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THE MISSING HEGELIAN REVIVAL IN TAX JURISPRUDENCE

Bret N. Bogenschneider*

Abstract

In this Article G.W.F. Hegel’s *Philosophy of Right* is applied directly to tax jurisprudence. The duty to pay tax is identified as one aspect of Ethical Life (*Sittlichkeit*). A counterintuitive aspect of *Sittlichkeit* is that it may entail freely willing the opportunity to pay tax to the State. The Hegelian theory of retributive punishment upon a violation of Abstract Right is also examined in the context of tax crimes. A few problems with the application of Hegelian theory to tax law are also examined including: (i) indeterminacy of law; (ii) sublation as method; (iii) the potential for immoral ethics; and (iv) taxation as interference with property rights (*qua* Libertarianism). Several policy recommendations are developed from the perspective of Hegelian theory including the idea of celebrating large tax remittances to the modern State.

INTRODUCTION

The Hegelian revival in American legal discourse did not initially extend to tax jurisprudence.¹ This is hardly surprising given how little Hegel had to say about taxation in the *Philosophy of Right*² or his other works on the philosophy of law.³ In the *Philosophy of Right*, Hegel posited free will as abstract thought translating itself into reality.⁴ The essence of free will accordingly entails thinking about and then proceeding to actually claim property in the external world.⁵ Any mention of ‘property’ implies a role for taxation.⁶ Thus, we encounter a significant problem with taxation in Hegelian theory because ethical duties of the person arise in relation to the State, yet taxation paid to the State seems to cancel property rights and freedom. Hegel ultimately identified ‘right’ with the free will toward duty, where ‘duty’ means achieving a synthesis between the subjective will of the person and the universal spirit embodied in the State.⁷

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⁴ Hegel, Philosophy of Right §4 (‘F]reedom becomes actual only as will’).

⁵ Hegel, Philosophy of Right §33 (‘This first phrase of freedom we shall know as property. This is the sphere of forma and abstract right, to which belong property in the more developed form of contract and also the injury of right’); §40 (‘Right is in the first place the immediate embodiment which freedom gives itself in an immediate way, i.e. possession, which is property — ownership.’).


⁷ Hegel, Philosophy of Right §155 (‘Hence in this identity of the universal will with the particular will, right and duty coalesce, and by being in the ethical order a man has rights in so far as he has duties, and duties in so far as he has rights. In the sphere of abstract right, I have the right and another has the corresponding duty.’).
The duty to pay tax in support of the State may be a fundamental or perhaps even the quintessential aspect of Ethical Life in Hegelian terms. So, at minimum, taxation represents a challenge for Hegelian theorists in balancing the competing elements of the actualization of freedom and duty.

Hegel’s advocacy of freely willing one’s duty as the highest form of Ethical Life (tr. *Sittlichkeit*) suggests that paying one’s taxes must be an important aspect of duty. He wrote, for example: ‘The right of the state is, therefore, higher than that of the other stages. It is freedom in its most concrete embodiment, which yields to nothing but the highest absolute truth of the world-spirit.’ Peter Stillman thus described Hegel’s likely view of taxation as follows:

Hegel asserts and assumes the state’s right and power to tax. He does not condition such a power on any particular requisite, such as representation, nor does he see taxes as a gift by citizens to state or as a quid pro quo (for example, for protection from others). Ultimately, I think, taxes are for Hegel legitimate claims made by the state for its own purposes and maintenances.

The counterintuitive aspect of *Sittlichkeit* is accordingly that it may entail freely willing the opportunity to pay tax to the State. Yet, if personhood is achieved out of the abstract in part via the ownership of property then taxation seems opposed to the development of this free will in the disposition of money, if not property. And, if taxation diminishes property, then taxation looks like a diminishment of abstract freedom. Such a limitation on freedom is potentially a problem if a person needs to acquire property to develop personhood in the first place. As Carlson said: ‘In Hegel’s account personality is not pre-legal.’

So, at the outset, we might add to Stillman’s description of Hegel’s likely views on taxation that any tax system must not be designed to be so onerous to any persons so as to be a de facto limitation on free will. This idea will be developed in more detail below with reference to high rates of wage withholding and regressive tax systems.

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8 Hoffheimer, 857 (‘No idea is more central to Hegel’s philosophy of law than Sittlichkeit, or order based custom – the idea of a personal and social order rooted in custom as opposed to coercive law.’).

9 The stages of Hegelian development are in order of progression: Abstract Right, *Moralität*, *Sittlichkeit* (tr. Ethical Life).

10 Hegel, Philosophy of Right §33.


12 David Gray Carlson, *How to do Things with Hegel*, (2000) 78 Texas Law Review 1377, 1377; see also Gary Minda, (1989) 10 Cardozo Law Review 1855, 1867 reviewing *The Just Economy* by Richard Dien Winfield (‘[T]he problem with the economic theory of individual behavior is that it assumes there is an objective prior self to which would be assigned preferences and attitudes, measured and evaluated a priori.’).
One general problem with the Hegelian theory of positive law particularly relevant to tax law and jurisprudence, was identified by Hegel in the *Philosophy of Right* (§213, et. seq.), and involves the indeterminacy of positive law when applied to specific facts. Hegel wrote:

Right becomes determinate in the first place when it has the form of being posited as positive law; it also becomes determinate in content by being applied both to the material of civil society... The purely positive side of law lies chiefly in this focusing of the universal not merely on a particular instance... It is true that the law does not settle these ultimate decisions required by actual life; it leaves them instead to the judge’s discretion, merely limiting him by a maximum and minimum.13

Hegel’s reference to the indeterminacy of positive law was given in the year 1821 (with the first publication of the *Philosophy of Right*) and thus pre-dates the split between Continental systems of positive law and American ideas of legal realism by approximately a half-century. To this day, there are effectively two parallel legal methods in international tax law.14 For example, some tax scholars take the revenue code as accessory to the larger system of law.15 This yields the potential for ‘null’ results in positive law interpretation (e.g., double taxation, or double non-taxation) meaning the framework of the tax law is highly proscribed and tax avoidance may allow transactions to fall outside the coverage of the positive law.16 However, at least in the United States, the tax code expressly contemplates a substantive meaning or intent thus sharply limiting the potential for ‘null’ results in tax code interpretation.17 Hegel likewise seems to reject the idea of a ‘null’ result where he says that law only becomes determinate in the application of the positive law to the material of civil society. In Hegelian terms, the positive law is entirely abstract in the first place (i.e., subjectively determinate), and then only becomes objectively determinate.

