. W 3, p. 282; *Phenomenology of Spirit*, trans. by A.V. Miller, Oxford, OUP, 1977, p. 227.

⁵³ W 3, p. 282; p. 227.

⁵⁴ *Ibidem*

⁵⁵ W 20, p. 228; *Lectures on the History of Philosophy*, vol. III, p. 182.

⁵⁶ W 3, p. 282; *Phenomenology of Spirit*, p. 227.

deed»⁵⁷. As Joachim Ritter has pointed out, both in his earlier work in the *Phenomenology* up until his later *Philosophy of History*, Hegel's consistent point of criticism of Jacobinism was that no stable order could arise out of it. The «constitutions get altered again and again and supersede one another»⁵⁸. Instead of the stable despotic unity of the *Leviathan*, Jacobinism represents a state of war that cannot be maintained by any coercive power. The same observation is found in the *Philosophy of Right* where Hegel writes that the people «destroyed once more the institutions they had themselves created, because all institutions are incompatible with the abstract self-consciousness of equality»⁵⁹.

The last part of this sentence which refers to 'abstract self-consciousness of equality' reveals the nature of the difference. The theoretical reference which accompanies this sentence is not Hobbes, but Rousseau. It was Rousseau, who according to Hegel «put forward the *will* as the principle of the state»⁶⁰. In many respects this mirrors his observation on Hobbes, who as shown above, based political authority on principles deduced from our nature. Both authors for Hegel, following Ritter, theoretically marked an «emancipation from the existing historical institutions and legal forms, and of destroying these in the positing of the new»⁶¹. But Hegel then immediately applies the same criticism to Rousseau with which he attacked Hobbes, for the former «considered the will only in the determinate form of the *individual* [einzeln] will»⁶². In other words, both authors posited an abstract idea of the will, which as Ritter points out, on the one hand, marks a break with premodern religious or mythological foundations of the state, while on the other, remains too abstract in so far as it features only as atomized caprice⁶³.

⁵⁷ Ivi, pp. 435-436; trans. p. 359.

⁵⁸ J. Ritter, *Hegel and the French Revolution: Essays on the Philosophy of Right*, trans. by R.D. Winfield, Cambridge, MIT Press, 1982, p. 45.

⁵⁹ W 7, p. 52, § 5; *Elements of the Philosophy of Right*, p. 39.

⁶⁰ Ivi, p. 400, § 258; trans. p. 277.

⁶¹ Ritter, *Hegel and the French Revolution*, p. 69.

⁶² W 7, p. 400, § 258; *Elements of the Philosophy of Right*, p. 277.

⁶³ Hegel's attack on Rousseau for understanding the will as mere subjective will, whose political manifestation is a mere aggregate of individuals, is a well known and

On the basis of this multitude of atomized individuals, the idea of equality itself remains abstract in both Hobbes and Rousseau.

However, there is also an important difference between the ideas of equality which Hegel ascribes to these two authors. In Hobbes, equality is «based upon universal weakness»⁶⁴ and not on the principle of absolute freedom as was the case in Jacobinism, and in Hegel's reading of Rousseau⁶⁵. Natural equality, which Hobbes posits, calls for a positive order established through a contract, whereby individuals are forced to, as Riley writes, come to «an agreement to limit the most destructive forms of violence»⁶⁶. *Leviathan* is an enforced peace, presided over by the transcended authority of the monarch who guarantees the right to self-preservation and property, but also retains the powers of life and death as means of enforcing these rights.

The contractarianism of the French Revolution, instead of enforcing peace, unleashed war – precisely the violence which Hegel regards as the condition of the natural state.

When these abstractions were invested with power, they afforded the tremendous spectacle, for the first time we know of in human history, of the overthrow of all existing and given conditions within an actual major state and the revision of its constitution from first principles and purely in terms of *thought* [...].⁶⁷

controversial point of his criticism. Hegel has often been accused of gross misreading of Rousseau's notion of the *general will*, whether intentionally or unintentionally. This specific point in the relationship between the two authors, however, is not of interest for my particular argument here. On this issue, see: A. Nuzzo, *Arbitrariness and Freedom: Hegel on Rousseau and Revolution*, in *Rousseau and Revolution*, ed. by R. Lauristen and M. Thorup, London, Continuum, 2011, pp. 64–82, p. 64.

