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## Two Metaphysics of Freedom: Kant and Hegel on Violence and Law in the Era of the Fall of Liberal Democracy

The article attempts to rethink the legacy of Kant and Hegel in light of the problematic of law, violence and universality. It is also an explication of this legacy in the context of two contemporary insights into historical fate of our Eurocentric civilization—of Achille Mbembe and of Susan Buck-Morss. First, I consider the Kantian foundation of *Rechtstaat* in the light of Benjamin's classic *Critique of Violence* and Mbembe's contemporary critique of colonial power. Then I propose a new account of the central concept of Hegel's *Logic*—i.e. the transition from necessity to freedom— from the same perspective, supplemented with Derrida's interpretation of Benjamin, and Žižek's reading of Hegel. The dialectic of modality from Hegel's *Science of Logic* seems to be an underappreciated thread in this respect, insofar as Hegel's idea of universality or freedom is founded on his ontology and critique of law.

Keywords: freedom, violence, law, ideology, contingency, colonialism, Hegel

The awareness of common humanity is born not through culture, but through the threat of its betrayal. (...) how are we to make sense out of the temporal unfolding of collective, human life? The need to rethink this question today in a global context, that is, as *universal* history, has not been felt so strongly for centuries—perhaps not since Hegel, Haiti, and the Age of Revolution.

Susan Buck-Morss, *Hegel, Haiti and Universal History*

By “two metaphysics of freedom” I do not have in mind the general metaphysical views on subjectivity and on the nature of freedom held by Kant and Hegel, but rather two ontologies of *law and freedom*, and the dialectical relationship between these categories and *violence*. The first ontology—developed by Kant—finds its final form in the *Metaphysics of Morals*, his last important work. The second one culminates in the *Science of Logic*, Hegel’s major work in this area, which can be read as a critique of Kant’s ideological absolutization of the rule of law.

The second part of my article’s title refers to a significant contemporary process that, according to Achille Mbembe’s argument in his essay on Fanon, reveals a colossal inversion within the framework of liberal democracy (Mbembe 2019). This consists in its transformation into a society of hostility and exclusion. The contemporary manifestations of this transition include: the rise of the alt-right movements, along with racism; the expanding universe of conspiracy theories; and such phenomena as cancel culture or post-truth.

### Kant and the Rule of Law

For the sake of my argument, I assume that Kant’s idea of the *Rechtstaat* constitutes an exemplary conceptual reference point for today’s liberal democracy. The most influential example of a more recent use of this reference is Habermas’s theory of the state, which is consciously rooted in Kantian social thought and has adapted its solutions to the contemporary world (Habermas 1996). Kant inaugurated a tradition that claims to be conceptually independent of the early modern concepts of natural law (Habermas 1974). He argued that a valid law comes into

existence at the moment when an act establishes a meditative regulation, as the classic theorists of the social contract had suggested before him. The conditions of the social contract are determined by the need to subordinate competing individuals to a common law because of general antagonism, as noted in the “Idea for a Universal History with a Cosmopolitan Purpose” (Kant 1991).

While formulating his philosophy of history, Kant attempted to capture the subtle logic of the process of socialisation through a bold synthesis of republican intuitions and the British political tradition of “rule of law” represented by Locke’s thought. The “war of all against all” straight out of Hobbes’s *Leviathan* should—according to Kant—be perceived from a different angle. The conflict of egoisms does not hinder socialisation but is—paradoxically—the key to explaining it, because it derives from an elusive feature of human nature. This feature is ambivalent, and can be described as “people’s unsocial sociability (*ungesellige Geselligkeit der Menschen*)” or the “the unsocial characteristic of wishing to have everything go according to (one’s—M.P.) own wish”:

It is this very resistance which awakens all man’s powers and induces him to overcome his tendency to laziness. Through the desire for honour, power or property, it drives him to seek status among his fellows, whom he cannot *bear* yet cannot *bear to leave*. Then the first true steps are taken from barbarism to culture, which in fact consists in the social worthiness of man. All man’s talents are now gradually developed, his taste cultivated, and by a continued process of enlightenment, a beginning is made towards establishing a way of thinking which can with time transform the primitive natural capacity for moral discrimination into definite practical principles; and thus a pathologically enforced social union is transformed into a moral whole. (Kant 1991, 44–45)

Kant’s reasoning is dialectical. Unsocial sociability explains how the conflict of egoisms immanently becomes its very opposite—a new kind of community, a moral whole. It is the process of the emergence of social distinctions in a developed division of labour that creates the social value of each person. Moreover, this process generates values as such, and forms something common. The natural need for socialisation in a state of nature forces distrustful individuals to seek cooperation and self-development, and to self-regulate inherently egoistic actions. The role of the enlightened authorities and public opinion is to acknowledge a positive tendency and endorse it. The process of transitioning from barbarism to culture should be universally sanctioned through a formal system of regulations—a rational legal order:

The highest task which nature has set for mankind must therefore be that of establishing a society in which freedom under external laws would be combined to the greatest possible extent with irresistible force, in other words of establishing a perfectly just civil constitution. (Kant 1991, 45–46)

The essence of civil liberty lies in the balance between the rights of the subject and the absolute respect for the limits of these rights. It seems, therefore, that Kant follows British Enlightenment thinkers. Even John Locke claimed that the aim of political order is to secure pre-existing natural laws. Kant agrees—in part—with Hobbes's thesis that “where (there is—M.P.) no law, (there is—M.P.) no injustice” (Hobbes 1998, 85). Valid property law and basic human rights can only be adopted after public authority has been established. More importantly, however, Kant goes on to formulate a characteristic interpretation of justice: a just legal system consists in the protection of citizens and their “external laws,” which are upheld by “irresistible force.” Therefore, he develops a political interpretation of his own concept. A political system of freedom is, paradoxically, based on an order of necessity—an order of the necessary formalization of social relations. Although such an order emerges from nature (as according to Locke), the artificial power of the force of law is the culmination of this process. The ever-changing and obscure realm of the “natural” relations between groups and individuals, as well as their conflicts and alliances—previously marked by the “primitive natural capacity for moral discrimination”—demands valid formalization (Kant 1991, 45). The rules of social activity must be sanctioned by the authority of a law-governed state.

Kant's argument is therefore based on the close relationship between two elements—on the one hand, legalism and the legal definition of freedom and justice *a la* Hobbes, and, on the other, the language of moral and civilizational duty. For the author of the *Critique of Practical Reason*, the majesty and power of positive law derives only from its universal validity.

### The Rule of Law as a Problem in Itself

In the essay “Idea for a Universal History with a Cosmopolitan Purpose” Kant also formulated a characteristic interpretation of freedom and justice within the *Rechtstaat*. Later, in *The Metaphysics of Morals*, he elaborated further on the interconnection between law, freedom, and violence (*Gewalt*). And it is at this point that the Kant's narrative about

the establishment of the legal order connects with Mbembe's thesis about the return of democracy's hidden colonial violence within democracy itself. This is because Kant developed a narrative about the social contract precisely in relation to colonization, referring directly to indigenous peoples. He was aware that colonization could lead to "fraudulent purchase" of the land belonging to "the American Indians, the Hottentots and the inhabitants of New Holland" and acquiring their land "without regard for their first possession," "making use of our superiority." However, his answer to the question of whether we should "establish a civil union with them and bring these human beings (savages) into a rightful condition" is positive; he justifies his choice with the maxim "nature abhors a vacuum":

Should we not be authorized to do this, especially since nature itself (which abhors a vacuum) seems to demand it, and great expanses of land in other parts of the world, which are now splendidly populated, would have otherwise remained uninhabited by civilized people or, indeed, would have to remain forever uninhabited, so that the end of creation would have been frustrated? (Kant 1999, 417–418)

It is in this context that Kant defines the relationship between law, freedom, and violence (*Gewalt*), where freedom merges with law because its realization consists precisely in limitation. Kant perceives the rational order as the "hindering of the hindrance," that is, as hindering of the freedom as far as it threatens its agreement with universal laws and rational order, or as a coercion *that is opposed to this*:

If a certain use of freedom is itself a hindrance to freedom in accordance with universal laws (i.e. wrong), coercion that is opposed to this (as a hindering of a hindrance to freedom) is consistent with freedom in accordance with universal laws, that is, it is right. (Kant 1999, 338)

Assuming that in the *Metaphysics of Morals* Kant builds an ontology of law, it appears in the role of double negation, "hindering of hindrance." As in the famous thesis from Carl Schmitt's *Political Theology: anomos precedes nomos*.

A closer inspection of this argumentation turns out to be symptomatically inconsistent and brings to mind the typical justifications of colonial violence in the style of British officials.<sup>1</sup> The narrative from the

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1 It should be stressed that Kant condemns colonial abuses. Yet both Hegel and Kant employ the dichotomy of civilization vs. barbarism. Still, the former

*Metaphysics of Morals* can be simplified in the following way: in the past, in the state of nature, there was a pre-political, provisional “private right,” later replaced in the civil constitution by a preemptory “public right,” in the sense that it applies ultimately and unfailingly. During the Enlightenment, before our eyes, as Kant would say, as if on behalf of the people’s tribune, the former “private” right was elevated to a law of reason. However, reason is not only an end in itself, like the “Kingdom of Ends” in the philosophy of morals, but it also *demand*s that pre-political law should be replaced by public right. It’s not an ethical demand, but a pragmatic one, perhaps more pragmatic than Kant usually is. He argues: “A civil constitution, though its realization is subjectively contingent is still objectively necessary, that is, necessary as a duty” (Kant 1999, 416). The “subjectively contingent” nature of this realization means that the “necessity” is actually rooted in civilization, because it is not linked to any particular form of republican government. In fact, it is not only a necessity but also a duty. Kant also warns that those who wish to remain in the state of nature “do wrong in the highest degree” because the state of nature “is not rightful, that is, (it is a state—M.P.) in which no one is assured of what is his against violence” (Kant 1999, 416).