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13 Hegel, *Philosophy of Right* at §§34, 213-4.
16 See e.g. Judith Herdin & Michael Schilcher, *Avoidance of Double Non-Taxation in Austria*, 15-6, in ‘Avoidance of Double Non-Taxation’ (Lang, ed.) (2003) (‘As mentioned above the tax authorities believe the object and purpose of tax treaties is to avoid double taxation and double non-taxation in general. This is in accordance with the Commentaries on Art. 23 of the OECD Model Convention which state that the basic function of Art. 23 would be to eliminate double taxation. This view cannot be shared fully. The tax treaties restrict the taxing rights of the contracting states in the areas they are regulating. A further purpose cannot be deduced...If the contracting states want to exclude non-taxation, they have to insert subject-to-tax clauses. If they do not stipulate this clause, there is no legal basis to assume that the states wanted to prevent double non-taxation.’).
in its application to specific cases where the universal is revealed.\(^\text{18}\)

Since much of tax law is indeterminate in application it is not clear how *Sittlichkeit* could be achieved by application of an indeterminate positive tax law. Simply put, tax *duty* is thus not fully known to the subject. Hegel gave a somewhat prescient statement of legal method at least in the context of tax law as follows: ‘It is misunderstanding which has given rise alike to the demand – a morbid craving of German scholars chiefly – that a legal code should be something absolutely complete, incapable of any fresh determination in detail’.\(^\text{19}\) The *object* of the person might be seen as merely a will toward a form of positive law adjudication by the State whatever that might entail. And, this does not appear to be a valid object for will because it is undefined (or abstract) and so there is accordingly no union between the individual *object*-ive and the universal (spirit).\(^\text{20}\) Put differently, the transition to a more concrete and less abstract stage (i.e., Abstract Right → *Moralität* → *Sittlichkeit*) in the Hegelian dialectic seems to fizzle where law itself is found to be indeterminate.

Hegel accordingly foreshadowed both the indeterminacy of law and also the potential for *factual indeterminacy* in law (i.e., the origin of facts) to be applied in the legal system. The issue of the origin of *facts* in legal theory was developed by Michael Potács in the context of public international law with the argument that fact words derive content from everyday language.\(^\text{21}\) However, everyday language is generally not used to the same degree in tax law. The content of ‘fact’ words may thus be determinable in part by legal theory. Hegel rejected the position that would later be developed by Hans Kelsen that legal interpretation arises solely from the positive law and not from outside law.\(^\text{22}\) Harry Brod summarizing David Kennedy argued that ‘Hegel... made the law dependent on and derivative of these first principles which must then be grounded elsewhere, either in morality, or history, or some other sphere... one thereby made the legal order subservient to other realms.’\(^\text{23}\) That is, Hegel did not take the system of positive law as internally complete in the determination of facts that would be subject to legal interpretation. Hegel further wrote: ‘No grounds can be adduced for supposing that the judge, i.e. the legal expert, should be the only person to establish how the facts lie, for ability to do so depends on general, not on purely legal, education.’\(^\text{24}\) Of course, this citation amounts to a

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\(^\text{18}\) Michael Quante, *Personal Autonomy and the Structure of the Will* in ‘Right, Morality, Ethical Life: Studies in G.W.F. Hegel’s Philosophy of Right’ (Kotkavirta, ed.) (Sophi, 1997), 60 (‘[A]s Hegel has shown (§§ 5-16)... the subjective will of an individual is active and moves itself to objectivity, that is, to realize the content of the will.’).

\(^\text{19}\) Hegel, Philosophy of Right at §216.

\(^\text{20}\) The word ‘spirit’ is often used with regard to the *Philosophy of Right*. As explained by Quante, ‘spirit’ refers to the universal objective will manifested in the state which is part of *Sittlichkeit*: ‘In regard to the individual the social world is something external, but in regard to Spirit it is internal. [P]ersonal autonomy... requires a natural basis and suitable social world.’ Quante, 57; Hegel, Philosophy of Right § 401 (‘Spirit which in this manner is the idea of reason subsisting in and for itself and which is for itself as such, is the concept of absolute spirit.’).


\(^\text{24}\) Hegel, Philosophy of Right at §227.
non-Kelsenian thesis since the origin of legal norms would arise at least in part from the prior stage of *Moralität*, as example, rather than positive law.

In Hegelian terms, ethics means translating morality (the subjective idea of right) into the world thereby rendering morality determinate. Duty means willing toward the universal spirit, where that ‘spirit’ arises in the stage of Ethical Life (*Sittlichkeit*). The manifestation of the universal spirit is ‘state’ which is the final stage of Ethical Life. A further issue in the application of Hegelian theory to taxation is that the duty to pay tax to the State seems to be a function of *Sittlichkeit* and not Abstract Right. In formal terms, the failure of a duty to pay tax is a civil (or fraudulent) form of wrong behavior and such failure of duty by a person does not involve the *formal* interference with the Abstract Right of any other person apart from the State. Hegel identified this problem and proposed that duties arising in State may also be a function of Abstract Right. However, most crimes against property violate aspects of both *Sittlichkeit* and Abstract Right, not just *Sittlichkeit*. Critically, if the duty to pay tax is not an aspect of Abstract Right, Hegel’s advocacy of retributive punishment is presumably not applicable to tax crimes. Of course, an indirect interference with Abstract Right can be imagined by anticipating the consequences of the failure to pay tax. However, consequentialism is not the proper consideration as a matter of Hegelian formalism.

