Intellectual Property and Plagiarism in Hegel (Or: Hold on to Your Principle of Non-Contradiction – An Analytically-Trained Philosopher is About to Quote Hegel)

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The following is an experiment. It will test whether an Analytically-trained philosopher can use one of the most Continental thinkers in the service of a topic of his choosing. Hegel's *Philosophy of Right*[2] will be my text, and intellectual property rights my topic (hereafter IP). I approach the text assuming the non-metaphysical, categorial interpretational style of Klaus Hartmann and his students, which I offer in brief sketch below (Part I). After giving a close reading of the two different areas in which Hegel specifically explores IP and property rights (Parts II-III), I will extrapolate where this concept is situated as it travels through the later dialectical determinations of Right (Part IV).

I

The Hartmann approach holds that Hegel's coverage of topics should always be read as a categorial/conceptual account. In the *Logic*, Hegel maps basic categorial structures by which we think both Thought and Being, ultimately unified in the Notion (or Concept) and actualized as Idea; in the end Hegel derives both what concepts are and the dialectical framework by which he will reconstruct them, both in Nature and *Geist.*[3] He derives a conceptual framework following necessarily and dialectically from logical categories, from most abstract and indeterminate to most concrete and determinate. New categories arise from contradictions or paradoxes which prior categories, being less complete, could pose but not answer (and so new categories sublate prior ones, and prior ones cannot be actualized until situated and transformed by later ones). Then, Hegel often considers whether our representational thinking (*Vorstellung*) has created something which accords with this logical conceptual framework, making X a "true" X in the sense of conceptual consistency (cf. Bungay in Engelhardt & Pinkard). So, for example, Hegel does not concern himself with any actual states in *Philosophy of*

Right, nor does he judge states normatively, but rather maps what is conceptually necessary within any state, to make it a state in the contemporary sense (PR 274; cf. 273 Zusatz). Higher conformity between a given state and its concept means a more stable and less one-sided or incomplete conceptual structure, which nevertheless allows for a variety of different states to thrive. Indeed, a running theme throughout Hegel, but considerably powerful in *Philosophy of Right*, is the necessity of contingency, and the contingency within necessity's boundaries. Thus, when a concept such as *Right* reaches beyond the abstract to exist as *Law*, certain determinations (e.g., quantities in fines) have no rational basis apart from cultural-historical contexts involving a contingent, customary way of life (*Sittlichkeit*), but *that* these decisions are made is still necessary (PR 211 Remarks, 214; cf. PR 150).

This should suffice to outline how my own discussion will take shape.[4] That is, Hegel's treatment of IP rights and copyrights is not normative. He will not give us the machinery to say that a particular ruling, law, or custom concerning copyright infringement is good or bad, only whether it makes conceptual sense. We would expect to gain a vocabulary to either make sense of IP, or conclude that IP is conceptually problematic due to some chimerical creation of the *Vorstellung*. Hegel explicitly discusses IP rights only in the section on *Property*, which is still highly abstract and indeterminate (indeed the first sub-stage of the first stage of Objective Spirit). By the nature of his method, we know that abstract concepts are fully retained by later determinations and do not find full expression until such time. However, Hegel does not himself follow this specific topic into later determinations where it seems most likely to express itself in the ethical sphere.

II

Hegel discusses intellectual and artistic property in two contexts. The first occurs early, after defining the Thing (*Sache*) as the object of property. The *Sache*, which is "different from the free spirit" is thus, minimally, "something unfree, impersonal, and without rights," something to which a will can attach the predicate "mine" (PR 43ff.). In the Remarks section, Hegel addresses IP, including inventions and "intellectual accomplishments" in fields of science, art, and even religious sermons (PR 43 Remarks). These IP-related comments appear in Remarks precisely because they cannot yet be part of the central categorial reconstruction. That is, the main evidence cited that we deem IP as *Sache* is that we make it the "objects of contract," to be "bought and sold" (ibid.). *Contract*, however, as the relation between wills, constitutes the categorial level after all of *Property* is exhausted and deemed incomplete. Hegel is not yet justified in bringing contracts into his main reconstruction until he has noted the *taking-possession of* property, its *use*, and its *alienation*, as the three dialectical stages which bring us necessarily to the need to mediate such ownership between wills, lest ownership itself maintain irremediable difficulties (cf. PR 71). Hegel introduces IP prematurely to stress its unique situation. He has just introduced the *Sache* as an external thing to be possessed, while "they [IP] are of an inward and spiritual nature" (PR 43 Remarks). At present, I will consider only the "inward" aspect of Hegel's remark, and not what "spiritual" may additionally entail.[5] Hegel continues (note again the con-

ceptually anticipatory use of *legal*):

