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4. CONCRETENESS AND VIRTUALITY: OUR FREEDOMS IN THE ERA OF THE INTERNET¹

*Concretude e Virtualidade:
Nossas Liberdades na Era da Internet*



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ABSTRACT

Like any other human society, virtual communities face ethical-political issues. Discussions on the internauts' human rights, especially those related to human freedom, and on the legitimacy of models of regulation are always present in the international Internet forums. The contemporary dispute over the true idea of freedom still places the heirs of Kant and Hegel in the arena. Following the dialectic route, we see as one of the main challenges of our time to unveil the concept of freedom that emerges from an evolutionary ontology. According to the dialectic actualization project shown here, the Internet is conceived as one more subsystem that emerges in nature under the constraints imposed by the *evolutionary logical space*. As a self-organized process that evolves over time, the Internet also has relational and processual traits, presenting equally a movement towards the coherence of the network itself. Online societies follow the same law of coherence that rules real societies and online freedom presents the same character of real freedom, the exploration of the open field of possible modes of coherence. Personal freedom on the Internet retains common traits with the personal freedom that every person has and should have in real society, but, as we shall show later, there are also subtle differences between the two, with a strong impact on the Theory of Law.

Keywords: Law, freedom, evolutionary idealism, Hegel.

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RESUMO

Como qualquer outra sociedade humana, as comunidades virtuais enfrentam questões ético-políticas. Discussões sobre os direitos humanos dos internautas, especialmente os relativos à liberdade humana, e sobre a legitimidade de modelos de regulamentação estão sempre presentes nos fóruns internacionais da Internet. A disputa contemporânea pela verdadeira concepção da liberdade ainda coloca na arena os herdeiros de Kant e de Hegel. Seguindo a via dialética, vemos como um dos principais desafios de nossa época desvelar o conceito de liberdade que emerge de uma ontologia evolutiva. De acordo com o projeto de atualização da dialética ora exposto, a Internet é concebida como mais um subsistema que emerge na natureza sob as restrições impostas pelo *espaço lógico evolutivo*. Como processo auto-organizado que evolui no tempo, a Internet também possui traços relacionais e processuais, apresentando por igual um movimento em direção à coerência da própria rede. As sociedades on-line seguem a mesma lei da coerência que rege as sociedades reais e a liberdade on-line apresenta o mesmo caráter da liberdade real, a exploração do campo aberto dos modos possíveis da coerência. A liberdade pessoal na Internet guarda traços em comum com a liberdade pessoal que cada um tem, e deve ter, na sociedade real, mas como mostraremos depois, há também sutis diferenças entre ambas, com forte impacto na Teoria do Direito.

Palavras-Chave: Direito, liberdade, idealismo evolutivo, Hegel.

1 Introduction

The Internet enables people everywhere in the world to connect in order to seek information, acquire knowledge, share ideas, among other possibilities that overcome political, cultural and economic barriers. It is also a new system that allows people to integrate in virtual communities with a significantly greater coverage compared to real societies, since without the geographic limitations these relationships may become international or even multicontinental.

Like any other human society, virtual communities face ethical-political issues. Discussions on the internauts' human rights, especially the fundamental freedoms, and on the legitimacy of models of regulation are always present in the international Internet forums. The rights at stake, however, are not new online rights, but human rights themselves. Personal freedom on the Internet retains common

traits with the personal freedom that every person has and should have in real society, but, as we shall show later, there are also subtle differences between the two.

The debate on the theme of freedom is also strongly influenced by modern philosophy, especially from the idealist current. This is possibly because in Western history nobody has been as concerned with this issue as the modern thinkers who needed to ensure human freedom in a world seen as mechanistic. Two main philosophical paths answered this⁴: monism, subordinating the subject to the natural and necessary laws; and dualism, situating the autonomous subject on a transcendental plane. Spinoza and Kant were two classical thinkers on one and the other path, respectively.

The Spinoza's System, however, presents a strong determinism applied to the matter and also to the human action, which renders impossible the true freedom, the action that explores an open field of possibilities. In another way, Kant found in transcendental idealism a path to ensure the individual freedom of the subject, understood as self-determination, in contrast with the linear causality (heterodetermination) of the natural phenomena. This Kantian response led to a dualist version, submitting the subject to two antagonistic worlds, the natural one of necessity and the transcendental one of freedom⁵. It was Hegel who detected this problem and accused Kant of advocating a dualism between being and oughtness, generating a formalist morality and a subjectivism that is incapable of deploying into a morality shared in a common life or 'ethical life' (*Sittlichkeit*). Still differently, Hegel built a dialectical idealist system to conciliate individual freedom and the determinism characteristic of modern thinking. He thought about freedom based on a teleological process that holds transforming the underdeterminate into the determinate, which ultimately caused another problem: the submission of individual

⁴ See Luft (2013).

⁵ To take as foundations of morality a transcendental and aprioristic sphere also compromises freedom, since the subject will all the same remain subordinate to laws that determine their conduct, whether they be moral or natural laws. This is the reason for the scathing statement by Schopenhauer when he deals with the Kantian approach as a "morality of slaves" (Sklavenmoral) (SW, III, p.660).

freedom to the collective one and the latter's subordination to the necessity of the Concept (the objective reason)⁶.

The contemporary dispute over the true idea of freedom still places the heirs of Kant and Hegel in the arena. The challenge now, however, is to unveil the concept of freedom that underlies the universe, no longer in the context of a deterministic model, but of an evolutionary cosmology. Despite the problems inherent to the Hegelian dialectic system, some of its conquests are still valid, since they reveal an important and current trait of ontological freedom that could characterize the logical structure of thought and of the world: the dialectic of necessity and of contingency. It is thus worth revisiting Hegel's philosophical system to retrieve these traits, not only to redefine current freedom, but also to construct a new dialectical system project. This path is shown in item 2.1.

Based on this dialectic of necessity and contingency, and with the support of neoplatonic philosophy, it is possible to draw a new idealist project of a logical-ontological system, Evolutionary Idealism (items 2.2 and 2.3), which could explain the evolutionary reason that operates in the world and thus conceive a new conceptualization of freedom.