In the modern era, taxing authorities have attempted to get around the dilemma that taxation is foremost a civil duty by requiring attestation as to the accuracy of the information presented on the tax return. But, if the taxing authority refuses to accept an unsigned return by rule under penalty of law, this converts a civil duty to a matter of Abstract Right (crime against another person), thus rendering the taxpayer subject to retributive punishment for an ostensibly lesser civil or fraud violation. And, the approach of shoe-horning Abstract Right via the administration of tax law seems to limit the free will (or voluntary) compliance with the objective statement of tax law. Stillman argued along these lines that the payment of tax in money (rather than property) provides an opportunity for the exercise of free will by the taxpayer. But, as Ossi Martikainen explained: “The main point of Hegel’s theory is that right (*Recht*) is the existence (*Dasein*) of free will. The system of right realizes free

\[\text{25 Hegel, Philosophy of Right §140 (‘That determinate content which I, as subject, give to the good, however, is the good known to me in the action, i.e. it is my good intention (see § 114).’); see also Hegel, Philosophy of Right §155 (‘In the moral sphere, the right of my private judgement and will, as well as of my happiness, has not, but only ought to have, coalesced with duties and become objective.’).}
\[\text{26 Hegel, Philosophy of Right §138 (‘The moral point of view, however, is defective because it is purely abstract. When I am aware of my freedom as the substance of my being, I am inactive and do nothing. But if I proceed to act and look for principles on which to act, I grope for something determinate and then demand its deduction from the concept of the free will.’).}
\[\text{27 Hegel, Philosophy of Right §133 (‘The essence of the will is duty. Now if my knowledge stops at the fact that the good is my duty, I am still going no further than the abstract character of duty. I should do my duty for duty’s sake, and when I do my duty it is in a true sense my own objectivity which I am bringing to realisation. In doing my duty, I am by myself and free.’).}
\[\text{28 Stillman, 1062 (‘Monetary taxes are also consistent with free choice - the arbitrary will of abstract right... When the state exacts monetary taxes, then the individual can choose how to earn the money to pay the tax, so that his taxpaying is “mediated through his own arbitrary will” and his “subjective freedom” is resected.”).}
will, and nothing that fails to express the existence of free will can claim to be a right. \(^{29}\) The forced attestation on the tax return thus amounts to an abridgement of Hegelian free will and therefore cannot be right.

The dialectical development toward Ethical Life (Sittlichkeit) may also illustrate an underlying problem with the ‘sublation’ method itself. The Hegelian sublation method was described by Thomas Knox as: ‘The later stages cancel the earlier ones, and yet at the same time the earlier ones are absorbed within the later as moments within them.’\(^{30}\) As an illustration of a problem arising sublation: What if Ethical Life (Sittlichkeit) becomes immoral in the world? In the tax context, we can easily imagine a situation (with significant modern-day and historical precedent) of regressive systems of taxation.\(^{31}\) A further question then arises of whether Sittlichkeit requires de facto collaboration with a potentially immoral (i.e., non-universalizable system) of tax law; hence, in actual practice ethical behavior with regard to taxation may become potentially immoral behavior, and vice versa. As every tax lawyer knows from experience, the State does not necessarily act according to the universalized will of the people since the object of the taxing authority acting on behalf of the State could be something entirely different from the will of the democracy. Public choice theory in the field of economics has developed a series of explanations for why and how the will of the State itself may deviate from the Hegelian objective spirit.

The Article begins first with a description of the Hegelian framework in the context of tax law. The Hegelian idea of retributive punishment is then explored in the context of tax crimes. Next, several of the apparent problems in application of Hegelian theory to tax law are explored. In the final section, the practical implications of a Hegelian revival in tax jurisprudence are discussed. One major difference from prior conceptions of tax jurisprudence results from the Hegelian rejection of the ‘state of nature’ as the origin of the social contract. This approach results in a very different tax jurisprudence in comparison to Richard Epstein’s *Taxation in the Lockean World*, for example, or other contemporary descriptions of tax jurisprudence.\(^{32}\)

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\(^{29}\) Ossi Martikainen, *The Principle of the Subjectivity and Sittlichkeit in Hegel’s Philosophy of Right*, 105, 111.

\(^{30}\) Thomas M. Knox, *Philosophy of Right*, Translation Preface, X.


HEGEL’S PHILOSOPHICAL FRAMEWORK APPLIED TO TAX LAW

Hegelian theory is given via the dialectic in progressive stages, namely: Abstract Right, Morality (tr. Moralität) & Ethical Life (tr. Sittlichkeit). This position means the stage of Ethical Life is then broken down into additional stages: Family, Civil Society and State. For tax scholars familiar with Hobbesian or Lockean theory the stage of Abstract Right is akin to the ‘state of nature’ but with critical differences. In Hegelian theory the person does not enter into society as a fully formed individual ready to enter into contracts with other persons. As Michel Rosenfeld explained: ‘Hegel calls his counterpart to the Hobbesian individual in the state of nature the ‘abstract person,’ indicating that this person is a construct who has been cut off from many of the diverse concrete determinations of the real historical person.’ As a matter of jurisprudence, Hegel expressly rejected the ‘social contract’ as the origin of civil society.

As such, as a matter of Hegelian philosophy, the person (here the taxpayer) is determined within and by society, and not apart from it as in Libertarian moral theory of the relation between the State and the taxpayer. And, by moving from the sphere of Civil Society to State the person is empowered to gain additional freedoms.

33 Chad McCracken, Hegel and the Autonomy of Contract Law, (1999) 77 Texas Law Review 719, 743 (‘The spheres of right, from lowest (i.e., most abstract) to highest (i.e., most concrete), are as follows: Abstract Right, Morality, Ethical Life. Ethical Life is itself divided into three subspheres: family, civil society, and state.’).
34 Ibid (‘The transition from each sphere of right to a higher sphere is a dialectical one, brought about by contradictions which cannot be resolved in the lower sphere.’).
37 Ibid, 1255 (‘[T]he state, representing the perspective of the community as a whole, cannot be the product of a contract, according to Hegel, because the perspective of society as a whole is that of the universal will as opposed to the arbitrary will.’).
38 G.W.F. Hegel, Hegel’s First Philosophy of Law: Encyclopedia of Philosophical Sciences (1817) (Hoffheimer, tr.), §415.
Abstract Right, Morality (Moralität) and Ethical Life (Sittlichkeit)

The stage of Abstract Right is Hegel’s formal description of the subjective will staking a claim in the objective world.\textsuperscript{40} The abstract will must develop what amounts to personhood and thereby become less abstract by acquiring property of things in the world which renders attributes and personality.\textsuperscript{41} Stillman wrote: “[Hegel] sees the right to property in things as the basis for the rights of the person to life and liberty. The person claims himself as he claims a property – through his will to own, occupy, and modify and transform himself.”\textsuperscript{42} This is achieved by acquiring things recognized by other persons as the property of the subject; ‘For Hegel, property is essential for an individual’s freedom. In the immanent logical development of the free will, a person’s will, hitherto internal and merely subjective, becomes in property ‘an actual will’ for the first time because it gains its ‘first embodiment’ in the external world.’\textsuperscript{43} Accordingly, it is through such acquisition of property the person becomes a legal subject. The subject also becomes aware of its identity as a person.\textsuperscript{44} As Jeanne Schroeder elaborates:

[T]o Hegel, the abstract person in the ‘state of nature’ is not yet a ‘subject’ in the jurisprudential sense of a being capable of bearing legal rights and being bound by legal duties. The abstract person can only achieve this capacity (subjectivity) through relationships with other legal actors (subjects) who recognize him as one of their own (hence the term ‘intersubjectivity’).\textsuperscript{45}

In Hegelian terms, becoming a legal person means being recognized by others as a person capable of owning property. The object of the ownership of property is solely to impress others. In Hegel’s words: “The recognition is recognition not only of the abstract personality of others but is rather recognition of their real personality; i.e., it is recognition of their [own] judgment.”\textsuperscript{46} Carlson clarified further: ‘It is now possible to see why the self craves recognition. The self cannot perceive its own properties. It needs the other to bestow that property on the self. Yet without properties, the self is nothing. In its most abstract form, property is pure being-for-other.’\textsuperscript{47}

The next stage after Abstract Right is Moralität, which has been severely

\textsuperscript{40} Peter Benson, Abstract Right and the Possibility of a Nondistributive Conception of Contract: Hegel and Contemporary Contract Theory, (1989) 10 Cardozo Law Review 1077, 1170 (“When the free will is conceived as abstractly universal and no more, the system of right that is based thereon is also formal and is called “abstract” right...”).

\textsuperscript{41} Peter Halewood, Law’s Bodies: Disembodiment and the Structure of Liberal Property Rights, (1996) 81 Iowa Law Review 1331, 1367 (“Hegel thus justified a social conception of legal personality in the mutual recognition of wills in property and contract.”).

\textsuperscript{42} Stillman, 1040.

\textsuperscript{43} Ibid, 1062.

\textsuperscript{44} Hegel, Philosophy of Right §35 (“Person” is essentially different from “subject”, since “subject” is only the possibility of personality; every living thing of any sort is a subject. A person, then, is a subject aware of this subjectivity, since in personality it is of myself alone that I am aware. A person is a unit of freedom aware of its sheer independence.).


\textsuperscript{46} Hegel, Encyclopedia of Philosophical Sciences,§411.

\textsuperscript{47} Carlson, ‘How to do Things with Hegel’, 1392.
criticized by contemporary scholars as severable from the rest of Hegelian theory.\textsuperscript{48} Hegel described the stage of \textit{Moralität} in abstract Kantian terms with the familiar principle of universalization.\textsuperscript{49} As explained by Rosenfeld: ‘Instead, this duty is a universal moral duty, which in its initial appearances is an expression of \textit{Moralität} – that is, a Kantian duty-based morality that prescribes that all actions should conform to universal maxims.’\textsuperscript{50} However, the concept of morality is abstract in that the substantive content to test the universalization can only be known with reference to the later dialectical stage of Ethical Life. Modern scholars thus interpret the stage of \textit{Moralität} as bridging individual morality with the community of which the individual is a part: ‘Joachim Ritter’s well-known interpretation lays emphasis on the fact that while Kant connects morality to the individual and the inner life (\textit{Innerlichkeit}), Hegel with his idea of Sittlichkeit strives to bring together the conflict between individual and community.’\textsuperscript{51} The difficulty with taxation is that it represents perhaps the quintessential example of conflict between the individual and the State. It is hard to define morality as simply the will of the State whatever that may entail; nonetheless, Hegel described it as a ‘blunder’ to compare private interest against the interests of the State.\textsuperscript{52} Nonetheless, from \textit{Moralität}, the Hegelian dialectic proceeds to the stage of \textit{Sittlichkeit}, which is the origin of morality rendered determinate. As Martikainen explained:

First the individual will has to give it-self an external existence. This happens in the form of property and those relations of right which belong to it, discussed in the section entitled Abstract Right. [The will’s]... own inner reflection about the justifiability of its external actions, discussed in the chapter on morality. Finally, free will is the objective reality of the laws and institutions of \textit{Sittlichkeit}.\textsuperscript{53}

\textsuperscript{48} Tuija Pulkkinen, \textit{Morality in Hegel’s Philosophy of Right} in ‘Right, Morality, Ethical Life: Studies in G.W.F. Hegel’s Philosophy of Right’ (Kotkavirta, ed.) (Sophi, 1997) 30 (‘It is often stated that in Hegel’s text the individual moral agent vanishes and that the theme of the section “Morality” is completely lost in the concept of “Sittlichkeit”. The accusation is that Hegel’s ethics is nothing but a reinforcement of the existing social norm structure and that Hegel’s social philosophy is actually sociology without any moral content.’) citing W.H. Walsh, Hegelian Ethics (MacMillan, 1969).

\textsuperscript{49} Hegel, Philosophy of Right §135 (‘The proposition: Act as if the maxim of thine action could be laiddown as a universal principle”, would be admirable if we already had determinate principles of conduct.’).

\textsuperscript{50} Rosenfeld, 1213.

\textsuperscript{51} Pulkkinen, 30 citing Joachim Ritter, Moralität and Sittlichkeit. \textit{Zu Hegel’s Auseinander-setzung mit der kantischen Ethik. Materialen zu 217-243.}

\textsuperscript{52} Hegel, Philosophy of Right §126 (‘[T]it is one of the commonest blunders of abstract thinking to make private rights and private welfare count as absolute in opposition to the universality of the state.’).

\textsuperscript{53} \textit{Ibid}, 112.
Ethical Life: Family, Civil Society and State

Ethical Life is the final stage in the development of free will; 'The identity of the good with the subjective will, an identity which therefore is concrete and the truth of them both, is Ethical Life.' This means that the subjective person has internalized the universal spirit and made it her own ethos. The universal spirit is embodied in the laws of society. In the words of Salter wrote: '[T]he results of this universalizing reflection are enshrined and realized in a concrete manner within objective social institutions, rules, values and laws.' However, it is also necessary that the universal spirit encompass reason or rationality. Hegel averred that: 'When I will the rational, I do not act as a particular individual but according to the conception of ethical life in general. In an ethical act I establish not myself but the thing. A man, who acts perversely, exhibits particularity.' Hence, universal spirit means not only the laws of society (which may be internalized by the subjective will), but a further requirement that the laws be reasoned and knowable. With respect to the stages of family, civil society and State, 'civil society' is universal spirit in the abstract (or the idea of universal spirit). 'Family' reflects the basic independent economic unit and a sphere for private property. However, taken as apart from family, the 'State' is the objective embodiment of universal spirit. The State establishes social institutions which embody Ethical Life where the subject freely participates therein. Quante explained:

The objectivity can be seen... in the structures of social or political institutions and in ethical life. These systems of rights are the objective, realized freedom of the will – the Objective Spirit has unfolded this material content by developing objective structures through which the subjective will can realize its freedom.