⁶⁴ W 20, p. 227; *Lectures on the History of Philosophy*, III, p. 181.

⁶⁵ Cf. A. Nuzzo, *Arbitrariness and Freedom: Hegel on Rousseau and Revolution*, p. 64.

⁶⁶ Riley, *Hegel on Consent and Social-Contract Theory*, p. 147.

⁶⁷ W 7, pp. 400–401, § 258; *Elements of the Philosophy of Right*, p. 277.

But because these «were only abstractions divorced from the Idea, they turned the attempt into the most terrible and drastic event»⁶⁸. Instead of natural equality, Rousseau and the Jacobins extolled a political form of equality, one based on the principle of the general will. The contract was to be the foundation not of a monarchic system of securities and guarantees, but of a republican free state. This is why Hegel, as Ritter and Domenico Losurdo have argued, shows more affinity with the Revolution than with the *Leviathan*.

Ritter observes that «in the same section of the *Phenomenology* that places the Revolution» under the title of Terror, Hegel «at the same time maintains its necessity and the historical justice that makes it irresistible»⁶⁹. Losurdo observes that in his later works as well, Hegel «justifies the French Revolution as having been caused also by the ‘greed’ and the ‘wealth’ of the dominant class, and by its insistence on continuing to plunder government funds and the people’s hard work»⁷⁰. This sentiment is mirrored in Hegel’s analysis of the Roman Republic, where as Losurdo argues, Hegel «justifies and celebrates plebeian insurrections»⁷¹ against the dominant, patrician class. On the basis of Hegel’s critical awareness of the republican Conflict of the Orders, Losurdo contrasts his approach to the Roman Republic with that of Rousseau, who tended to celebrate its status of a free state to a much higher degree⁷².

However, despite Hegel’s critical approach to ancient republicanism, he was, as already shown, very much influenced by it throughout his works. His awareness of the ancient class struggle is still coupled with his celebration of republican ‘public courage’ which held these divided orders together. ‘Public courage’ as a form of unity and ‘integration with the universal’, as shown previously, represents the principle which Hegel takes as the foundation of the

⁶⁸ *Ibidem*.

⁶⁹ Ritter, *Hegel and the French Revolution*, p. 46.

⁷⁰ D. Losurdo, *Hegel and the Freedom of the Moderns*, trans. by M. and J. Morris, Durham and London, Duke University Press, 2004, p. 106.

⁷¹ Ivi, p. 98.

⁷² Ivi, p. 112.

sovereignty of the modern state in the *Philosophy of Right*. The integrative character that courage had for ancient, republican unity, is essential for the unity of Hegel's modern state as well. This becomes more evident when it is taken into account that, as Renato Cristi had observed, Hegel inherited the Roman republican principle of *status mixtus*, the idea of the mixed constitution within his monarchy⁷³. On the basis of this integration of the republican constitution, the principle of wartime courage serves as means of holding the divided orders — or in Hegel's case — the estates, together and as a way of taming internal conflicts and regenerating equality among the citizens⁷⁴. This is why «true valour» as Hegel terms it, signifies common and mutual trust, where one «counts as one among many»⁷⁵. Of course, this virtue is not the old warlike *thymos*, but represents, as Rupert Gordon points out, a «distinctly modern virtue», because it remains in service of a modern and a rationally constituted monarchy⁷⁶. However, this virtue is still Roman in its origin. Indeed, as Steven B. Smith shows, precisely this appropriation of ancient republicanism was one of the ways that allowed Hegel to distinguish the political state from civil society⁷⁷.