For Evolutionary Idealism, everything that exists in the world is considered a process of self-organization or the moment of such a process. These systems, while they produce and reproduce the ties that constitute them as systems, are coherent (with different degrees of coherence) and evolve over time. The system of all systems is the evolving universe itself. People and their entanglement in interaction networks are also systems that emerge from processual relationships within the evolutionary universe. The role of human freedom in forming Law, the critical reconstruction of the Philosophy of Right in the light of Evolutionary Idealism, and a new understanding of the relationship between concrete and virtual freedoms in the Internet era are the topics of item 3.

⁶ The tragic consequences of this position came to light with the rise of Marxism as a political phenomenon, even if Hegel, obviously, did not take any revolutionary position in political theory (Koslowski (1998)).

2 The ontology of freedom

2.1 Dialectic freedom in Hegel

2.1.1 Logic and freedom

The elaboration of a theory of freedom in modernity depended on a philosophical concept that could somehow conciliate human freedom with the deterministic causality of nature, since Physics and Mathematics, sovereign sciences at the time, prescribed truths that explained the world and were considered universal, indubitable and necessary. It became the task of Philosophy, inserted into this rigid mechanistic and still anthropocentric context to save human reason and freedom. Kant and Fichte constructed their philosophical theories receiving determinism, the former ultimately incorporating it to a dualist model and the latter approaching it as the moment of a dialectic process that reproduces to the infinite the tension between necessity and freedom. Schelling chose a more sinuous route, reverting the determinism of the linear causality of mechanistic physics into a determinism of circular causality or self-causation (*causa sui*) of an organicist physics⁷, an innovative model that ultimately exerted strong influence on Hegel's thinking.

Hegel's *Science of Logic* is the consequence of absolute idealism. The ontological, epistemological and ethical explanation of the world which has the thought that thinks itself as a key-piece characteristic of modern idealism since Descartes, is now unified into a theory of reason conceived not only as a subject, but also as the substance itself, ie, into a monism of the Absolute (which is the subject and also the world). In other words, understanding the logic of thinking is also to understand the objectivity inherent to thinking itself, and thus rendering explicit the logic immanent to the physical world.

Hegel begins his idealist system with the thought that attempts to think to itself based on the category of Being. Pure thinking is then conceived as pure Being, still without any content. The indeterminate Being however, when submitted to

⁷ See Gare (2013).

dialectic activity, shows itself only to be an unstable *moment* and correlating with its also unstable opposite, Nothing. The truth of both emerges in their synthesis, Becoming.

In the deployment of the semantic conceptual network which constitutes this pure thinking, the determination of each concept depends on negation. The concepts are not deduced from each other but presuppose themselves mutually. A concept is only determined, only becomes significant by the limitation resulting from the relationship with the other. Likewise, equally in the structuring of the world, something real in the world is only something determinate and existing through the other's negation. Determination presupposes relationship.

The unfolding of the thought that thinks itself follows in this direction. Each new concept arises as a synthesis of the previous moment and its negation will emerge jointly as its correlative opposite. The negative part, the antithesis, which is still unknown, will emerge as the negation of the thesis. This negation is engendered by dialectic reason itself and appears in this initial correlative moment as contingency.

When reason makes the opposite emerge, a momentary imbalance occurs between affirmation and negation, in a tension that is pacified in the synthesis, which will become a new thesis in the next stage of the dialectical round. In the process of this rational development, however, the presupposition that initially had traits of a contingency is ultimately shown to be necessary. The transmuting from contingency into absolute necessity is only consolidated at the end of the dialectical process. Every time the thought, thinking about itself, tries to grasp a new concept, a new contradiction emerges. A contradiction that is no more than the incompatibility between the dialectical claim to saying the totality of the conceptual determinations and the fact that the totality is grasped only partially and precariously⁸. The conceptual semantics also shows itself to be processual and the dialectic development goes on until the final round, the Absolute Idea.

There is contingency in the Hegelian system because there is dialectic. In a sense, dialectic moves the systematic process insofar as it promotes the emergence

⁸ About the dialectical contradiction as pragmatic contradiction, see Wieland (1989, p. 201) and Höslé (1988, p. 198ss).

of new actual or potential contradictions. If it were an absolute system, in which everything is already predetermined in the beginning as the One Substance of Spinoza and of young Schelling, there would be no contingency.

Contingency emerges due to the subject's incapacity to immediately grasp the Idea (the conceptual totality) in a single time. In the beginning the Hegelian system is open to all and any possibility. The problem is that the system is based on an absolute teleology, which at the end of the conceptual development closes the process transforming the contingencies into necessity.

In this way, if at the beginning of the development of logic, a moment when reason self-determines engendering contingency, there is freedom because there is an open space of possibilities, at the time when reason concludes its teleological process freedom reveals itself as an absolute necessity; in other words, freedom is then seen as the plenification of the necessary self-determination of reason.

2.1.2 Hegelian justification of freedom in the dialectic of modalities

The logic of modalities appears at the end of the Doctrine of Essence, situated between the doctrines of Being and of Concept in the *Science of Logic*. This intermediary part of the work is not yet committed to the plenification of the Concept as an Absolute Idea, and consequently with freedom as necessity.

The argumentation developed by Hegel here is fundamentally important for the contemporary rereading of dialectic, insofar as the author highlights the main characteristic of this logic: the game of opposites between necessity and contingency. Under the title of Actuality (*Wirklichkeit*), the third section of the Doctrine of Essence, Hegel argues that the formal logic, isolated from reality, is insufficient to determine any thought – or anything that exists in the world – and that it, alone in its abstraction, is no more than mere tautology.

In this sense, if on the one hand Kant was successful in understanding the limits of formal logic, trying to overcome them with the theory of *a priori* synthetic judgments, on the other Hegel proves that the true logic that provides the foundation of the structure of thought and the world is still broader. And justifies that it is not,

nor can it be only formal, but it is and should also be real, namely, it is not only analytic but also dialectical.