So, Sittlichkeit primarily reflects the transition from subjective thinking to objective doing. And, of course, objective doing requires paying taxes (i.e., not just thinking about paying taxes). The recognition of duty to participate in the institutions of the State is the basis for objectively knowing ethical behavior including the duty to pay tax.

RETRIBUTIVE PUNISHMENT OF TAX CRIMES.

54 Hegel, Philosophy of Right § 141
57 Philosophy of Right §15
58 Hegel, Philosophy of Right, §215 (‘To hang the laws so high that no citizen could read them (as Dionysius the Tyrant did) is injustice of one and the same kind as to bury them in row upon row of learned tomes, collections of dissenting judgments and opinions, records of customs, &c., and in a dead language too, so that knowledge of the law of the land is accessible only to those who have made it their professional study.’).
59 Ibid, 107 (‘First, the family forms the basic independent economic unit and thus a sphere for private property. Second, it provides its members with the sphere for immediate feeling of love and unity.’).
60 Quante, 60.
Hegel’s *Philosophy of Right* crime negates right and must be formally annulled. However, the annulment of crime is *not* to avoid negative consequences by deterrence of future crime, but to defend right.\(^6^1\) Hegelian punishment is therefore *retributive* punishment.\(^6^2\) The purpose of punishment is also not the rehabilitation of the criminal within society, although that might occur if the criminal chooses to respect the right of other persons in the future as a result of punishment. Hegelian punishment is also not for the purpose of deterrence of crime.\(^6^3\) Hegel famously argued against deterrence as follows: ‘To base a justification of punishment on threat is to like it to the act of a man who lifts his stick to a dog. It is to treat a man like a dog, instead of with the freedom and respect due to him as a man.’\(^6^4\) Hegelian theory is perhaps best understood as the formal defense of right in the abstract as achieved by the punishment of wrongdoing against the universal spirit. Matthew Pauley explained: ‘Crime, Hegel says, is the negation not only of the particular but also the universal. That is to say, when a criminal steals another person’s property, he is not only denying that person’s right to own that piece of property, he is denying the right to property in itself.’\(^6^5\) The punishment relates to nullification of the criminal act in the abstract and not the nullification of the person as criminal.\(^6^6\)

As explained above, the Hegelian dialectic in the *Philosophy of Right* traces the development of free will toward universal spirit. Such dialectical method is also applied in the context of crime and punishment. The abstract negation of crime is accordingly a function of Abstract Right. This framework is directly linked to property rights and crimes against property. Pauley articulates this thus:

> The stance that the criminal implicitly adopts, that there are no rights, must be rejected and annulled if rights are to have actuality and force. For Hegel, punishment is precisely this annulment. Its function is to erase, restore the right to own property... reestablish the possibility of freedom’s actualization, and recover thereby the (at least partial) truth of the Notion of Right.\(^6^7\)

The criminal act is the destruction of right as expressed in laws\(^6^8\) and the abstract idea of right (i.e., Abstract Right) is the primary consideration in punishment, and not, morality or ethics. Then, in terms of the punishment of

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\(^{61}\) See Peter Stillman, *Hegel’s Idea of Punishment*, (1976) 14:2 *History of Philosophy* 169, 172 (‘To annul the crime is not optional: it is required. Otherwise, the crime – and its implicit denial of rights – would be held as valid. In abstract right, if the rights of one person are allowed to be negated by crime, then – since persons are equal in rights – all persons lose their rights.’).

\(^{62}\) *Ibid.*, 177 (‘The essence of crime has to do not with the specific injury or theft but with the coercion of rights; the retribution, then, need only be an equivalent of coercion of rights, not the same particular coercion. It is not the empirical identity of an eye for an eye, it is the abstract, mental, universal identity of value that is important.’).

\(^{63}\) *Ibid.*, 177-8 (‘Deterrence judges the criminal according to an entirely external standard, the result of his being punished on others; and, for Hegel, this is to treat the criminal as a thing, without rights and autonomy. Only with a retributive system of penalties must there be justice and desert.’)


\(^{65}\), 140-1.

\(^{66}\) *Ibid.*, (‘P)unishment, for Hegel, is the “negation of the negation” that is crime.’.


\(^{68}\) Stillman, 180.
tax crimes the ultimate goal would be to annul any violation of Abstract Right caused by the crime, if any exists.

**Civil Offence, Fraud, and Crime**

Hegel defines *wrong* in relation to three categories: non-malicious wrong (civil offense), fraud and crime.\(^{69}\) However, the differentiation of these categories in the context of tax crimes is not entirely clear. For example, a civil offense relates in part to unintentional crimes where a person is ignorant of the law. As Markus Dirk Dubber wrote: ‘When I commit an unintentional wrong I try to follow the law and therefore respect it, but I find out later that I violated it.’\(^{70}\) Some civil offenses (especially tax crimes) are committed intentionally. Pauley differentiates on the separate grounds of ‘malicious’ intent where the difference seems to be the intent to cause harm to another person. Pauley thus defines the question as solely of Abstract Right. By this definition, a civil offense committed intentionally is done with malice against the State, but not against a particular legal person. Such malice against the State is not cognizable in the stage of Abstract Right without looking forwards or backwards to other stages in the dialectic (presumably by sublation). On the other hand, a crime against another legal person (e.g., as a matter of Abstract Right) does not deny the right of the State except where that harm is also cognized in positive law. However, the deprivation of another person’s legal rights is not always cognized in law.\(^{71}\) For example, the violation of rights without legal recourse actually entered the American vocabulary with the word ‘railroading’ where small farmers and landholders were forced off their land by the broad exercise of eminent domain.\(^{72}\)