> Consequently, the understanding may find it difficult to define their [IP-things'] legal status, for it thinks only in terms of the alternative that something is *either* a thing *or* not a thing (just as it must be *either* infinite *or* finite). (PR 43 Remarks)

Hegel's supposed denial of the law of non-contradiction is precisely what fuels his dialectic and leads time and again to the conclusion that the *Vorstellung* finds unsurpassable contradiction where there is merely insufficient conceptual richness—a contradiction not equivalent to the law of excluded middle, but a false-contradiction based on a false-dilemma. In fact, much like the analytic philosopher, Hegel does not so much embrace contradiction as dispel it by updating our categories.[6] In this case, Hegel finds little difficulty in considering IP as internal insofar as IP originates in the self, but external (and thus susceptible to *Sache*-hood) insofar as it can be expressed, given "external existence," and ultimately "disposed of" by the spirit (ibid.). He would have us think that IP can map onto the moments of property easily, but can they?

III

To consider IP as a *Sache*, we must comprehend how it can be alienable in a coherent fashion, and so Hegel's second and final passage on IP picks up the tabled digression at alienation: "I can alienate individual products of my particular physical and *mental skills* and active capabilities of someone else and allow him to use them for a limited period" (PR 67, emphasis mine). Building on a distinction between "partial or temporary use" and "whole use," the latter of which signifies true, "free and complete" ownership (PR 62), Hegel limits the *degree* to which we can alienate such things. When the whole use of a thing is alienated (whether its direct utility or its quantified conversion into value; cf. PR 63), we cease to own it truly (i.e., in accordance with the concept of ownership). Applied to IP, these categorial limitations create the "distinctive quality of intellectual production," in that, once externalized, IP is then reproducible (PR 68). Typically "the sole purpose of such things and their value as acquisitions" moves into the copy (ibid). The skill of the creator soon becomes obsolete in light of the skill of the copyist, and the owner of a copy becomes the owner of the entire property, every time (PR 68 Remarks). D.B. Resnick illustrates:

> In a world without copyright laws, if an author produces a book manuscript, he can only own the actual pages…. When the author sells [the] manuscript to the publisher, he has transferred all of his rights to the publisher with respect to the book. Likewise, if the publisher sells a copy of the book, he has transferred all of his rights to the buyer. (320)

To save IP rights, then, Hegel must provide said categorial account (which is, after all, his general goal in any discourse). He distinguishes between owning the value of the IP, and possessing the "power" of reproduction, or retaining the "universal ways

and means" as one's "distinctive mode of expression," i.e., a copyright (PR 69). The new subcategory would patch the gap in accounting for IP as property. Hegel must ask, however, if this split between exercising the "power" and owning the physical copy violates the concept of free and full ownership set forth above. Hegel notes some aspects of this power:

> [It] depends solely on the arbitrary will of the intellectual originator whether he retains the power to reproduce the things in question, or alienates this power as something of value, or places no value on it for its own part and relinquishes it along with the original thing. (PR 69 Remarks)

Hence the copyright itself gains value and use of its own, its own distinct *Sache*-hood, and in fact becomes that aspect of IP "which makes it not merely a possession but a *resource*" (ibid.). Again Hegel propels us with his Remarks section into the ethical life. Resources are first described as possessions which have become "permanent and secure," a security deemed necessary for the communal good of the family (PR 170) and for the individual welfare of a person in civil society (199ff), which eventually necessitates *Police and Corporation* (230ff.) to help with stability. When a creator gives up a copy of the creation, it is not, in fact, the entire use of the innovation which is exhausted in the copy; if we compose IP as a combination of the use or value of the copy plus that of the copyright, the copy embodies only partial use, the additional component being the stable resource of generating new copies. Since "to retain one part of the use while alienating the other part is not to reserve a proprietorship without utility" (PR 69 Remarks), Hegel has now provided a conceptual basis for IP that does not violate his own standards of coherence for property ownership.

Hegel quickly introduces a new problem, though, that, if misinterpreted, may jeopardize the true placement of IP in the ethical life. He states that "the destiny of a product of the intellect is to be apprehended by other individuals and appropriated by their representational thinking" (ibid.). When the learners then rethink or apply what has been learned, that application itself becomes an "alienable thing," with "a distinctive form," and potentially a resource for them as well (ibid.). The ability to pass on intellectual gains makes sciences and education in general possible. For now, though, it produces a problem: how to determine the extent that the originator retains property rights and the learner is deemed a mere copyist, *versus* the extent to which the learner has appropriated, reconfigured, and rightfully claimed a new object. Hegel says this distinction "*cannot be precisely determined, nor therefore defined in terms of right and the law*" (ibid.). In contexts of writing and publication, the same applies with plagiarism (ibid.). Hegel is here tackling a problem that composition teachers may find familiar—students often have difficulties learning when one must cite sources, especially during the transition into secondary school and college.[7] Students typically do not understand that paraphrases have the same status as direct quotes for purposes of citation. They furthermore seldom distinguish between what a field deems common knowledge[8] (e.g., encyclopedic) and specialty knowledge, in part because, while learning both the subject and its common citation standards, common knowledge is currently being incorporated into (and so is not *yet* common to) the learner's mind. Ini-

tially, most of the student's production will not be original contribution but summary for the purposes of retention, and so an inordinately high degree of citation would be required.

