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Wrong

Abstract: Philosophy, as all social sciences base on experience. The matters, primary in science are also primary in history. Philosophy, incl. philosophy of right cannot be started with "I" and "population" due to absence of *relation*, as *objective movement*, although it looks like being correct – to start from the things tangible and concrete. The point of reference of empiricism in any of its variations has been, is and will remain man as such [4, p. 218]. In order to research *wrong* as *infringement of law (crime)*, one must first make it clear, what sort of a "thing", phenomenon or value is *right* or legal relation, in the first place. The famous German philosopher Georg Wilhelm Friedrich Hegel views everything as "things", often evidently also man. Jurisprudence has been studied at universities of Europe for centuries, however until now there is no clarity in what sort of "thing" *right* and even *legal relation* eventually is. It looks somewhat queer, however this is how the matters stand. It is usually maintained that the "right is right". However is it plausible to surmise that we are unable to understand what right is?

Today we can talk of infringements of law (crimes) as a form of some other phenomenon, or in other words, of crimes as a semblance. But let us make it clear that crime cannot be researched through itself, although this is how it is ubiquitously done today. Knowingly crime as a fundamental concept of science of law, especially criminal law, is actually - contrary to the prevailing belief - a social fact, on the one hand, and on the other hand a totally abstract phenomenon.

The categories of being: quality, quantity and measure [1, p. 55-348] as states of

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abstract and positive right, according to Hegel, represent different states of a certain *substrate*. They do not exist for themselves, but constitute determinations, attributed to or belonging to another – *a substrate*. Therefore the sequences of relations of measures (quality, quantity, measure) must be cognizable as states, overlying a *substrate*, as their carrier. Unluckily nobody has managed to show, until now what specifically is that *substrate*. Therefore we will make an endevour to accomplish what the world science of law, even sociology and other social sciences have not as yet even attempted to tackle – notably proving on points of fact the essence of that *substrate*. The said substrate is nothing else but *surplus value, as new knowledge, as truth*.[1] This unveils conclusively the mystery of wrong (infringements of law and crimes) and punishments.

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Any new theory only arises through critical superseding of the existing theory, considering the same phenomenon. It never sprouts in an empty spot, without theoretical premises that one accepts as being true and uses as a base for developing other ideas, and «settling a critical score» with predecessors [4, p. 241]. Therefore, prompted by deep respect to his teachers and scientists-predecessors, author of this article will use throughout the text “we” instead of “I”.

Keywords: philosophy of right and wrong; crime; punishment; surplus value.

[1] Here and hereafter the author of this article goes beyond the confines of the logical category “being”.

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1) What should the study of jurisprudence start with?

Every beginning is hard due to usually a complicated nature of a problem newly tackled. The matters, primary in science are also primary in history. Philosophy, incl. philosophy of right, cannot be started from "I" and "population", absent the *relation* as an *objective movement*, although the starting from actual and concrete is seemingly correct. Point of reference of empiricism in any variation thereof is man *per se* [4, c. 218]. "And further, if something concrete is taken as the beginning, the conjunction of the determinations contained in it demand proof, and this is lacking" [1, p. 65]. Consequently, only *relation* can be the starting point of a theory, built by means of dialectic logic. Hegel starts his philosophy of right from the most abstract phenomenon – *possession*, which is *property* [2, p. 99], and about which K. Marx says that Hegel correctly starts study of right (philosophy of right) from possession, as the simplest legal relation of the subject [7, p. 725]. Therefore, possession viewed as a directly "isolated fact" is the direct appropriation of objects of nature by an individual or their body [9, p. 46]. Therefore possession is an initial abstraction, a relation, a theoretical beginning of our research. Its equivalent in dialectic logic is the category of *being* [9, p. 46]. Even at search for initial abstraction – possession – it becomes evident that right does not have a history proper. The dialectic of ascending from abstract to concrete in the area of history presumes a "subject" - a certain society – as the given entity, as the prerequisite, K. Marx wrote. He emphasised that there was possession before the relation of governing and subservience [7, p. 728], i.e. before the rise of a socially structured human body – a society, or as Hegel used to call it – a "civic society". Therefore all legal relations are essentially the relations of a social entity, whose members are vested with legal properties or matter only as elements or moments (Hegel's expression) of that *social body*. *Society* is the prerequisite or the subject, whose parties acquire, in the process of development the social, economic, legal, psychological, political and other meanings.