Fraud adds yet another inconsistency to the Hegelian framework in that with fraud the criminal purports to act in accordance with the law, but in actual fact, does not. As a formal matter of interpretation, fraud does not violate Abstract Right. Fraud violates *substantive* right. Fraud violates universal spirit without violating positive law (other than a specific anti-fraud statute). This is a substantive challenge to law as opposed to the formal challenge. This is illustrated in the tax context where formal tax planning can be used to meet the requirements of positive law as opposed to the substance of the tax law. Ironically, this is sometimes called violation of the ‘spirit’ of the tax law. In Hegelian terms, formal tax planning violates the Hegelian ‘universal spirit’ embodied in positive law. Such use of formalistic tax planning led to the adoption of the economic substance doctrine in the tax code of the United States. The economic substance doctrine can be understood in Hegelian terms as the last-ditch defense of substantive right. Just as Hegel predicted, the economic substance doctrine is applied by the judge (or taxing authority) in particular

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69 Pauley, 140.
71 See Markus Wahlberg, Punishment as Ideal Reconciliation and Real Regeneration, 5, 18 (‘For a crime is not only an attack against the right in itself and against an individual’s rights, but also an attack against the social validity of rights.’).
cases only. Hegel postulated: ‘But apart from being applied to particular instances, right by being embodied in positive law becomes applicable to the single case. Hence it enters the sphere where quantity, not the concept, is the principle of determination.’

Tax Crime and Abstract Right

The essence of ‘crime’ is that the rights of another legal person are violated by the criminal. Many tax avoidance crimes ostensibly fall into the category of intentional civil violations. Other tax violations may be unintentional civil crimes (particularly where the tax laws are indeterminate). But, this differentiation between intentional versus unintentional civil crimes is problematic because under Hegel’s framework, civil offenses seem to be taken as a lesser version of wrong since retributive punishment is taken solely as a matter of Abstract Right. For example, in civil crimes, the aggrieved party is the State; the State arises as a sphere of Ethical Life. Therefore, tax crimes are not covered as a question of Abstract Right. The Hegelian framework does not apply very well in the context of taxation because we need to apply sublation to mix and match concepts between the stages of Abstract Right, Sittlichkeit (and conceivably, Moralität). Notably, where morality is taken as the idea of subjective right, it is conceivable that a Libertarian could act morally in the violation of Abstract Right (or ethics), for example, thereby implicating all of the Hegelian dialectical stages at once.

Tax fraud entails a situation where the taxpayer conceals the fact of the fraud from the taxing authority, presumably with a false or misleading tax return. The paradoxical aspect of punishment in the Philosophy of Right is then that the formal compliance with the tax law (apart from an anti-fraud statute) mitigates in favor of the tax fraudster purporting to be in compliance with the tax law, but is not so. Dubber notes that even in deception one ‘indirectly affirm the law by pretending even though knowingly misrepresenting it to the the victim.’ As a matter of tax jurisprudence, if only the form of the tax return is publicly known, such tax fraud does not directly undermine taxpayer morale. So, where the universal spirit of taxation is understood as the substance of taxpayer morale then universal spirit is not violated by fraud. But, fraud is the clearest example of substantive non-compliance with universal spirit. Such malice against the universal spirit incumbent to an intentional civil violation is the essence of a failure of Ethical Life.

Legal Norms and Customs in the State.

As a matter of legal interpretation it is the law itself which determines what is right. According to Kelsen’s ‘separation thesis’ law is not to be regarded as a policy instrument as this would constitute sociology and not law. Hegel

73 Hegel, Philosophy of Right §214.
74 Dubber, 1607.
begins by saying something similar to Kelsen. He noted that: ‘Laws (Gesetze) express the nature and determinations of the universal substance.’\textsuperscript{76} However, in Hegelian terms this is merely the abstract idea of law; ‘[t]he formalism of law consists in the fact that it is the abstract and, consequently, the unmediated determination of free personality.’\textsuperscript{77} Then, the question is how to transition the abstract idea into an objective actual. This requires first enshrining the universal spirit in law, and then, making determinations of what law means in particular situations.\textsuperscript{78} In the transition to the objective from the abstract, the Hegelian theory of law is the formal rejection of the ‘separation thesis’. The positive law does not exist for its own sake, but to carry out the universal spirit; ‘[t]he abstract essence of laws is the universal will existing in and for itself. But the actuality of laws is living custom.’\textsuperscript{79} The universal will is embodied in the customs of the people.\textsuperscript{80} Accordingly Hegel wrote:

\begin{quote}
Order based on Custom is the completion of objective spirit. It is not only the truth of law and morality in the form of their unity, but it is rather the truth of subjective and objective spirit. Order based on Custom is namely freedom in the form of the universal rational will.\textsuperscript{81}
\end{quote}

In general, the law needs to be written down so that it can be known. This makes the law seem closed and complete in the abstract contemplation of positive law. However, as with the Hegelian differentiation between morality and ethics, the transition from subjective to objective means that the law becomes indeterminate in the application to specific facts, just as knowing moral behavior becomes determinate in the application to specific cases. Hegel articulated this stance thus:

\begin{quote}
For a public legal code, simple general laws are required, and yet the nature of the finite material to which law is applied leads to the further determining of general laws ad infinitum. On the one hand, the law ought to be a comprehensive whole, closed and complete; and yet, on the other hand, the need for further determinations is continual.\textsuperscript{82}
\end{quote}

Thus in Hegelian terms, the interpretation of positive law is abstract ‘sociology’ in determining how the law reflects the customs of society. This is achieved where the law is applied to specific facts and is thereby rendered determined by application. The judge is not making the social practices but determining what they actually are in adjudicating the case. Accordingly, what the law is reflects the universal spirit of the people stated objectively whereas the positive law

\begin{footnotes}
\item\textsuperscript{76} Hegel, Encyclopedia of Philosophical Sciences, § 437.
\item\textsuperscript{77} Hegel, Encyclopedia of Philosophical Sciences, §415.
\item\textsuperscript{78} See Chad McCracken, Hegel and the Autonomy of Contract Law, (1999) 77 Texas Law Review 719, 734.
\item\textsuperscript{79} Hegel, Encyclopedia of Philosophical Sciences, § 438.
\item\textsuperscript{80} Rosenfeld, 1213 (‘Inherent in the concept of Sittlichkeit is the notion of community as defined through the amalgam of customs and norms which have been internalized by a people and which have given shape to its collective identity.’).
\item\textsuperscript{81} Hegel, Encyclopedia of Philosophical Sciences, § 430.
\item\textsuperscript{82} Hegel, Philosophy of Right, §216.
\end{footnotes}
represents merely the abstract idea. Further simple general laws are required so as to reflect the customs of the people elevated to the status of law. If there is no custom on a particular set of facts, this does not render a ‘null’ result as something automatically outside the positive system of law, as the judge must ‘continually make further determinations.’

