

The Missing History of European Colonialism and Modern Right in Hegel's *Phenomenology*

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ABSTRACT: European colonialism does not play a constitutive role in the dialectic of modern right and freedom in Hegel's *Phenomenology of Spirit*. Unlike the significance attributed to the conquests and colonialism of the Greek and Roman worlds, the expansionary activities of European empires are neglected in Hegel's account of right in the *Phenomenology*, *Philosophy of Right*, and *Lectures on the Philosophy of History*. In this article, I argue that European colonialism and the need to justify jurisdictional expansion were pivotal in the development of modern right and thus should have been accounted for in Hegel's phenomenology of freedom. I support this conclusion by reconstructing two developments in natural rights theory—in the works of Francisco de Vitoria and John Locke—that specifically emerge from European colonial activity. The result is an emendation to Hegel's philosophy of European history and a new understanding of this history's relation to modern right.

KEYWORDS: Hegel, Colonialism, Right, Locke, Vitoria.

While the rest of the world is venturing toward India, America—to gain wealth and acquire a worldly dominion that encircles the earth, and on which the sun shall never set—there is a simple monk seeking that [*das Dieses*], which Christendom had formerly sought in the earthly sepulcher of stone, in the deeper recesses of the absolute ideality of everything sensuous and external, in the spirit and the heart. (HEGEL. *Vorlesungen über die Philosophie der Geschichte*, 494/414)

The experience of European colonialism and the theory it engendered are integral to the history of modern right. We would not be amiss to view the emergence of the self-grounding concept of modern right as, in part, a response to the need to establish jurisdiction and justify resource accumulation beyond Europe. This history has not, however, been incorporated into Europe's historical self-understanding. Philosophical accounts of modern right tend to focus on the theoretical aporias such a concept produced. While Hegel identified many of these aporias,

they remained unresolved within his practical philosophy. The modern right to private property, for example, represents a necessary but insufficient form of freedom that must be sublated, according to Hegel. The desires motivating the exercise of such right proved, however, uncontainable within the norm-governed institutional order tasked with mitigating them.¹

The historical result of this institutional shortcoming was, Hegel acknowledged, the ‘necessary’ extra-territorial expansion of modern European powers through conquest and colonization: “Civil society is driven to establish colonies.”² Hegel was, therefore, committed to a form of state that was always compelled beyond itself in order to accommodate the structural effects of a capitalist system that set those rights, particularly property rights, in motion.³ Yet Hegel remained silent about the origins of modern right in European colonialism itself, for the expansionary activities of European states pass without comment in his narrative of modern right’s emergence.

To be sure, Hegel did not altogether avoid the history and constitutive significance of colonialism for freedom and right, for we read of its importance in the ancient Greek and Roman worlds. We also learn that the early Germanic world arose from colonialism and that mature Germanic political states return to it. Absent, however, is an account of the ‘modern colonial’ experience in the emergence of ‘modern right’ in European nations—a development assisted by reformist theology and eventually codified in late eighteenth-century revolutionary political doctrines. We thus find an uneven discussion of colonialism in Hegel’s *Philosophy of Right*, the early fragment *System of Ethical Life* (1802/03) breaks off shortly after the heading on culture and colonialism, and no account of colonialism is found in the *Phenomenology*.⁴

¹ See Hegel’s notion of the unification of the universal ends of the state and private interests “through difficult and lengthy discipline [*Zucht*],” which will prove incapable of nation-state containment, in HEGEL, G.W.F. **Vorlesungen über die Philosophie der Geschichte**. Band 12. Frankfurt: Suhrkamp Verlag, 1970, p. 39; HEGEL, G.W.F. **Philosophy of History**. Trans. J. Sibree. New York: Dover, 1956, p. 24. Translations of **Vorlesungen über die Philosophie der Geschichte** are my own, but all citations include page numbers from Sibree’s translation as well.

² HEGEL, G.W.F. **Elements of the Philosophy of Right**. Trans. H. B. Nisbet. Cambridge, Mass.: Cambridge University Press, 1991, §248, Addition (G), p. 269.

³ See HEGEL, G.W.F. **Philosophy of Right**, §258. As H. S. Harris’s observes: “Hegel’s National State is supposed to sublimate the Civil Society in which the national economy is articulated; but the economy was always implicitly universal (international), and now it is explicitly so. It is now the case, therefore that Civil Society sublimes the State, rather than vice versa.” HARRIS, H. S. **Hegel: Phenomenology and System**. Hackett, 1995, p. 101.

⁴ See HEGEL, G.W.F. **System of Ethical Life (1802/03) and the First Philosophy of Spirit (Part III of the System of Speculative Philosophy 1803/04)**. Trans. H. S. Harris and T. M. Knox. Albany: State University of New

One of the claims of this article is that the extra-European origins and consequences of modern right are interrelated. If we seek to identify a satisfactory form of mediation for the desires motivating expansion, and the inadequate concept of freedom they expressed, we must understand the colonial origins of modern right.⁵ While there are many paths one might take to investigate modern right's connection to the experience of European colonialism and thereby address a deficit in Hegel's account of right, in the following, I begin the project of constructing what might be called a phenomenology of law and right (*Recht*).⁶ In the *Phenomenology*, right only emerges in the transition from 'Reason' to 'Spirit,' when we move from individual consciousness to law-governed society and from the immediate identification with customary life to the mediated recognition of legal personality via property right. If we were to situate the colonial history of modern right in the *Phenomenology*, then it would constitute something of an emendation to the 'Spirit' section. It is there that the positing and negation of (inadequate) conceptions of law and right—historically implicated in struggles to establish and recognize jurisdiction beyond the nation-state—are located.

In the following I first reconstruct the positing and negating of right as they relate to colonialism in Hegel's work (1). This project must, however, be more than mere reconstruction, for in his *Lectures on the Philosophy of History* Hegel appears to suggest why he does not include European colonialism in the *Phenomenology*: "the Christian world is the world of completion; the principle [of freedom] is fulfilled, and thereby has the end of days fully come." From this, Hegel concludes that "an external relation" such as colonization "is no longer determinate with respect to the epochs of the modern world."⁷ To sustain a consistent dialectical account, I must therefore demonstrate that this claim does not justify Hegel's exclusion of

York, 1979, p. 176-77. See also HARRIS, H. S. **Hegel: Phenomenology and System**, Introduction. p. 72-73.

⁵ On the role of desire or passion (*Leidenschaft*) in the actualization of the concept of freedom, see HEGEL. **Vorlesungen über die Philosophie der Geschichte**, p. 36-39; HEGEL. **Philosophy of History**, p. 22-25.

⁶ The relatively sparse literature on colonialism in Hegel's work deals for the most part with the structural or institutional elements of colonialism as the systematic entailment of the expansionary logic of capitalism. See HEGEL. **Philosophy of Right**, §243ff. See also HIRSCHMAN, A. O. **On Hegel, imperialism, and structural stagnation**. In: HIRSCHMANN (Ed.). **Essays in Trespassing: Economics to Politics and Beyond**. Cambridge, Mass.: Cambridge University Press, 1981, p. 167-176; SEREQUEBERHAN, T. The Idea of Colonialism in Hegel's Philosophy of Right. **International Philosophical Quarterly**, n. 29 (115), 1989, p. 301-318; PAQUETTE, G. Hegel's Analysis of Colonialism and Its Roots in Scottish Political Economy. **Clio**, n. 32 (4), 2003, p. 415-432; and WASZEK, N. **The Scottish Enlightenment and Hegel's Account of "Civil Society"**. Dordrecht: Kluwer Academic Publishers, 1988.

⁷ HEGEL. **Vorlesungen über die Philosophie der Geschichte**, p. 414; HEGEL. **Philosophy of History**, p. 342.

colonialism from his account of right, and that the early modern positing of right was dialectically engendered by, and transformed through, Europe's interaction with non-European cultures (2). To support this move, I briefly discuss two significant developments in modern natural rights theory in the works of Francisco de Vitoria and John Locke that emerge from the experience of European colonial activity (3), before making some closing remarks (4).

1. *The Constitutive Role of Colonialism in the Development of Right*

Chapter Six of the *Phenomenology*, 'Spirit,' largely concerns itself with 'objective spirit,' or spirit that has 'being-for-itself' and takes the form of necessity and actuality (*Wirklichkeit*). Spirit is here objective insofar as law and social institutions become objects of collective self-understanding and particularize the universal potentiality of subjective spirit—discussed in the previous five chapters—in real communities. This gives a positive form to freedom, which was previously only negative or abstract. Because objective spirit emerges in particular societies, freedom, we might say, has a history as well as a geography. Hegel, therefore, argues that world history has four phases, manifested in four empires: the Asian, Central Asian (Greek), Roman, and Germanic, although the Asian phase of history is considered pre-spiritual or “unhistorical history [*ungeschichtliche Geschichte*],”⁸ leaving only three world-historical (national) spirits. World history, Hegel writes, “moves from East to West,” and “Europe is *the* end of world history.”⁹ This is Hegel's way of saying that the three logical moments of the concept—universality, particularity, and individuality—are here historical-ontological moments of freedom instantiated in three different law-governed nations.¹⁰ In the following, I take up the account of this development of freedom in law-governed nations in the *Phenomenology*. I pay particular attention to the Greek and Roman worlds, for the terms of their dialectical development and undoing will help us situate the (missing) dialectic of European colonialism to be addressed in the following section.