Here, the law seems to be a crypto-moral extreme of radical opposition between state of law and that of lawlessness, thereby heralding the modern disciplinary model described by Foucault. Even though the idea of *Rechtsstaat* was inspired by the liberal tradition of natural law, Kant broke away from it, lending the concept of law (in the legal sense) a certain normative surplus related to normalization in the form of “legal interventionism” (see Foucault 2008, 167). According to Kant, almost all of humanity—with minor exceptions in North America and Europe—“does wrong in the highest degree” in everyday life by existing outside the republican order.

This argumentation brings to mind the Freudian term “kettle logic,” which refers to contradictory arguments concerning the same issue, the sum of which means something altogether different than what is implied by particular arguments (Freud 2010, 144). The first premise is that it is our pragmatic *responsibility* to recognize civilizational necessity and submit to it, as in: the kettle has been returned undamaged. The second concerns the resulting *moral duty* to act in accordance with civilizational necessity, as in: it already had holes in it when he borrowed it. The third

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does not do so (rather fortunately) in any crucial passage—Susan Buck-Morss discusses this important matter in detail in her brilliant essay *Hegel and Haiti* (Buck-Morss 2009, 65–75).

premise consists in the moral imperative to combat the unlawful situation described above, which—as a call to action—presupposes the absence of any objective necessity to do so, as in: he had never borrowed it at all. The same is true with regard to establishing a new legal order: its main aim is *either* to transform and eradicate the shortcomings of the natural condition of mankind by replacing it with a new, formal order of reason, *or* to preserve and secure elements of the natural condition that had already existed in it in a provisional form. These two scenarios are mutually exclusive. Moreover, Kant admits that in the natural state we can find communities governed by certain rules. He emphasizes that when these rules fall within the scope of public law, the social contract does not contain any new obligations but only gains a guaranteed sanction from universal law—an observation that is difficult to accommodate with the basic opposition of civilization vs. barbarism.

From the point of view of the problematic of this essay, however, the most important problem is that Kant introduces a metaphysical explanation that combines the concepts of lawlessness and violence. He claims that the state of nature need not be a state of injustice just because it is natural. However,

it would still be a state devoid of justice (*status iustitia vacuus*), in which when rights are in dispute, there would be no judge competent to render a verdict having rightful force. Hence each may impel the other by force to leave this state and enter into a rightful condition; for although each can acquire something external by taking control of it or by contract in accordance with its concepts of right, this acquisition is still only provisional. (Kant 1999, 456)

This reasoning evidently suggests that because the state of nature involved some form of customary law, it was not regulated by violence alone but rather kept itself below a certain level of civility. It was a state of lawlessness (*Rechtslosigkeit*), or of the absence of justice (*status iustitia vacuus*). Times when the lack of a formal system of justice bred uncertainty concerning property laws serve as historical testimony to the “intermediate” kind of human condition. The hidden sense of Kant’s argumentation is thus finally revealed: each may impel the other by force to leave this state and enter into a rightful condition. Transitioning into the state of law is an unconditional and absolute necessity, and must be achieved at all costs. Significantly, Kant does not justify his point by referring to humanitarian values or even fighting lawlessness and barbarianism, but through the need for legal stability or security in relation to the acquisition of goods. As if the intermediate

state of customary law did not provide the conditions for longer-term investments. While discussing the “postulate” of public right, Kant argues that one “ought to abandon” the natural state and adds another justification: “the ground of this postulate can be explicated analytically from the concept of right in external relations, in contrast with violence (*violentia*)” (Kant 1999, 452).

This is how he justifies accepting what could be recognized as pro-state or pre-civil violence. This peculiar view is based on the assumption that the law is officially the opposite of violence but allows using violence against lawlessness—even if it is not exactly lawless—because such violence would serve the public good or civil liberty. The law “has the right” to use violence. In a nutshell, even before the law exists somewhere, for example in the colonies, it has the performative ability to establish itself, in a legitimate and lawful way. As Mbembe points out, “as, indeed, no extant legitimacy authorizes power in the colony, power seems to impose itself in the manner of a destiny.” Further, we can recognise three major points made by Mbembe. First, “the colonial world as an offspring of democracy, was not an antithesis of the democratic order. It has always been its double or, again, its nocturnal face.” Second, “this nocturnal face in effect hides a primordial and founding void—the law that originates in nonlaw and that is instituted as law outside the law” (Mbembe 2019, 25–27). And third,

Added to this founding void is a second void—this time one of preservation. These two voids are closely imbricated in one another. Paradoxically, the metropolitan democratic order needs this twofold void, first, to give credence to the existence of an irreducible contrast between it and its apparent opposite; second, to nourish its mythological resources and better hide its underneath on the inside as well as on the outside. (Mbembe 2019, 25–27)