⁷³ Cf. R. Cristi, *Hegel on Freedom and Authority*, Cardiff, University of Wales Press, 2005, p. 115. I have already presented Hegel's appropriation of Roman conception of courage in the context of his adoption of the republican mixed constitution in my article *Roman Courage and Constitution in Hegel's Philosophy of Right* (see: G. Hristov, *Roman Courage and Constitution in Hegel's Philosophy of Right*, «Hegel Bulletin», XLIII (2), 2022, pp. 242-266). Here, I expand on some of the arguments presented there in order to show that there are in fact two sides to Hegel's critique of the contract theory.

⁷⁴ One of Hegel's famous justifications for wars is that «successful wars have averted internal unrest and consolidated the internal power of the state». W 7, p. 494, § 324; *Elements of the Philosophy of Right*, p. 362.

⁷⁵ W 7, p. 495, § 327; trans. p. 364.

⁷⁶ R.H. Gordon, «Modernity, Freedom, and the State: Hegel's Concept of Patriotism», «The Review of Politics», LXII (2), 2000, pp. 295-325, p. 297.

⁷⁷ Cf. S.B. Smith, *Hegel's Views on War, the State, and International Relations*, «The American Political Science Review», LXXVII (3), 1983, pp. 624-632, pp. 626-627.

So if we remain in the Roman world, Hegel's historical reference for civil society would be the Roman Empire, with its modern counterpart being the *Leviathan*. On the other hand, the historical image for the political state would be the Roman Republic, while its modern expression Rousseau's *The Social Contract*.

Hegel would thus have no issues with the republican background of Rousseau's or Jacobin contractarianism. The problem for him is that this republican equality was to result from a contract⁷⁸. Robespierre and the Jacobins, as Losurdo observes, extolled «a republican France modelled after the republics of Sparta and Rome» and even compared «the overthrow of the monarchy in France and Rome»⁷⁹. The problem with this was that this historical reference was coupled with the principle of absolute freedom and equality, and the idea that republican virtue could result from a contract between autonomous individuals. The aspiration to mimic ancient republican courage through the procedure of the contract, gave way not to mutual trust, but precisely the opposite, to mistrust and suspicion. Instead of courage, what manifested was fanaticism and hypocrisy⁸⁰.

The reason for this, as Hegel argues, was that «disposition and Religion were not taken into account»⁸¹. The ancient republics rested on education and as in Plato, on the organization of families, which acted as the basis of this disposition⁸². However, as Hegel argues «the modern theory is diametrically opposed to this, referring everything to the individual will»⁸³. The consequence of this is that

⁷⁸ As Arthur Ripstein argues, Hegel's main argument against Rousseau is that the latter's «very fear of the contingency of consent collapses his account of community into arbitrariness». A. Ripstein, *Universal and General Wills: Hegel and Rousseau*, «Political Theory», XXII (3), 1994, pp. 444-467, p. 445.

⁷⁹ Losurdo, *Hegel and the Freedom of the Moderns*, p. 112.

⁸⁰ W 7, pp. 51-52, § 5; pp. 400-401, § 258; *Elements of the Philosophy of Right*, p. 39, 277. See also: *ivi*, p. 284, § 140; trans. p. 183.

⁸¹ W 12, p. 532; *The Philosophy of History*, p. 469.

⁸² *Ivi*, p. 531; trans. p. 469.

⁸³ *Ibidem*.

«we have no guarantee that the will in question has that right disposition which is essential to the stability of the State»⁸⁴. This does not concern Hobbes, because his contract offers securities and guarantees in return for obedience predicated on the power of punishment. His famous comment on the ‘silence of the laws’ is a case in point, for «where the sovereign has prescribed no rule, there the subject hath the liberty to do, or forbear, according to his own discretion»⁸⁵. However, Robespierre aimed legislation not only on the outward collection of atomized individuals, but at their disposition as well. The revolutionary contract aspired toward republican equality and an ancient disposition of trust, which overwhelmed the modern subject with suspicion and mistrust.⁸⁶ In both the Hobbesian and the Jacobin contract at issue is the lack of trust among the members. This is why a contract is required in the first place. But this mistrust in *Leviathan* is held in check by the monarch. Since the Jacobins rejected monarchic authority and aspired toward unity based on abstract idea of political equality, the contract was to rest on the disposition of each of its members. But the attempt to legislate the disposition of the *bourgeois*, which already is one of ‘mutual fear’ and against which the contract is supposed to guard against in the first place, backfired and only intensified these fears.

