

## THE PLACE OF SOCRATES IN THE CONFRONTATION OF KIERKEGAARD WITH HEGEL

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Luis Recaséns Siches stands at the very head of Ibero-American philosophy of law and represents ideology which is important from a world point of view. This essay has been written in homage to him.

The prestige of Ibero-America in the sphere of philosophy of law is today among the highest of bourgeois nations. Of these Mexico is foremost because it has had two genuine bourgeois revolutions. This is of special significance because the superstructure of Ibero-American bourgeois philosophy of law derives from a legacy which includes Krause and Ortega y Gasset, and which has also been sensitive to contemporary currents of philosophy and philosophy of law that have included Husserl, Heidegger, N. Hartmann, Scheler and Kelsen. In the German Democratic Republic the influence of Krause and of Ortega y Gasset has been carefully studied because in part such thought, though it was philosophically idealist and elitist, objectively nurtured Spanish bourgeois progressivism in confrontation with both Spanish feudalism and Spanish fascism. This reveals the world-historical importance of Ibero-American philosophy of law (2 G. Klaus and M. Buhr, *Philosophisches Wörterbuch* 612-623).

One of the most important achievements of Luis Recaséns Siches has been in the sphere of theory of interpretation. In 1956 he published *Nueva filosofía de la interpretación del Derecho*. This was a general presentation of the problems of contemporary theory of interpretation of the "new law" (p. 28). This is part of an upsurge of interest in theory of the force of texts and monuments --legal, literary, philosophical, theological, etc.-- which has developed in recent decades within Neo-Kantianism and its diverse developments. This work is a criticism of "mechanical" law, but in due course leads to considerations of idealist ontology of interpretation (p. 241). Recaséns Siches mentions, among others, Husserl and Dilthey (p. 242). He writes of the gaps or "windows (*ventanas*) (*las lagunas*)" in positive law through which the jurist can make "contact with ideal justice" (p. 244). This passes into chapter VI entitled "New Perspective of Equity" (pp. 252-269). He writes that nothing can affect "... the works of Logic

and formal juridical Ontology” (p. 268). As the discussion throughout is free of the role of the material infra-structure of society in explaining justifying or condemning the above, this writing is philosophically idealist.

In 1944 Recaséns Siches established his pre-eminence in philosophy of law with the following discussion, which is of the utmost importance in twentieth century idealist legal thought, especially of Neo-Kantianism and its diverse outcome. This may be considered as reflections on a passage from Stammler and those mentioned to Heidegger. In this sharpened discussion, the focus of which has not been mastered in the United States, although it points to present-day idealist directions, he said:

“The philosophy of values, especially that of the school of Scheler and of Hartmann, has represented one of the most resounding conquests of contemporary thought. But also it is necessary to recognize that, for something more than ten years now, it has entered into a strange situation. The theory of values, as it appeared in the work of Scheler, attained an enormous influence in the whole philosophic area of our epoch; and it was considered one of the most skillful and fertile discoveries of contemporary meditation. But then a rare event happened, in the final phase of philosophic thought, in the so-called existential Philosophy of Heidegger, in *Metaphysics* according to the principle of the vital reasoning of Ortega y Gasset, in short, in the thinking we might label transcendental humanism —according to the happy designation of José Gaos. That new thinking —protagonist of the present philosophic moment, and fertile creation which signifies the beginning of a new age in the history of Philosophy— seems to have left to one side, as almost forgotten, the theory of values. But the curious part is that there has been no critical confronting of it, with the intention of showing something superior to it. They have limited themselves simply to ignoring it—at least in appearance—we should say only to turn attention away from it. The themes which fifteen years ago were in the center of contemporaneous thought have been replaced by others in the thinking of Ortega y Gasset and of Heidegger; but without either of them having developed a sufficient explanation for it, in spite of the fact that some years before they were wont to live very near the source of the philosophy of values. It remains, consequently, as an urgent task for the thinking of the immediate future, to revise the philosophy of values and determine what may be its place in the doctrines of transcendental humanism” (Recaséns Siches, *Human Life, Society and Law*, p. 23 (1948); see also pp. 286-287).

The presentation of Recaséns Siches means that within the history of Neo-Kantianism there has been a general passage from idealistic value-theory of law to idealistic ontological hermeneutical or interpretation theory of law as justified by Heidegger. Neo-Kantianism, in general, always rests on *Verstehen* theory, that is, on theory of “understanding” or of “*compréhension*”. *Verstehen* theory could emerge because Neo-Kantianism abolished