To sum up, the attempt to legitimize the principle of freedom in Kant’s classic Enlightenment formulation as the principle of law, or the self-limitation of freedom, seems deconstructible, and is therefore revealed as ideological. As was argued by Habermas and other authors, Kant’s failure is probably rooted in his departure from the theory of natural law professed by his predecessors—Hobbes, Rousseau, Locke (see Habermas 1974, 82–120). Marx’s ironical observation in *On the Jewish Question* provides a perfect commentary on the problems of Kant’s *Rechtstaat*:

Security is the highest social concept of civil society, the concept of police, expressing the fact that the whole of society exists only in order to guarantee to

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each of its members the preservation of his person, his rights, and his property. It is in this sense that Hegel calls civil society "the state of need and Verstand." The concept of security does not raise civil society above its egoism. On the contrary, security is the insurance of its egoism. (Marx 1975, 163–164)

## A Drama in Three Acts

Let us turn to Hegel, who also embraced the idea of a "civilizing mission" to be carried out in the colonies. In *Philosophy of Right*, he argues:

In the same way civilized nations may treat as barbarians the peoples who are behind them in the essential elements of the state. Thus, the rights of mere herdsmen, hunters, and tillers of the soil are inferior, and their independence is merely formal. Note. Wars and contests arising under such circumstances are struggles for recognition in behalf of a certain definite content. It is this feature of them which is significant in world-history. (Hegel 2001, 269)

The question is whether the potential of Hegel's thought has been exhausted with regard to this problem. Susan Buck-Morss offers an in-depth study on Hegel's legitimization of slavery in *Hegel, Haiti and Universal History* (see Buck-Morss 2009, 115–118). As I argue later on, her reconstruction of his arguments provides grounds for such investigations into Hegel's thinking on violence and law as those offered here. As Susan Buck-Morss has shown in the context of the *Phenomenology of Spirit*, with the famous master-slave dialectic and the Haitian revolution we can only begin to understand the complexity of Hegel's theory in this regard.

On the other hand, in the context of Kant and Hegel's *Logic*, Walter Benjamin's classic essay *Towards the Critique of Violence* seems particularly insightful, because it discovers a new distinction between "law-making" violence, i.e. military violence that establishes new legal rights, and law-preserving violence, i.e. police violence which uses violence to preserve the law. Benjamin illustrates the tension between legal violence and illegal actions with the figure of the "great" criminal admired by the people in defiance of the law. Duncan Stuart explains that:

The police use state-sanctioned violence to uphold the law and the effectiveness of this violence gives the established legal order the appearance of permanence. Law-preserving violence is the inevitable response to any attempt to break the law or found a new legal order. Law-preserving violence need not take the form of an actual punishment. Rather, the threat of violence always hangs over any-

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one seeking to undermine the law. This is what Benjamin means when he refers to the retributory power of the state as fate. (Stuart 2021)

As can already be seen from our presentation of the Kantian logic of law in its performative power of self-establishment, the two types of violence distinguished by Benjamin, namely a “legislative” or “law-making” violence (*rechtsetzende Gewalt*) and a “lawpreserving violence” (*rechtserhaltende Gewalt*), cluster into a single, yet dual figure. From its outset this legislative violence aims to preserve the law and therefore at the same time appears as its opposite, as law-preserving violence. It aims to monopolize itself—monopolize violence. In this context Benjamin points to

the surprising possibility that the law’s interest in a monopoly of violence vis-à-vis individuals is explained not by the intention of preserving legal ends but, rather, by the intention of preserving the law itself; that violence, when not in the hands of the law, threatens it not by the ends that it may pursue but by its mere existence outside the law. (Benjamin 1999, 239)

At first glance it may seem surprising that after Kant’s *Metaphysics of Morals* we do not turn to Hegel’s *Principles of the Philosophy of Law*. However, it is the *Science of Logic* that develops the most complex and significant account of freedom and violence. The discussion of the relationship between the appearance of law itself, the manifestation of the violence of law, and then the transition to freedom, dramatically splits into three acts. When considered from the perspective of Benjamin’s *Critique of Violence*, the moment that Kant viewed as the end, culminating in the establishment of a legal order—or, to follow Benjamin, of violence preserving the law—is only the starting point for Hegel. This crucial distinction—between violence and law—is annulled not only by Kant, but also by Hegel (in *Logic*), since the purpose of establishing the legal order is merely to preserve it. In the philosophical tradition extending from Benjamin to Agamben, this situation is conceptualized as “the state of emergency,” in which *nomos* is constituted in an internal reference to *anomos*, in a kind of a vicious circle of the two kinds of violence. “The tradition of the oppressed teaches us that the »state of emergency« in which we live is the rule” (Benjamin 1968, 257).