Consequently, development of abstract right, positive right and legislation is just a moment of development of society.

It might be presumed for the start that theory of right, as well as theory of wrong, could be started with infringements of law or crimes, however as said above, conspicuously absent therein is the objective movement, with the most important factor - *relation* missing, although at the first glance it looks like the easiest and even the most correct approach.

The “Grand Logic” of Hegel (being, essence and actuality, considering objective logic and teaching of thinking, containing subjective logic) is a task beyond strength of many scientists. However not understanding it, or understanding it to a degree only, the tackling of social sciences, incl. sciences of law does not make much sense. We hold that the dialectic logic of Hegel can only be comprehended when the researcher has a *specific topic*, which he will advance as best he can.

Dialectic logic of Hegel breaks down into three sections: logic of being, essence and notion. The study of *being* concerns mainly the logical categories of quality, quantity and measure. It starts with the characteristics of the most abstract categories of being. In the beginning the object, stripped of all of its determinations, just is there, and we know about it that it is in existence. Therefore the starting point of movement of logical categories under Hegel will be *pure being* (*das Sein*). Pure being is devoid of any determination. It is pure abstraction and therefore equals *nothing*, because *nothing* is the absence of determinations. The beginning therefore contains both, the being and the nothing, it is the unity of being and nothing; or it is non−being which is at the same time being, and being which is at the same time non−being. The opposites, being and non−being are therefore directly united in it, or, otherwise expressed, it is their undifferentiated unity. Thence three necessary moments of being: being (*thesis*), nothing (*antithesis*) and becoming (*synthesis*) [3, p. 145-148].

The train of thought of Hegel is quite difficult to grasp, it is possibly unfathomable, because he considers everything said from the point of view of pure thinking or idealism (Marxists titled Hegel an objective idealist). Therefore one can say with assurance that

the so-called “Grand Logic” of Hegel has been understood by few even among philosophers.

According to L.I. Spiridonov, the Hegel’s triad of stages of cognition and development is a reality. *Being* is intimate; *essence* is something, mediated by the entirety, and concrete historically. However *notion*, as reproduction of the *being* under laws of *essence*, reflects the real historical process. The tribal formation, where natural and social coincided, was reflected in the sphere of *being*,[3] while barter-based formations were reflected in the sphere of *essence*. *Notion* would yet have to rise to prominence. In the category of notion the semblance is negated, it becomes essence on a higher level of its development. The history has mastered only two first stages. The study of notion contains its methodology of obtaining *new knowledge*, not the knowledge proper [10, p. 28].

Distribution of logic into *being* (intimate) – L.I. Spiridonov continues – into *essence* (mediated) and *notion* (consciously “construed” under laws of *essence*) reflects the real historical process. Spheres of “being” and “essence” are coincidentally spheres of materialism. The sphere *notion* is the sphere of building the reality in pursuance of an ideal reality, i.e. of realised notion, expressing not only the existing essence, but also its potential to give birth to a new reality, as a result of activities, and not only to the “essential”, i.e. existence. This is the sphere of idealism. Consequently, idealism and materialism turn out to be a unity [10, p. 28-29].

By making additions to the utterances of Hegel, lacing them with the existing reality or materialism, his deliberations will become quite lucid and understandable. We declare that *being* of the abstract right under materialist conception is *possession* (originally land in tribal formation), which is (private) *property*, while *becoming*, as the most important phenomenon, is *absolute*, until now as yet a runaway or elusive “*one*”, a *surplus value* or *need for surplus value*, as an increment to the existing property in class societies, incl. capitalism, held by a given individual or legal entity, without which the

[3] Author of this article considers under the category *being* also some issues related to capitalist production.

society (mankind) cannot exist. Therefore the *need for surplus value* is *subject* of our study.