Kant's unknowable-thing-in-itself, which was Kant's tenuous connection with the materialism of the eighteenth century Enlightenment. This destruction justified subsequent idealist veerings. Alfred Schmidt writes that Marcuse offers an "ontologized" form of *Verstehen* theory of history. (A. Schmidt, *Existential-Ontologie und Historischer Materialismus bei Herbert Marcuse*, in Habermas (ed.), *Antworten auf Herbert Marcuse* 17, 38, note 79 (1968)). However, Marcuse derives this from Heidegger. Heidegger's idealist theory of interpretation or hermeneutics is not only an ontological theory of interpretation, but is, more precisely, an activist, formalist ontology of interpretation. It is an activist theory of formal possibility. Methodologically it echoes the formalism or abstractness of Kant's categorical imperative; and such formalism veils *Verstellung*, ambiguity, irony, *placement/déplacement*, equivocation. Value theory of law thus disappears into Heidegger's formal, ambiguous, veiled, activist theory of interpretation or hermeneutics, because the latter lacks content or what Hegel called "filling". In *Being and Time* Heidegger says: "As understanding, Dasein projects its Being upon possibilities. This *Beingtowards-possibilities* which understands is itself a potentiality-for-Being, and it is so because of the way these possibilities, as disclosed, exert their counter-thrust upon Dasein. The projecting of the understanding has its own possibility—that of developing itself. This development of the understanding we call 'interpretation' ... In it the understanding appropriates understandingly that which is understood by it. In interpretation, understanding does not become something different. It becomes itself. Such interpretation is grounded existentially in understanding; the latter does not arise from the former. Nor is interpretation the acquiring of information about what is understood; it is rather the working-out of possibilities projected in understanding." (M. Heidegger, *Being and Time* 188-189 (1962)).

It is not here necessary to pursue much further the subsequent history of Heidegger's theory of interpretation. Beyer suggests that there is a relation between the latter-day Heidegger and Schleiermacher, who says that one of the basic missions of hermeneutics reads: "to comprehend (*zu verstehen*) a writer *better* than he comprehends himself". (2 G. Klaus and M. Buhr, *Philosophisches Wörterbuch* 474). A leading theorist of idealist interpretation theory today is H. G. Gadamer, who has written *Wahrheit und Methode* (1965). Gadamer is not a jurist. He confronts E. Betti, *Teoria generale della interpretazione* (1955). Betti is a philosopher of law and an important Romanist jurist. But it must be mentioned that the above-mentioned theorists of interpretation must confront not only Marx (Ricoeur, *Freud and Philosophy: An Essay on Interpretation* 34), but also Hegel, who in *The Phenomenology of Mind* condemned not only the subjectivity of " 'meaning', 'perception', and 'understanding' " (p. 213), but subordinated them to the "play of forces" (p. 186).

I

The trial of Socrates presents problems for the philosophical theory of both Hegel and Kierkegaard. Hegel discusses these largely in his *History of Philosophy* and Kierkegaard in his master's dissertation at Copenhagen, which is based almost entirely on Hegel's treatment of Socrates, so that it may be described as pseudo-Hegelian. This confrontation was founded in the historical situation of early nineteenth-century Europe.<sup>1</sup> Although the French bourgeoisie had carried out a successful revolution during the eighteenth-century, the German bourgeoisie was too weak to achieve a similar outcome in early nineteenth-century Germany in the face there of renovated feudalism and aristocratism. Hence the confrontation between Hegel and Kierkegaard relative to Socrates was for them also a confrontation regarding the idealism of German romanticism, which was the form taken by renovated German feudalism and aristocratism<sup>2</sup> in opposing the bourgeois French Enlightenment. The opposition between Hegel and Kierkegaard relative both to Socrates and to the idealism of German romanticism is also important today in connection with the struggle between historical materialism and bourgeois existentialism.

Several aspects of the trial of Socrates commanded the interest of both Hegel and Kierkegaard. Although not all of these considerations will be discussed here, they will be mentioned, because in their totality they touch the ancient and the contemporary crises to which these thinkers were responding. The condemnation of Socrates was grounded in the social struggle precipitated by the presence of democracy in slave-holding Athens,<sup>3</sup> which survived the passage from kin-organized social relations to the establishment of a regime of private property. As the subjectivity of Socrates was hostile to democracy, he was thrown into collision with old thought. This explains the two accusations made against him. These were "That Socrates did not consider as gods those who were held to be such by the Athenian people, but introduced new ones; and that he also led young men astray."<sup>4</sup> Both Hegel and Kierkegaard agree it was established that Socrates had been guilty of these crimes. Throughout his review of the facts of Socrates' guilt, Kierkegaard's chief interest is in discovering Socrates' own basis for his criminality, which he finds in Socrates' subjectivity. Kierkegaard differs from Hegel in filding Socrates' subjectivity, and hence Socrates' guilt, in the nature of the irony of Socrates. Kierkegaard holds that Socratic irony is the attitude of subjective negativity of actuality or of positivity. Such negativity for Kierkegaard is an unknowable thing-in-itself or is a

<sup>1</sup> Sève, *La Philosophie française contemporaine et sa genèse de 1789 a nos jours*, p. 239.

<sup>2</sup> Sève writes that the Denmark of Kierkegaard was feudal. *Id.* at 249.

<sup>3</sup> 1 Dynnik, *Geschichte der Philosophie* (German trans. 1959) 92; Pokrovski, *Historia de las ideas políticas* (Sánchez trans. 1966) 56. See 1 Hegel, *Lectures on the History of Philosophy* (Haldane trans. 1892) 358, 361.

<sup>4</sup> Hegel, *op. cit.*, *supra* note 3 at 431.