⁸ HEGEL. *Vorlesungen über die Philosophie der Geschichte*, p. 136; HEGEL. *Philosophy of History*, p. 105. See also HEGEL. *Philosophy of Right*, §§354-358.

⁹ HEGEL. *Vorlesungen über die Philosophie der Geschichte*, p. 134; HEGEL. *Philosophy of History*, p. 103.

¹⁰ On the three moments of the concept, see HEGEL, G.W.F. *Logic: Being Part One of the Encyclopaedia of the Philosophical Sciences (1830)*. Trans. William Wallace. Oxford: Oxford University Press, 1975, §163. I have amended the Wallace's translation throughout insofar as *Begriff* is here translated as 'concept' rather than 'notion.'

As noted, the social institutions of spirit are contained in the ‘Spirit’ chapter, where relations of law and right (and thus ethical substance) emerge, which is why H. S. Harris has rightly suggested that ‘Spirit’ should be read as a phenomenology of law—moving from custom and abstract right to moral law.¹¹ The legal order of a community forms what Hegel calls “substantial right” or self-consciousness’s “second nature.”¹² Hegel speaks of our habituation to this institutional second nature as a ‘rebirth’ in which the natural will is destroyed and a new ethical subject is born—a “son of civil society”¹³—in the legal order it inhabits. This order both limits and makes possible freedom insofar as it mediates, affirms, and habituates the recognitive sociality of the people.¹⁴ It cultivates the individual capacity for rational self-reflection, while also providing the normative content or substantive ends of action that can be recognized (and affirmed) by others. Through this recognition, mediated by the legal order, the individual becomes aware of its freedom.

Thus, in the *Phenomenology* we are presented with an account of the coming to be of right, which in the *Philosophy of Right* is taken as given. That is to say, Hegel’s philosophy of right is a science of the idea (*Idee*) of freedom, whereby idea is understood as the unity of both the concept (*Begriff*) and the actualization of right (*Recht*), the unity of form and content.¹⁵ The ‘idea’ of right is therefore the starting point of the *Philosophy of Right*, for it presupposes the historical actualization of the concept of right accounted for in the *Phenomenology*. The idea of right is the beginning of the philosophical science of right, but its ‘proof’ (i.e. the actualization of the concept) precedes it. The “concept of right, so far as its coming into being is concerned, falls

¹¹ See Harris, H. S. *Hegel’s Ladder II: The Odyssey of Spirit*. Indianapolis: Hackett, 1997, p. 147.

¹² HEGEL. *Vorlesungen über die Philosophie der Geschichte*, p. 57; HEGEL, *Philosophy of History*, p. 40. See also HEGEL. *Philosophy of Right*, §151.

¹³ HEGEL. *Philosophy of Right*, §238. See also §151A.

¹⁴ “Freedom is simply that universal substantial objects such as right and law are wanted and known in their appropriate actualization—in the state” (HEGEL. *Vorlesungen über die Philosophie der Geschichte*, p. 82; HEGEL. *Philosophy of History*, p. 59) and ethical life “is the *Idea of freedom* as the living good which has its knowledge and volition in self-consciousness, and its actuality through self-conscious action,” having concrete existence in “laws and institutions which have being in and for themselves” (HEGEL. *Philosophy of Right*, §142 and §144). See also HEGEL. *Vorlesungen über die Philosophie der Geschichte*, p. 409 and p. 57; HEGEL. *Philosophy of History*, p. 338 and p. 39.

¹⁵ HEGEL. *Philosophy of Right*, Preface, p. 22 and §1, §258, as well as HEGEL. *Logic: Being Part One of the Encyclopaedia*, §213.

outside the science of right; its deduction is presupposed here and is to be taken as given.”¹⁶ Freedom is at first only in itself (*an sich*), but its objectification is the material of human history and thus the condition for us to become conscious of our own freedom and have appropriate social institutions for its expression.¹⁷ Such institutions must make possible the continuing recognition of one’s self in law and thus in others.¹⁸ As Hegel says, we must be able to bear ‘spiritual witness’ to rational law as to our ‘own essence,’ for it is in rational law that we have self-awareness and, thus, our essence and the law are indeed indistinct.¹⁹

In world history, the above three shapes of juridical consciousness—custom, abstract right, and moral law—find their place in the Greek, Roman, and Protestant European or ‘Germanic’ nations. These three shapes of consciousness and geographic regions are also manifestations of the abovementioned three moments of the concept of freedom—universality, particularity, and individuality—which are actualized in the family, civil society, and the state. In the *Phenomenology*, we read of their dialectical emergence and overcoming in the three subdivisions of ‘Spirit’—Ethical Order, Culture, and Morality—which repeats the determinations of spirit already evidenced in the three sections of ‘Reason’ (V. C.), but with the aforementioned difference: what was previously only shapes of consciousness now becomes shapes of a world.²⁰ What was universal self-consciousness in Reason must become ‘for-itself’ in the collective self-determination of objective spirit, where we can now speak of the historical life of a people, of worlds or nations.

In the first world, we have the simple universality of the Greek customary life (VI A a), which is manifest in human law: “In the form of universality it is the *known* law, and the

¹⁶ HEGEL. **Philosophy of Right**, §2. See also HEGEL, G.W.F. **Philosophy of Mind, Part Three of the Encyclopaedia of the Philosophical Sciences (1830)**. Translated by William Wallace. New York: Oxford University Press, 1971, §§483-87. The Idea of right as freedom forms a circle, which Hegel describes as “the round of movement, in which the concept... gives itself the character of objectivity and of the antithesis thereto; and this externality which has the concept for its substance, finds its way back to subjectivity through its immanent dialectic” (HEGEL. **Logic: Being Part One of the Encyclopaedia**, §215). See also HEGEL. **Philosophy of Right**, §2 and HEGEL. **Logic: Being Part One of the Encyclopaedia**, §§15-16.

¹⁷ HEGEL. **Vorlesungen über die Philosophie der Geschichte**, p. 33; HEGEL. **Philosophy of History**, p. 20. World history, writes Hegel, “begins with its universal end that the concept of spirit to be realized [*befriedigt*] is only *in itself*, that is as nature; it is the inner, the innermost unconscious instinct and the entire business of world history is... the work of bringing it to consciousness.” *Ibid.* p. 39-40; p. 25.

¹⁸ For a good discussion of law, right, and recognition in the *Phenomenology*, see RUSSON, J. **Reading Hegel’s Phenomenology**. Bloomington, IN: Indiana University Press, 2004, Chapter 11.

¹⁹ HEGEL. **Philosophy of Right**, §147.

²⁰ HEGEL. **Phenomenology of Spirit**. Translated by A. V. Miller. New York: Oxford University Press, 1979, §441.

prevailing custom [*vorhandene Sitte*].”²¹ As the effective agent of human law, government “moves, and maintains itself by consuming and absorbing into itself the separatism of the Penates.”²² Government, as the “unitary soul or the self of the national Spirit,”²³ must then continually resist and dissolve tendencies toward the division of public (universal) and private (particular), or the emergence of individuality ‘within’ the community. It must suppress the particularity of the families, sons, and soldiers, which have pride of place in the divine/family law that Antigone so tragically follows. Yet the government is also “spontaneously active in an outward direction,”²⁴ in war and colonization. Indeed, its warring nature, its expansionary tendency, is only activated once it has achieved (a political) unity at the expense of the particularizing tendency of Hegel’s infamous ‘internal enemy,’ namely, womankind.²⁵ The outward and conflicted trajectory of the individual (as community) is, we find, a precursor of the destructive and unrestrained freedom of the atomistic self in the imperial Roman world to follow.

Adhering to the human law, thus, gives expression to a contradiction, for the suppression of particularity within the community produces a collective individuality that tends outward toward war, but the means to victory is the very particularity (i.e. its heroic soldiers) the community sought to vanquish.²⁶ Although Hegel’s discussion of downfall of the harmonious customary life of Greece is notoriously brief, he makes it clear that it is consciousness’s immediate relation to law that allows the ethical to be tainted by nature, here being the feminine (and unconscious) nature of the divine law and the family.²⁷

In the downfall of the Greek world, the living universality of ethical life, in which each had an immediately recognizable role, is lost and spirit is “shattered into a multitude of separate

²¹ HEGEL. *Phenomenology of Spirit*, §448.

²² HEGEL. *Phenomenology of Spirit*, §475.

²³ HEGEL. *Phenomenology of Spirit*, §473.

²⁴ HEGEL. *Phenomenology of Spirit*, §475.

²⁵ HEGEL. *Phenomenology of Spirit*, §475.

²⁶ Cf. HEGEL. *Philosophy of Right*, §§321-24.

