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A COMMENTARY ON HEGELIAN PHILOSOPHY AND THE ABSOLUTES IN LAW

by

H. NEWCOMB MORSE*

THE PRINCIPLES OF LAW ARE TWOFOLD: those that are absolute and those that are relative. The absolute and the relative are akin to dogma and doctrine, respectively. We are on shaky ground indeed when we stand upon relativism. The principal purveyors of relativism have been Justices Cardozo, Douglas, and Holmes.

In 1937, Justice Cardozo, in attempting to justify the exercise of national power, made this astounding statement:

The problem is plainly national in area and dimensions. Moreover, laws of the separate states cannot deal with it effectively. Congress, at least, had a basis for that belief. States and local governments are often lacking in the resources that are necessary to finance an adequate program of security for the aged Apart from the failure of resources, states and local governments are at times reluctant to increase so heavily the burden of taxation to be borne by their residents for fear of placing themselves in a position of economic disadvantage as compared with neighbors and competitors.¹

According to Justice Cardozo, the exercise of national power is fully warranted if Congress believes that the states lack the resources or are reluctant to finance a so-called social program; no matter that there is no authority in the Constitution for such "social engineering." The needle on the judicial compass, had it not been asported by Cardozo's mischievous finger, would have pointed to the absolute: The national government may *not* constitutionally exercise any power not delegated to it by the States.

The author of this commentary touched upon Justice Douglas' theorized relativism in a recently-published work² as follows: "The legal exemplar of this theory is Mr. Justice William O. Douglas, as his following pontifications will attest: 'For the eternal problem of the law is one of making accommodations between conflicting interests. This is why most legal problems end as ques-

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¹Helvering v. Davis, 301 U.S. 619, 644 (1937).

²Morse, *A Legal Commentary on Carlylean Philosophy* 6 (1982) [hereinafter cited as Morse, *Carlylean Philosophy*].

tions of degree.’³ ‘We deal not with absolutes but with questions of degree.’⁴

Most astonishing, however was the following statement made by Justice Douglas: “The first requirement of a sound body of law is, that it should correspond with the actual feelings and demands of the community, *whether right or wrong*.”⁵

The idea that law has absolutes should not come as a surprise since, for example, the law, under certain well-defined circumstances, recognizes absolute liability. The problem in dealing with absolutes in law is that to be consistent and therefore logical the law would have to place *absolute* emphasis and importance upon its absolutes, and this the law does not always do. This according of emphasis and importance is analogous to enforcement of the law. There should always be rigid and uncompromising enforcement of the law; this is, in itself, an absolute, but an absolute “*ought*” rather than an absolute “*is*.”⁶ The absolute to which this commentator is addressing himself herein is this absolute “*is*.” An absolute is unchanging, unchangeable, changeless and constitutes the bedrock of the law. An absolute can be diminished in its effect only by lax law enforcement; that is, by *absolute* emphasis and importance not being placed upon it.

How many absolutes are there? That is like asking how many rebuttable presumptions there are. There are literally hundreds of rebuttable presumptions, although the exact number is unknown. Rebuttable presumptions are relative; that is why there are so many of them. They are relative in that they can be overcome or overturned and their number fluctuates. Also, and most significantly, they are unequal in the weight to be accorded them. For example, the strongest rebuttable presumptions are the presumption of innocence in the criminal law, the presumption of access militating against a husband who denies the paternity of his wife’s child, and the presumption of the constitutionality of a statute or ordinance.

Conclusive presumptions, on the other hand, are absolutes. Consider the textual nomenclature; an absolute is conclusive of what otherwise would pose a question, problem, or issue. Their number is correspondingly small. One conclusive presumption is that a woman is capable of bearing a child regardless of how old she might be. This presumption serves as a twofold example of an absolute. First, it is an absolute in law even though in medicine it is rejected as fallacious. Second, this conclusive presumption calls to mind Sarah’s giving birth to Issac at the age of ninety. This is an example of recognition

³Estin v. Estin, 334 U.S. 541, 545 (1948).

⁴Bibb v. Navajo Freight Lines Inc., 359 U.S. 520, 530 (1959).

⁵O. HOLMES, JR., THE COMMON LAW 36 (1963) (emphasis added). See also Morse, *A Legal Commentary on Thomistic Philosophy*, 8, CAP. U.L. REV. 387, 394 (1979) [hereinafter cited as Morse, *Thomistic Philosophy*].