THE PLACE OF SOCRATES

329

formal or abstract possibility. The difference between Hegel and Kierkegaard which makes their confrontation important consists in their struggle over the concept, meaning and force of irony in social history. Contrary to Kierkegaard, Hegel holds that Socratic irony is a moment in the history of the negation, which determines its own negation. "In recent times", Hegel writes, "much has been said about the Socratic irony which, like all dialectic, gives force to what is taken immediately, but only in order to allow the dissolution inherent in it to come to pass; and we may call this the universal irony of the world. Yet men have tried to make this irony of Socrates into something quite different, for they extended it into a universal principle; it is said to be the highest attitude of the mind, and has been represented as the most divine".<sup>5</sup> In discussing the condemnation of Socrates, Hegel presupposes his own conception of irony. Having agreed that Socrates had been guilty, Hegel directs his attention to the nature of the content of the regime which had posited the crimes of which Socrates was indeed guilty. Socrates' irony was intended to negate this regime, leading to a new positive regime the content of which would be necessitated by the historical content of the negation.

Unlike Kierkegaard, Hegel is thus forced to study the Athenian regime as a determinate historical actuality in order to understand the historical force of Socrates' ironic negation of such regime. He considers this contradiction not only as a historically determined contradiction, but he relates it to the German situation of his own period. In criticizing the Athenian regime which destroyed Socrates, Hegel appears as what should be called the *Encyclopédiste* or European bourgeois Hegel as distinguished from the German bourgeois Hegel. In the *History of Philosophy* Hegel believes that the *Encyclopédiste* or European bourgeois state required and was strong enough to permit anti-bourgeois action which did not become immediately revolutionary. Here Hegel writes that "There is undoubtedly a limit which in liberty of thought and speech is difficult to define and rests on tacit agreement; but there is a point beyond which we find what is not allowed, such as direct incitement to insurrection".<sup>6</sup> Hegel continues: "...[T]he State really rests on thought, and its existence depends on the sentiments of men, for it is a spiritual and not a physical kingdom. Hence it has in so far maxims and principles which constitute its support, the Government must intervene. Added to this, it was the case that in Athens quite a different state of things was present than with us; in order to be able to judge rightly of Socrates' case we must first consider the Athenian State and its customs...[I]n our constitution the universal of the states is a stronger universal, which last undoubtedly permits of individuals having freer play, since they cannot be so dangerous to this universal."<sup>7</sup>

<sup>5</sup> *Id.* at 400.

<sup>6</sup> *Id.* at 439.

<sup>7</sup> *Id.* See Franklin, *Alienation and Hegel's Justification for Codification*, 33 *Tulane Law Rev.* 133 (1958).

This is perhaps close to the First Amendment and to Jefferson's first inaugural address. This perhaps may be deepened by the analogical, expansive, productive or inventive force of the First Amendment, especially since the Supreme Court has once acknowledged that the Ninth Amendment legitimates general development of the particularism of the bill of rights.<sup>8</sup> The First Amendment, which states a hegemony, guarantees freedom of speech, assembly and right of petition. If these guarantees have become ineffective or illusory, the Ninth Amendment justifies the required expansion of these guarantees if such is required in order to preserve the hegemony established by the First Amendment.

A close relationship between Hegel and Thoreauan thought is perhaps expressed by Hegel in his *Lectures on the Philosophy of Religion*, in which, however, there is reference to Plato without reference to Socrates. "The upholding of the existing legislation is handed over to the courts of justice; whoever transgresses the law is brought up for trial, and the existence of the community as a whole is made to rest on laws in this legal form. Over against this, however, stands that subjective conviction, that inner life which is the very home of religion. In this way two sides, both of which pertain to the actual world, are mutually opposed, namely positive legislation, and the subjective disposition or feeling in reference to this legislation. As regards the constitution of the State, there are two systems here—the modern system in which the essential characteristics of freedom and its whole structure are upheld in a formal manner to the disregard of subjective conviction. The other system is that of subjective conviction—which represents, speaking generally, the Greek principle... The two sides—the subjective conviction and that formal constitution—are inseparable, and neither can do without the other; but in recent times a one-sided view has made its appearance, according to which the constitution is to be self-sustaining..."<sup>9</sup>

Hegel's theory of social subjectivity was not Kierkegaardian irony, which recognizing only formal or abstract possibility, does not acknowledge the content of the positivity of the law. But Hegel may justify thought recognizing the positivity of the content of the law, but also acknowledging the validity of its violation. This is para-law.<sup>10</sup> This, in part, may however be Hegel's "universal irony of the world", which is the historic negation of actuality, a negation which necessitates the content of its own determined negation. Hegel's discussion of para-law, in which he seeks to justify both subjective

<sup>8</sup> Franklin, *The Ninth Amendment as Civil Law Method and Its Implications for Republican Form of Government: Griswold v. Connecticut; South Carolina v. Katzenbach*, 40 *Tulane Law Rev.* 487 (1966).

<sup>9</sup> Hegel, *Lecture on the Philosophy of Religion* (Speirs and Sanderson trans. 1962 ed.) 255.