**SUBLATION AND OTHER PROBLEMS IN THE HEGELIAN DIALECTIC AS APPLIED TO TAXATION**

The tension between *freedom* versus *duty* in Hegelian philosophy, as perhaps best illustrated in its application to taxation, relates in part to the dialectical method itself. That is, freedom is embodied in property in the stage of Abstract Right; the objective person then contemplates right to arrive at *Moralität*; and only then identifies duty in the stage of Ethical Life by freely willing toward objective spirit. So, where Ethical Life limits freedom by some significant degree the sublation inherent to the dialectical method Hegelian philosophy both begins and ends with the concept of ‘freedom’. Nietzschean philosophy in particular seems opposed to Hegel because the Nietzschean overman (tr. “Übermensch” meaning transcending human morality) does not recognize either the latter stages of *Moralität* or *Sittlichkeit*. Hegelian duty is the embracing of societal rules in Ethical Life, such as the requirement to pay tax, whereas Nietzsche would reject the entire premise of freely willing toward one’s duty to pay taxes to the State as determined by others. Likewise, Libertarian theory directly focuses on the individual relation to State and the moral limits of restrictions on individual freedom, such as taxation by the State.

**Taxation as a Limitation on Freedom (qua Libertarianism)**

The Hegelian critique of Libertarian theory might be interpreted as an objection to the Libertarian beginnings at the stage of *Moralität* without considering the abstract origins of the person as subject. In tax jurisprudence we are concerned primarily with Hobbes and Locke. Hegel develops the person out of the subject in the earlier stage of Abstract Right. It is only the person that can become the bearer of legal rights. Various Hegelian scholars have made this point in detail. However, a Libertarian response to Hegel might be given along the lines that the ethical question of duty is the primary focus of the theory in the relation of the individual to the Leviathan.\(^8\) This issue is particularly acute with regard to taxation. Hence, everything depends on the validity of sublation applied as part of the dialectical method. If sublation is valid, then the progression from abstract, to moral, to ethical results in a proper conception of duty. If sublation is not valid, then the progression fails in the stage of Ethical Life where the person lacks sufficiency to develop freedom at the earlier more abstract stage. This failure of duty occurs even in the Hegelian method with the development of Abstract Right. So, under this argument Libertarian theory still holds even if we grant Hegel’s point that personhood does not arrive out of thin air.

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A possible solution to the thematic dilemma identified above is offered by Pulkkinen thus: ‘Civil Society... is action which takes the existing law and customs as the norm for right conduct. The Civil Society is law-abiding society, while the State is the processing of changing the laws and customs.’ Sublation refers to the formal origins of right. Hence, if Hegelian Civil Society is interpreted as the evolution of laws with the potential for change by will (i.e., the freedom of will to change) then we arrive at a more workable system. Nietzsche notably reserves the right of the individual to change the laws and customs. So, if Hegel also allowed for change to customs and norms this might subsume Nietzsche as merely an agent of change toward moral customs and legal norms. Thus, Pulkkinen’s approach more clearly distinguishes Libertarian theory. However, Libertarian theory is not about an attempted change to the universal spirit, but more about the moral limits of open resistance to spirit. In Hegelian terms, open resistance to spirit is unethical as it does not embody Ethical Life. Yet, Libertarianism is subjectively moral. A valid interpretation of Hegel is accordingly that Libertarian theory applied to tax jurisprudence is moral but not ethical.

**What if Ethical Life Becomes Immoral?**

The more difficult philosophical dilemmas arise not from Libertarianism where something thought to be subjectively moral is objectively unethical, but the reverse situation where the objective will is found to be subjectively immoral (e.g., non-universalisable). Hegel admits, the insistence on rationality is the ultimate right of the free will. Reason is a fundamental aspect of universal spirit. The question arises, how does a rational person conceive its duty when the universal will is not rational? To provide an example of a non-rational universal will in the context of taxation, many people believe that the incidence of corporate taxation is borne by labor. However, that view is not necessarily rational because it lacks both empirical evidence and a coherent explanatory theory. The heavy taxation of labor based solely on this belief might then be taken as immoral, for example, under a Libertarian framework. Then, where the universal will enacts tax policies based on nonrational ideas we reach a major problem for democracy or any State. This leads to the philosophical problem of determining what constitutes a rational (or reasoned) method toward the identification of the universal will.

Another situation of where Ethical Life may become immoral is any situation where the universal will becomes the will toward the preservation of power by self-serving leadership. For example, where the State is concerned with the preservation of power (as opposed to the implementation of universal will), then it is not clear that laws enacted by such an authority could form the basis for duty. The universal will is then mediated through the monarch. If the monarch fails to act in accordance with the universal will, the rational person

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84 Pulkkinen at 29.  
might become morally obligated to preserve the potential for Ethical Life rather than to obey the law. In each case, the Hegelian defense of law as the embodiment of societal customs mitigates in favor of the preservation of the status quo in the form of ostensibly immoral customs and tax laws, where the will to change the tax law would be opposed to custom and Hegel’s definition of universal spirit.87

What if Excessive Tax Withholding Preempts Possession of Property?

In the Hegelian framework, in order for the subject to develop into person, he must develop ‘qualities in the external sphere of [his] freedom: possession.’88 To acquire possessions one requires money to be given in exchange. For many persons the acquisition of money involves exchanging labor for money. Of course, the modern State is increasingly funded by wage tax withholding. Thus, in some significant respect the wage laborer never comes into possession of the money upon which taxation is to be levied. The system thereby preempts the development of freedom in the external sphere of possession for the wage laborer. The same is not true of taxation levied on property. The taxation of property entails the deprivation of some property to pay the tax, but after possession is achieved. This difference evidences a potential answer to the Libertarian challenge to property taxation in that property taxation is justified because wage taxation prevents the laborer from coming into the possession of money (or, property) at all. This preempts the development of Hegelian freedom in the external sphere. Notably, the consequence of persons that never come into possession of money may be the rejection of recognition by property holding entirely. Such a phenomenon seems to be developing in the United States where the younger generation increasingly eschews buying a home or car, since the younger generation never learned to identify such possessions with the exercise of freedom (i.e., personhood).