A major contribution made by K. Marx is discovery of *social-economical formations* and discovery of *surplus value* on its basis, conceived under K. Marx as an historically determined stage in development of the human society, characterised by a specific manner of production and social and political relations conditional on that manner, on legal norms and institutions, and also ideology. The basic social-economic formations are tribal, slave-holding, feudal, capitalist and Communist. Knowingly capitalism is the most complicated social formation among others. K. Marx studied in his main work "Capital", basing on positions of dialectic logic, the structure of capitalist society and capitalist manner of production, as the bulwark of capitalist social economical formation. This enabled him to expose the secret of capitalist production, making the discovery of *surplus value* [13, p. 244-245, 342-344]. However without "Science of logic" ("Grand logic") of Hegel, the "Capital" of K. Marx would not have been composed.

2) Method of dialectic logic

A question arises as to where lies hidden the root cause of stagnation of science of law presently? Author of this article is convinced that the methods used at studying infringements of law have been erroneous. Every scientist or researcher "devises" his or her own method, by means of which he or she attempts to solve a given problem, with a host of novel problems arising, as invariably evidenced in empiric studies.

The said researchers are deplorably adamant in their refusal to recognize that in the history of mankind there were but few personalities – scientists (admittedly geniuses), capable of elaborating a scientific method, of necessity to be used also when studying crime. Those people are in the first place Plato (427 – 347 BC), Aristotle (384 – 332 BC), I. Kant (1724-1804), G.W.F. Hegel (1770-1831), and K. Marx (1818-1883).

The title of that method is *dialectic logic*, with the help of the categories of logic reflecting the most general and significant properties of phenomena of reality and cognition. Plato is the first person to name that method "dialectic" when considering cognition of ideas. Aristotle has great merits in elaboration of philosophic categories. Hegel, who considered categories in their dialectic development said with modesty befitting a great scientist that he developed the categories relatively little, Aristotle having already done the job. Hegel maintains that "from different points of view, Logic is either the hardest or the easiest of the sciences. Logic is hard, because it has to deal not with perceptions, nor, like geometry, with abstract representations of the senses, but with the pure abstractions; and because it demands a force and facility of withdrawing into pure thought, of keeping firm hold on it, uncultured people who insist most on their rights, while noble minds look on other aspects of the thing" [3, p. 39]. This is true. K. Marx, who evidently, best of all among representatives of "Epoch of modern times" understood the dialectic logic of Hegel and promoted it, maintained, concerning the science of law, regarding the "protection of acquired objects" as follows: "every form of production gives rise to appropriate legal relations, forms of governing etc. Lack of sophistication and understanding brings about inherently linked phenomena being set into random interrelations and deliberately concocted connections" [7, p. 714].

It is often that the so-called "systematic elaborations" in a given social science are being referred to, with factually everyone's aspirations falling short of attaining the heart of the matter of systematic elaborations. However we cannot blame the scientists preceding us for being short-sighted. In the first part of his "Encyclopaedia of the Philosophical Sciences" or the so-called "Small Logic" Hegel wrote that as the logical idea is seen to unfold itself in a process from the abstract to the concrete, hence in the history of philosophy, the earliest systems are the most abstract, and thus at the same time the poorest. The relation too of the earlier to the later systems of philosophy is much like the relation of the corresponding stages of the logical idea: in other words, the earlier are preserved in the later, subordinated and submerged.