<sup>10</sup> Franklin, *The Roman Origin and the American Justification of the Tribunitary or Veto Power in the Charter of the United Nations*, 22 *Tulane Law Rev.* 24, 42 (1947); Franklin, *A New Conception of the Relation between Law and Equity*, 11 *Philosophy and Phenomenological Research* 474, 482 (1951).

conviction and the positive law is reminiscent of Aristotle's discussion of law and equity and may have its historical antecedents in Roman praetorian law and in Anglo-American equity. However, although Hegel may appear in his discussion of Socrates' condemnation to be an European *Encyclopédiste*, d'Hondt says that, unlike Marx, "Hegel has not been the Socrates of modern times".<sup>11</sup> Perhaps Hegel perceived his situation, saying that after Socrates Greek "philosophers withdrew from the affairs of the State, restricted themselves to cultivating an inner world . . ." <sup>12</sup>

## II

The opposition between Hegel and Kierkegaard, which has appeared as an opposition in theory of irony, appears also in their considerations regarding the punishment of Socrates. His guilt having been determined the accused had the "liberty of suggesting . . . a penalty different from the punishment which the accuser proposed".<sup>13</sup> Hegel writes: "But when it was left to the accused to determine what his punishment should be, it might not be arbitrary, but must be in conformity with the crime, a money or bodily punishment . . . But it was implied in the person's guilty constituting himself his own judge, that he submitted himself to the decision of the court and acknowledged himself to be guilty. Now Socrates declined to assign a punishment for himself consisting either of fine or banishment, and he had the choice between these and death, which his accusers proposed. He declined to choose the former punishment because he . . . would acknowledge guilt; but there was no longer any question as to the guilt, but only as to the kind of punishment . . . [T]he fact that he would not himself determine the punishment, and thus disdained the juridical power of the people, was foremost in leading to his condemnation."<sup>14</sup>

Hegel has here precipitated a crisis in his own thought. Kierkegaard did not realize this, but Hegel was keenly aware of it. When Hegel said that the accused was "himself his own judge" he was stating his own general theory of criminal responsibility. He developed this concept of self-determined responsibility in his *Philosophy of Law*. But in his discussion of the trial of Socrates Hegel condemns Socrates for making a self-determination obnoxious to Athenian ideas of criminal responsibility. At first Hegel tries to rescue himself from this contradiction by saying that Socrates had submitted himself to Athenian penal sanction at the initiation of the proceedings. However, as Hegel proceeds, he wavers as to this distinction.<sup>15</sup>

Hegel develops his own problem by writing that "With us the competency

<sup>11</sup> D'Houdt, *Hegel Philosophe d l'histoire vivante*, 167 (1966).

<sup>12</sup> Hegel, *op. cit.*, *supra* note 3 at 447.

<sup>13</sup> *Id.* at 440.

<sup>14</sup> *Id.* at 440.

<sup>15</sup> Cf. *id.* at 440 with *id.* at 441.

of the court is presupposed, and the criminal judged without further ado; to-day the whole matter is also open to the light of day and accepted as an acknowledged fact".<sup>16</sup> Then Hegel continues: "But with the Athenians we find the characteristic request that the prisoner should, through the act of imposing on himself a penalty, sanction the judge's sentence of guilt. In England this is certainly not the case, but there still remains a like form of asking the accused by what law he wishes to be judged. He then answers, by the law of the land and by the judges of his country."<sup>17</sup> Hegel might have added that in kin-organized society as it exists before the emergence of private property, judicial or judicial-like determination, was founded on the principle of the self-determined submission of the accused to the power of the mediator or judge. In Roman law this was *litis contestatio*, in which the procedural contract or self-determined submission of the defendant at the outset of process was and remained the basis for judicial competence. In political theory this may perhaps have been the basis for the bourgeois political theory of the social contract. During the period of the Enlightenment this became the basis for the attack on capital punishment by Beccaria in Italy and France and by Edward Livingston in the United States.

There may have been for Hegel two ways of escape from his dilemma.

The first solution to Hegel's crisis in justifying the condemnation of Socrates is that of alienating the consciousness of Socrates by appropriating it, as was made possible by Hegel's objective idealism, and attributing to Socrates his own will to be punished by death. The will of the subject-of-law is alienated or appropriated by the state and becomes the object of the real subject-of-law, that is, the state. Thus the will of the accused becomes his own enemy. Although Hegel advances the theory of self-determined criminality in the *Philosophy of Law* he also shows there that appropriative alienation occurs. "A member of civil society has... the duty of acknowledging the jurisdiction of the court accepting its decision as final when his own rights are in dispute",<sup>18</sup> he says. But Hegel does not alienate the will of Socrates. He writes that "Socrates thus set his conscience in opposition to the judges' sentence, and acquitted himself before its tribunal. But no people, and least of all a free people like the Athenians, has by this freedom to recognize a tribunal of conscience which knows no consciousness of having fulfilled its duty excepting its own consciousness. To this government and law, the universal spirit of the people, may reply: 'If you have the consciousness of having done your duty, we must also have the consciousness that you have so done'. For the first principle of a State is that there is no reason or conscience or righteousness or anything else, higher than that the State recognizes as such... This miserable freedom of thinking and believing what men will, is not permitted, nor any such retreat behind personal consciousness

<sup>16</sup> *Id.* at 442.

<sup>17</sup> *Id.* at 442.