²⁷ In the *Lectures on the Philosophy of History*, the Socratic spirit of critical reflection is given a greater role. The principle at work in the corruption of the Greek world is a “developing *for-itself* [moment] of free subjectivity [*Innerlichkeit*]” (HEGEL. *Vorlesungen über die Philosophie der Geschichte*, p. 326; HEGEL. *Philosophy of History*, p. 267). It was in Socrates that “the principle of subjectivity [*Innerlichkeit*], the absolute independence of thought itself, attained free expression.” He was thus the “founder of morality” (HEGEL. *Vorlesungen über die Philosophie der Geschichte*, p. 328-29; HEGEL. *Philosophy of History*, p. 269). See also HEGEL. *Philosophy of Right*, §138A.

atoms” in the stoical world of persons.²⁸ By 275 B.C. Rome had conquered most of Italy, subsequently took large parts of Spain and North Africa, and with commercial concerns in the expanding empire looming large, citizenship was soon granted to nearly every inhabitant in order to facilitate trade. A myriad of legal traditions were being practically unified, which in turn elevated the concept of *ius gentium*.²⁹ This is the cosmopolitan uprootedness of the ‘universal community’ of Rome, according to Hegel, “whose simple universality is soulless and dead.”³⁰ This universalization of right through the process of incorporating national particularities into the empire meant that the “right of property previously limited by distinctions of various kinds... were now abrogated.”³¹

For Hegel, the appearance of personality marks the recognition of a kind of individual free will and capacity for abstract right, which is mediated by law and therefore acknowledged by others.³² It is an ‘actualized’ form of stoicism insofar as its capacity to participate in right finds recognition in the positive law of an objective legal institution. We encountered the emergence of the universal in stoical consciousness in Self-Consciousness (B. IV. B)—an outcome of the (pre-legal) struggle for recognition in lordship and bondage. The development of self-consciousness is conceived by Hegel as “essentially the return from otherness.”³³ It is a return to self through the overcoming of its own externalization in the other, which is the double-ground or intersubjectively mediated condition of freedom. As formal reason, this self-consciousness is capable of participating in a condition of right.³⁴ The stoicism of personality in the ‘Condition of Right [*Rechtszustand*]’ (VI A c) is, then, the realization of the person as a legally recognized formal self, but the actualization of right is through arbitrary choice.³⁵ As a ‘sheer empty unit’ it

²⁸ HEGEL. *Phenomenology of Spirit*, §476.

²⁹ See JOLOWICZ. H. F. *Historical Introduction to the Study of Roman Law*. 3rd edition, Barry Nicholas (Ed.). Cambridge: Cambridge University Press, 1972, p. 345-52.

³⁰ HEGEL. *Phenomenology of Spirit*, §475.

³¹ HEGEL. *Vorlesungen über die Philosophie der Geschichte*, p. 383; HEGEL. *Philosophy of History*, p. 316. See also KAUTZER, C. Kant, Perpetual Peace, and the Colonial Origins of Modern Subjectivity. *Peace Studies Journal*, n. 6 (2), 2013, p. 58-67.

³² HEGEL. *Phenomenology of Spirit*, §633.

³³ HEGEL. *Phenomenology of Spirit*, §167.

³⁴ HEGEL. *Phenomenology of Spirit*, §203.

³⁵ HEGEL. *Phenomenology of Spirit*, §479. “We find the moment of subjectivity that was wanting in the Greeks with the Romans, but because it was formal and in itself undetermined, it took as its content passion and arbitrary choice.” HEGEL. *Vorlesungen über die Philosophie der Geschichte*, p. 387; HEGEL. *Philosophy of History*, p. 319.

must seek content outside itself through possession, which is legally recognized in property right.³⁶ Unlike Greek customary life, which lacked this notion of self and for which law was immediate, in the Roman world law was imposed upon the self from another within its world. Persons are alienated from the source of law's determination; they have personality (as an abstract universal, i.e., as merely formal and recognized in law), but not yet self-determination. The sovereign or "lord and master of the world" is an absolute power that stands "over against all the rest" with the power of determining law.³⁷ Persons are now in bondage to the will and law of the Cesar/Sovereign; he is the force whose negativity (as the power of determination) holds the atomistic society together.

Absent this negative power, we have a condition well described by Yeats's poem *The Second Coming*: "Things fall apart; the centre cannot hold/Mere anarchy is loosed upon the world."³⁸ This condition devolves, writes Hegel, into "a frenzy of destructive activity,"³⁹ wherein "particular interests" come to "oppose patriotic sentiment, and public spirit [*Sinn für den Staat*] no longer holds these opposites in their necessary equilibrium."⁴⁰ This is the negativity of persons who have no reason to identify with others or the community as a whole, making the ends of their actions arbitrary, unrecognizable by others, and thus collectively chaotic. We can see it as a 'particularized' version of the destructiveness of the subsequent 'universalized' form of absolute freedom, which is said to mark the French Revolution. It is also a fitting description of what the sovereign, thinking himself a god and alienated from the multitude, will carry out in "monstrous excesses," bringing ruin to the Empire.⁴¹ Such demise is, however, a necessary result of the insufficient and inherently unstable understanding of freedom as mere abstract right and arbitrary choice in the sphere of property relations. Since the content of law is external and the sovereign's actions arbitrary—not respecting others ends and treating citizens as little more than his private property—the condition of right is inverted into a situation of complete rightlessness

³⁶ HEGEL. *Phenomenology of Spirit*, §480.

³⁷ HEGEL. *Phenomenology of Spirit*, §481.

³⁸ YEATS, W. B. *The Second Coming*. In: Finneran, R. J. (Ed.). *The Collected Poems of W. B. Yeats*. New York: Simon & Schuster, 1996, p. 187.

³⁹ HEGEL. *Phenomenology of Spirit*, §481.

⁴⁰ HEGEL. *Vorlesungen über die Philosophie der Geschichte*, p. 373; HEGEL. *Philosophy of History*, p. 307.

⁴¹ HEGEL. *Phenomenology of Spirit*, §481.

(*Rechtslösigkeit*).⁴² This self-undermining condition of the Roman world was, according to Hegel, “preparing the ground for a higher spiritual world” and thus “equivalent to a place of birth”—the birth of the Christian concept of freedom.⁴³ The form of particularity that the Greek world sought to suppress and the Roman world institutionalized in its abstract legal order, will be ‘subjectivized’ in the concept of freedom of the European colonial period, giving rise to its own distinctively modern contradiction and dialectic.

2. *Christian Freedom and European Expansion*

Hegel views the emergence of Christianity as a new phase in the development and recognition of freedom—the third moment of its logic—and his analysis of Culture (*Bildung*) in the *Phenomenology* (VI B) takes up its institutional development. “Whole continents, Africa and the East, have never had this Idea [of freedom], and are without it still,” writes Hegel. “The Greeks and Romans, Plato and Aristotle, even the Stoics, did not have it... It was through Christianity that this Idea came into the world.”⁴⁴ In Hegel’s *Logic*, we read that the “universal in its true and comprehensive meaning is a thought which, as we know, cost thousands of years to make it enter into the consciousness of men” and did not gain recognition “till the days of Christianity.”⁴⁵ In the *Lectures on the Philosophy of History*, this is the Christian principle (*Prinzip*) or foundation (*Grundsatz*) of spiritual freedom, which after the fall of Rome the Germanic nations are tasked with actualizing.⁴⁶ Hegel expresses a similar sentiment in the *Philosophy of Mind* and *Philosophy of Right*, but in the latter speaks of a “Nordic principle” rather than a Christian principle.⁴⁷

My task here is not to reconstruct this account, but to identify Hegel’s understanding of this new concept of freedom and to question its use as justification for a ‘principle of division’ unique

⁴² HEGEL. *Vorlesungen über die Philosophie der Geschichte*, p. 387; HEGEL. *Philosophy of History*, p. 320.

⁴³ HEGEL. *Vorlesungen über die Philosophie der Geschichte*, p. 386; HEGEL. *Philosophy of History*, p. 318.

⁴⁴ HEGEL. *Philosophy of Mind*, §482.

⁴⁵ HEGEL. *Logic: Being Part One of the Encyclopaedia*, §163.

⁴⁶ HEGEL. *Vorlesungen über die Philosophie der Geschichte*, p. 413; HEGEL. *Philosophy of History*, p. 341.

⁴⁷ HEGEL. *Philosophy of Mind*, §377 and HEGEL. *Philosophy of Right*, §358. For a good discussion of the role of Christianity as a conceptual possibility opened up by the Greek and Roman experience, which was not *per se* necessary, see PINKARD, T. *Hegel’s Phenomenology: The Sociality of Reason*. Cambridge, Mass.: Cambridge University Press, 1996, Chapter 6.

to the modern world.⁴⁸ Unlike the principle of division of the Greek and Roman worlds, whose middle-period is one of conquest and colonialism, Hegel's dialectical account of the modern world excludes the colonial experience. The Christian world "has no absolute external relation [*kein absolutes Aussen*], but only a relative one that is in-itself conquered or transcended [*an sich überwunden*]." The only task yet to be accomplished, he concludes, "is to make it apparent that this relation is transcended."⁴⁹ To open up the space for an account of European colonialism's relation to the emergence of modern right, this claim must be challenged.