3) General subdivision of being: quality, quantity and measure of wrong

According to the German philosopher I. Kant: "We cannot cognize any object otherwise as by means of categories..." [5, p. 211]. "*Being* - Hegel writes – is firstly determined with regard to other (*Anderes*). Secondly it determines itself within itself. Thirdly, when dismissing that preliminary division, *being* is the abstract immediacy and the immediacy, in which it must serve as the beginning. *Being* manifests itself in three following dimensions: firstly as *determination* proper: *quality*; secondly as superseded *determination*: size, *quantity*; thirdly as *qualitatively* determined *quantity*: *measure*" [4, p. 65-66]. However the categories of dialectic logic under I. Kant are purely logical forms, schemes of activity of intellect, linking the data of perceptible experience (perceptions) in the form of notion, theoretical (objective) judgement. As such the categories are empty (a very important postulate – *A.L.*), and the attempt to use them, not in the capacity of logical forms of generalisation of empiric data but somehow otherwise, amounts to idle talk, the verbiage [4, p. 69].

a) Quality of wrong

1) Hegel's dialectic logic starts with the *being*, including three categories: a) isolated possession as such; b) possession as *being* for another and therefore recognized by another (property); c) contract as existing consensus of parties to barter, forming possessions "for oneself" constitute direct definitions of law, characterising it on part of the quality. Of course such determination, characterising legal relations in the capacity of property relations only, is not characteristic to the developed law, e.g. legal system of capitalist production relations [9, p. 49].

"Subjects of barter relations are owners of goods - L. I. Spiridonov writes - who in the simplest case (in underdeveloped capitalist production relations – *A.L.)* are simultaneously producers of goods. Because selection by producers of types of activity is determined depending on specificity of their in-born gifts, inclinations, particular production conditions (e.g. geographic) etc., products of work of one individual differ

from those of another. This causes difference in needs of producers-owners, prompts them to barter and makes barter indispensable" [11, p. 40-41]. Spiridonov continues: "However by engaging in barter the people acquire new social properties. Insofar as the individual A can satisfy his needs by obtaining goods from individual B, and vice versa, both make use of one another as a device. Consequently, both of them, being oriented to themselves as the highest value can achieve their ends by satisfying the other's aims and thereby acknowledging the other's value. Because it is not the matter only of separate duets, trio, and quartet of individuals but of people whose barter connections form the economic foundation of the society, man will consciously or unconsciously, willy-nilly acknowledge the collective interest, although in a concrete act of barter everyone pursues one's egoistic interests" [11, p. 41].

Thence individual A satisfies his need, not doing it by violent seizure of goods held by individual B. Quite the contrary in the barter relation individuals A and B acknowledge one another as *owners,* i.e. persons whose will permeates their goods. Individuals A and B themselves, not acting under duress, menace, fraud or constraint, *alienate* their goods, in order to obtain *surplus value,* i.e. the value added, in order to buy new goods. Consequently the individuals: A and B, as owners are of equal stature and become the *being* for another. "The legal outcome of such development – the result of mediation of isolated free possession with an equal possession – is the contract, revealing common will of subjects of barter" [9, p. 49]. I. Kant said in this connection that what you do not want done to yourself**,** do not do to others.

"Contract (as external form of possession "for oneself" – *A.L.*) however did not supersede the contradiction, fixed by history with respect to barter", L. I. Spiridonov writes, "contractual links of individuals, basing on in-born specificities of the parties to barter only and conditions of reproduction did not eliminate the rule of randomness. Freedom of individuals, provided by abstract right was reduced to the freedom to take a chance and therefore contained the seeds of inequality and thence lack of freedom" [9, p.

49]. Therefore it can be assumed that abstract right (quality of law) is negated by *quantity* of wrong.

Consequently, *contract* is only an external form of possession «for oneself», while internal *being*, more important than contract is *surplus value as substrate* [13, p. 660], for which owners of goods barter their goods. It is an important fact!

2) In Hegel's "Philosophy of right" a separate place is occupied by abstract right. He writes: "Thus abstract right is nothing but a bare possibility and, at least in contrast with the whole range of the situation, something formal and of moving in such an element" [2, p. 98]. In his opinion abstract right means that underlying the right is freedom of an individual. Individual, Hegel says, implies active legal capacity. Thence derives correctness of his train of thought that abstract right is the first stage in movement from notion of abstract to the concrete. Under K. Marx, only that method and no other, is scientifically correct [7, p. 727]. From the point of view of dialectic logic, true relation between abstract and concrete is the relation of integral whole – concrete - and the moment isolated from it, the party, the "element" of abstract. However in such understanding the singular, immediate, empirically observable actual fact, e.g., infringement of law (crime) turns out to be abstract, while the whole, synthesised quantity, e.g., capitalist society or state holds the place of concrete.