⁶G. HEGEL, LECTURES ON THE PHILOSOPHY OF HISTORY 168, 424 (J. Sibree trans. 1900) [hereinafter cited as HISTORY]; THE LOGIC OF HEGEL 308 (W. Wallace trans. 2d ed. 1982) [hereinafter cited as LOGIC].

by the secular of the Biblical.

An absolute in law is the counterpart of a constant in theoretical physics. Probably the foremost example of a constant is: The velocity of light *in vacuo* is 186,284 miles per second, never varies, and cannot be surpassed. The velocity of light constant is the cornerstone of Einstein's Special Theory of Relativity. Nigel Calder in *Einstein's Universe*⁷ writes: "[I]n Einstein's universe the speed of light is more fundamental than space or time. Space is what light moves in; time is how long it takes to move. It is by means of light that we see objects scattered through space and changing in time. Atoms, too, rely on light to inform them about what is going on. As a result all physical processes are governed by the speed of light."⁸ Lest we forget, the first words spoken by God when He created the world were "Let there be light."⁹ It was Carlyle who so eloquently wrote: "Light! All is not corrupt, for thou art pure, unchanged and changeless."¹⁰ This comparison of an absolute in law to a constant in physics is consistent with what this commentator has done in the past in applying analogically principles of theoretical physics to Thomistic moral philosophy,¹¹ and, conversely, in applying analogically moral equations to principles of Cartesian physics in his work.¹²

Let us consider several absolutes in law. To maintain a lawsuit one must have the concurrence of a cause of action and a right of action.¹³ This is a common law constant, but it is unknown to the Roman Civil Law system.¹⁴ What is not prohibited is permitted. The burden of proof always is incumbent upon the plaintiff at the outset of litigation and throughout litigation never shifts to the defendant. The defendant is never obligated to overcome or overturn a rebuttable *presumption* because a rebuttable presumption is never cast against him. However, at times under appropriate circumstances an *inference* is cast against the defendant; he then is obliged to come forward and adduce evidence to dispel such inference.

The meaning of a world in a constitution, statute, or ordinance, even the nuance or shade of meaning, is determined exclusively by the meaning ascrib-

⁷N. CALDER, *EINSTEIN'S UNIVERSE* (1981).

⁸*Id.* at 93.

⁹*Genesis* 1:3.

¹⁰T. CARLYLE, *Corn-Law Rhymens* in *SELECTED ESSAYS* 155 (1972).

¹¹See Morse, *Thomistic Philosophy*, *supra* note 5, at 387-90.

¹²Morse, *A Legal Commentary on Cartesian Extension and Enlargement of Augustinianism*, 10 *CAP. U.L. REV.* 759, 768-69 (1981) [hereinafter cited as Morse, *Cartesian Extension*].

¹³See *Zepeda v. Zepeda*, 41 Ill. App. 2d 240, 190 N.E.2d 849 (1963), *cert. denied*, 379 U.S. 945 (1964), in which the court stated: "Bearing in mind that an action for damage is implicit in any wrong that is called a tort . . . it may be inconsistent to say, as we do, that the plaintiff has been injured by a tortious act [cause of action] and then to question, as we do, his right to maintain an action to recover for this act [right of action]." *Id.* at 259, 190 N.E.2d at 857-58.

¹⁴See *Wood and Selick, Inc. v. Compagnie Generale Transatlantique*, 43 F.2d 941 (2d Cir. 1930), where the court referred to "the attempt to import into the French law the refined notion which pervades our own, of a right [cause of action] barred of remedy [right of actions], but still existing in nubibus." *Id.* at 942.

ed to such word by the dictionaries or lexicons in use at the time the organic law was promulgated or the legislation enacted. In the case of a word in the Constitution of the United States there was only one lexicon of the English language extant at the time of our founding fathers: Dr. Samuel Johnson's venerable *Dictionary*.¹⁵ With respect to every word selected by the framers for inclusion in the Constitution the meaning laid down by Dr. Johnson was "fixed forever" to such word. The "fixed forever" designation was devised by this commentator in his work *The Hohfeldian Place of Right in Constitutional Cases*,¹⁶ wherein he wrote:

Both the meaning and the shade of meaning of every word in the Constitution became fixed forever as of 1787. Neither the generic meaning nor the specific meaning of any word in the Constitution was susceptible to the slightest alteration, enlargement or expansion subsequent to that date. Any change could come only through the amendatory process and not through court interpretation since the Framers of the Constitution wrote Article V into the charter but provided nowhere in the instrument for judicial review. The doctrines to which words gave rise became dogma because the meaning and nuance of each word had become immutable.¹⁷

For example, Dr. Johnson defined the word "welfare" as "happiness, success, prosperity."¹⁸ This definition appeared in the sixth octavo edition in 1778, the seventh octavo edition in 1783 and the fifth folio edition in 1784. The last edition was published only two years prior to our Constitutional Convention, at which time the word "welfare" was selected to follow the word "general" in Article I, section 8, clause 1 of the Constitution.