Modern freedom, according to Hegel, is the will that "knows itself as free and wills itself as this its object."⁵⁰ This is the moral worldview, the self-legislating rational will, conceptually expressed in the work of Immanuel Kant and Johann Gottlieb Fichte, in which moral law is self-imposed and the duty to adhere to it is self-generated. The determination of law and its enforcement are here internalized in the modern subject, closing the circuit of self-legislation and obligation. This is a self-grounding free will, the self of 'conscience,'⁵¹ which transcends natural determination: "Into its conscious will all objectivity, the whole world, has withdrawn."⁵² This understanding of freedom is, I take it, the thought behind Hegel's claim that the Christian world "has no absolute external relation," thus rendering European colonialism insignificant.

European colonialism does not, for Hegel, play a determinate role in the dialectic of modern freedom presented in the *Phenomenology*, despite the significance attributed to the colonial experience of the preceding Greek and Roman empires in his other work. In the *Lectures on the Philosophy of History*, Hegel not only celebrates the heterogeneity and internalization of otherness engendered by the colonial origins of the Greek and Roman worlds,⁵³ but as mentioned, in both we find the middle period of their triadic historical division to be precisely one of conquest and colonialism.⁵⁴ When the development of freedom, however, reaches its final phase

⁴⁸ HEGEL. *Vorlesungen über die Philosophie der Geschichte*, p. 414; HEGEL. *Philosophy of History*, p. 342.

⁴⁹ HEGEL. *Vorlesungen über die Philosophie der Geschichte*, p. 414; HEGEL. *Philosophy of History*, p. 342.

⁵⁰ HEGEL. *Philosophy of Mind*, §482.

⁵¹ HEGEL. *Phenomenology of Spirit*, §633.

⁵² HEGEL. *Phenomenology of Spirit*, §598.

⁵³ HEGEL. *Vorlesungen über die Philosophie der Geschichte*, p. 277-81; HEGEL. *Philosophy of History*, p. 225-29.

⁵⁴ On the Greek world's three phases, Hegel writes: "the first is the emergence of real individuality [*Individualität*]; the second is the independence and prosperity of external conquest, making contact with antecedent world-historical people; and the third, finally, is the period of decline and fall, in its encounter with the succeeding organ of world-

in the Germanic world (i.e., in Protestant Germany, Scandinavia, and England), Hegel characterizes ‘its’ middle period, stretching from Charlemagne to the Reformation, not as an ‘external’ experience of inter-national conflict and domination, but as an ‘internal’ opposition of theocracy and feudal monarchy.⁵⁵

The Germanic nations, Hegel insists, do not have what he calls a “double external relation” to an antecedent and future world-historical national spirit.⁵⁶ As for the contact Europeans had with other nations in the global colonial project up through Hegel’s time, it was insignificant:

Their history is much more an introversion [*Insichgehen*] and relation to itself. Of course, the Western world moved outward in the Crusades and in the discovery and conquest of America, but it neither came into contact with a preceding world-historical people, nor dispossessed a principle that had previously ruled the world. The external relation here only *accompanies* [*begleitet*] history; it does not bring with it essential changes in the nature of conditions, but rather bears the mark of an internal evolution.⁵⁷

This is why, Hegel concludes, the colonial experiences of Western European nations are ‘completely different’ from those of the Greek and Roman worlds.⁵⁸ Such a claim, however, appears to contradict the logic of his own phenomenological treatment of law for two reasons. First, as we saw in the *Phenomenology*, the Greek world does not come to ruin because it came into contact with the Romans; rather, it becomes weakened and thus vulnerable to military defeat due to the self-undermining force of an insufficient concept of freedom (or unsustainable ethical substance), which arose from an internal contradiction of human and divine law, or universality (of the state) and particularity (of private family life and individual sons). And the Roman world did not fall because the Germanic invaders were the bearers of a more powerful world-historical principle; the Roman world became one of the “rotten and hollowed out states”⁵⁹ due to the

history.” HEGEL. *Vorlesungen über die Philosophie der Geschichte*, p. 276; HEGEL. *Philosophy of History*, p. 224. Similarly, in the Roman world, after achieving unity in its first period, “the state turns outward... and enters the theater of world history... the Punic Wars and the contact with the antecedent world-historical people.” HEGEL. *Vorlesungen über die Philosophie der Geschichte*, p. 343; HEGEL. *Philosophy of History*, p. 281.

⁵⁵ HEGEL. *Vorlesungen über die Philosophie der Geschichte*, p. 416; HEGEL. *Philosophy of History*, p. 344.

⁵⁶ HEGEL. *Vorlesungen über die Philosophie der Geschichte*, p. 413; HEGEL. *Philosophy of History*, p. 341.

⁵⁷ HEGEL. *Vorlesungen über die Philosophie der Geschichte*, p. 413; HEGEL. *Philosophy of History*, p. 342.

⁵⁸ HEGEL. *Vorlesungen über die Philosophie der Geschichte*, p. 411; HEGEL. *Philosophy of History*, p. 342.

⁵⁹ HEGEL. *Vorlesungen über die Philosophie der Geschichte*, p. 413; HEGEL. *Philosophy of History*, p. 341.

consistent and self-undermining expression of their own concept of freedom as abstract right: they were thus susceptible to the Germanic “deluge [*überschwemmen*].”⁶⁰

By Hegel’s own account, then, the rise and fall of these world-historical nations was not determined by an external Other, but by the immanent logic of their own (inadequate) concept of freedom. To better understand this internal/external distinction, it is perhaps helpful here to employ Charles Taylor’s language of ontological versus historical dialectical development in the *Phenomenology*.⁶¹ The ontological dialectic is the immanent movement of the concept animated by consciousness’s self-differentiation into different shapes, which instigate a negation of those shapes when a particular form of consciousness is found lacking in light of its own standards. Through this realization of contradiction, the knowledge and subsequently the object are superseded, producing new ones in turn.⁶² When Hegel writes that the Christian, i.e. European, concept of freedom “bears the mark of in internal evolution,” it is to this immanent logic of freedom that he refers. With this move the development of European freedom is seemingly unaffected by the historical and dialectical development of the social institutions and ethical norms engendered in the service of European war, conquest, and colonialism: An internal concept of freedom becomes isolated from the historical and systematic institutionalization of brutality and domination, and this brings me to the second point.

Although Hegel speaks of the introverted or self-relational nature of the modern concept of freedom—as the free will that wills itself in the final synthesis of self and object—this is still only a subjective account. This subjective moment has yet to be concretized in the legal order and social institutions of real communities whose relations and conflicts with others are of central importance to their determination. This is not to say that there is a subjective and objective form of contradiction, for in objective spirit contradiction occurs between social practices and institutions and the self-understanding or conceptual account historical agents have of themselves. In the historical dialectic, externality is the nature of the actualization of the concept. The concept of Roman freedom in the form of abstract right, for example, contributed to the status of Roman citizenship becoming weaker and the rights of property and contractual

⁶⁰ HEGEL. *Vorlesungen über die Philosophie der Geschichte*, p. 413; HEGEL. *Philosophy of History*, p. 341.

⁶¹ TAYLOR, C. *Hegel*. Cambridge: Cambridge University Press, 1975, Chapter 8.

⁶² HEGEL. *Phenomenology of Spirit*, §85.

exchange becoming simplified as the Empire expanded through conquest and colonialism. As discussed in the previous section, this brought positive right ever closer to the stoical notion of the natural right of nations (*ius gentium*). This was more fitting for an expanded and culturally pluralistic Empire, yet this increasing tendency toward abstraction undermined the institutional capacity of the legal order to sustain relations of mutual recognition and identification necessary for social stability.

If in asserting that the “external relation” of European colonialism “only *accompanies* history,” Hegel means that, unlike the Roman example above, colonialism was merely contingent or marginal to the historical dialectic of modern freedom, then a case must be made to the contrary—a task I take up in the following section. At this point, there is no reason to believe that the “internal evolution” of the Christian concept of freedom in the modern period was any different in principle from the “internal evolution” of any other concept. Hegel argues that modern freedom is at first “itself only a concept—a principle of the mind and heart, intended to develop into an objective phase, into legal, moral and religious, and not less into scientific actuality.”⁶³ The “dead bones of logic,” we could say, have yet to be “quickenened by spirit, and so become possessed of a substantial, significant content.”⁶⁴ Historically, this content was to be found in the experience of modern European colonialism and the positing of inter-national right and law that arose from it.

3. *Vitoria, Locke, and the Colonial Origin of Modern Natural Right*

Adam Smith claimed that the “discovery of America” was one of “the two greatest and most important events recorded in the history of mankind,”⁶⁵ and Hegel included it among the three great inaugural events or dawning light (*Morgenröte*) of modernity.⁶⁶ Few would disagree, for European colonialism fostered a revolution in Europe’s self-understanding, entailing racial,

⁶³ HEGEL. *Phenomenology of Mind*, §482. See also HEGEL. *Vorlesungen über die Philosophie der Geschichte*, p. 140; HEGEL. *Philosophy of History*, p. 109.