<sup>18</sup> Hegel, *Philosophy of Right* [Law] (Knox trans. 1942) 141.



of duty. If this consciousness is no mere hypocrisy, in order that what the individual does should be recognized as duty, it must be recognized as such by all.”<sup>19</sup>

Thus it appears that Hegel allows the unalienated will of Socrates to enter into struggle with the will of Athenian legitimacy in order to disclose the reality of the Athenian social struggle which explains the trial and condemnation of Socrates. This may introduce Hegel's second solution of his crisis in justifying both the theory of self-determined criminal responsibility and his condemnation of Socrates for having exercised it against the Athenian regime. In the *Phenomenology* Hegel discusses the problem of self-determined criminality in his attack on Kant's unknowable thing-in-itself. For Hegel the thing-in-itself was knowable and was the reality behind the phenomenon. As the appearance and the reality were a unity of opposites the appearance was an inversion of reality. Hence he writes: "If now this inversion, which is brought out in the punishment of crime, is made into a law, it also is again only the law of a world which has an inverted supersensuous world standing in antithesis to itself, where that which is despised in the former come to honour, and that which in the former is honoured meets with contempt. The punishment which, by the law of the former, disgraces a man and annihilates him, turns round in its inverted world into the pardoning grace which preserves his being and brings him to honour."<sup>20</sup> What Hegel could have said here is that the apparent guilt of the subject-of-law is the real guilt of the state and of the social order of the criminal. This indeed was said during the French Enlightenment by Holbach and during the American Enlightenment by Edward Livingston. However as Hyppolite does not invert Hegel's own idealism, he here perceives theology and Dostoyevsky.<sup>21</sup>

In discussing the trial of Socrates Hegel in truth develops the thought of the *Phenomenology* and not that of the *Philosophy of Law*. In refusing to acknowledge his guilt and to declare his own punishment Socrates confronted the legitimate Athenian regime which he rejected. Because of his apparent guilt he was condemned. In reality his self-determination that he was guiltless was a justified self-determination because the legitimate or apparent Athenian regime, which condemned him, was historically illegitimate. Through Socrates' self-determination that he was guiltless the Athenian reality which overcome his apparent guilt came to power. Purged of his idealist presentation, it is evident that Hegel's thought, in which struggle of opposed forces is so conspicuous, could have influenced the development of Marxism. Hegel writes of Socrates: "In general history we find that this is the position of the heroes through whom a new world commences, and

<sup>19</sup> Hegel, *op. cit.*, *supra* note 3 at 442.

<sup>20</sup> Hegel, *The Phenomenology of Mind* (Baillie trans. Harper ed. 1967) 204.

<sup>21</sup> Hyppolite, *Genèse et structure de la Phénoménologie de l'esprit de Hegel* (1946) 133.

whose principle stands in contradiction to what has gone before and disintegrates it: they appear to be violently destroying the laws. Hence individually they are vanquished, but it is only the individual, and not the principle, which is negated in punishment, and the spirit of the Athenian people did not in the removal of the individual, recover its old position. The false form of individuality is taken away, and that, indeed, in a violent way by punishment; but the principle itself will penetrate later, if in another form, and elevate itself into a form of the world-spirit.”<sup>22</sup> Hegel continues: “. . . [T]he Athenians recognized . . . that this principle in Socrates, signifying the introduction of new gods and disrespect to parents, has —while destructive and hostile to it— been introduced even into their own spirit, and that they themselves are in the dilemma of having in Socrates only condemned their own principle. In that they regretted the just judgment of Socrates, it seems to be implied that they wished that it had not occurred. But from the regret it does not follow that in itself it should not have occurred . . .”<sup>23</sup> Hegel says that he is concerned with tragedy. “. . . [I]n what is truly tragic”, he says, “there must be valid moral powers on both sides which come into collision; this was so with Socrates.”<sup>24</sup> Nevertheless, the Athenians, Hegel writes, “. . . punished an element which was their own. The principle of Socrates is hence not the transgression of one individual, for all were implicated; the crime was one that the spirit of the people committed against itself.”<sup>25</sup>

As Hegel proceeds the difference between Hegel’s treatment of Socrates in the *History of Philosophy* and his general alienation principle deepens. In the *Phenomenology* and even in the *Philosophy of Law* he condemned the alienating power of the Roman praetor, the feudal magistrate and the German judge of his own time. In reminiscence of the appropriative alienation of the master of the slave, the prototype of all social relations based on private property, Hegel wrote in the *Philosophy of Law* that in litigation “. . . the members of civil society . . . become the wards, or even in a sense the bondsmen, of the legal profession . . .”<sup>26</sup> Nevertheless, in justifying the condemnation of Socrates against the will of Socrates, Hegel writes that “If the people can make mistakes the individual may do so much more easily, and he [the accused] must be conscious that he can do this much more easily than the people. Now law also has a conscience and has to speak through it; the law-court is the privileged conscience . . . [T]he conscience of the court alone possesses any value as being the universalized legalized conscience, which does not require to recognize the particular conscience of the accused”.<sup>27</sup>

<sup>22</sup> Hegel, *op. cit.*, *supra* note 3 at 444.

<sup>23</sup> *Id.* at 445.

<sup>24</sup> *Id.* at 446.

<sup>25</sup> *Id.* at 447.

<sup>26</sup> Hegel, *op. cit.*, *supra* note 18 at 145.

<sup>27</sup> Hegel, *op. cit.*, *supra* note 3 at 443.