The principal dictionary¹⁹ in use in the United States today defines "welfare" as "State of faring, or doing, well; esp., condition of health, prosperity, etc; negatively, exemption from evil or calamity."²⁰ This definition is obviously vastly more encompassing than Dr. Johnson's definition. For Congress to tax and spend pursuant to the co-called "general welfare clause" in order to foster the public health or to protect against obscenity, or to take remedial measures in respect to the effects of natural disasters, amounts to a gross usurpation of states' powers and a perversion of the Constitution.

The school of relativism espouses what this commentator shall refer to as the "accordion-chameleon theory." That school would have the meaning of a word in the Constitution expand or contract (usually expand) according

¹⁵JOHNSON'S DICTIONARY (5th fol. ed. 1784).

¹⁶6 CAP. U.L. REV. 1 (1976).

¹⁷*Id.* at 9.

¹⁸*See supra* note 15.

¹⁹WEBSTER'S COLLEGIATE DICTIONARY (5th ed. 1941).

²⁰*Id.* at 1143.

to the whims and caprices of the moment. That school would also have the word assume the shade of meaning attributed to it in the mind of the beholder.

The State, according to Saint Augustine, is supposed to be a sub-sovereignty of God.²¹ Until this is realized, the State, as a secular sovereignty, has failed in its ultimate mission. The highest objective the State is to sublimate its direction, or path or "aim"²² in order to transcend mere humanism. It is not enough for the State to achieve an admixture of sectarianism to secularism on the secular level; its purpose is to attain the sectarian plateau, where the most it can accomplish is an admixture of secularism to sectarianism. This is pushing man, through his instrumentality of the State, to his ultimate capacity. Then we would have a true Augustinian sub-sovereignty of God. On the sectarian plateau pure sectarianism without any trace²³ of secularism is descriptive of God.

Once a secular sovereignty becomes a sub-sovereignty of God, the State takes on a new dimension or responsibility: By compulsion²⁴ to diminish substantially, with elimination as the "aim," sin and the base characteristics of man which formerly have been wrongfully tolerated under the appellation of "human nature." This would be an impossible task to impose upon the State if there was not "divine nature" as the exemplar. Christ is the Supreme Exemplar, the Apostles are exemplars, and the Carlylean heroes²⁵ are the sub-exemplars; man, through his instrumentality of the State, as a sub-sovereignty of God, becomes the emulator.

Further elaborating on what is meant by the reference to "compulsion," the state, once it has ascended to become a sub-sovereignty of God, would, in Hobbesian verbiage, "by the terror of some [secular] punishment,"²⁶ proceed to curtail the base characteristics of so-called "human nature."

States, wrongfully and unfortunately, are rated according to their respective military capabilities and prowess. A better rating method would be to judge them according to the respective number of great philosophers each has produced. Descartes asserted that "the civilization and refinement of each nation

²¹ST. AUGUSTINE, *THE CITY OF GOD* 118 (Walsh, Zema, Monahan, and Honan trans. 1958).

²²G. HEGEL, *PHILOSOPHY OF RIGHT* 11 (T.M. Knox trans. 1942) [hereinafter cited as *RIGHT*].

²³Morse, *Thomistic Philosophy*, *supra* note 5, at 404.

²⁴Morse, *A Legal Commentary on Hobbesian Philosophy*, 12 *TULSA L.J.* 247 (1976) [hereinafter cited as Morse, *Hobbesian Philosophy*], in which the following passage appeared. Hobbes stated:

[T]he nature of Justice, consisteth in keeping of valid Covenants: but the Validity of covenants begins not with the Constitution of a Civil power, sufficient to compell men to keep them *Id.* at 270. This same thought was expressed in much the same manner, even to the use of the noun form of Hobbes' gravaman word in verb form "compel," as recently as 1974, by Macklin Fleming in his *The Price of Perfect Justice*: "In ultimate analysis, the law requires compulsion — intelligent, reasoned, measured, and tempered, but compulsion nonetheless If we remove the element of compulsion from law, what remains may be a perfectly devised system of ethics and morals, but it will not be a working system of law." M. FLEMING, *THE PRICE OF PERFECT JUSTICE* (1974).