⁶⁴ HEGEL. *Science of Logic*. Trans. A. V. Miller. New York: Humanities Press, 1969, p. 53.

⁶⁵ The second was the discovery “of a passage to the East Indies by the Cape of Good Hope,” which Hegel notes as well, but groups together with American colonization. SMITH, A. *An Inquiry into the Nature and Causes of the Wealth of Nations*, Volume II. R. H. Campbell and A. S. Skinner (Eds.). Indianapolis: Liberty Fund, 1981, p. 626.

⁶⁶ HEGEL. *Vorlesungen über die Philosophie der Geschichte*, p. 491; HEGEL. *Philosophy of History*, p. 410-11.

political, religious, and economic upheavals as significant as any in the shaping of modernity. It was, indeed, an “othering” of global proportions in which the “discovery” of the “New World” was simultaneously the constitution of the “Old.”⁶⁷ This “outward trajectory of spirit,” as Hegel calls it, was the European desire for “men to get to know *their* world [*Erde*],” but to come to know the world is to come to know oneself, and the path that spirit takes toward this appropriative self-knowledge is, as we are often reminded, rife with despair and death.⁶⁸

Hegel acknowledges the economic and religious dimensions of colonialism, yet the juridical dimension is absent; missing is the dialectical emergence of modern concepts of natural right within the natural law traditions of the colonial period, concepts that indeed give birth to modern international law.⁶⁹ Modern right and law in this tradition are commonly associated with the normative ideal of the social contract that grounds the legitimacy of political sovereignty—and often private property—in a ‘consensual’ act. This tradition, however, also sought to justify the ‘nonconsensual’ means of enacting sovereignty and property. And indeed it is often these means that inform the actualization of the concept of freedom and the contradictions that arise from them in struggles for the recognition of property right and sovereignty. Such struggles arise between Europeans and non-Europeans as well as between the competing European colonial powers themselves.

Justificatory arguments for colonialism entail theories of jurisdiction, which themselves entail more theories about property and rule (*dominium*) and the generation of right (*ius*). Jurisdiction is at its root the speaking (*dictio*) of right (*ius*) and the power to administer justice (*iustitia*) within a particular territory or dominion—the exercise of public *dominium* or *imperium* as opposed to private *dominium* or private property. These dimensions were not yet distinguished in the Roman idea of *dominium*, the power exercised by the *paterfamilias*, but they became so as

⁶⁷ It is in this spirit that Howard Winant writes: “By evolving systems of enslavement and conquest that differentiated their ‘nationals’ (soldiers, settlers) from the proto-racial ‘others’ who were the conquered and enslaved, imperial nations also consolidated themselves. They were not only the French, the Portuguese, the Dutch, the British; they were also the whites, the masters, the true Christians.” WINANT, H. **The World is a Ghetto**. New York: Basic Books, 2001, p. 23.

⁶⁸ HEGEL. **Vorlesungen über die Philosophie der Geschichte**, p. 490; HEGEL. **Philosophy of History**, p. 410.

⁶⁹ HEGEL. **Vorlesungen über die Philosophie der Geschichte**, p. 490-91; HEGEL. **Philosophy of History**, p. 410. See also HEGEL. **Philosophy of Right**, §248.

they worked their way into the European legal tradition via the recovery of Justinian's *Corpus Juris Civile* around the eleventh century.⁷⁰

In late medieval and early modern discourse there developed a general understanding of *dominium* as a power of rational will, which when reflexively exercised is liberty, and when exercised over others is domination. When combined with *ius*, *dominium* was to become property in private law, and sovereignty (*imperium*) in public law. More specifically, this *ius* or right associated with *dominium* eventually became 'subjectively' understood as a quality of one's person—an assimilation of liberty, *dominium*, and right unknown to Roman law. An important development in this conceptualization ensued from Thomas Aquinas' participation in the Franciscan poverty debates, one of the most important moments in the development of legal personality and property right in Western history. It was then that the Church of the 14th century—reacting to the radical economic implications of apostolic poverty supported by Duns Scotus and William of Ockham—recognized Aquinas' notion of rational self-mastery as the natural or true *dominium* of persons as such; thus poverty, as the renunciation of *dominium*, was contrary to the nature of the person.⁷¹ This was a juridical form of recognition—insofar as the *dominium* was the anchor of legal status—and the foundation of modern so-called possessive individualism.⁷² Whether this recognition of persons included non-Christians or indigenous peoples would be the subject of future conflict.

The need for the colonial powers to give an account of the establishment of right to justify their jurisdictional expansion was pivotal in the development of the modern natural law theory and the 'subjectivization' of right. This, in turn, served as the conceptual basis of international law and the natural-rights constitutional and revolutionary moments of the late eighteenth

⁷⁰ Although *dominium* originated as the power of the *paterfamilias*, in the classical period (roughly 40 B.C. to 240 A.D.) *dominus* and *dominium* came to mean simply owner and full ownership respectively—as opposed to lesser forms such as *usucapatio*, *possessio*, *dominium bonitarum*, etc. This was its meaning the late republic, and certainly in the texts from the classical period, compiled centuries later in the *Corpus Juris Civilis* by order of the Byzantine emperor Justinian in the early sixth century.

⁷¹ See BRETT, A. **Liberty, Right and Nature: Individual rights in later scholastic thought**. Cambridge: Cambridge University Press, 1997, p. 14.

⁷² As Brian Tierney writes: "A continuous chain of texts connects the idea of *dominion* of self with the seventeenth-century doctrines. There are relevant comments, for instance, in Olivi, Gerson, Summenhart, Vitoria, Suarez, and Grotius. Sometimes *dominium* was taken in Aquinas's sense of self-mastery; sometimes the idea of property persisted...It is a story that has never been adequately written." TIERNEY, B. **The Idea of Natural Rights: Studies on Natural Rights, Natural Law and Church Law 1150-1625**. Atlanta: Scholars Press for Emory University, 1997, p. 89.

century. Only the natural-rights constitutional and revolutionary moments—not the colonial condition of their emergence—are discussed in the last two sections of ‘Culture’ (VI B) in the *Phenomenology*. In the following, I briefly introduce two moments in the development of modern right within the colonial condition. The first relates to the dialectical development of the concept of (universal) legal personality—understood in terms of ‘natural public’ *dominium*—in the natural law debates over the legitimacy of Spanish slavery and jurisdiction in the Americas. The second is John Locke’s attempt to posit a theory of natural right that could legitimate jurisdiction in the colonies independent of consent, just war, the *a priori* denial of the Amerindian right, and the authority of the Catholic Church. His solution was to argue for a *dominium*-founding practical activity of the self and a form of private punishment grounded in conscience.

Sixteenth-century Spain witnessed a strong revival of Thomist natural law theory thanks to Francisco Vitoria and his students who formed the so-called Salamanca School. This revival brought with it new debates over the nature of *dominium*, which were as much about countering the reformist threat (with its notions of grace and *sola fide*) as they were about articulating a justification of Spanish colonialism. In his lectures dealing with the Spanish conquest, *On the American Indians* (1539), Vitoria questioned whether ‘barbarians’ could have true public and private dominium? “That is to say,” he wrote, “whether they were true masters of their private chattels and possessions, and whether there existed among them any men who were true princes and masters of the others.”⁷³ He argued that they did have true *dominium*, but that it could be trumped by the Catholic theory of just war.

These lectures coincided with reports of the terroristic practices of the ‘conquistadors’ making their way back to the homeland, which elicited moral outrage and a vigorous debate about the right to colonize. The explanation of absolute freedom and terror in the *Phenomenology* (VI B III) is illustrative here. “In this its characteristic *work*, absolute freedom becomes explicitly objective to itself, and self-consciousness learns what absolute freedom in effect is.”⁷⁴ Self-consciousness is thereby faced with the irreconcilability of “its own concept of itself” and the results of its actual practice, “the *terror* of death.”⁷⁵ Faced with practices carried out in the

⁷³ VITORIA. *On the American Indians*, 1.1 §4, in *Political Writings*, 239.

⁷⁴ HEGEL. *Phenomenology of Spirit*, §592.

⁷⁵ HEGEL. *Phenomenology of Spirit*, §592.

colonies and in their name, Spaniards too experienced a contradiction between their self-understanding and the law with which they identified. So much so that all overseas conquests were temporarily suspended in the mid-sixteenth century until concept and deed could be reconciled.⁷⁶ What followed (1550-51) in the city of Valladolid was a debate between Juan Ginés de Sepúlveda, theologian and Aristotle scholar, and Bartolomé de Las Casas, Bishop of Chiapas, concerning natural *dominium* and thus juridical status in the context of Spanish colonialism.