III

It will have been noticed that Hegel criticized or overcame the “hypocrisy” of an accused,<sup>28</sup> including Socrates. What Hegel, in effect, rejects as “hypocrisy” Kierkegaard embraces and accepts as Socrates’ “irony”. Kierkegaard writes: “Thus we clearly see how the standpoint of Socrates is thoroughly negative towards the state, how he was wholly incompatible with it . . . [W]e have an irony carried through to its utmost limit, an irony that allows the objective power of the state to crush itself against the rock-like negativity of irony. The objective power of the state, its restraints upon the activity of the individual, its laws, its courts, everything loses its absolute validity for him, all are stripped away as imperfect forms. Thus he elevates himself higher and higher, becoming ever lighter as he rises, seeing all things disappear beneath him from his ironical bird’s eye perspective, while he himself hovers above them in ironic satisfaction, borne by the absolute self-consciousness of the infinite negativity within him. Thus he becomes estranged from the whole world to which he belongs.”<sup>29</sup> A rivalry between two theories of negation or alienation or estrangement here emerges. With Hegel alienation is negation or seizure or appropriation of the other. With Kierkegaard negativity or alienation or estrangement is flight or escape from the other. Continuing his discussion of Socrates, Kierkegaard says: “. . . [T]hat which sustains him is negativity which as yet has fashioned no positivity. And here it becomes explicable how even life and death have lost their absolute validity for him. Thus we have in Socrates not the apparent but the actual zenith of irony, because Socrates was the first to arrive at the Idea of the good, the beautiful, and the true as a limit, that is, to arrive at ideal infinity in the form of possibility.”<sup>30</sup> Such irony or possibility is an unknowable thing-in-itself. It is negativity which does not make its own historic negation its own historically.

This it cannot do because an unknowable thing-in-itself is non-being. Because it lacks relation to other-being it is nothing, for being is being through its relations to other-being. If these are historically knowable, the thing-in-itself is historically knowable. It is Hegel’s criticism of Kant’s unknowable thing-in-itself that Kant, because of the permanence of the unknowability of the thing-in-itself, has posited non-being as the reality behind appearance. “Things are called ‘in themselves’ in so far as we abstract from all Being-for-Other, which means that they are thought of as quite without determination, as Nothings.”<sup>31</sup> This means, too, that appearance becomes simulated appearance because appearance and reality are a unity of opposites. Usually such non-being is posited as a god. Kierkegaard here may

<sup>28</sup> *Id.*

<sup>29</sup> Kierkegaard, “The Concept of Irony with Constant Reference to Socrates” (Capel trans. 1965) 221.

<sup>30</sup> *Id.*

<sup>31</sup> Hegel, *Science of Logic* (Johnston and Struthers trans. 1929) 133.

posit non-being as the ironic, mediating subject, free both from the historic past and the historic future. His ironic subject may also be the ironic object. This formal or abstract or subjective possibility or freedom Kierkegaard calls negativity. Hegel writes: "...[T]he Thing-in-itself as such is no more than the empty abstraction from all determinateness, of which it is admitted that nothing can be known just because it is meant to be the abstraction from all determination. The Thing-in-itself being thus presupposed as the indeterminate, all determination falls outside it into a Reflection which is foreign to it, while it is indifferent to the Reflection. In transcendental idealism this External Reflection is consciousness. This philosophical system places all determinateness of things (both in regard to form and to content) in consciousness; and accordingly, from this point of view, it falls within me, the subject..."<sup>32</sup> But, Hegel, adds, "This crude presentation of subjective idealism is in immediate contradiction to the consciousness of freedom... [T]ranscendental idealism does not emancipate itself from the limitation of the ego by the object..."<sup>33</sup>

#### IV

Although Kierkegaard's dissertation was devoted to the irony of Socrates, it is related also to Hegel's considerations directed against the conception of irony held in nineteenth-century German romanticism. This was a struggle which may be described as a rivalry between the bourgeois dialectical idealism of Hegel and the renovated feudal and aristocratic ideas of German romanticism, which were grounded in the objective idealism of Schelling and certain aspects of the subjective idealism of Fichte. Both of the latter emerged out of certain characteristics of Kantian thought. The rivalry between Hegel and German romanticism stimulated some of Hegel's sharpest criticism, especially of Friedrich Schlegel. The existentialism of Kierkegaard, as it appears in his dissertation on the irony of Socrates, emerges as an attempt to strengthen the subjectivity of German romanticism. Hence Kierkegaard's writings requires an attack on Hegel. Nevertheless, Kierkegaard's volume was formulated under the influence of Hegelian ideas; and he writes that he is only advancing a "modification" of Hegel's thought.<sup>34</sup>

It is useful to begin with Friedrich Schlegel, whose theory of the center or *Mittelpunkt* leads to the German romantic theory of irony, which Hegel condemned and which Kierkegaard sought to rescue. The theory of the center or *Mittelpunkt* must be the beginning because it justified romantic subjectivity, romantic irony, ambiguity, equivocation, *déplacément*, hypocrisy or *Verstellung*. These constitute today Sartre's concept of bad faith. They

<sup>32</sup> *Id.* at volume 2, page 117.

<sup>33</sup> *Id.* at volume 2, page 118.

<sup>34</sup> Kierkegaard, *op. cit.*, *supra* note 29 at 246, 403, n. 31.

lead today to the role of theory of possibility in existentialism. "The conceptual instrument, i. e., the category that existentialism employs in all its forms", Abbagnano writes, "is that of *possibility*. In fact, it carries out the analysis of human existence in the world as the analysis of the possibilities open to man in his confrontation with men and things."<sup>35</sup> Contrary to Hegel, Kierkegaard justified the ironic methodology of Socrates as an anticipation of existential, subjective irony or of what should be called formal possibility. For Kierkegaard romantic irony, which Hegel condemned, merely represented a stage, a badly done or worked out stage, in the development of the theory of existential irony.