The dialectic of the modalities is exposed by Hegel based on four modal categories: actuality, possibility, contingency and necessity. The argumentation goes through three consecutive rounds that semantically relate these four categories, each round indicating a degree of necessity of some thought or of an actual being: formal necessity, real necessity and absolute necessity, respectively. The three rounds are the dialectic unfolding itself of the meaning of what is real and according to the Concept, namely of what is actual.

The development needs to undergo a critical (negative) phase and later find its true meaning, as also exposed in item 2.1.1. According to Hegel, only in the last round, in absolute necessity, is it possible to understand the meaning of a specific thought, or likewise, of something actual in the world.

The first round concerned what is sought by formal logic: any thought can only be determined if it obeys the principle of non-contradiction (or self-identity⁹). Being and nonbeing at the same time and under the same aspect would be impossible, according to this principle, since both are conceived as excluding opposites. Thus, if idealism presents the thought that thinks its own logical structure – it should be insisted that it is identical to the structure of the world – and if the structural ensemble of all thoughts is called Concept, a thought that attempts to think the Concept completely needs, before anything else, to be a determinate thought, and for this it must be identical to itself and not contradictory.

Hegel identifies a contradiction of this way of thinking that can be explicated as follows: it is not enough for a thought to be self-identical (or non-contradictory) to be a determinate (actual) thought. The principle of non-contradiction is not determinant, on the contrary it is only tautological. The first of the three rounds thus ends with the finding that the attempt to determine something by appealing to the mere law of identity is lost in the indeterminate void, and what appeared to be the

⁹ Influenced by Leibniz, Hegel understands the principle of non-contradiction in his classical reading as a negative version of the principle of identity. Deep down, the modern concept of reason as well as the Greek concept, are structured based on the principle of identity, the being itself is understood in the light of this principle: the being in their full expression is the pure identity with oneself, the real being is *auta kath' hauta* (see Plato, Sophist, SW, v. VII, 255c).

realm of pure necessity, precisely for its formalism, proves to be the realm of pure contingency.

So we need to go to the second round of unfolding of the concept of actuality, the relative necessity (or real actuality, possibility and necessity). If a thought (or something actual in the world) cannot self-determine itself alone, its relationship with another thought that determines it is necessary. The determination depends on conditioning or relationship, but in the real round of modalities, this conditioning is always external conditioning.

This point must be reinforced: since in the real rounds the conditionings are always external, the relationship between conditioned and conditioning unfolds into a linear series that is lost in infinity, and the relative necessity reverts equally into contingency. Once again the Hegelian dialectic innovates the Spinozism of young Schelling in his Identity Philosophy: the process of determination is mediated by contingency. The reversion of relative necessity into contingency, however, reveals a new contradiction, since the thinking that sought to grasp something as determinate is now lost in this infinite process that leads to always new conditionings and is not stabilized in any of them.

In order to finally determine a thought (or something actual in the world) it is necessary for the linear chain to turn back on itself. Relational semantics must also be holistic, in order not to become hostage to an infinite regress. When the linear series of heterodetermination shows itself to be only a moment in a circular process of self-determination, absolute necessity emerges. Only with this round does a thought achieve its true significance without needing to presuppose other thoughts, since only here does it turn on itself and receive the *status* of something *actual*, determinate and significant.

Hegel's argumentation in the logic of modalities presented above is valid and essential to construct a new project of a dialectical system. But now we have come to an impasse that requires a revision of Hegelian thinking: how to think about this process of self-determination or self-conditioning (*causa sui*) without falling into a vicious circularity¹⁰? How can a cause be a cause of itself? The answer is that any

¹⁰ This objection is one of the central points of Schopenhauer's classic *On the quadruple root of the principle of sufficient reason*. (SW, v. 3, p.27-28).

self-determination process only stops being vicious if mediated by contingency, if new determinations emerge, or at least can emerge from within them: the dialectic reason is manifested not as the source of an absolute necessity, but as the very game of necessity and contingency. Everything that is determined needs to manifest some degree of coherence¹¹ but there are potentially infinite modes of coherence. The Hegelian teleology of the unconditioned, this one-directional teleology that points to the complete or exhaustive manifestation of the Concept¹², for its plenification, is transmuted into a teleology of the self-conditioned, a dynamic teleology that is directed at coherence¹³, indeed, but a coherence that opens up to its infinite potential modes, pointing to the multiple possible paths of a life that is continuously evolving¹⁴. The actualization of dialectic from an evolutionary universe, as the one shown below, will then allow recreating the theory of freedom.

2.2 Evolutionary Idealism: a system project

The contemporary project of actualizing the dialectic takes place in the context of a deflationary and fallibilist ontology. These characteristics are not random choices but necessary to respond to the decisive critique launched against the Hegelian dialectic: from Schelling the critique of the lack of contingency in the system; from Feuerbach the critique of dogmatism; and from Kierkegaard the critique of the Hegelian approach to the problem of freedom. Responding to such criticism appears to be a promising way of actualizing dialectic and proposing a new system project¹⁵.

¹¹ The term 'coherence' comes from the Latin 'cohaerentia', meaning connection or relationship. Coherence is the unity of a multiplicity or multiplicity in unity.

¹² The process of self-determination of the Concept is teleological in the sense that it directs itself to the full manifestation of the Concept itself, to its self-reception as a "complete totality" (*vollendete Totalität*) or as an Absolute Idea (Hegel, WL: W, v.6, p.550).

¹³ Cirne-Lima here would say, "points toward an *oughtness*" (Cirne-Lima, 1997). But we prefer to preserve the dynamic teleology as the core of dialectic, and not take it apart into a deontology that holds the risk of a new dualism, this time between being and ought, between the logical sphere and the real sphere (a problem which is in fact already latent in the Hegelian dualism that contraposes *Logic* and *Philosophy of the Real*).

¹⁴ See Luft (2014a).

¹⁵ See Luft (2001).