CONCLUSION

Perhaps the most significant consequence of a Hegelian revival in tax jurisprudence relates to the underlying idea of property. For Hegel, the accumulation of property from or through other persons is not the purpose of human life, rather property is simply one means to achieve recognition by other persons.89 The particular properties a subject may acquire in society (both physical good and other forms of individuality, such as personal traits) form the development of the person, but the person with the capacity to be recognized reciprocally by others as a subject (i.e., bearer) of rights is still something distinct

87 See Hegel, Philosophy of Right, §151 (‘But when individuals are simply identified with the actual order, ethical life (das Sittliche) appears as their general mode of conduct, i.e. as custom (Sitte)’).
88 Hegel, Encyclopedia of Philosophical Sciences, §403.
89 Dubber, 1617 (‘In contract law and punishment, abstract right is the mutual recognition of equal persons. In contract, I see the other party as an equal person and achieve mutual recognition and self-manifestation through an exchange of external things.’).
from the property itself. At the minimum, Hegelian theory allows us to say why property (or money) accumulation is not the sole moral standard. Moral right is not defined solely as even the lawful accumulation of property. The Hegelian person is therefore more important than property alone because she has the capacity for recognition and this is evidenced in Hegel’s explanation of Abstract Right building to Moralität and Ethical Life. This is also why Hegel says that slaves cannot bear legal rights. Also, the reverse situation of the non-recognition of the status of an otherwise wealthy person is possible (see e.g., Leona Helmsley). This is possible in Hegelian terms because persons are free to recognize other persons for any reason whatsoever, not just money holdings.

Taxation is thus not by definition opposed to human flourishing even if it is presumed to diminish property accumulations in the aggregate. The issue for Hegel is the recognition of the particularity of property acquired by persons as opposed to the quantum of money acquired. Insofar as modern Libertarian ideas entail the acquisition of a certain quantum of money for interpersonal recognition as a person, these are non-Hegelian ideas because it changes the definition of a ‘person’. Therefore, a postmodern idea of taxation might entail special recognition of the subject for tax payments to the State. As such, persons who pay taxes should be formally recognized by the State representing the celebration of the practical continuation of universal spirit via tax remittance. The great patron of the State should be recognized or celebrated by or for universal spirit.

The contractual transfer (or gifting) of property is in Hegelian terms an act of personal recognition toward another person. Rosenfeld explains:

[T]he wealthier a person happens to be, the more likely it is that she will be able to procure a greater number of tokens of recognition from a large number of individuals. While some such tokens may be more important to their recipient than others, generally speaking, the relative value to a recipient of an individual token will decrease as the wealth of that recipient increases.

Rosenfeld’s position accounts for the phenomenon why why a wealthy person may be affronted to receive a gift – that is, the gift fails to recognize the aggregate wealth holdings of the recipient irrespective of any particularity. Where the wealthy person thinks solely in quantum terms, and not in terms of particularity in the individual person, then it is potentially offensive to receive a gift from a less wealthy person notwithstanding the gift was intended as a particular token of recognition and not as an accretion to aggregate wealth.

Another lesson from the Hegelian revival in tax jurisprudence relates to the growing underclass of persons in American society of persons with little or no property holdings. These persons are at risk of not being recognized by the

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90 Stillman, 1039 (‘Rights require a pre-existing relational structure of reciprocally recognizing persons (with free wills) – a structure that has developed historically, that represents the crystallization of certain habits and customs, and that (for Hegel) is characterized as Sittlichkeit.’).
91 Hegel, Philosophy of Right §155 (‘A slave can have no duties; only a free man has them.’)
93 Rosenfeld, 1252.
property holding class as legal persons at all. As Rosenfeld pointed out persons that do not hold property are not recognized as equal persons. He wrote: ‘Such recognition is equal for everyone, for it is not the nature or quantity of property which accounts for the kind of recognition the latter receives, but merely the fact that she has property - that is, her abstract identity as a property owner.’

The development of personality cannot constitute a stage in the actualization of free will without embodiment in external things so wage laborers need some disposable income.

In terms of legal theory, a coherent reading of Hegel’s philosophy of law requires a non-static interpretation, such as that given by Pulkkinen. As Hegel wrote, the abstract statement of positive law is entirely determinate in its formulation and entirely indeterminate in its application. This is similar to Hegel’s distinction of morality from ethics where, ethics is the revealed determinacy of subjective morality; likewise, legal adjudication is the revealed determinacy of positive law. This revealing of the meaning of law through adjudication allows for a dynamic process of evolving social customs and norms rendering a workable system since we know societal values change over time. This interpretation of Hegel is different than Pulkkinen’s because it posits the function of law as to allow for change, as opposed to change as occurring in various stages of the Hegelian dialectic. As a matter of legal theory, this approach also formally rejects the ‘law as sociology’. Accordingly, ethical duty means acting with faith in the legal process itself and not with faith in a particular outcome. The willingness to accept the outcome of the legal process even where it is not pleasing is ethical duty.

In conclusion, the Hegelian revival in tax jurisprudence gets to the basic idea of right as the realization of freedom in the world. Libertarians of course take taxation as a limitation on freedom. The difference is that Hegelian Ethical Life takes right as the realization of free will in the world by the acceptance of ethical duty. So, if Libertarianism comprises a justification for the denial of duty in the payment of tax. This moral claim against the duty to pay tax is a challenge to the universal right, which is an objective question of ethics. The denial of taxing authority is potentially an ethical failure, but it is not wicked. As Hegel wrote of Aristotle: ‘Aristotle says: “Every wicked man is ignorant of what he ought to do and what he ought to refrain from doing; and it is this kind of failure (amartia) which makes men unjust and in general bad”.’ Moral objections to the right of the State to levy tax are abstract claims about the nature of right since there is an objective duty to pay under the tax laws. The rejection of any potential objectivity in the tax laws by the manufacture of factually indeterminate transactions is both morally (Moralität) and ethically (Sittlichkeit) flawed. Finally, the quasi-Nietzschean claim that tax avoidance is

94 Ibid, 1231.
95 Benson, 1167-8.
96 See Pulkkinen, supra note 48.
98 Hegel, Philosophy of Right §29.
99 Hegel, Philosophy of Right, §140.
achieved by more capable or smarter persons on behalf of multinational firms
formally denies the Abstract Right of other taxpayers (in addition to its moral
and ethical failure) and this denial of legal capacity in other persons would
potentially justify retributive punishment for tax crimes in Hegelian terms.