For the purpose of this paper the theory of the *Mittelpunkt*, which in turn justifies irony, may be said to appear in Kant's *Critique of Judgment*. Here Kant said: "Hence we see that the removal of the antinomy of the aesthetic judgment takes a course similar to that pursued by the critique in the solution of the antinomies of pure theoretical reason. And thus here, as also in the *Critique of Practical Reason*, the antinomies force us against our will to look beyond the sensible and to seek in the supersensible the point of union for all our *a priori* faculties, because no other expedient is left to make our reason harmonious with itself."<sup>36</sup> Kant himself states that his *Critique of Judgment* was not only an aesthetic theory, but he also relates aesthetic taste to moral ideas and "the culture of the moral feeling".<sup>37</sup> Kant thus made possible the subordination of contradictory forces through the motion of a *deus ex machina* or mediator or external force, which dominates the rival elements and chooses freely or arbitrarily among them. Where Hegel perceived negation through the interpenetrating self-motion of the contradictory elements, Kant in effect perceived and made possible the irony or equivocation or shifting of the external mediator who with agility selected his possibilities among the rival forces.

In *Verstellung* or hypocrisy or *déplacement*, Hegel says that consciousness is confronted by "a 'perfect nest' " of Kantian "contradictions".<sup>38</sup> Here consciousness proceeds "by fixing definitely one moment, passing thence immediately over to another, and doing away with the first, but as soon as it has set up this second moment, it also 'shifts' (*verstellt*) this again, and really makes the opposite the essential element. At the same time, it is conscious of its contradiction and of its shuffling, for it passes from one moment, immediately in its relation to this very moment, right over to the opposite. Because a moment has for it no reality at all, it *affirms* that very moment as real: or, what comes to the same thing, in order to assert one moment as *per se* existent, it asserts the opposite as the *per se* existent. It thereby confesses that, as a matter of fact, it is in earnest about neither of them.

<sup>35</sup> Abbagnano, *Critical Existentialism* (Langiulli trans. 1969) 226.

<sup>36</sup> Kant, *Critique of Judgment* (Bernard trans. 1951) 186.

<sup>37</sup> *Id.* at 202.

<sup>38</sup> Hegel, *op. cit.*, *supra* note 20 at 629.

The various moments of this vertiginous fraudulent process we must look at more closely".<sup>39</sup> As he develops his condemnation of Kant, Hegel says: "The concrete moral consciousness . . . is an active one; that is precisely what constitutes the actuality of its morality. In the very process of acting however, that 'place' or semblance is immediately 'displaced', is dissembled; for action is nothing else than the actualization of the inner moral purpose, nothing but the production of an actuality constituted and determined by the purpose; in other words, the production of the harmony of moral purpose and reality itself."<sup>40</sup> What Hegel here says against Kant's arbitrary bourgeois subject or against Kant's holy moral legislator is reminiscent of Hegel's attack on the appropriative power of alienation of the feudal mediator who dominated the "unhappy consciousness" of the middle ages,<sup>41</sup> and who reappears in twentieth-century existential philosophical discussion.<sup>42</sup>

A weakness of Marcuse is that, in effect, he justifies the ironic or arbitrary mediator. "In the *Critique of Judgment*", Marcuse writes of Kant, "the aesthetic dimension and the corresponding feeling of pleasure emerge not merely as a third dimension and faculty of the mind, but as its *center*, the medium through which nature becomes susceptible to freedom, necessity to autonomy. In this mediation, the aesthetic function is a 'symbolic' one . . . In Kant's system, morality is the realm of freedom, in which practical reason realizes itself under self-given laws. Beauty symbolizes this realm in so far as it demonstrates intuitively the reality of freedom."<sup>43</sup>

Kant's theory of the "point of union" or of indifference or of harmony of the antinomies or contradictions developed, as has been said, into the German romantic theory of the *Mittelpunkt* through the force of the objective idealism of Schelling and of certain feudalized aspects of the subjective idealism of Fichte. Baxa writes that Schlegel's theory of the *Mittelpunkt* derives from ". . . Fichte's pantheistic teaching of the unity and divinity of spirit. Schlegel always speaks of a center (*Zentrum*), of a middle (*Mitte*) toward which all has to direct itself".<sup>44</sup> Baxa, basing himself on Minor, quotes Schlegel as writing: "Religion is not merely part of creative education (*Bildung*), a part of humanity, but the center (*Zentrum*) of all remaining everywhere the first and highest, the positively original."<sup>45</sup> N. Hartmann repeats with Schlegel that "the center is the boundary between reason and religion".<sup>46</sup>

<sup>39</sup> *Id.*

<sup>40</sup> *Id.* at 630.

<sup>41</sup> *Id.* at 251, 265.

<sup>42</sup> See, e.g., Wahl, *La Malheur de la conscience dans la philosophie de Hegel* (2<sup>e</sup> éd., 1951) 119; Niel, *De la médiation dans la philosophie de Hegel* (1945) 133; Kojève, *Introduction a la lecture de Hegel* (1947) 74; Hyppolite, *op. cit.*, *supra* note 21 at 184.

<sup>43</sup> Marcuse, *Eros and Civilization* (1955) 159.