Attention to critiques thus requires that the new dialectic system be deflated and fallible. It is dialectic insofar as it carries within itself the game of the One and the Many, or the Idea of Coherence. It is deflated¹⁶ because it reduces the many categories of classical ontology to this single Idea. It is fallible because the opening to the many modes of coherence which to a great extent cannot be anticipated, prevents the ultimate foundation of the system project so desired by Hegel. The dialectic philosophy is only legitimated by being continuously open to dialogue with the philosophical tradition and with the contemporary philosophy and sciences in its multiple lines.

Actualized dialectic is a kind ontological monism constituted by the system of the universe and by self-organized relational and processual subsystems. Relational because they are the result of interactions and processual because they are dynamic – they are not static facts, but events – and they are constantly evolving. It is also a logical-ontological evolutionary idealism insofar as it sustains, on the one hand, the logical structure of thinking as identical to the logical structure of the world and on the other, an immanent and dynamic teleology that, on opening up to the potentially infinite modes of coherence, is susceptible to the evolutionary change.

This proposal ensures that philosophy has its legitimate place as a universal science – as an ideal that gives unity to diversity – and related to all other particular sciences. The approach between philosophy and the particular sciences offers philosophy a few technical terms elaborated by the Network Science and by the theory of Complex Adaptive Systems. It is thus possible to understand the many dialectical subsystems as complex networks, diversified in different degrees of complexity. The project of a dialectic system ruled by the single Idea of Coherence is thus the universal theoretical network which ensures a minimum frame of reference to understand the world.

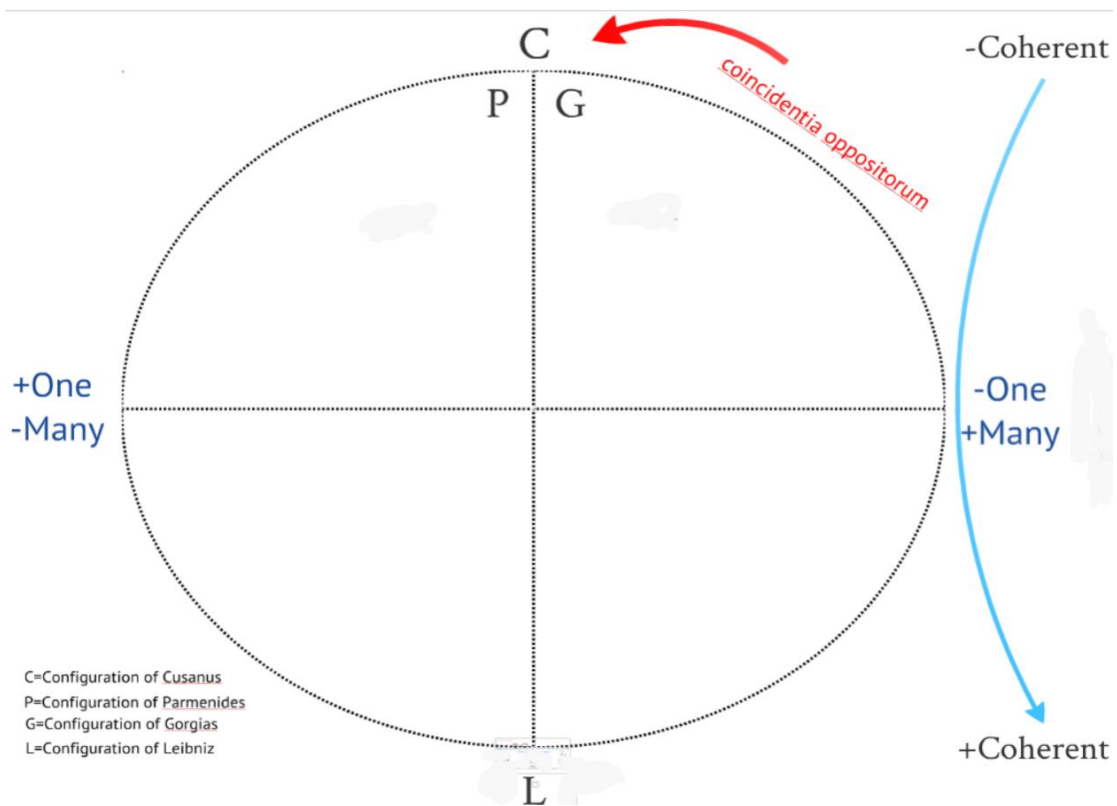
The system project of Evolutionary Idealism can be designed based on a contemporary reconstruction of the late Plato's dialectic of the One and the Many.¹⁷ The *Being* in Parmenides and the *Nothing* in Gorgias were the main pillars that

¹⁶ This project of deflation of classical ontology in a contemporary dialectical approach was inaugurated by Cirne-Lima (1997), and here and in other places it is further looked at and radicalized (see Luft, 2005, 2014a).

¹⁷ See Luft (2014b).

sustained the dogmatic and skeptical philosophical traditions, respectively. While the dogmatic current affirmed to the extreme a static universal principle of the world in which coherence would be a Unity without Multiplicity, the skeptical current tended to affirm or at least presuppose a dynamic or even chaotic principle, a Multiplicity without any Unity.

Evolutionary Idealism establishes the union of both in the Idea of Coherence. *There is no unity without multiplicity, nor is there multiplicity without unity.* There is always the dialectic between the One and the Many, and constitutive traits of the One are identity, determination and invariance, those of the Many are difference, underdetermination and variation. The Idea of Coherence operates in all possible modes of effectuation of the *One/Many* dialectic. The field of the infinite and unpredictable possibilities of dialectic manifestation within this system can be understood as an *evolutionary logical-ontological space*, which is both the field of all possible thoughts and the field of all possible events that could exist in the world, remembering that the logical structure of thought is equal to the logical structure of the world.