Freedom of individual is realised, according to Hegel, in the rights of private property. Hegel substantiates and reasons out the formal, legal equality of members of society. People are equal as free individuals. They are equal in their similar right to private property, but not in the size of private property possessed.

Nothing said by Hegel can be challenged, however remaining opaque is the main issue – whence does man "obtain or take" that abstract right? It is a very serious question, because figuratively speaking by implication the right is a "soaring phenomenon" over society, suggesting that the right is handed down by God?! However, this is not so. The right and all its variations derive exclusively from society, because the individual, as *member of society*, obtains all his properties, incl. legal properties, only

from the society as *a whole*. Hence that complicated question seems to us to be clear and, what is most important, rather simple [6, p. 30-31].

Hegel says that *being*, as well as *non-being* consists in the unity of both one and the other, and that unity is becoming, i.e. taking place is the creation of a certain *new phenomenon*. In other words, it means that logical category of "*being*" presumes within itself logically, not in time, another phenomenon. Hence the category of "*being*" or "*something*", in the given case *possession* as *property*, presumes within itself a new phenomenon.

"*In being-for-oneself the quality of being is completed*", Hegel writes, it is infinite *being*, it is "*one*" (*das Eins*), i.e. (surplus value. – *A.L.*)... *Being-for-oneself* and *being-for-one* – they are not, consequently, different meanings of ideal but they are its essential, indivisible moments... "One" is generally for oneself; its "*being*" cannot be transformed into another; it is *unchangeable*; "*one*" will just transform into "*one*"... It is undetermined, however unlike "*being*", its non-determination is determination, which is in correlation with "self", absolute determination, placed within self. As something which by its notion is negation, correlating with itself, it does not have variation inside self... It is in its more concrete forms that it poses as abstract freedom.... and thereafter also as *evil*" [1, p. 137-151].

b) Quantity of wrong

1) Hegel writes: "Wrong is the mere outer semblance of essence, giving itself forth as independent. If this semblance has a merely implicit and not an explicit existence, that is to say, if the wrong is in my eyes a right, the wrong is unpremeditated. The mere semblance is such for right but not for me. The second form of wrong is fraud. Here the wrong is not such for general right, but by it I delude another person; for me the right is a mere semblance. In the first case wrong was for right only a semblance or seeming wrong; in the second case right is for me, the wrongdoer, only a semblance or pretence. The third kind of wrong is crime. This is both of itself and also for me a wrong. I in this

case desire the wrong, and make no use of the pretence of right. The other party, against whom the crime is done, is quite well aware that this unqualified wrong is not a right. The distinction between fraud and crime lies in this, that a fraudulent act is not yet recognized as a wrong, but in crime the wrong is openly seen" [2, p. 138-139].

A synopsis of this statement of Hegel has been given by K. Marx, whom L.I. Spiridonov quotes as follows: "Non-equivalence of barter further determines the possibility of arbitrary conduct of separate individuals – their encroachment on equality of parties to contract, i.e. the very basis of abstract right. Legal expression of that arbitrariness embraces all three possible stages of encroachment: 1) infringement of principle of equality, established by law, when parties do not suspect inequality of value of barter, i.e. as characterised by K. Marx, in case of subjective error at mutual appraisal; 2) infringement of contract, when the encroaching party abuses the trust of contractor within contract relations, i.e. as said by K. Marx, "in case one individual cheats the other»; 3) crime, when the encroaching party tramples on the right (contract) as such, negating its meaning of semblance, i.e. in case of engaging of the "isolated individual" into battle against prevailing relations. The first two forms constitute the sphere of mainly civil right, the third is criminal right" [9, p. 51]. In the history of right it is known that Romans were the first to elaborate the right to private property because development of barter relations brought about the situation that Roman law transformed into private law in its classic expression, which later turned out to be one of the factors eroding the Roman Empire [10, p. 102-103].