²⁵Carlyle defines heroes as "the visible Temples of God." T. CARLYLE, *Past and Present* in *THE WORKS OF THOMAS CARLYLE* 208 (J. Alden ed. 1885).

²⁶Morse, *Hobbesian Philosophy*, *supra* note 24, at 248.

is proportionate to the superiority of its philosophy.”²⁷ However, these methods are both secular. It “ought” to be (certainly not “is”) that States are rated according to which of them have ascended to the status of sub-sovereignty of God and, among the latter class, which have curtailed the base characteristics of “human nature” to the most appreciable degree.

Man, in the milieu of the United States of America in 1983, is living in a predominately humanistic environment, in a veritable sea of materialism and paganism. In the secular State the principles to which he is held and the precepts by which he is guided are mainly relativistic. If the secular State ascends to the noble status of a sub-sovereignty of God, then the dominant element in the life of man would consist of absolutes; the principles by which he is bound and the precepts by which he is guided would be mainly absolutes.

However, the future augurs wells. We are pointed in the right direction, in the direction of a sub-sovereignty of God. Frederick G. Weiss²⁸ states that in Professor Hegel’s view, as expressed in the Preeminent Professor’s *Lectures on the Philosophy of History*:²⁹ “Though individuals and nations fail, mankind as a whole is moved forward, in a continuous dialectical progression . . . toward actualization of all its potentialities for freedom.”³⁰ Lloyd C. Douglas eloquently described this forward movement in terms of the individual as follows:

I have laid hold upon a truth powerful enough to sustain me until I die! I know that, in spite of all the painful circumstances I have met, my course is upward! I know that the Universe is on my side! It will not let me down! I have been detained at times — but — eventually — I go on through!

I go on through! . . . I have suffered — but I know that I am Destiny’s darling! . . . You have suffered — but you, too, can carry on through! . . . Take it from me! I know! In spite of all the little detainments, disappointments, disillusionments — I get the lucky breaks! I get the signal to go forward! I have been delayed — long — long — long — but-at-length — I get the GREEN LIGHT!³¹

An absolute in the law represents definiteness, certainty, and security. An absolute is *authoritative*; it is a command emanating from an unimpeachable source. The authority warrants respect, reverence, veneration, unanswering obedience.

An absolute in law is injunctive in nature, either mandatory or prohibitory. An absolute never involves leeway, latitude, judgment, discretion, grace; it is

²⁷R. DESCARTES, *THE ESSENTIAL DESCARTES* (Haldane and Ross trans. 1969) [hereinafter cited as *ESSENTIAL DESCARTES*].

²⁸HEGEL: *ESSENTIAL WRITINGS* 225 (F. Weiss ed. 1974) [hereinafter cited as *ESSENTIAL WRITINGS*].

²⁹See *HISTORY*, *supra* note 8.

³⁰*ESSENTIAL WRITINGS*, *supra* note 28, at 255.

³¹L. DOUGLAS, *THE GREEN LIGHT* 167 (1966).

a commandment, an order, a ukase, an imperial rescript. An absolute is an element, an essence, an entirety, an indivisible integer.

An absolute in law affords us direction, guidance, an undeviating path. Without absolutes we would be caught in a welter of inconsistent legal principles, a labyrinth of contradictory statutes, a maze of conflicting judicial decisions. An absolute contains no exception, exemption, immunity, condition (precedent or subsequent), qualification, limitation, restriction, proviso, caveat.

An absolute in law is free, and in the words of Professor Hegel, "that is free which is not connected with or dependent on another."³² Our encounter with Professor Hegel at this juncture of our journey into absolutes is not without design. Professor Hegel is the ultimate authority on absolutes, and in order to understand fully the application of his theories on absolutes to law it is necessary to consider the relation of Hegelian philosophy, wherever applicable, to law. After an initial immersion, hopefully with penetrative insight and sagacious analysis, we will be at a vantage point from which to view the Master's concepts of absolutes in perspective, to recognize their governance over all other theories, and to grasp them in their entireties.