The first act of the Hegelian discussion of freedom in *Logic* is the manifestation of the absolute as an absolute necessity, in the third and final section of the second transitional “book” of the *Logic*—“The

Doctrine of Essence.” The first difference in relation to Kant concerns the moment of establishing law, which is explicitly connected with the lack of rational legitimisation. In Hegel, this establishing appears to be rather mystical—in the sense of Derrida’s “mystical foundation of authority”—the subtitle of his late work devoted entirely to the analysis and interpretation of Benjamin’s essay. Derrida claims:

Discourse here meets its limit—in itself, in its very performative power. It is what I propose to call the *mystical*. There is here a silence walled up in a violent structure of the founding act; walled up, walled in because this silence is not external to the language. Here is the sense in which I would be tempted to interpret, beyond simple commentary, what Montaigne and Pascal call the *mystical foundation of authority*. (Derrida 1992, 242)

Derrida wrote about the “walling up/in,” and in his *Logic* Hegel wrote about concealment (*Verschlossenheit*) of the essence in being:

The absolutely necessary only *is* because it *is*; it otherwise has neither condition nor ground.—But it equally is pure *essence*, its *being* the simple immanent reflection; it is *because* it is. As reflection, it has a ground and a condition but has only *itself* for this ground and condition. It is in-itself, but its in-itself is its immediacy, its possibility is its actuality.—*It is, therefore, because it is* (...).

Absolute necessity is therefore *blind*. On the one hand, the two different terms determined as actuality and possibility have the shape of *immanent reflection as being*; they are therefore *free actualities*, neither of which reflectively shines in the other, nor will either allow in it a trace of its reference to the other; grounded in itself, each is inherently necessary. *Necessity as essence* is concealed (*verschlossen*) in this being; the reciprocal contact of these actualities appears, therefore, as an empty externality. (Hegel 2000, 487–488)

The “mystical” is expressed in Hegel explicitly through the destruction of contradictory universalities and actualities. When Hegel attempts to describe the tautological nature of law in order to demonstrate the logic of its manifesting, it is undoubtedly the most visionary and poetic aspect of his *Logic*. First, the absolute necessity expresses itself in a contradictory, mutually impervious coexistence: “This essence is *averse to light*, because there is no *reflective shining* in these actualities, no reflex—because they are grounded purely in themselves, are shaped for themselves, manifest themselves only to *themselves*—because they are only being” (Hegel 2000, 487).

Next comes destruction:

But this *contingency* is rather absolute necessity; it is the *essence* of those free, inherently necessary actualities (...). The *essence* will break forth in them and will reveal what *it* is and what *they* are (...) it will break forth against this being in the form of being, hence as the *negation* of those actualities, a negation *absolutely different* from their being; it will break forth as their *nothing*, as an *otherness* which is just as *free* towards them as their being is free. (...) In their self-based shape they are indifferent to form, are a content and consequently *different* actualities and a *determinate* content. (Hegel 2000, 488)

And here we encounter law:

This content is the *mark* that necessity impressed upon them by letting them go free as absolutely actual (...) It is the mark to which necessity appeals as witness to its right, and, overcome by it, the actualities now perish. This manifestation of what *determinateness* is in its truth, that it is negative self-reference, is a *blind* collapse into otherness. (Hegel 2000, 488)

This metaphysical vision of the “*blind* collapse into otherness,” where law appears as the unity of contingency and necessity, creates a situation that Hegel later attributes to the substance itself as the core of reality.

It is a distinguishing, of which the moments are themselves the whole totality of necessity, and therefore *subsist* absolutely, but do so in such a way that their subsisting is *one* subsistence, and the difference only the *reflective shine* of the movement of exposition, and this reflective shine is the absolute itself. (Hegel 2000, 489)

It is thus a situation that can be described as the “state of emergency” in Kant’s legal order, i.e. as the rule of so-called law-preserving violence, to put in Benjamin’s terms, insofar as the law preserving violence is the threatening violence. It would be a “legislative violence” (*rechtsetzende Gewalt*) that aims, right from the outset, to preserve the law and therefore appears as its opposite: the “law-preserving violence” (*rechterhaltende Gewalt*) that aims to monopolize itself, i.e. to monopolize violence. Benjamin describes the state of emergency as a law-preserving violence that “resides in the fact that there is only one fate and that what exists, and in particular what threatens, belongs inviolably to its order” (Benjamin 1999, 285).

Moving to the second act of Hegel’s dramatic presentation of the constitution of law, in his view law-preserving violence is expressed in the concept of substance. The basis of contradictory actualities appears

to be that they are mutually false. However, the very appearance of their self-sufficiency paradoxically turns out to be absolute actuality. The blind collapse into otherness—this is precisely Hegel’s so-called absolute or its manifestation.