Figure 1 (evolutionary logical space) ¹⁸

The internal order of the system of the universe, as well as the order between the various subsystems engendered in the evolutionary logical space, is given by coherence. There is coherence in all of them, from the most determinate, in which the One predominates over the Many (in the region of the logical space that for this

¹⁸ To understand the evolutionary logical space: each point in the circumference is a possible configuration. In the representation, the number of configurations is finite, although in fact it is potentially infinite. The image is therefore a simplification for teaching purposes. The true logical space is much more complex than what is shown in it; as suggested by Sérgio Sardi in a personal conversation, the space is represented in the image as a circumference, but it could be represented likewise in 'n' dimensions. In the Configuration of Parmenides (P), there is the maximum predominance of One over the Many, and the quadrant in which it is located is the Quadrant of Parmenides. On the other hand, the maximum predominance of the Many over the One is seen in the Configuration of Gorgias (G). In the Configuration of Cusanus (C) the movement toward the maximum predominance of the One over the Many and the reverse movement coincide. The arrow on the right shows that from the point of view of dynamic and deflationary ontology, inaugurated by the Idea of Coherence, the events situated in the inferior quadrants – called Quadrants of Leibniz because they hold the configurations that move away from the extremes and place the One and the Many in greater balance or symmetry – they are more coherent with the universal becoming. The arrow is curved to indicate that the configurations situated in the Quadrant of Parmenides, although generally less coherent with this universal becoming than those situated in the inferior quadrants, are generally more coherent with this same becoming than those situated in the Quadrant of Gorgias. For a more detailed description of the evolutionary logical space and of this dialectical ontology as a whole, see Luft (2014a).

reason we might call the Quadrant of Parmenides) to the least determinate, with the predominance of the Many over the One (close to the Quadrant of Gorgias). Although the logical space can basically be explored throughout its amplitude, the evolution favors systems that manifest themselves in the Quadrants of Leibniz, the quadrants of the logical space in which the relationship between the One and the Many tends to become more balanced without losing itself in the extremes of the predominance of one over the other. Life occurs "between order and chaos", as Kauffman¹⁹ would say.

2.3 Freedom in Evolutionary Idealism

Thinking like Hegel of an objective reason (the Concept) that is necessarily manifested in human history following the teleology of the unconditioned, besides transforming individuals into mere instruments of the spirit²⁰, prevents the possibility of engendering new facets that can be anticipated or not, of human actions. That is precisely the opposite of full freedom. Hegel, however, is right in characterizing freedom as self-determination mediated by social interactions. The dialectical ontology is a relational ontology: on the contrary of the liberal understanding that treats people as social atoms and society as the mere agglomeration of these atoms, dialectic sees the person always emerging in interactional networks. Precisely at this point, however, lies the risk of the entire holistic understanding of social ontology, the tendency to think about individuality only as a mere product or subproduct of the modes of interaction, dissolving the person in the collective as a grain of sand comes undone in the desert.

Here the dialectic of the One and the Many can help us, since *good* – in the objective sense of the *most coherent* in the context of a dynamic social ontology and in the normative sense of what is ethically the *best* (after all, ontology is ethics) – is the middle term, the *mesotês*, not the predominance of sociability over the individualities (of the One over the Many), as the socialists believe, and many dialectical thinkers of the tradition (as Plato himself and Hegel), nor the

¹⁹ See Kauffman (1995, p.26).

²⁰ "While this occupation of Actuality appears as action and the work of *individuals* [Einzelner], as regards the substantial content of their work, these are *instruments* [Werkzeuge] and their subjectivity (...) is the empty form of the activity" (Enz: W, v.10, p.353).

predominance of individualities over sociability (of the Many over the One), as the classical liberals and anarchocapitalists believe²¹. No, good is not the predominance of one over the other, but the directly proportional growth of both: that common life that, expanding and furthering interactions, makes the multiple individualities flourish. It is not my or your freedom, but our freedoms in open networks of interaction.

Open and dynamic societies seen as self-organized networks based on deflationary ontology – that is, ontology ruled only by the Idea of Coherence – should balance necessity and contingency to remain coherent and free. The ontological freedom is inherent to the Idea of Coherence according to Evolutionary Idealism: coherence, as open to its multiple modes, is freedom, and freedom relationally seen is coherence. This point is decisive: when one thinks that the directly proportional growth of individuality and sociability is the political good *par excellence*, one is not suggesting that there is an *optimal state* of this kind, towards which the social dynamics would tend, and much less a single optimal state. There are several forms of interaction that may coherently explore the quadrants of Leibniz, most of which cannot be anticipated, but the result of a continuously redone search in an open space of possibilities. In other words, several ethical modes of social interaction can be convergent with the Idea of Coherence. Defending any notion of freedom that moves away from free action in the face of these numerous possibilities, like the Hegelian notion, proves unsustainable.

3 Freedom and Law

3.1 Law and ethics

Political good, the joint flourishing of individuality and sociability, is the

²¹ To distinguish between classical liberals and anarchocapitalists, see Soto (2009). Although strongly inserted in the liberal tradition, Soto is very close to a relational theory in social ontology, when he emphasizes the coordination of action as a key to reading in the understanding of the economic system: "All such human interactions are motivated and driven by the force of entrepreneurship, which continually creates, discovers and transmits information or knowledge, as it adjusts and coordinates different people's contradictory plans through competition and enables them all to live and coexist in an increasingly rich and complex environment" (Soto, 2008, p.27).

*reciprocal autonomy*²²: two or more movements that open to the multiple possible modes of coherence with oneself²³ interact, producing and sustaining the coherence of the open network of interactions itself.

However, Law proper is not confounded with political ethics. It is only in the sphere of Law that we see as legitimate the use of force or violence in specific cases²⁴. A law is not exactly a good, but something like vaccines, a lesser evil done in order to avoid a greater evil²⁵. It is because the freedoms are in fact continuously threatened by acts of indiscriminate violence that the presence of Law is necessary. If we lived in a world of angels, there would be no need for Law. The presence of the Law does not really cancel the use of force but transfers it from the sphere of indiscriminate retaliations among individuals to the sphere of a greater power that places itself about the individualities, the sphere of collectivity itself. The dialectic of individuality and collectivity (sociability) reemerges with full force and societies need to manage the tensions between these antagonistic movements to ensure their own long-term sustainability.