According to Professor Hegel, the beginning must be the end inchoate; the beginning must contain within it the embryonic end, *the purpose* (vorsatz), and the route to be traversed and the methodology to be utilized in order that the goal be reached. If the end is not attained there was no beginning. If the end comes to pass the end is the beginning consummate; the beginning (the end inchoate) as the servient estate was merged into the end (the beginning consummate) as the dominante estate and absorbed therein. Thus, a true beginning carries with it the seeds of its own fulfillment.

In the words of the Preeminent Professor, "[T]he *result* (the beginning consummate) is the same as the *beginning* solely because the *beginning* is *purpose* (the end inchoate)."³³ Analogously, in the criminal law the beginning of the crime is the overt act (the end inchoate) for without the overt act and regardless of how much planning and preparation have gone before there can be no crime. Further analogously, Nuremberg Trial defense counsel Otto Kranzbuhler recounted that Justice Robert H. Jackson, as Chief United States Prosecutor, said that "[o]nce there must be a beginning."³⁴ The end was the trial before the International Military Tribunal and the beginning, leading irrevocably to that end, was the London Agreement. Most importantly, the London Agreement itself was a matter of formal *primae impressionis*. In the abstract, the beginning (the end inchoate) lies at some indeterminate point in the misty dawn of "civilization" when the leadership of a victorious tribe decreed

³²ESSENTIAL WRITINGS, *supra* note 28, at 2.

³³G. HEGEL, THE PHENOMENOLOGY OF MIND 83 (J. Baille trans. 1931) [hereinafter cited as PHENOMENOLOGY].

³⁴Kranzbuhler, *Nuremberg Eighteen Years Afterwards*, 15 DE PAUL L. REV. 334, 343 (1965).

that an outrage be perpetrated against the members of a vanquished tribe. Throughout history the outrages increased, multiplied, proliferated — the cumulative evidence of the wrongful utilization of collective free will. The cumulative effect of the evidence proved collective guilt to be a moral certainty and gave rise to the moral imperative of legal accountability. In the final analysis, what is collective guilt but a self-serving declaration on the part of collective *individuals*? Professor Hegel stated that “[W]hat appears as done by the whole is at once and consciously the deed of every single individual.”³⁵ This is an Hegelian absolute, and according to Professor Arthur Schopenhauer, the absolute without predicates is just matter.³⁶ The Hegelian absolute is grounded in granite, predicated upon the elemental algebraic axiom that the whole constitutes the sum total of its parts.³⁷

Professor Hegel mandated: “Do not infringe personality and what personality entails.”³⁸ This commandment, couched in the negative, is similar to the Hohfeldian definition of abstract right³⁹ expressed in his famous “land hypothetical,”⁴⁰ which, as paraphrased, reads: A’s right in respect to his freehold is the correlative duty of B, C, D, E, and all other persons in the world *not* to enter upon A’s land in the absence of A’s authorization.

Professor Hegel also stated that “[t]he healthy natural reason knows immediately what is right and good.”⁴¹ Here he discloses his indebtedness to Descartes, for the latter stated: “I judged that I could take it as a general rule that whatever we conceive very clearly and very distinctly is true”⁴²

In *Hegel Highlights*,⁴³ it is stated that “[t]he first and simple thought of being, the thought ‘I am’ is the foundation on which all further perception rests.”⁴⁴ Here is a further indication of Hegelian indebtedness to Cartesian philosophy.⁴⁵

Professor Hegel stated that “[h]uman law as a living and active principle

³⁵PHENOMENOLOGY, *supra* note 33, at 601.

³⁶

³⁷However, “The helium nucleus is less than the sum of its parts.” N. CALDER, *supra* note 9, at 37. Perhaps a relativistic inroad has been made into what has been regarded and accepted heretofore as a mathematical axiom.

³⁸RIGHT, *supra* note 22, at 38.

³⁹Hohfeld, *Some Fundamental Legal Conceptions as Applied in Judicial Reasoning*, 23 YALE L.J. 16 (1983). See Morse, *The Hohfeldian Approach to Constitutional Cases*, 9 AKRON L. REV. 1 (1975); Morse, *The Hohfeldian Place of Right in Constitutional Cases*, 6 CAP. U.L. REV. 1 (1976); Morse, *The Hohfeldian Place of Power in Constitutional Cases*, 7 CAP. U.L. REV. 397 (1978).

⁴⁰Hohfeld, *supra* note 39, at 32.