The individual, subjective will did not give way to an order of peace enforced by a transcended instance of authority, but laid claim to this authority itself. Just like in Hobbes’ case, civil society and political authority were mistakenly taken as one and the same thing. Only now, not outward obedience to the monarch, but inner virtue was expected. Yet the «virtue» which manifested in the

⁸⁴ Ivi, p. 533; p. 470.

⁸⁵ Hobbes, *Leviathan*, p. 146.

⁸⁶ Angelica Nuzzo argues that Hegel’s interpretation of Rousseau and the French revolution was one of the reasons for his sharp distinction between civil society and the state. Indeed, the arbitrariness of the state in Rousseau was based on the fact that the political union rested on the contract. It was by displacing this arbitrariness (and consequently, the foundational role of the contract) to civil society, that Hegel achieved to arrive at his own conception of the general will. Cf. Nuzzo, *Arbitrariness and Freedom: Hegel on Rousseau and Revolution*, p. 64.

revolution was merely «subjective»⁸⁷. All decisions were made «on the basis of subjective representations [...] *of opinion and the caprice of the arbitrary will*»⁸⁸. Instead of courage, the «terror of death»⁸⁹ consumed these individuals, and by experiencing «the fear of death, of their absolute master»⁹⁰ they did not succeed in establishing unity, but were in contrast, reduced to the very Hobbesian solitary individual in a state of nature, where arbitrary, individual wills fanatically lay claim to political authority.⁹¹

4. *Contract and Trust*

As shown, both the Hobbesian and the Jacobin (and by extension Rousseau's) contract cannot serve as foundations of political unity for Hegel. They certainly figure as forms of association which is proper to civil society, but the point that Hegel wants to make is that these two forms should not be confused. What from Hegel's perspective both the Hobbesian and the Jacobin constructions lack are the objective ties of trust *that would not be reducible to a contract*. This is why instead of presupposing a collection of atomized individuals, Hegel's exposition of the state begins with families, where first instances of organic «love, trust, and the sharing of the whole

⁸⁷ W 12, p. 533; *The Philosophy of History*, p. 470.

⁸⁸ W 7, p. 419, § 270; *Elements of the Philosophy of Right*, p. 293.

⁸⁹ W 3, p. 361; *Phenomenology of Spirit*, p. 437.

⁹⁰ *Ibidem*; trans. p. 438.

⁹¹ This difference, however, is not that clear. As Riley points out, Hegel describes the Hobbesian monarchic authority in terms of a «universal will», which stands in distinction to the arbitrary will that reigned during the Jacobin terror. However, Riley also observes that Hegel at the same time and «somehow equated this monarchical will with 'arbitrary' will», which would then bring the Hobbesian monarch closer to Robespierre. Riley, *Hegel on Consent and Social-Contract Theory*, p. 147.

Despite this confusion, the fact that the Hobbesian monarch functions as a system of securities and guarantees and as a measure of enforcing peace does mark a clear distinction to the contractualism of the Jacobins, which was not concerned with maintaining external protections, but with legislating internal disposition.

of individual existence»⁹² arise. Children's «early emotional life may be lived in this [context], as the basis of ethical life, in love, trust, and obedience»⁹³. Before a contract between autonomous individuals takes place come education and «*upbringing*»⁹⁴ which create ties of trust that are not based on an external agreement. It is this love and trust that then develop into and feature as elements of political disposition. And «this disposition is in general one of *trust* [Zutrauen]...»⁹⁵. Only on the basis of this long line of upbringing and education can courage itself represent a manifestation of the social order's capacity for self-preservation and regeneration. Whereas political disposition signifies peacetime patriotism or «the consciousness that my substantial and particular interest is preserved and contained in the interest and end of an other (in this case, the state)»⁹⁶, courage is the wartime manifestation of this trust. Instead of preservation and containment of the particular interest in the state, what is now expected is sacrifice, whereby citizen's «life and property, as well as their opinions and all that naturally falls within the province of life»⁹⁷ is placed in the service of the political whole. And as Hegel continues