Now, a person's freedom is threatened when social interaction is one-sided: my autonomy does not make another person's autonomy flourish, on the contrary, it comes apart in heteronomy. My freedom claims to be the other's slavery. If reciprocal autonomy is possible, slavery must be banned as a principle of social life. In this sense the Hegelian dialectic of the master and the slave²⁶ should be seen as the key to the reading of the genesis of the sphere of Law itself: on seeing his life threatened, of trembling before the terror of imminent death, a subject accepts to preserve his life in exchange of the loss of their own freedom; what appears to be a purely negative attitude, an act of pure subjection, actually reveals itself as the acknowledgment of the limits of any abstract theory of freedom: without the right to the exclusive use of my own body, I can in no way be free. The first of all rights is the right to bodily integrity, to the preservation of movement to be coherent with oneself which is

²² A theory of reciprocal autonomy is at least implicit in the re-evaluation of the Hegelian approach made by Müller (1993).

²³ Coherence with oneself or *personal integrity*.

²⁴ See Reale (1999, pp.328 e 338).

²⁵ A lighter way of saying the same: what the law protects has intrinsic value: human freedom; but the law itself has extrinsic value: it is there to sustain freedom.

²⁶ See Hegel (PhG, p.145ss.).

manifested in my own organic life (here the novelty introduced by Hegel in relation to the abstract theory of freedom that we see in Kant and Fichte). This is the most original of rights, *the right to self-property*, which ensures the greatest of all goods, coherence with oneself or personal integrity.

The assumption of Philosophy of Right is the Idea of Freedom, but not of an abstract freedom. It is the life of the spirit itself that is at stake, and the life of the spirit is, as emphasized in the dialectic of the master and the slave, the experience of our concrete freedoms. Yet precisely the exercise of concrete freedom brings with itself a new and explosive potential contradiction: if all humans are free, if acknowledging freedom is the good that is universally understood and implemented by Law, and the only limitation of freedom is respect for self-property, the non-exercise of violence against another person, nothing prevents exercising my freedom against what is not a person. Nothing limits the enjoyment of freedom in the act of possessing things, of non-humans. The act of merely possessing something, therefore, does not infringe the freedom of the other, and there would be nothing wrong in possessing whatever were necessary to carry out my will.

The fact is, however, that human life occurs in an environment with finite resources or scarce goods. If a person were the only existing person, they could indeed possess everything unrestrictedly – if there were not the limits that come from natural physical impediments –, but precisely in this case they would not exist as a person, because we have already seen that people emerge within interactive networks. The last man could still have an organic life, determined by their relationship with the ecosystem, but could not sustain themselves very long as a person, since a person is a social being²⁷. Precisely by coexisting with other free beings in an environment permeated by scarce goods, a person who exercises their freedom makes actual or potential conflicts emerge: two or more wills want to exercise their right of possession over the same scarce goods. Now arises the second central legal good: the right which transforms mere possession of things into property, *the right to property (of things)*²⁸.

²⁷ This is a central assumption of the dialectical theories that reemerge in contemporary science, in the theory of networks (see Barabási (2002) and Franco (2012)).

²⁸ See Hegel (GPR, p.102).

3.2 Law as freedom

3.2.1 A very brief history of freedom

Now these primordial rights to individuality and to property did not emerge at one time. Both the abolition of slavery and the conquest of the right to private property were the results of a long period of historical becoming, full of comings and goings. The Human species²⁹ was not unique around 2 million years ago. We were actually many human species³⁰. The fact that *Homo sapiens* became outstanding among all of them, in the sense of being able to prevail in future history, does not appear to have depended exclusively on the large size of our brains, but more properly on the capacity to use abstract language, to meta-coordinate actions (to speak with Maturana) using symbols that do not necessarily refer directly to things in the real world, but can the unexpected and the unknown³¹. The use of this unique language enables *Homo sapiens* to meta-coordinate actions of vast groups of people, all following the same idol or guiding idea. Think of the thousands, millions or even billions of people who might be gathered around a same religious belief or political ideology.

The first human communities were nomadic. The characteristic of nomadism is parasitism: human agglomerations, although initially relatively small, with at most 500 people, enjoy the goods offered by nature in given surroundings, exhaust these local resources and move to another location. In the face of the impasse of unprecedented scarcity, derived precisely from the success of sapiens, three main alternatives emerge³²: migration, fighting³³ to conquer territories and reinvention of their way of social organization. In time, and with the expansion of *Homo sapiens* throughout the different regions of the earth, migration ceased to be an alternative

²⁹ For human evolution, see also Diamond (2006).

³⁰ See the historical reconstruction of Harari, 2014: "[Some of] our siblings, according to speculative reconstruction [...]: *Homo rudolfensis* (East Africa); *Homo erectus* (East Asia); and *Homo neandertalensis* (Europe and western Asia)".

³¹ See Harari (2014).

³² Here we are following the historical-rational reconstruction of the genesis of private property by Hoppe (2015).

³³ For the almost chronic presence of war in human societies, see Diamond (2005, p.291).

and the Hobbesian war of all against all, once disseminated, although always recurrent in human history, certainly had a cost. The reinvention of social organization, with the transition of nomadic communities to sedentarism, and the emergence of the agricultural revolution was one of the decisive factors in human history. From the privatization of their offspring was born the family, from the privatization of the land was born its productive use in a regime of scarcity³⁴.

Property rights arose together with the chant of the *patêr* in the ancient family³⁵. The chant reverberates the values and norms transmitted from father to son, giving continuity to the family tradition: *nomos* is the chant of the father, and the chant of the father is the law. For the ancient family the soul of the dead had its own life within the tomb: the family members had to be given homage in rituals. At the graveside emerges the *oikos*, the house, and with it the right of exclusive use of the territory of which it is part. It should be noted that this nascent right to private property is not yet the right of an individual. It is quite true that the power is paternal in these patriarchal societies, but the father does not possess property rights. He only represents and passes on to his oldest son a right which pertains to the family: property thus is collective ownership. The families joined in phratries, the phratries in tribes and the reunion of these into even greater units created the cities. In Ancient Greece we get to the blood aristocracy that Plato will unsuccessfully attempt to revert into an aristocracy of sages, but that will continue throughout historical times, when blood aristocracies are reinvented in the monarchical families.