Hegel seems here to surrender any hope of final determination between new and old intellectual contribution, either to answer students' questions or in broader legal terms. Hegel sees it as utterly impossible *not* to leave "an endless multiplicity of alterations which give the property of others the more or less superficial imprint of being one's own," whenever information is repeated. (PR 69 Remarks). Thus, there is never a *mere* copy of informational material, nor is there a way to separate the trivial additions of paraphrase from a transformation that *does* produce significant contributions and corresponding copyright (ibid). For copyright to become a universal resource without any components that can be safeguarded for and particularized to the individual, it would be an abstraction only, and thus conceptually invalid. Back at the discussion of plagiarism, Hegel concludes:

> Plagiarism ought therefore be a matter [Sache] of *honour*, and honour should deter people from committing it. —Thus laws against breach of copyright do attain their end of protecting the property rights of authors and publishers to the (albeit very limited) extent specified. (PR 69 Remarks)

Hegel speaks worriedly of the curious silence in his society on the topic of plagiarism. The silence can result for three reasons: a) honor has successfully suppressed plagiarism, insofar as its extension has been *contingently* defined, b) the "revulsion" against plagiarism is gone and hence not dishonorable, or c) our standards of originality have stooped so low that in fact any paraphrase constitutes new material (ibid.). With that pessimistic adieu, Hegel drops his overt discussion of IP and plagiarism entirely.

However, Hegel leaves us with questions about this mysterious *honor*. At what level is the contingent decision defining plagiarism necessitated, and on what basis are these limits secured? Hegel initially states that right *and* law have no business in determining it—note well the apparent effect of this disjunction: not just right-as-law, but right (perhaps in its abstract sense), *as well as* its last determination as law, is altogether powerless. Copyright "laws" work only by the honor system. It would seem, then, that honor is said in a *moral* sense (*Morality* being the second major category, between Abstract Right and Ethical Life). Ignoring the structure of Hegel's dialectic, this is the interpretation we would be tempted to keep based on the language used. However, the moral sphere (personal or group sensibilities of the good) cannot determine the later ethical sphere (in this case, what copyright means); it is the latter category which implements the former.[9] The conscience, if left to its own devices, will have an empty formalism, with no content and no means of comparing its subjective representation of duty with the actual concept of right (cf. PR 135-141). Thus, it is best to seek out some ethical meaning or determination of honor wherein the necessary (and necessarily contingent) lines defining plagiarism and copyright law can finally make sense.

IV

As it turns out, we do not need to look far to find a likely candidate in "the honour of one's estate:"

> The individual attains actuality only by entering into … determinate particularity; he must accordingly limit himself exclusively to one of the particular spheres of need. The ethical disposition within this system is therefore that of rectitude and the *honour of one's estate*…. (PR 207)

According to this section, a person cannot "gain recognition in his own eyes and in the eyes of others" until committing him/herself to an occupation and estate, thereby finding a place in civil society (ibid.). One's sense of identity and self-worth are necessarily bound up in such placement, and though the *Vorstellung* may see it as a limitation, the placement in fact brings the will into accordance with its true concept *qua* free (PR 207 Remarks, cf. Zusatz). Though Hegel does not draw the connection, the honor which condemns plagiarism in one's intellectual contributions shows close relation to the honor of fitting into society and doing one's job well. Even the initially moral tone of Section 69 gains its context as moral attitude, here situated in a highly visible manner:

> Morality has its proper place in this sphere, where reflection on one's own actions and the ends of welfare and of particular needs are dominant, and where contingency in the satisfaction of the latter makes even contingent and individual help into a duty. (PR 207).