But it must be emphasised, K. Marx writes, that encroachment of an individual on right in all its forms does not occur "on the strength of the nature of that social function, where they oppose one another", but "solely on the strength of inherent deviousness, the art to convince and so on, on the strength of purely individual supremacy of one individual over another" [7, p. 187]. Therefore it cannot suppress the general tendency of goods to equivalent barter, and consequently the general tendency of evolution of the right, which is still only the "right in itself", to become a single scale of appraisal of

human conduct. Moreover, such encroachment does not affect the economical foundations of the barter, because freedom and arbitrariness do not “affect directly the economical determinations of the form of barter, and concern it either in its legal form, or content, the consumption value as such...” [7, p. 452-453].

On these grounds the individual accrues the need for getting *surplus value* with malicious intent or constructive intent or by imprudence, which makes no difference. Consequently, all cases with elements of crime (*corpus delicti*), contemplated in criminal codes feature all forms of getting surplus value, prohibited by positive right or legislative acts, although every existing *being*, i.e. commitment of infringements of law, may have various motives. Even one crime can have different motives. As something concrete, it contains multiple essential determinations, and every one of them can therefore be presented as the “main” motive, although there is here a “third” or “one”, i.e. *surplus value*, for which the crime is committed, and which is content of surplus value.

“Development of non-equivalent barter”, L. I. Spiridonov says “incidental to the process of property differentiation and accrual of wealth deprives the owner of original equality. Possession ceases to base on one’s own work. Therefore it is here that the declaration: property is theft becomes correct - the individuals break down into the propertied, needy and poor not due to difference in effort put in one’s job, but due to distortion of proportions at barter. Extensive quantity thus transforms into intensive quantity” [9, p. 50-51]. This problem was pointed out by well-known researchers of the wrong, e.g. the Italian R. Garofallou and others. Distribution of individuals into the propertied, needy and poor, i.e. social strata in class societies brought about the relations between members of society basically forming through private property.

From the category point of view the *wrong* refers to dialectic category of *quantity*, in the first place meaning that in case of subjective error in mutual appraisal, *surplus value* can usually be obtained by only one possessor of goods. In case of fraud or crimes, the surplus value is only obtained by the criminal. Consequently, subjective error in

mutual appraisal, fraud and crime are only external forms, with their subject (internal form) being *surplus value*.

From this point of view, the original legal relation – possession as the given "isolated" fact is the result of direct appropriation by an individual or collective body of the objects of nature. However man commands only what he has consciously created. In the sphere of direct unity of man and in-born conditions of his *being*, he himself poses as a natural being, and therefore his possession is mediated only by work. That is why in historically equal legal systems "the basis proper of the private property, *possession*, is taken as a *fact, as an unexplainable fact, and not as right*" [10, p. 46]. However we can talk about right which already contains "right in itself".

"As an originally collective entity", L. I. Spiridonov writes, "the sole proprietor presumes the availability of other proprietors. The choice by producers of type of activities being determined conditional of "in-born cunning, gift of the gab, ability to persuade etc., in a word only on the strength of purely individual superiority of one individual over the other", because the product of work of one individual differs from product of work of another individual. This in its turn causes difference in needs of producers-proprietors, promoting them to barter and necessitating the latter" [9, p. 47]. The barter relation conveys to proprietors new determinations, putting them without confines of their own singularity. Since individual A can only satisfy his needs by obtaining goods of individual B and vice versa, both make use of one another as means. Consequently every one of them, being an end in itself (*being* for himself) becomes a *being* for another. In that sense they mutually assume themselves *equal* to one another [9, p. 48]. Here we also see the fundamentals of capitalism as a more concrete form of abstract right – positive right transmits to legislation, which is a universal scale of appreciation of human conduct. A question suggests itself of whether encroachment of individual on juridical norms affects the economical bases of barter? Upon K. Marx's opinion, there is nothing more incorrect than considering society under an angle of its economical conditions [7, p. 213]. Thinking of K. Marx moves, as we hold, in the right

direction, however he has nowhere written that content of wrong may be *surplus value*. K. Marx doubtless understood well that *surplus value* has not only an economic but also a vast social meaning to members of society as a whole. However K. Marx studied in the first place the economic aspect of *surplus value*.