The potential of Hegel’s argument is embedded in a unique dialectical situation, which Slavoj Žižek also described as a decisive moment in *Logic*, and as a “vertiginous” conceptual reversal (Žižek 1994, 37). Pure appearance or pure seeming turns out to be identical with absolute reality, the moment when Hegel’s *Schein*—something supposedly relational or reflective—turns out to be the very core of the inert substantiality. This moment in Hegel’s *Logic* involves a decisive shift in the understanding of falsehood itself. If falsehood is inherent in substance, a whole constellation of modal terms and their determinations changes its meaning—due to fracturing or substantial curvature. It is also the moment which Žižek diagnoses as a particularly important step towards the transition from substance to subject, from necessity to freedom:

Absolute necessity as *causa sui* is an inherently contradictory notion; its contradiction is explicated, posited as such, when the notion of substance (synonymous with Spinozean absolute necessity) splits into active substance (cause) and passive substance (effect). This opposition is then surmounted by the category of reciprocity, wherein the cause which determines its effect is itself determined by the effect—thereby, we pass from substance to subject. (...) Thus we arrive at the most concise definition of the subject: the subject is an effect that entirely posits its own cause. Hegel says the same thing when he concludes that absolute necessity is »a relation because it is a distinguishing whose moments are themselves its whole totality, and therefore absolutely subsist, but in such a manner that there is only one subsistence and the difference is only the *Schein* of the expository process, and this (*Schein*) is the absolute itself«. The vertiginous reversal is brought about by the last clause of the last sentence (...). That is to say, had the sentence ended without “and this is the absolute itself,” we would be left with the traditional definition of the substance as absolute: each of its moments (attributes) is in itself the whole totality of the substance, it “subsists absolutely,” so that there is only one subsistence, and difference concerns only the appearance. (Žižek 1994, 37)

The manifestation of necessity or substance in the *Logic* reveals the immanent perspective on the fracturing of the absolute itself underlying the falsehood of any modal or finite point of view, in the Spinozian sense. According to Žižek the transition from substance to subject assumes that this paradoxical reflection is not only our external reflection,

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but an immanent fracturing of the absolute. Žižek interprets it as the death of God, or, in Lacanian terms—as the suspension of the big Other—*L'autre n'existe pas* (Žižek 1994, 42). I would call this *the recognition of the ultimate limit of the rationalisation of law in Hegel*.

The third act brings the direct transition to the concept of freedom. It transpires that in the Hegelian drama the establishment of the rule of law-preserving violence—the manifestation of absolute necessity mentioned above—is only the starting point for the final solution of Benjamin's vicious circle of law-constituting and law-preserving violence, which points towards what Benjamin termed *divine violence*—the third, separate kind of violence that leads beyond the vicious circle of the constituting and the law-preserving violence. This new distinction also led Derrida to the important conclusion regarding this issue in *Force of law* (Derrida 1992). He claims it is the possibility to deconstruct law as the law-constituting/law-preserving violence—something that Hegel actually does in *Logic*—and the impossibility of deconstructing justice, corresponding to Benjamin's "divine violence." Derrida argues:

Since the origin of authority, the foundation or ground, the position of law can't by definition rest on anything but themselves, they are themselves a violence without ground. Which is not to say that they are in themselves unjust in the sense of "illegal." They are neither legal or illegal in they founding moment (...). The structure I am describing here is a structure in which law (*droit*) is essentially deconstructible, whether because it is founded, constructed on interpretable and transformable textual strata (and that is the history of law (*droit*), its possible and necessary transformation, sometimes its amelioration), or because its ultimate foundation is by definition unfounded. The fact that law is deconstructible is not bad news. We may even see in this a stroke of luck for politics, for all historical progress. But the paradox that I'd like to submit for discussion is the following: it is the deconstructible structure of law (*droit*) or if you prefer of justice as *droit* that also insures the possibility of deconstruction. Justice in itself, if such a thing exists, outside or beyond law, is not deconstructible. No more than deconstruction itself, if such a thing exists. Deconstruction is justice. (Derrida 1992, 14)

Hegel's Transition from Substance to Subject as  
a Deconstruction of Law: Beyond the Vicious Circle  
of Law-Making and Law-Preserving Violence?

Let's now return to the issue of colonialism, in order to ask again how  
Hegel's philosophy could potentially contribute to our understanding

of the contemporary reversal of liberal democracy. In light of our earlier discussion of Kant and Mbembe, and then Benjamin's problematics of violence and law, at least three strands come into play.

First, if we compare Kant and Hegel, the latter does not establish freedom as the rule of law, because in the *Logic* freedom stands above law. It doesn't fit within the logical space set by the law—freedom means directly the *overcoming* of substance as the manifestation of law in its destructive logic. In this sense, it becomes doubtful whether Kant could have grasped Haiti, as in the kind of research that Susan Buck-Morss has conducted with regard to Hegel. The clear boundary drawn in the *Logic* between the logic of law and the logic of freedom means that both the *Phenomenology of Spirit* and the key theme from the *Logic* can be read as a slave revolt directed against external power. It is in any case a transition that can be sufficiently understood only through the prism of the relation of domination and its abolition.

Second, what Hegel describes as the logic of law brings to mind something schizophrenic, a final split, the process of diversifying universes, both apparently self-grounded and self-sufficient, and yet existing within the same conditions. The best-known historical interpretation of such a contradiction between division and the same conditions of existence is, of course, the contradiction between capital and labour. Benjamin, inspired by Sorel, also writes his essay about violence and law under circumstances that direct his gaze towards the form of the general strike.