⁴¹PHENOMENOLOGY, *supra* note 33, at 141.

⁴²DESCARTES PHILOSOPHICAL WRITINGS, DISCOURSE ON THE METHOD 32 (Anscombe and Geach trans. and ed. 1978) [hereinafter cited as PHILOSOPHICAL WRITINGS].

⁴³HEGEL HIGHLIGHTS: AN ANNOTATED SELECTION (Philosophical Library, 1960).

⁴⁴*Id.* at 143.

⁴⁵See Morse, *Cartesian Extension*, *supra* note 12.

proceeds from the divine”⁴⁶ “States and Laws are nothing else than Religion manifesting itself in the relations of the actual world.”⁴⁷ “Morality and Justice in the State are . . . divine and commanded by God”⁴⁸ Here, Professor Hegel reveals his indebtedness to Aquinas.⁴⁹ It was the view of the Preeminent Professor, in the words of Gustav E. Mueller, “that the people must *participate* in legislation and in the most important affairs of the state The state is free from external and internal disruption, if it has the strength to back its unifying law. This in turn depends on the voluntary *participation* and free activities of its citizens and professional groups.”⁵⁰ Aquinas wrote: “[A] law is in a person not only as in one that rules, but also by *participation* as in one that is ruled.”⁵¹ Today in the United States this thought is exemplified by the phrase “participatory democracy.”

Professor Hegel wrote that “[m]an could not appreciate Good, if Evil were not . . . he can be really good only when he has become acquainted with the contrary”⁵² As to the latter portion of this statement, the life of Saint Aurelius Augustine bears testimony to its truth but the life of Saint Thomas Aquinas bears testimony to its falsity.

The Hegelian concept of the so-called doctrine of “civil disobedience” was expressed by Jonathan Robinson as follows: “To act ethically in a heroic way means breaking the law a person feels is not his; the reality of the other law, in whose sight that person is guilty, will then be forced upon him by punishment.”⁵³ A law might be said to be bilingual in that it speaks not in the usual monotheistic law-morality tongue, but rather in two separate languages of law *and* morality, or at least may be so perceived by the civil disobeyer. It can be laid down as an absolute that in the event of such divergence the legalistic imperative is irretrievably erroneous. One of the heaviest rebuttable presumptions known to the law is the presumption in favor of the constitutionality of a statute. However, there is no presumption in favor of the morality of a statute. Entirely too often there is a veritable abyss between law and morality in a statute or even in an organic provision. However, the absolute is preceded by three possible elements of subjective idealism of a *relativistic* nature: (1) What is the legal position? (2) What is the moral posture? (3) Does a schism exist? Should it not be essential for the civil disobeyer, before making and exercising his decision, to comply with Decartes’ mandate: “I must never decide

⁴⁶PHENOMENOLOGY, *supra* note 33, at 479.

⁴⁷HISTORY, *supra* note 6, at 417.

⁴⁸*Id.* at 422.

⁴⁹See Morse, *Thomistic Philosophy*, *supra* note 5.

⁵⁰G. MUELLER, *HEGEL: THE MAN, HIS VISION AND WORK* 96 (1968) (emphasis added).

⁵¹Morse, *Thomistic Philosophy*, *supra* note 5, at 392 (emphasis added).

⁵²HISTORY, *supra* note 6, at 178.

⁵³J. ROBINSON, *DUTY AND HYPOCRISY IN HEGEL'S PHENOMENOLOGY OF MIND: AN ESSAY IN THE REAL AND IDEAL* 21 (1977).

about anything that I did not clearly and distinctly understand.”⁵⁴

It is ironical that the civil disobeyer ignores the law he finds repellent to his conscience, but that same law will not ignore him. He embraces the moral principle which is not encompassed in the law and which runs counter to the law. But the law, or, perhaps more properly speaking, the erroneous legalistic imperative contained in the law, seizes him. He thus becomes a martyr to morality and a self-imposed sacrificial lamb on a self-built altar to a self-perceived ideal.

The Hegelian concept of a contract is expressed as “the transference of property from one to the other in conformity with a common will and without detriment to the rights of either.”⁵⁵ Standing alone, “common will” is, in relation to “meeting of the minds,” a cognate rubric descriptive of a legal fiction signifying falsity. But the “saving clause” is “without detriment to the rights of either.” The incorporation by implication of the Hohfeldian definition of a right⁵⁶ in the “saving clause” would satisfactorily shore up and implement this Hegelian definition of a contract.