In this connection a very interesting thought of L.I. Spiridonov needs be pointed out, when he writes the following in his key work "Social development and right": "…we will not delve on the essence of society in general but on the essence of capitalism; not on value as such but on surplus value" [9, p. 25]. However it is unbeknown to the author of this article why he did not pursue further the idea of surplus value.

Surplus value has enormous social significance, incl. legal significance. Notably the existence of *surplus value* as a social-economic category cannot be proven by purely economic methods (means) only, as many economists have attempted to do, e.g. the Frenchman J. Attali, the American P. Sweesy, the Estonian U. Mereste and others, who were deplorably either totally ignorant of the dialectic logic Hegel or knew it poorly. Therefore their "scientific works" have been dismissed. Quite understandably the task of economists under capitalism must be elaboration of methodology: how to increase the surplus value, so that it would be to the benefit of the whole society, not only catering to the needs of owners of the means of production or employers.

c) Measure of wrong

1) Unity of quality and quantity forms *measure*. Logically the category of measure, as that of the quantity, is a prerogative of the state. Infringement of law (crime) and punishment however are the areas of law-maker and Parliament, i.e. belong to the competence of state institutions. Hegel depicts the "civic society" as an antagonistic society torn asunder by contradictions, as a battlefield with everyone fighting everyone tooth and nail. Therefore the abstract right transcends through positive right to legislation and the "civic society" "gets transmogrified" into state.

V.S. Nersesyanc is right in pointing out the error made by Hegel when considering in the section about civic society the issues of law, justice and activities of police, those topics belonging to that part of “Philosophy of Right”, which scrutinizes the state. However V.S. Nersesyanc goes on saying that in the philosophic-logic aspect the civic society is regarded by Hegel only as a moment of state, as something superseded in the state [8, p. 21]. This is correct.

However, now the *right* transforms into the means of appraisal of activity of individuals-owners. “In that function, the right poses as *measure*” L. I. Spiridonov points out, “i.e. as unity of abstract right and wrong. The first (quality right) acknowledge the people as owners, holding in their immediacy specific goods, due to natural specificity of their production. The second (the quantity aspect of right) determined the boundaries of freedom of individuals-owners, correlating it with the equivalent character of barter. Measure as quantity, which is returned to quality on the new stage of its development, approximates the natural determination of individual production of owners, in conformity with the evolved system of division of work. It heralds leaving the confines of circulation (spheres of immediacy), since the individual turns out included into the system of production relations and becomes the socially determined individual. ... Now those are acts of a body of proprietors. The person acting must correlate the results of his acts with the needs of *social whole*. Only an act meeting those requirements is lawful. However in that case the individual must, in the first place have a possibility to foresee the consequences of his acts. He will become the subject of right only insofar as he is free to change the actuality according to his knowledge and will. This juridical condition of being subject to law is expressed in the category of “*causing*”. Secondly, the individual must be aware that his acts have social significance. Otherwise his acts are legally null and void. The person unable to foresee the social significance of his acts cannot engage into a lawful transaction or be a subject of liability. Thirdly if all juridical conditions of being subject to law are there, the individual will be vested with *rights and obligations*. They are the real measure of activity of people as not proprietors only, but

as members of a body of people, causing their interaction and interconnection. The right of one individual is made conditional on the obligation of another and vice versa" [9, p. 53-54].