It is a grave miscalculation if the state, when it requires this sacrifice, is simply equated with civil society, and if its ultimate end is seen merely as the *security of the life and property* of individuals [*Individuen*]. For this security cannot be achieved by the sacrifice of what is supposed to be *secured* – on the contrary⁹⁸.

‘Public courage’ serves as a process of integration into the universal, in other words, as means of strengthening the bonds of

⁹² W 7, p. 313, § 163; *Elements of the Philosophy of Right*, p. 202.

⁹³ Ivi, p. 327, § 175; trans. p. 212.

⁹⁴ *Ibidem*.

⁹⁵ Ivi, p. 413, § 268; *Elements of the Philosophy of Right*, p. 288.

⁹⁶ *Ibidem*.

⁹⁷ Ivi, p. 491, § 324; trans. p. 360.

⁹⁸ *Ibidem*; p. 361.

trust in the face of the common enemy. On the other end, if this sacrifice is made not in the name of an existing objective order, but as in the case of the Jacobins, in an attempt to contractually establish a new one, courage then amounts to mere fanaticism of the subjective will. As Hegel famously wrote, violence in this case is meaningless and sacrifice has «no more significance than cutting off a head of cabbage or swallowing a mouthful of water»⁹⁹.

Consequently, although civil society, as the proper sphere of subjectivity and opinion, does break the continuity between the family and the state, opening the space for «self-sufficiency and freedom of personality»¹⁰⁰, its principle cannot form the basis of the state. The two presuppose different types of relationships of the individual to the whole, which have their historical references in the distinction between the Roman Republic and the Empire. The imperial subject is a legal person, whose main concern is the security of their property, not unlike the *bourgeois*. The republican's main concern is the republic, to which they are prepared to sacrifice 'all that falls within the province of life', like Hegel's modern citizen. The specific feature of Hegel's modern state is that the two figures are in fact one and the same individual.

5. Conclusion

Hegel's critique of both Hobbesian contractarianism and Jacobinism highlights a divergence in his general attack on modern contract theory. In Hegel's view, Hobbes advocates for a contractual union under a transcendent political authority that can alleviate fear and secure property. On the other hand, Jacobinism asserts the subjective will's claim to political authority, but the price for this is an exacerbation of mistrust among individuals. In order to overcome what he regards as the weakpoints of both positions, Hegel turns to Roman antiquity, and in particular, the virtue of courage, which according to him offers an alternative foundation

⁹⁹ W 3, p. 436; *Phenomenology of Spirit*, p. 360.

¹⁰⁰ W 7, p. 327, § 175; *Elements of the Philosophy of Right*, p. 212.

for state sovereignty. This underscores Hegel's search for a political framework that harmonizes individual autonomy with societal cohesion, but that also overcomes the limitations of both Hobbesian contractarianism and Rousseau's republicanism. The importance of the concept of courage for Hegel resides in the fact that, in his view, contract cannot form the basis of trust, or indeed if it can, then only trust which is predicated on coercion. This is why, to repeat the quote from above, the «contractual relationship» is a «determination which, as we noticed some time ago, is of primary importance in civil society (or merely seeks to assert itself as such), but is not the [basic] principle of the family, let alone of the state»¹⁰¹.

If this were not the case, only two alternatives remain in Hegel's eyes: either a state based on a transcended and coercive authority that would enforce peace and hold together the atomized individuals in their mutual mistrust — such as in the *Leviathan*—, or a destructive war fuelled by mistrusts and suspicions that Hegel saw in Jacobinism.

¹⁰¹ W 7, p. 453, § 281; trans. p. 324.