In all patriarchal societies we see the same regime with the concentration of power in hierarchical structures. These are societies configured from a regime of *order*, where the One predominates over the Many. But every so often, with comings and goings, societies test the possibilities that come from exploring the quadrants of Leibniz, taking distance from the predominance of the One over the Many, and rebalancing these opposite pairs, moving from the regime of *order* to the regime of (self)*organization*. The land that guards the tomb, which in the beginning belonged exclusively to a collectivity, the family, is now allowed to be sold, already during the

³⁴ See Hoppe (2015).

³⁵ For this reconstruction of the emergence of law in the ancient family, see Coulanges (2009) and Cirne-Lima (1997).

times of Roman Law: the right to property which, formerly, was collective, begins to become the right of a person, individuality begins to show its face. Power, previously concentrated in the hands of the noble families, now becomes decentralized, with the rise of the democratic experience in the Agora. The free play of individualities in the open networks of interaction begins to flourish. This brief democratic period flows back into Antiquity and the Middle Ages, but reemerges in the democratic experiences of modernity.

This brief description of the trajectory of *Homo sapiens* allows us to say, with Hegel, that human history is a history of freedom. But, unlike Hegel, we are not suggesting to read this history as a one-directional movement that necessarily flows into increasingly full forms of freedom. On the contrary, it is a fragile, always reinaugurated exercise of exploration of an open field of possibilities. Nothing guarantees the continued expansion of human freedom, even if the ontological freedom is an unarguable fact of nature in general.

3.2.2 The Deflationary Theory of Law

The historical trajectory to a large extent forges who we are. We owe much to the evolutionary history of our ancestors: our institutions, our customs and even our values and visions of the world. There are characteristic traits of how good emerges for us who are the result of a specific biological and cultural evolutionary trajectory. But we are not only the result of our history. If coherence is open to its multiple modes, in our personal and common lives, nothing prevents the (sensible and well measured) critique and reconstruction of given modes of coherence.

That is what we seek to do with the critical reconstruction of dialectic tradition, here represented by Hegel. His Philosophy of Right presupposes a theory of freedom whose primary justification lies not in the theory of Right itself, but in the *Science of Logic*³⁶, in other words, in dialectical ontology. A critical reconstruction of the *Logic* would certainly have implications for the Philosophy of Right. This was exactly what we did in the second chapter: now it is necessary to evaluate what is the impact of

³⁶ For the logical –ontological assumptions of the theory of freedom in Hegel, see Müller (1993), Weber (1993) and Klotz (2017).

the new reading of dialectical ontology in the context of the Evolutionary Idealism for the Philosophy of Right.

Law arises, we were saying, as a response to current or potential conflicts that result from the concrete exercise of freedom. Our conflicts do not occur due to disagreements in an ethereal world, but because our free wills indeed interfere in other free wills, because our acts of freedom are exercised in the presence of scarce goods, goods that when rendered mine by exercising my will, cannot be yours and vice-versa.

Freedom is a good. Laws are there to prevent indiscriminate retaliations among people in a situation of current or potential conflict and to protect freedom. If the Philosophy of Right is a theory of reciprocal autonomies³⁷ or mutually acknowledged and exercised freedoms in a concrete context of interaction, the law is no more than the first constraint, the minimal condition that inaugurates the very sphere of Law.

The deflationary dialectic ontology flows into a Deflationary Theory of Law: in place of the uncontained proliferation of rules that emanate from *legislation*, the minimalist trait of the *law*³⁸; in place of the infinite verbosity of dying parliaments, the contained word of the law, aiming only at the flourishing of personal freedoms in open interactive networks. The motto of a fair law: to collaborate for the production and sustaining of the open interactive networks with a minimum of intervention and a maximum of efficacy. Only thus is the law placed at the service of political good. The societies that implement the political good are called *open societies*³⁹.

³⁷ It should be emphasized that an ethics of reciprocal autonomy cannot be reduced to a mere theory of recognition, much less to a model of "fighting for recognition" (Honneth, 1992). This is the price to pay for Honneth's refusal to continue the dialogue with the Hegelian *Logic* (Honneth, 2001, pp.13-14). The author appears to have realized later, at least in part, the deficit inherent to an exclusive theory of recognition. (Honneth, 2013).

³⁸ See Leoni (1972).

³⁹ For the Popper's theory of democracy as the core of an open society, see Popper (1988).

3.3 Concreteness and virtuality: our freedoms in the era of the Internet

3.3.1 Tangible and intangible goods

According to the dialectic actualization project shown here, the Internet is conceived as one more subsystem that emerges as an event or self-organized process within the *evolutionary logical space*. As a self-organized process that evolves over time, the Internet also has relational and processual traits, presenting equally a movement towards the coherence of the network itself.

Online societies follow the same law of coherence that rules real societies and online freedom presents the same character of real freedom, the exploration of the open field of possible modes of coherence, but with a crucial difference: on the contrary of what happens in the physical environment, in the virtual environment we deal with non-scarce goods. If I take possession of your house, the house is no longer yours, it becomes mine. But if I download a film from the Internet, nothing prevents you from also downloading the film. If I kill a real person, I kill a real person; if I kill a virtual person, well, I am only "killing" an avatar, and the real person can then choose a new avatar.

The problem may become clearer by evaluating a topic that is very much in vogue today, the question of the rights of intellectual property⁴⁰. A physical book, for instance, is what we call a tangible good, a virtual book is an intangible book. My reading a physical book prevents it from being read by another person in a faraway country, but the fact that I download a virtual book from the cloud does not prevent another (or thousands, millions of others) from doing so. In a scenario where there is no scarcity, no conflict can emerge unless a higher power introduces artificial scarcity by force. But why would someone introduce artificial scarcity? Or worse, why would someone advocate the intervention of the force of law, which serves precisely to avoid the escalation of conflicts, in a scenario where such conflicts, basically, would not need to occur? Applied in this manner, the law reverts to its opposite: it

⁴⁰ For the discussion that follows, we owe much to Kinsella (2008).

does not avoid but rather encourages the formation of conflicts that would otherwise be avoidable.