It is only when members of society are vested with right and obligations that we can transfer to the truly legal measure, to the positive right to be more exact, i.e. as the lawmaker foresees the legislative act – relation of crimes and punishments, what specifically becomes the scale of conduct of every member of society, determining the boundaries of freedom of every member of society, when he violates the positive right. Consequently, measure as punishment will become a scale. "Measure, as unity of quality and quantity", Hegel writes "is, consequently, the ultimate *being*" [3, p. 185].

Conceived under the punishments is usually retribution against the guilty party, re-education of the guilty party, correction of the guilty party, to preclude his further culpable acts, and with respect to custody - to prevent him from committing new crimes at the time of being isolated from society. All specified determinations of punishments are by no means incorrect however in aggregate they do not produce the phenomenon, named by Hegel "something", which is notably the *content of punishments* [1, p. 420-425]. When perpetrating an offence the criminal acquires *surplus value*, when punishing him *surplus value is* acquired by all members of society.

Capital punishment is nothing but retribution. It has been abolished in many countries by representative bodies, parliaments only, while population has overwhelmingly opposed doing away with death penalty.

4) Summary

a) All categories of *being* are connected with transition of determinations into one another. The contradiction gives rise to movement. It has drive and activity, which becomes some other phenomenon [1, p. 31]. What is the form of property which the possession transmits into? It is a challenging problem. We will venture to say as a marginal note that in the conditions of capitalist production relations, the interrelations

of members of society are made manifest through *private property*. Researcher of Hegel K. Fischer wrote that philosophy (logic) of Hegel is by its character the knowledge, will to obtain new knowledge and solution of problems, arising of that new knowledge [14, p. 340]. The main category, ruling supreme over the whole logic of Hegel is the category of *development*. L.I. Spiridonov points out in connection with the category of philosophic beginning or "*being*", when researching the right - *possession*, why in the process of further theoretical analysis it is extremely hard for the scientist not to lose the *whole* under scrutiny. An inadvertently conducted analysis (losing the image of whole as its initial prerequisite and target) always risks disintegrating the subject into such component parts, which are totally non-specific for that whole and which therefore cannot be put together into a whole, just as it is impossible, hacking the body, to glue the pieces together to make it living again [9, p. 45].

b) Category of *being* – quality, referring to the abstract right, categories of quantity and measure referring to the positive right or some legislative act, represent under Hegel various states of a certain *substrate*. Contract, made in written or verbally is only the external form of "for-oneself-being" possession, while the internal form or content, more important than contract, is *surplus value* as *substrate*, pursuing which owners of goods barter their goods.

c) We declare that *being* of abstract and positive right under materialist understanding, is *possession* (originally land in tribal communities), which is (private) *property,* a *becoming*, as the main, as *absolute*, until now elusive "*one*", is *surplus value* or *need for surplus value*, as value added to the already existing property in class societies, and also in capitalism, which the concrete individual or legal entity possesses and without which the society (mankind) cannot exist. Therefore the need for *surplus value* is *subject* of our research.

d) From the category point of view *wrong* belongs to the dialectic category of quantity, what means in the first place that in case of a subjective error in mutual appraisal, *surplus value* can usually be obtained by only one owner of goods. In case of

fraud or crime, surplus value is obtained by criminal only. Consequently, subjective error in mutual appraisal, fraud and crime are only external forms, their content or internal form being *surplus value* as *substrate*. Hence that substrate is specifically *surplus value,* as new knowledge*, as truth.*

e) In the positive right as legislation, as measure, as relation of crimes and punishments, where both are external forms of positive right, legislative act or juridical law, their internal form or content is *surplus value*. When crime is perpetrated, the criminal will obtain *surplus value*, however when he is punished - *surplus value is obtained by all members of society*. Consequently, crime and punishment both need *surplus value* in different forms. This divests infringements of law (crimes) and punishments of their enigma, at long last.

f) At this juncture it is to be deplorably noted that philosophers, scientists–economists and representatives of other branches of science have developed jurisprudence more than have the scientists of law proper. The main deficiency of jurists consists, by presumption usually in total lack of knowledge in philosophy or very scanty knowledge thereof, while according to Hegel dialectic logic is a science of all-pervasive import.

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