In the debate, Sepúlveda's supported Aristotle's doctrine of natural slavery and an understanding of *dominium* that relied upon God's grace, which indigenous peoples supposedly lacked.⁷⁷ This was tantamount to claiming that the Amerindians were barbarians and did not have the status of rights-bearing persons, with which they might have been able to challenge Spanish claims to rule over them and their land. Las Casas too thought the Amerindians were barbarians, but only to the extent that they were not yet Christians, for their well-documented and sophisticated arts and systems of law and commerce clearly demonstrated that they were rational.⁷⁸ Thus, he concluded, as did Vitoria before him, that they were capable of exercising public and private *dominium*, and capable of receiving salvation.⁷⁹ Indeed, their rationality would lead them to it. Vitoria was particularly concerned that Sepúlveda's argument maintained a reformist heresy supporting popular resistance, for if public *dominium* as a right of rule was lost "in a state of mortal sin," then Christian reformists, relying on conscience, could choose to resist a sinful sovereign. In the fourteenth century, Richard Fitzralph and John Wycliffe incorporated an Augustinian notion of natural *dominium* as subject to grace. Their work not only served as an important precursor to the Reformation, but created the foundations for a theory of resistance as well. Theologians of the Counter Reformation took this to be heresy and Vitoria clearly had this in mind when deliberating over the justification of Spanish colonialism, for he re-articulates

⁷⁶ See PAGDEN, A. **Lords of All the World: Ideologies of Empire in Spain, Britain and France c. 1500 – c.1800**. New Haven: Yale University Press, 1995, p. 46-62. For Hegel's account of the role of Charles V, see HEGEL. **Vorlesungen über die Philosophie der Geschichte**, p. 418; HEGEL. **Philosophy of History**, p. 346.

⁷⁷ See ARISTOTLE. **Politics**, 1252a26-35. See also PADGEN, A. **The Fall of Natural Man: The American Indian and the Origins of Comparative Ethnology**. Cambridge: Cambridge University Press, 1986, Chapters 3 and 4.

⁷⁸ LAS CASAS. B. **Witness: Writings of Bartolomé de Las Casas**. Trans. George Sanderlin. New York: Orbis Books, 1993, p. 100.

⁷⁹ See LAS CASAS. B. **In Defense of the Indians**. Trans. Stafford Poole. DeKalb: Northern Illinois University Press, 1974.

Aquinas' claim about the naturalness of *dominium* (public and private), extending it to infidels and "barbarians."⁸⁰

The resolution of this conflict, itself initiated by the experience of terror in the colonies, was the firm establishment of universal legal personality in Catholic natural law theory. To establish jurisdiction in the colonies, then, the Spanish must either claim first occupation (for private *dominium*) or if, in an act of "defending" the law of nations (*ius gentium*), the sovereign of Church or state could declare a just war.⁸¹ Indeed, a just war in reaction to violations of *ius gentium* is only possible if the violators are considered rational, free, and thus capable of recognizing and adhering to its law. The recognition of legal personality, in short, opened the door to justifiable conquest.

[I]f the barbarians nevertheless persist in their wickedness and strive to destroy the Spaniards, they may then treat them no longer as innocent enemies, but as treacherous foes against whom all rights of war can be exercised, including plunder, enslavement, deposition of their former masters, and the institution of new ones.... This, then, is the first title by which the Spaniards could have seized the lands and rule of the barbarians...⁸²

English colonialism faced a different set of problems concerning justification and right. As Ken Macmillan explains, "Unlike Roman law, common law possessed no doctrines for the acquisition of sovereignty over territory because the doctrine of tenures held that no land subject to the common law could be outside a state of sovereignty."⁸³ Sir Frederick Pollock and Frederic William Maitland have argued that Roman law in England "led to nothing," for "there would be no court administering Roman law."⁸⁴ One could perhaps "become a diplomatist; there was always a call in the royal chancery for a few men who would be ready to draw up treaties and state-papers touching international affairs, and to meet foreign lawyers on their own ground."⁸⁵ In one sense, they are right, for England's domestic legal and political institutions were common law, but the almost dismissive comment about the use of "a few men" schooled in Roman law for

⁸⁰ VITORIA. *On the American Indians*, 1.2, in *Political Writings*, p. 240-41.

⁸¹ VITORIA. *On the American Indians*, 3.1 §4, in *Political Writings*, p. 280-81.

⁸² VITORIA. *On the American Indians*, 3.1 §8, in *Political Writings*, 283.

⁸³ MACMILLAN, K. *Sovereignty and Possession in the English New World: The Legal Foundations of Empire, 1576-1640*. Cambridge: Cambridge University Press, 2006, p. 33.

⁸⁴ POLLOCK and MAITLAND. *The History of English Law Before the Time of Edward I*, Volume I, 122.

⁸⁵ *Ibid*, 123-24.

international affairs conceals the great importance of Roman law for conceptualizing international relations, law, external sovereignty, and, most importantly for us, colonialism. Although Henry III banned the teaching of Roman law in the London schools in 1234 and Pope Innocent IV banned its teaching in France, England, Scotland, Wales and Hungary in 1254, Henry VIII created the post of Regius Professor of Civil Law at Oxford and Cambridge in 1540, which at Oxford (in 1587) was taken by Alberico Gentili, who had previously been professor of Roman law at Oxford.⁸⁶ This legal development was part of the project of territorial expansion.

Since common law, which fell under the purview of both King and parliament, did not extend to new territories, the king could decide whether to formally unite the new territory with England (as he did in the case of Wales), thus extending English common law (*lex terra*) into the territory, or apply his own law (*lex coronae*), using Roman law or an absolute (as opposed to ordinary) prerogative. The latter, absolute prerogative, excluded parliament from jurisdictional powers within the colonies, creating a bi-lateral relation between king and colonists wherein the king was absolute “lord and proprietor.”⁸⁷ This is why John Adams could ask: “by what law the parliament has authority over America?” He answered: “by the common law of England, it has none, for the common law, and the authority of parliament founded on it, never extended beyond the four seas.”⁸⁸

English colonists were not particularly happy about the King claiming the lands they conquered or the fruits of their labor (and the labor of their slaves). The introduction of Roman or civil law in England in the mid-sixteenth century only increased the King’s power to the detriment of parliamentary power, and it is plausible that John Locke’s effort to circumvent Roman legal reasoning was an intentional move to undermine the Crown’s law (*lex coronae*).⁸⁹ This is the context of Locke’s argument for two remarkable mechanisms for establishing private right and thereby political jurisdiction in the colonies. They are mechanisms that do not rely on

⁸⁶ See MACMILLAN. **Sovereignty and Possession in the English New World**, Chapter 1. Jean Bodin went so far as to claim that “it is treason to pose Roman law against the ordinance of one’s prince.” BODIN, Jean. **On Sovereignty: Four Chapters from The Six Books of the Commonwealth**. Translated by Franklin, Julian H. Cambridge: Cambridge University Press, 2006, p. 38.

⁸⁷ See MACMILLAN. **Sovereignty and Possession in the English New World**, p. 31-41.

⁸⁸ ADAMS, J. **Life and Works**, Charles Francis Adams (Ed.), Volume 4 (Boston, 1850-6), p. 37; cited in MACMILLAN. **Sovereignty and Possession in the English New World**, p. 40.

⁸⁹ See MACMILLAN. **Sovereignty and Possession in the English New World**. For Hegel’s critique of common law see HEGEL. **Philosophy of Right**, §211

Roman law, just war, sin, or—and this is the great irony of Locke’s place in the liberal tradition—consent. That is to say, Locke devised *nonconsensual* mechanisms for the establishment of the right to rule over objects and the right to rule over other subjects (i.e. private and public *dominium*) in the colonies antecedent to any government: (1) individual labor, which established private right and was an alternative to the Roman principle of first occupation; and (2) private punishment, which established political rule over another, and was a Protestant alternative to Catholic just war. Neither relied on community or consent.

Locke took the argument for *dominium*-founding private punishment from Hugo Grotius and admits it is a “very strange doctrine.”⁹⁰ In the state of nature, he argues, “*every one has the Executive Power of the Law of Nature,*” and thus “*a Right to Punish the Offender.*”⁹¹ It follows, he says, that the offended can legitimately appropriate “to himself, the Goods or Services of the Offender,” resulting “in the perfect condition of *Slavery... between a lawful Conqueror, and a Captive.*”⁹² This is significant, for as with just war it placed the violator of natural law under the dominion of the enforcer. Thus, although in the beginning, as the famous claim goes, all “Power and Jurisdiction is reciprocal,” by private punishment “one Man comes by a Power over another.”⁹³ As Locke argues in his *First Treatise*, “A Planter in the *West Indies,*” could fight “against the *Indians,* to seek Reparation upon any Injury...and all this without the *Absolute Dominion of a Monarch.*”⁹⁴ Violators of natural right “trespass against the whole Species,” and have, argues Locke, “declared War against all Mankind” and thus may be killed like “wild Savage Beasts.”⁹⁵ The significance of Locke’s move here is overlooked when not situated in the

⁹⁰ LOCKE, J. *Second Treatise*. In: **Two Treatises of Government**. Peter Laslett (Ed.). Cambridge: Cambridge University Press, 1999, §9.