But thirdly, if we consider this again through the prism of Mbembe's diagnosis of the transformation of liberal democracy into a society of hostility, and try to look at Hegel in the manner proposed by Susan Bauck-Morss (this time with reference to the *Logic*), we can see that a general strike (or revolution) isn't the only possible scenario of going beyond the vicious circle of two types of violence. Mbembe suggestively shows that the division exported to the fringes of civilization now begins to affect it in its own geographically dense area. As the whole of Atlantic slavery existed within the entire economic system in the period of the rise of democracy, today's existence of "a sort of boring ice floe" that Europe is beginning to turn into, is still a contradictory coexistence between refugees and citizens, and among citizens themselves, in the form of an escalating culture war (Mbembe 2019, 57).

Therefore, if we consider today's deep entrenchment of ideological positions, manifesting in the retreat of mutually impervious ideological realities into themselves, in *Logic* the starting point is the same moment as the one that Mbembe calls "relation without desire" which in fact

appears to be a “desire of apartheid” (Mbembe 2019, 1). Just as in Hegel’s vision of “free actualities, neither of which reflectively shines in the other, nor will either allow in it a trace of its reference to the other; grounded in itself, each is inherently necessary.”<sup>2</sup>

On the other hand, Mbembe speaks in terms of a split:

real isolation that is exclusively turned upon itself and that, while pretending to ensure the world’s government, seeks exemption from it. What follows is a reflection on today’s planetary-scale renewal of the relation of enmity and its multiple reconfigurations. (Mbembe 2019, 1)

All of humanity, including the previously privileged Europeans, become slaves to the logic of hostility, making it a universal experience. However in Hegel’s *Logic* we can observe a peculiar, complex change of perspective, which is significant and calls for broader consideration. We can recognize that Hegel’s transition to freedom overcomes (or fails to overcome) this ultimate contradiction between actualities in two distinct ways. Already the manifestation of the law itself—as a “blind collapse into otherness”—is a kind of objective ontological failure, something that cannot be fully rationalized, which is expressed further in the paradoxical concept of substance as an absolute relation, as seen by Žižek. Hegel wrote:

But the *expositor* (*Auslegerin*) of the absolute is the *absolute* necessity which, as self-determining, is identical with itself. Since this necessity is the reflective shining posited as reflective shining, the sides of this relation, because they are as shine, are *totalities*; for as shine, the differences are themselves and their opposite, that is, they are the whole; and, conversely, they thus are only shine because they are totalities. (Hegel 2010, 489)

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2 “Absolute necessity is thus *the reflection or form of the absolute*, the unity of being and essence, simple immediacy which is absolute negativity. *On the one hand*, therefore, its differences are not like the determinations of reflection but an *existing manifoldness*, a differentiated actuality in the shape of others independently subsisting over against each other. *On the other hand*, since its connection is that of absolute identity, it is the *absolute conversion* of its actuality into its possibility and its possibility into its actuality.—Absolute necessity is therefore *blind*. On the one hand, the two different terms determined as actuality and possibility have the shape of immanent reflection as being; they are therefore *free actualities*, neither of which reflectively shines in the other, nor will either allow in it a trace of its reference to the other; grounded in itself, each is inherently necessary” (Hegel 2010, 487).

The problem is further exacerbated and confirmed in the dialectics of causality. If it is possible to use such a distinction, it would be not only a “ultimate failure” of *nomos*—right or law—but also a failure of *physis*, insofar as it is already indistinguishable from *nomos* at this stage.<sup>3</sup>

This substantial contradiction is no longer dialectical, but constitutes a real *aporia*—a pure appearance seems to be identical with an absolute actuality. In this sense, the dialectic of the absolute and substance would be the very weakness that addresses the topic of the Warsaw 2020 conference, *The return of Hegel. History, Universality and Dimensions of Weakness*—the moment of exhaustion, when the regressive process could perhaps be reversed. This is also the moment discussed by Susan Buck-Morss, when she juxtaposes the Haitian experience with economic and political powerlessness, which converge in the history of Atlantic slavery.

What this dialectics of substance shows is how the self-contradiction of substance derives, in its opacity, from substance itself, from the essence of law itself. As a result of this, substance is no longer regarded as nature or rational law, but as a pure yet empty structure of the falsehood of the still existing reference based on radical otherness. In fact, the entire ontological structure remains intact. However, as Hegel pointed out, the result of the dialectic “is that the substantiality of the sides that stand in relation is lost, and necessity unveils itself” (Hegel 2010, 504). The logic of transition is still expressed in modal terms, where *contingency* plays a key role:

Necessity does not come to be *freedom* by vanishing but in that its still only *inner* identity is *manifested*, and this manifestation is the identical movement immanent to the different sides, the immanent reflection of shine as shine.—Conversely, *contingency* thereby comes to be *freedom* at the same time, for the sides of necessity, which have the shape of independent, free actualities that do not reflectively shine into each other, *are now posited as an identity*, so that now these totalities of immanent reflection, in their differences, also *shine as identical*, in other words, they are also posited as only one and the same reflection. (Hegel 2010, 504)

3 Also Derrida explained: “The structure I am describing here is a structure in which law (*droit*) is essentially deconstructible, whether because it is founded, constructed on interpretable and transformable textual strata (and that is the history of law (*droit*), its possible and necessary transformation, sometimes its amelioration), or because its ultimate foundation is by definition unfounded” (Derrida 1992, 14).