IP rights are thus placed in the contexts of particular professions or educational contexts (e.g., liberal arts academia, trade schools, research engineering, etc.), which produce regulatory organizations (such as the MLA and APA for academia), to make necessary decisions about plagiarism and norms of citation, granting content to the otherwise formal and subjective honor of pure morality.[10]

Further, the determinations of IP rights would not end merely at the interplay between civil society and professions, but would involve the state itself. A great deal of property rights, and even legal enforcement and adjudication, Hegel reconstructs prior to deriving the constitutional state. A needs-based, contractarian society is possible for Hegel, in the abstract, but would not completely stabilize or unify a pluralistic people without something to identify each as a citizen of an overarching whole (cf. Pinkard's "Constitutional Politics and the Common Life" in Engelhardt & Pinkard). The role of education (and hence the continual transfer of ideas and IP) is not only important for basic civil law (PR 215) and the economy (i.e., job training, PR 197), but for the competency of the civil servants and general improvement of public opinion, so that the citizenry may act on knowledge and better interface with the state *qua* rational source of decision (PR 310ff.). The state thus has a direct and strong interest in issues of IP.

Hence, our final determinations for IP rights do not end with morality, but find rec-

ognition in the state. To revisit the earlier problem of plagiarism: the primary answer given to students' quandary (i.e., to define the lines of IP) will thus vary by type of IP and often by major discipline-type, in cases of citation styles and patent procedures, and creators should consult an expert or official handbook in that field (or err on the side of caution and offer acknowledgement even when it may be possibly extraneous), regardless of one's personal intuitions. The Hegelian approach gives us the typical pedagogical and legal responses here. However, as Resnick points out, copyright law functions to a great extent at the international level (321). Insofar as Hegel only considers international law as functioning between states *qua* corporate individuals (PR 330ff.), such laws, which would function between members of different states and perhaps via norms set by trans-national entities, do not receive the attention that they are due, and so the Hegelian answer remains indeterminate. Back in Hegel's first remarks on IP, and on my present reading of those remarks, the discussion of "intellectual accomplishments" was limited only to their external factor as property, and "that possession of body and spirit which is acquired through education, study, habituation, etc. and which constitutes an *inner property* of the spirit" was tabled (PR 43 Remarks). Education and philosophical evolution is not only important for the state, but also for history's progression and ultimately Hegel's ultimate category of Absolute Spirit (PR 340ff.). That the *international* flow of ideas has become increasingly mediated by intellectual property regulations, and indeed has become the medium through which the global culture expresses its speculative discourse, should suggest that IP rights, in the Hegelian project as a whole, should not be considered such a footnote-ish digression. The internal and external nature of new ideas may perhaps hold a more important connection than what the *Philosophy of Right* would suggest.

Coda Regarding the Parenthetical Title

My experimental foray into Hegelian interpretation despite mostly Analytic background can in principle fall into two limitations. On one hand, I might have overly domesticated Hegel by favoring an exegesis of his dialectic that stresses conceptual analysis; on the other hand, I could have "gone native" and offered little in the way of analytic clarification (though overall positive reception by reviewers would belie such a fatal flaw). However, if I have done as intended, this analysis demonstrates what so many have implied but too seldom exemplified—that the so-called Analytic-Continental divide should no longer hinder us.

Notes

1. This work was developed prior to and independent of the current institutional affiliation, out of scholarly work done at Rice University and with helpful feedback from Dr. H. Tristam Engelhardt, Jr. The author has no interests or funding sources to declare.

2. For citations, I will employ PR as an abbreviation, with Section numbers; all quotes are from the Wood/Nisbet edition; see bibliography).

3. *Geist* is one of many rich words in German, and especially in Hegel's vocabulary, which notoriously deflates in translation. Rather than choose between mind, spirit, etc., I find it best to leave such words untranslated. I similarly shy away from referring to *Sittlichkeit* with more

verbose and ultimately less helpful English combinations of cultural-socio-historical-contextual custom.

4. I have attempted thus far only to give a summary, not a textual justification, of a categorial approach, as to do so in such a short span would do little justice. For other categorial accounts of Hegel and how such a reading can be contextualized in the history of philosophy, see Engelhardt & Pinkard in the bibliography.

5. As noted above, Hegel's use of 'spirit'/'spiritual' or 'geist' is notoriously rich. Does he here mean something not purely necessary/natural in an animal sense? Does he mean something of the speculative nature (as in Absolute Spirit)? The full implications of this connection will not be fully explored here, though I will revisit them in my concluding remarks.

6. Compare Gilbert Ryle's criticism of the mind-body problem as a category mistake.

7. That is, their *Vorstellung* does not connect plagiarism to more abstract or obvious forms of wrong-doing, such as theft.

8. On common property in abstract and its retention in civil society, see PR 46 and Zusatz, 199.

9. Cf. marriage and divorce (PR 162ff., 176). Though subjective components are present, an objective (ethical) authority must substantiate the change in relationship to give it non-fleeting and true existence.

10. Various academic and professional honor code pledges, complete with carefully formulated handbooks and often internal courts of arbitration, come swiftly to mind.

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