⁹¹ LOCKE. **Second Treatise**, §13 and §8.

⁹² LOCKE. **Second Treatise**, §11, §24. “In transgressing the law of nature, the offender declares himself to live by another rule than that of reason and common equity,” he writes. *Ibid.* §8.

⁹³ LOCKE. **Second Treatise**, §8.

⁹⁴ LOCKE. **First Treatise**, §130. See also §131.

⁹⁵ LOCKE. **Second Treatise**, §8 and §11. We find this Lockean argument in Vattel’s influential work, *The Law of Nations* (1752), wherein he argues that every nation “is obliged by the law of nature to cultivate the land that has fallen to its share,” and those “nations...who inhabit fertile countries, but disdain to cultivate their lands...are wanting to themselves, are injurious to all their neighbors, and deserve to be extirpated as savage and pernicious beasts.” VATTEL. E. **The Law of Nations; or, Principles of the Law of Nature applied to the Conduct and Affairs of Nations and Sovereigns**, translated by Joseph Chitty (London: Stevens and Sons, 1834), Book I, Chapter VII, §81, 35. See HEGEL. **Philosophy of Right**, §350 for a similar argument by Hegel.

historical context of colonialism—the encounter of “a Swiss and an Indian, in the woods of America”—and the philosophical context of establishing right.

Locke’s vision of individual freedom and right in the colonial state of nature is not unlike Hegel’s description of the self as rational insight, as negativity, that obtains its positive objectivity in the world of things through its newly found concept, “the useful” (*Nützlichkeit*). The realization of this form of absolute externalization or objectification, which in its concept of utility renders all the world a function for itself, is absolute freedom (*absolut Freiheit*).⁹⁶ As Locke writes: “God and his Reason commanded him to subdue the Earth, i.e. improve it for the benefit of Life, and therein lay out something upon it that was his own, his labour.” For, “it cannot be supposed [God] meant it should always remain common and uncultivated. He gave it to the use of the Industrious and Rational.”⁹⁷ This is the self-certainty of conscience adhering to an abstract law—“its language universal law, its work the universal work”⁹⁸—for in the international “state of nature” concrete institutions of ethical substance are absent. Like the absolute freedom and terror of the French Revolution, here in the shape of (formal) conscience, in “the strength of its own self-assurance it possesses the majesty of absolute autarky.”⁹⁹ The “fury of destruction” that the colonists brought to the indigenous peoples makes the Reign of Terror in Europe seem almost insignificant.¹⁰⁰

Locke’s second mechanism for the nonconsensual constitution of right, in this case over objects, was individual labor. “Though the Earth, and all inferior Creatures be common to all Men, yet every Man has a *Property* in his own *Person*... Whatsoever then he removes out of the State that Nature hath provided, and left it in, he hath mixed his *Labour* with, and joyned to it something that is his own, and thereby makes it his *Property*... [and] no Man but he can have a right to what that is once joyned to...”¹⁰¹ This solution to the problem of establishing right outside nation-state jurisdiction entailed a particular concept of the self that could establish subjective right through the externalization of its will in practical activity (labor), which

⁹⁶ It is in this utility that “pure insight achieves its realization and has itself for its object, an object which it now no longer repudiates...” HEGEL. *Phenomenology of Spirit*, §580.

⁹⁷ LOCKE. *Second Treatise*, §32 and §34.

⁹⁸ HEGEL. *Phenomenology of Spirit*, §585.

⁹⁹ HEGEL. *Phenomenology of Spirit*, §646.

¹⁰⁰ HEGEL. *Phenomenology of Spirit*, §589.

¹⁰¹ LOCKE. *Second Treatise*, §27.

consciousness could then appropriate as its own. Locke's move here is an 'epistemic' one, whose source is found in *An Essay Concerning Human Understanding*, for there we have a self capable of voluntary action and thus of recognizing and obeying law, and whose identity consists in its awareness of itself as the author of its own thoughts and actions. To be the author of such thoughts and actions is, for Locke, to be their owner, and ownership is constituted by consciousness of one's practical activity. The term 'person,' for Locke, represents the 'conscious self,' which is "a Forensick Term appropriating Actions and their Merit; and so belongs only to intelligent Agents capable of Law... This personality extends its self beyond present Existence to what is past, only by consciousness, whereby it... owns and imputes to it self past Actions..."¹⁰² This is, we find, the basis of the self as the "great Foundation of Property," and the reason why one is "Proprietor of his own Person, and the Actions of Labour of it."¹⁰³

In the *Essay*, Locke distinguishes three types of qualities in objects or bodies: primary qualities; secondary qualities that are immediately perceivable; and secondary qualities that are mediately perceivable. The latter two are types of 'powers.'¹⁰⁴ The mediate kind of secondary quality is a power to change the primary qualities of another body: "Thus the Sun has a Power to make Wax white, and Fire to make Lead fluid."¹⁰⁵ Locke refers to these mediate and immediate powers as 'passive' and 'active;' thus the Sun has an active power to make wax white and the wax has a passive power to be so changed. The most important active power in the *Essay* is liberty: "the Idea of Liberty, is the Idea of a Power in any Agent to do or forbear any particular Action, according to the determination or thought of the mind, whereby either of them is prefer'd to the other."¹⁰⁶ Thus the power to alter an object is an active "Power to produce any Idea in our mind"—it is a "Quality of the Subject where that power is," writes Locke.¹⁰⁷ When the individual labors, "the Mind must collect a Power somewhere, able to make that Change."¹⁰⁸

¹⁰² LOCKE, J. *An Essay Concerning Human Understanding*. Peter H. Nidditch (Ed.) Oxford: Oxford University Press, 1975, Book II, Chapter 27, §26, p. 346.

¹⁰³ LOCKE. *Second Treatise*, §45.

¹⁰⁴ LOCKE. *Essay*, Book II, Chapter 21, §1, p. 233-34.

¹⁰⁵ LOCKE. *Essay*, Book II, Chapter 8, §23, p. 140-41.

¹⁰⁶ LOCKE. *Essay*, Book II, Chapter 21, §8, p. 237

¹⁰⁷ LOCKE. *Essay*, Book II, Chapter 8, §8, p. 134

¹⁰⁸ LOCKE. *Essay*, Book II, Chapter 21, §4, p. 235.

Liberty, for Locke, is thus an active power of the individual to intentionally affect the qualities of other bodies, which are properties attributable to the active power of the individual. Thus, the transformed qualities of an object due to my labor upon it are a ‘property’ of my person, my will. A right is therefore generated when our actions produce changes in the world and the relation between our active power and the passive power of the things changed are sensible to ourselves and others—they are appropriated by us and should be recognized by others: “cultivating the Earth, and having Dominion,” he writes, “are joyned together.”¹⁰⁹ As in Hegel’s concept of the person, this self must seek content outside itself through possession, which is realized in property right. One becomes the “absolute Lord of [one’s] own Person and Possessions,”¹¹⁰ and one’s labor creates an abstract ‘subjective’ right as a quality of the person.

This ‘internalization of right’ is very different from the abstract right of the Roman world. In the latter, individual right was understood as *suum*, as in the Roman definition of justice: “*Iustitia est constans et perpetua voluntas ius suum cuique tribuendi*,” which roughly translates as “justice is the steady and enduring will to render unto everyone his right.”¹¹¹ *Suum* is thus similar to Aristotle’s *dikaion* as an objectively right or fair state of affairs, or the *iustum* of a right action. It is not a claim, relation, or subjective power, but the outcome of a decision. In the experience of European colonialism, a very modern subjective right is posited as an anchor for the expansion of jurisdiction and, when not recognized by others, private punishment (i.e. right-generating violence) is employed.

The history of modern colonialism is the history of the subjectivization of right. It was within and because of European colonialism that juridical personality is universalized and modern right written into the nature of the subject, actualizing concepts that emerged from a rich history of canon and secular theory, including the *Corpus Juris Civile*. The *Corpus* was well suited to this enterprise, for the concept of *ius gentium* within it was an achievement of Rome’s own imperial experiences. As we saw in the case of Locke, however, a non-Roman foundation for the establishment of right was needed, one grounded in free will and self-consciousness rather than mere factual occupation. Right became the result of practical activity—or as in Kant’s work,

¹⁰⁹ LOCKE. **Second Treatise**, §35.

¹¹⁰ LOCKE. **Second Treatise**, §123.