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The transition to freedom involves here, as it were, a decision to abandon the logic designated by law, insofar as the mystical authority of the necessity “unveils itself.”

In this passage we encounter the final conceptual formulation of the famous movement of recognition or subject formation in the Hegelian sense. It is quite convoluted, due to its still being expressed in modal terms, but the ethical moment is undoubtedly identifiable here. The transition to freedom involves here, as it were, a decision to abandon the logic designated by law, insofar as the mystical authority of the necessity “unveils itself.” Freedom is synonymous with the recognition of a shared responsibility for mutual contingency in the face of the non-existence of truth only in-itself; the big Other—*L'autre n'existe pas* in Žižek's terms. It means that such freedom can neither be understood as “a truth” in the liberal manner, as mutual limitation of rights and property, a concept determined, as in Kant's narrative, by reference to that which threatens it. It can neither be understood in the republican manner, as subordination to the “truth” that already exists as the always already defined “common.” This is because in the Hegelian transition, community is formed precisely by this randomness, contingency.

This modal dimension constitutes the prerequisite of Hegelian universality, and if *Logic* contains any explication of the concept of universality, this is the one. At this point it becomes necessary to seek answers to two questions posed by Susan Buck-Morss: one concerning “collective identity” and whether it can be imagined as a creation as inclusive as humanity itself; and the second, enquiring as to “whether there is such a thing today as universal history” and where could we find the path towards it (Buck-Morss 2009, 111).

Here we encounter the extreme point of Hegel's last *aporia*, a “real isolation that is exclusively turned upon itself and that, while pretending to ensure the world's government, seeks exemption from it” (Mbembe 2019, 1). This is the extreme point, as Susan Buck-Morss points out, where universality should be sought. It is the

moment of the slaves' self-awareness that the situation was not humanly tolerable, that it marked the betrayal of civilization and the limits of cultural understanding. (...) At the same time, we are pushed to the point where Hegel's dialectic of master and slave fall silent. (Buck-Morss 2009, 133)

Still, perhaps Hegel's *Logic* does not remain silent on this point. I would like to actually claim the contrary; it can indeed help to understand the relation of extreme otherness that we face today, and indicate an interesting solution which is not aimed at the erasure of difference, but which helps to understand the singularity inscribed in universality

itself. This would I think be exactly the point that Buck-Morss makes—when she suggests the need to adopt “a *radical* neutrality”:

Nothing keeps history univocal except power. We will never have a definitive answer as to the intent of historical actors, and even if we could, this would not be history’s truth. It is not that truth is multiple or that the truth is a whole ensemble of collective identities with partial perspectives. Truth is singular, but it is a continuous process of inquiry because it builds on a present that moving ground. History keeps running away from us, going places we, mere humans, cannot predict. The politics of scholarship that I am suggesting is neutrality, but not of the nonpartisan, “truth lies in the middle” sort; rather, it is a radical neutrality that insists on the porosity of the space between enemy sides, a space contested and precarious, to be sure, but free enough for the idea of humanity to remain in view. (Buck-Morss 2009, 150)

Such radical neutrality can be formulated in the perspective opened by Hegel’s logic. It would be a sublation, not an erasure, of difference.

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**Tytuł:** Dwie metafizyki wolności. Kant i Hegel o przemocy i prawie w epoce upadku demokracji liberalnej

**Abstrakt:** Artykuł jest próbą przemyślenia dziedzictwa Kanta i Hegla w świetle problematyki prawa, przemocy i uniwersalności. Jest również analizą tego dziedzictwa w kontekście dwóch współczesnych perspektyw na historyczne losy naszej cywilizacji zdominowanej przez Europę – w wydaniu Achille Mbembe i Susan Buck-Morss. Najpierw rozpatruję Kantowskie ufundowanie *Rechtstaat* w świetle klasycznego *Przyczynku do krytyki przemocy* Benjamina i współczesnej krytyki władzy kolonialnej Mbemego. Następnie proponuję nowe ujęcie centralnej koncepcji z *Logiki* Hegla – czyli przejścia od konieczności do wolności – f z tej samej perspektywy, uzupełnionej o interpretację Benjamina przeprowadzoną przez Derridę oraz interpretację Hegla w wydaniu Žižka. Dialektyka modalności z Hegłowskiej *Nauki logiki* wydaje się wątkiem o tyle niedocenianym, o ile Hegłowska idea uniwersalności czyli wolności znajduje oparcie w precyzyjnie sformułowanej ontologii i krytyce prawa.

**Słowa kluczowe:** wolność, przemoc, prawo, ideologia, przygodność, kolonializm, Hegel