There is seldom a common will or meeting of the minds in entering into a so-called “contract” because, quite simply, a detriment is almost always inflicted against the rights of one by the other. The common will is such only if it passes the “without detriment” test; then there results that singularity, that rarity, a non-adhesion contract.

Reverting to that word “essential,” as in the title *Hegel: The Essential Writings*,⁵⁷ brings to mind the truism that an absolute is, above all else, an essentiality. According to Descartes, “nothing without which a thing can exist is comprised in its essence.”⁵⁸ The absolutes in law constitute the essence of law; the law could not exist without them. As pointed out by J. N. Findlay in his foreword to *Hegel: The Essential Writings*, “one learns from Hegel: that one’s Absolute must not be without something which contrasts with it”⁵⁹ Related to this is the following passage authored by this commentator in his work on the impact and influence of Augustinianism on Cartesianism:⁶⁰

Descartes writes “[H]ow could I understand my doubting and desiring — that is, my lacking something and not being altogether perfect — if I had no idea of a more perfect being as a standard by which to recognize my own defects?” At approximately the same time that Descartes wrote

⁵⁴R. DESCARTES,

⁵⁵ESSENTIAL WRITINGS, *supra* note 28, at 268.

⁵⁶*Id.*

⁵⁷*Id.*

⁵⁸ESSENTIAL DESCARTES, *supra* note 27, at 270.

⁵⁹Findlay, *Forward to ESSENTIAL WRITINGS*, *supra* note 28, at xii.

⁶⁰See Morse, *Cartesian Extension*, *supra* note 12.

this passage (circa, 1641) Sir Thomas Brown wrote the following passage in his *Religio Medici*: “They that endeavor to abolish Vice, destroy also Virtue; for contraries, though they destroy one another, are yet the life on one another.” The same fundamental thought was expressed by the author of this legal commentary in his work *Human Values Versus Property Values* when he wrote “Would the attainment of justice be impossible without the existence of injustice to delineate the contrast?” Einstein gave expression to this thought as follows: “[I]n describing the motion of a body we must refer to another body. The motion of a railway train is described with reference to ground, of a planet with reference to the total assemblage of visible fixed stars. In physics the bodies to which motions are spatially referred are termed systems of coordinates.”⁶¹

The statement by Findlay in his foreword continued: “[I]t [one’s Absolute] also only can be an Absolute if what contrasts with it has no true independence from it, but exists only as providing the contrast in question.”⁶² The absolute is the epitome of perfection; the relative, imperfection. And “Evil,” according to Professor Hegel, is “a negative which, though it would fain assert itself, has no real persistence.”⁶³

Every absolute has a relative counterpart. The relative counterpart has no true independence from the absolute because it exists only as providing the contrast and is not free because it is dependent on the absolute. This is to because the absolute is grounded in strict rationality and withstands the testing rigors of irrefutable logic. As Professor Hegel wrote, “what is not rational has no truth.”⁶⁴

The relative counterpart has no real persistence. It is not enduring; it is ephemeral. The relative counterpart, representing the profane, the entirely secular, is, by contract, Evil to the extent that it is removed from truth.

Professor Hegel reminded the world that “truth is always infinite.”⁶⁵ An absolute, because it is an embodiment of truth, is, as stated earlier, “unchanging, unchangeable, changeless,” and therefore, infinite.

The absolute is characterized by “rigidity.” In the words of Einstein, “[r]igidity means here that the theory is either true or false, but not modifiable.”⁶⁶ Ergo, the absolute constitutes the truth.

A quote from Carlylean prose serves as a fitting summary: “I too must believe that God, whom ancient inspired men assert to be ‘without variableness

⁶¹*Id.* at 763 (citations omitted).

⁶²Findlay, *supra* note 59.

⁶³LOGIC, *supra* note 6, at 67.

⁶⁴PHENOMENOLOGY, *supra* note 33, at 566.

⁶⁵LOGIC, *supra* note 6, at 59.

⁶⁶A. EINSTEIN, *IDEAS AND OPINIONS* 340 (1976).

or shadow of turning,' does indeed never change; that Nature, that the Universe, which no one whom it so pleases can be prevented from calling a Machine, does move by the most unalterable rules."⁶⁷

⁶⁷T. CARLYLE, *Sartor Resartus* in THE WORKS OF THOMAS CARLYLE 302 (J. Alden ed. 1885).
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