¹¹¹ WATSON, A. **The Digest of Justinian**, Volume I. Trans. Alan Watson. Philadelphia, PA: University of Pennsylvania Press, 1998, Book One, Section 10, p. 2.

a quality of the rational subject—and was uprooted from particular jurisdictions, geographic localities, or consent, and resituated in the subject, a subject whose colonizing activity insinuated that concept in political constitutions and legal orders around the globe. Thomas Jefferson, for example, asserted that he and other colonists “held their lands, as they did their personal property, in absolute dominion, unencumbered with any superior, answering nearly to the nature of these possessions which the feudalists term allodial.”¹¹² This Lockean thinking informed the Declaration of Independence and the post-independence understanding of right enshrined in the U.S. Constitution and still present in the legal order of the former colony that became an empire.¹¹³

4. *Concluding Remarks*

It has been my argument that Hegel’s treatment of the European colonial experience as marginal to the historical dialectic of modern freedom and right prevented him, and potentially us, from bringing this history into thought. This project has also been hindered by Hegel’s philosophy of colonialism, which relies on a so-called ‘absolute right.’ European colonialists are, for Hegel, world-historical heroes who are unbounded by right insofar as their absolute right transcends rather than collides with the rights of others. It is to them that falls the responsibility to traverse the interstices of right beyond the nation-state and actualize the modern concept of freedom in the service of world spirit. “In contrast with such a people in whose deeds world spirit manifests itself,” writes Hegel, “the rights of other peoples are of no account; grievous though it may be to watch how it tramples them under foot, it fulfills its role.”¹¹⁴ This right is certainly

¹¹² JEFFERSON, T. **A Summary View of the Rights of British America (1774)**. In: Boyd, J. P. (Ed.). **The Papers of Thomas Jefferson**. Princeton: Princeton University Press, 1950, Volume I, 1760-1776, p. 132-33.

¹¹³ In Haiti, it was the former slaves who invoked the ‘Rights of Man’ in their struggle against the French. Buck-Morss argues that Hegel’s lordship and bondage model is most likely derived from the Haitian slave revolts and revolution during his days in Jena. See BUCK-MORSS, S. Hegel and Haiti. **Critical Inquiry**, n. 26 (4), 2000, p. 821-865.

¹¹⁴ HEGEL, G.W.F. **Lectures on Natural Right and Political Science: The First Philosophy of Right**. Trans. J. Michael Stewart and Peter C. Hodgson. Berkeley: University of California Press, 1995, §164, p. 307-08. Hegel describes such heroes as individuals “who take the lead in such a people and at such a time, even if they act in an immoral fashion by despising the rights of others, are nonetheless responsible for its being executed. Here the absolute idea of spirit has absolute right over everything else.” Ibid. Cf. HEGEL. **Philosophy of Right**, §93 and §§345-48.

inconsistent with the situatedness of modern freedom—anchored by the positive right of the nation-state—and Hegel’s recognitive and intersubjective philosophy of right in general.¹¹⁵

The above examples of the colonial development of law and right, and the work of the modern natural law traditions to justify it, are small contributions to the larger project of incorporating this history of right into our own historical self-understanding. These developments of legal personality and abstract right are, therefore, relevant not because we can give them a dialectical reading and incorporate them into a Hegelian narrative, but because we must do so if we want to comprehend and appropriate this history of right as our own. To this end, I have attempted to clear a space, so to speak, in the narrative structure of Hegel’s *Phenomenology* and philosophical history within which to situate this experience. This task entailed a critique of Hegel’s justification for the exclusion of European colonialism, namely, that the self-relational nature of the modern (Christian) concept of freedom necessitated a unique principle of division in modernity. Once this was shown to be untenable, the experiences of the European colonial powers could be treated in a way similar to Hegel’s dialectical account of the Greek and Roman empires, i.e. as nations that became empires whose collective conceptual accounts of themselves and their world were embedded in legal orders and social institutions that developed through their relation to other nations—relations of contact, conflict, conquest, and colonialism. It is difficult (if not impossible) to imagine a historical and phenomenological account of the Greek and Roman worlds without accounting for the determinate role of inter-national relations both within and between empires. Hegel’s exclusion of them from his account of European modernity is an attempt to do just that, and my brief introduction of the experiences and conceptualizations of freedom and right within European colonialism is an effort to counter this exclusion. Initiating a task as large and as varied as this within the confines of this chapter cannot, of course, do justice to the complexity of Hegel’s thought and the modern colonial and natural law history I hoped, in part, to elucidate.¹¹⁶

¹¹⁵ Cf. FICHTE, J.G. **Foundations of Natural Right: According to the Principles of the Wissenschaftslehre.** Trans. Michael Baur. Cambridge: Cambridge University Press, 2000, §7. See also Ibid. §1.

¹¹⁶ The latter task is further complicated when the appropriation of this history into a dialectical account is grounded in unconventional interpretations, particularly my reading of Locke’s (property) right-founding faculty of the self’s practical activity. The claim that the justificatory intent of the *Two Treatises* included British colonialism—in addition to the Glorious Revolution, domestic enclosures, and resistance to absolutism—doesn’t yet enjoy consensus, but consensus is growing. The relation of Locke’s *Two Treatises* to colonialism has recently been addressed by

In closing, I return to the claim from my introductory remarks that European nation-states ‘return’ to colonialism and that Hegel was unable to articulate a way to mitigate this tendency or sublimate the concept of freedom expressed by it. By this I meant that the expansionary tendency colonialism represents is not merely a practice of a bygone era, but is the logical entailment of modern capitalist economies that generate overproduction and endemic poverty, undermining the citizenry’s identification with the legal order of the state.¹¹⁷ Expansion is a permanent tendency in modern states, which the contemporary geographer David Harvey has called a “spatial fix” for the crises of capitalism. As Hegel argues in his *Philosophy of Right*, this tendency arises from the “inner dialectic” of capitalism and its institutionalization of abstract right.¹¹⁸ The institutions of modern ethical life are, in turn, tasked with mediating its effects within the concrete universality of state sovereignty.¹¹⁹ Failing to do so, the state has a responsibility to counter this socially disintegrating and expansionary tendency in a non-contingent manner, i.e. through colonial expansion.¹²⁰ Hegel had sought, therefore, to retain the abstract right of capitalist property relations, but by his own admission, the centrifugal force of a “system of needs” grounded in abstract property right was not containable within the state’s territory or jurisdiction.

Hegel was surely aware of Rousseau’s argument that states generally have “a kind of centrifugal force” that makes them expand, but that some states have been “so constituted that the necessity for conquests entered into their very constitution, and that, to maintain themselves, they were forced to expand endlessly.”¹²¹ Hegel’s innovation was to understand this expansionary tendency as inherent to the capitalist concept of freedom expressed in abstract property right. He

philosophers and historians such as James Tully, Richard Tuck, David Armitage, Barbara Arneil, and Herman Lebovics, whose seminal article, LEBOVICS, H. The Uses of America in Locke’s Second Treatise of Government. *Journal of the History of Ideas*, n. 47 (4), 1986, p. 567-82, anticipated the direction of the much subsequent scholarship. See ARNEIL, B. *John Locke and America: The Defense of English Colonialism*. New York: Clarendon Press, 1996, for a nice summarization of the literature on the topic at the time of publication. See also WOOD, N. *John Locke and Agrarian Capitalism*. Berkeley: University of California Press, 1984; IVISON, D. Locke, liberalism and empire. In: Anstey, P. R. (Ed.). *The Philosophy of John Locke: New Perspectives*. London: Routledge, 2003, p. 86-105; and ARMITAGE, D. John Locke, Carolina, and the *Two Treatises of Government*. *Political Theory*, n. 32, 2004, p. 602-627.

¹¹⁷ HEGEL. *Philosophy of Right*, §§240-46.

¹¹⁸ HEGEL. *Philosophy of Right*, §246.

¹¹⁹ The idea of the state, writes Hegel, “is precisely that the opposition between right as abstract freedom and the particular content which fills it, i.e. the state’s own welfare, should be superseded within it...” which is why the state should be recognized as a “concrete whole.” HEGEL. *Philosophy of Right*, §336.

¹²⁰ HEGEL. *Philosophy of Right*, §248.

¹²¹ ROUSSEAU, J.J. *On the Social Contract*. In: *The Basic Political Writings*, Book I, Chapter IX, p. 168.

was also aware of the non-colonial accommodations of this tendency suggested by Rousseau, Kant, and Fichte—e.g. international federalism or cosmopolitanism, international trade, and a closed national economy—but considered each insufficient. It is colonization “to which the fully developed civil society is driven,” Hegel wrote, “and by which it provides part of its population with a return to the family principle in a new country.”¹²²

It was the particularity of individual will that the legal order of the Greek world sought to suppress and the Roman world institutionalized in abstract legal personality and private property right. The latter was to remain the juridical foundation of the modern capitalist economy, but sublated within the modern state, according to Hegel’s political philosophy. Although Hegel acknowledged the state’s inability to do so, the reemergence of ethical immediacy in the colonies—whose natural condition that the modern state was supposed to overcome, but toward which its economy of abstract right is logically compelled—did not prompt Hegel to rethink his unique principle of division of the dialectic of right in European modernity or to give a phenomenological account of modern colonialism. This need not, however, prevent us from doing so.¹²³

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¹²² HEGEL. **Philosophy of Right**, §248.

¹²³ As David Harvey writes: “The role of imperialism and colonialism, of geographical expansion and territorial domination in the overall stabilization of capitalism is unresolved. A comprehensive and irrefutable answer to the problem Hegel so neatly posed so many years ago has yet to be constructed.” HARVEY. **The Limits to Capital**. New York: Verso, 1999, p. 415.

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