In this context it is common to appeal to consequentialist arguments. Let us take as an example the case of property rights over patents. These rights are applicable not only to ideas as ideas, but to ideas, inventions or discoveries that may be applied concretely. Even so, this right is not applicable to tangible goods, but to patterns or abstract forms, to a certain way of conceiving a grass-cutting machine, for instance. Without the right to patents, all technological progress would be impaired, this is what its advocates allege. We would like them to prove, however, that this statement is true, that indeed technological progress depends on applying this kind of property right, or that arguments against it that point to technological backwardness, as a result of the natural increase in bureaucracy by applying these rights, would be unreasonable or not deserving of attention.

Even if they could prove, however, the correctness of consequentialist arguments of this kind, or similar ones, how can they be prioritized in relation to axiological arguments that present, for instance, personal integrity (and the freedom inherent to it) as a good, maybe even the most significant of goods? If the exclusion of all people that are notoriously unproductive from society would mean notable technological progress, and a flagrant increase of wealth in general, would we be authorized to expel them from society for this reason? Certainly not.

It is most likely however, that the supposed conflict between consequentialist and non-consequentialist libertarian visions is a pseudoconflict. We have good reason to believe that, under the regime of full freedoms, societies will increase their capacity to solve problems, in other words, they will become more prosperous⁴¹ (the finding of good consequences resulting from the advocacy of an open society).

Now imagine an even more complicated situation that will probably be pervasive in our societies in the near future: think about the case in which the property right of intangible goods interferes or jeopardizes the right to goods as tangible and decisive as the integrity of our own body. Imagine that a company holds the patent of an ocular implant technology that will allow a blind person to see normally again.

⁴¹ For the definition of prosperity as the resolution of human problems, cf Beinhocker & Hanauer (2015). See also Beinhocker (2006, pp. 8ss and pp. 316ss).

Once the implant has been performed, does the company reserve its original rights to the technology inherent to the device or does it lose them for once and for all? Could the patient use this technology in any way they like, since it is now part of their body? Could he modify the software embedded in this device in any way he likes? Would it be fair for him to remain hostage, for instance, to the payment of endless rent to use this equipment? In all these cases, strictly applying the right to intellectual property would literally mean that the person would become a slave, irreparably subjected to another.

The right to intellectual property is not only a strange type of right, because it is exerted over intangible and non-scarce goods, it is a type of right that, once disseminated, will decisively disturb the legitimate property rights, the property right over tangible goods.

3.3.2. Concrete and virtual freedoms

The crucial difference between our virtual freedoms and our concrete freedoms is that only the latter operated in a context of scarcity. If the right to property is to prevent conflicts regarding scarce goods, safeguarding free interaction among people, what is the sense in introducing the force of the law to ensure the right to property in a non-scarcity regime?

This leads to a fundamental principle: the virtual environment has legal relevance *if and only if* what occurs in it affects rights that emanate from our concrete freedoms that are situated in the physical, not the virtual environment. Following the deflationary intention of the Philosophy of Right here exposed, which is based on the principle that the law must be understood as the minimal condition for the emergence and preservation of freedoms, governments basically should not intervene in online activities, unless they place our concrete freedoms at risk.

Saying that the law should be minimalist does not mean to say that norms in general should be seen in the same way, just like a deflationary ontology does not imply that the number of species that will in fact emerge during the course of the biological evolution is minimal. What one wishes to affirm is that except for the law proper (and other laws derived from it), this original restriction that inaugurates the

sphere of Law itself, all the other norms, as long as they do not contradict the law, must be entrusted to acts of self-regulation, must emerge from the processes of self-organization of the interaction networks themselves⁴². The same is also applied even more strictly to the online environment whose legal relevance, as we saw, is attested only indirectly, if and only if the interventions in this environment impair our concrete freedoms.

3.3.3 Freedom creates freedom

Law exists for the political good, to enable open societies, open networks for interaction that, by flourishing, make individual freedoms blossom. However, it must be emphasized that the political ontology/ethics advocated here, although only as an outline, does not sustain a kind of preview of the specific type(s) of society(ies) that could realize political good. There is a vast number of possible models of what we call open societies, a vastness that is to a great extent unexplored and unexplorable (in anticipation) of possibilities that move away from the predominance of the One over the Many (quadrant of Parmenides) or vice-versa (quadrant of Gorgias) and invest in the quadrants of Leibniz. The belief that general ontology, or even any specific social ontology can unveil *the adequate way* to solve the problem of conciliating the One and the Many is, besides falling hostage to the dangerous myth of the philosopher-king, to ignore that the best, in this dynamic, open universe is always context-dependent and pluriform, being rediscovered or reinvented by the potentially infinite exercise of trial and error.

Political ethics, in this case, does hasten the avoidance of the extremes of societies centralized on excess (because they are against adaptation, innovation and the exercising of freedoms) or anarchical (because they are unsustainable over the long term), but knows that only the free exploration of the space of possibilities allows

⁴² It should be asked whether a parliament whence now arise *legislations* under a democratic regime, is the appropriate vehicle (or one of the appropriate vehicles) for the self-regulation processes of society as a whole. This highly relevant topic extrapolates the limits of this essay, because it would lead us to deepen the problem of the relationship between Law and Politics. What can be anticipated is that, without the law, a functional legislation (that will not endanger our freedoms) is not possible. In other words, legislations should not be in contradiction with the law.

a glimpse, here and there, of the desired solution, and that no solution can be assumed to be definitive, because coherent is coherent in this context, and tomorrow is different. Now this recurrent exploration, by trial and error, of an always open space of possibilities, gestating itself as the eternal return of the always new⁴³ which mirrors the universal becoming, *is in itself an exercise of freedom*.

It is only by promoting and encouraging open networks for interaction that we can find those that are sustainable over the long term. Only freedom creates freedom.

Authorized translation by Hedy Lorraine Hofmann.

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⁴³ Paraphrasing Nietzsche (Gaia Ciência: KSA, v. 3: 341).

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