<sup>44</sup> Baxa, *Einführung in die romantische Staatswissenschaft* (2<sup>te</sup> Aus. 1931) 64.

<sup>45</sup> *Id.* at 65.

<sup>46</sup> N. Hartmann, *La filosofía del idealismo alemán* (Zucci trans. 1960) 266.

Verra describes the *medio* as the “middle point extremes, that is to say, the middle point between consciousness and infinity...”<sup>47</sup>

The concept of the *Mittelpunkt* thus is an idealist theory of contradictions which, because there is no dialectical negation of the negation, collapses into subjectivity and arbitrariness or irony. This collapse, or this hegemony or irony of the subject, is what Kierkegaard finds during the period of his dissertation in Socrates and what he tries to strengthen by moving from romantic irony to existential irony.

It is the merit of German romanticism that it acknowledged the reality of contradictions. This was required because of the existence in Germany of hostile feudal and bourgeois forces. It was the weakness of German romantic idealism that it failed to resolve the contradictions through the self-motion of the contradictions themselves, but concealed and overcame the rivalry by means of the arbitrariness or irony or *Verstellung* of the feudal subject, the latter being the dominant force in the social rivalry. What was required was dialectical negation of the negation. What romanticism gave was a pseudo-dialectic which was an attempted evasion by the subject of the historically necessitated negation of the negation. Consequently the crisis or *Mittelpunkt* theory of German romanticism brought forth the feudal subject as the agile, god-like genius, artist, jurist, philosopher or historian.

Hegel condemned the ironic subjectivity and arbitrariness of the feudal idea of the *Mittelpunkt* in his celebrated preface to the *Phenomenology of Spirit*. Some say, he wrote, “...that truth exists only in that, or rather as that, which is now called intuition, now immediate knowledge of the absolute, religion, or being —not at the center of divine love but the being itself of this very center...”<sup>48</sup> Stiehler writes that Hegel “determines the rhythm of self-movement by means (*Mittels*) of the category of absolute negativity, another expression for the negation of the negation. In this sense negativity is marked for him through the moment of mediation (*Vermittlung*). The negative (*Negieren*) of a given condition represents the mediation (*Vermittlung*) of this condition with another, a higher; the negativity is the ‘middle’ (*Mitte*) between these conditions and (as the developmental force) the means (*Mittel*) through which a transition follows into another manner of existence”.<sup>49</sup> Not only Hegel, but Schiller must be mentioned in criticizing the romantic theory of the *Mittelpunkt*. “Beauty, it is said, links together two conditions which are *opposed to each other* and can never be one,” Schiller wrote in answer to the problems set by Kant’s *Critique of Judgment*. “It is from this opposition that we must start; we must comprehend and recognize it in its whole purity and strictness, so that the two conditions are separated in the most definite way; otherwise

<sup>47</sup> Verra, “Friedrich Schlegel”, in 4 *Enciclopedia filosófica* 378, 379 (1957).

<sup>48</sup> Kaufmann, *Hegel: A Reinterpretation, Texts and Commentary* (Kaufmann trans. Anchor ed. 1966) 14.

<sup>49</sup> Stiehler, *Die Dialektik in Hegels “Phänomenologie des Geistes”* (1964) 122.

we are mixing but not uniting them.”<sup>50</sup> This is Schiller’s approach to the German romantic theory of the *Mittelpunkt*. “Secondly, it is said that Beauty combines those two opposite conditions, and thus removes the opposition”, Schiller continues, “but since both conditions remain eternally opposed to one another, they can only be combined by cancellation (*aufgehoben*). Our second business, then, is to make this combination perfect, to accomplish it so purely and completely that both conditions entirely disappear in a third, and no trace of the division remains behind in the whole; otherwise we are isolating but no uniting them.”<sup>51</sup> Thus Schiller here sets up not German romantic *Mittelpunkt*, but dialectic or absolute negation of the negation, and excludes the irony or agility of the external subject. Both Hegel<sup>52</sup> and Schiller necessitate mediation and both Hegel and Schiller exclude the mediator. In their great German dictionary the Grimms quote Schiller as writing that “*Egoismus* attains its *Mittelpunkt* in self itself”.<sup>53</sup> This may be taken as condemnation of Schlegel, who wrote of “feeling, as the living centre of the entire consciousness, where all its extreme tendencies converge and reunite”.<sup>54</sup> Schlegel concludes that “God, then, is the key-stone which holds together the whole human consciousness . . . And now our notion of the whole scheme and delineation of the human mind is complete”.<sup>55</sup>

Thus, the *Mittelpunkt* was the center of the contradiction and there the soul of the subject intuitively or immediately encountered objective spirit.<sup>56</sup> Such immediacy or intuition of the subject resolved the crisis or the contradiction. The subject was both man and god or god-like. Such subject was the genius.

The god-like or divine genius or subject or Ego of German romanticism was an ironical genius or subject because he could be arbitrary or subjectively ironical. The subjective irony of the genius meant that as an “eternally agile”<sup>57</sup> or “acrobat”<sup>58</sup> god he could shift positions or equivocate or be hypocritical. The outcome, then, of Schlegel’s theory of the *Mittelpunkt* was the emergence of the theory of subjective irony, a theory of the domination of the object of knowledge by the methodology of the genius. Hegel himself emphasizes the Fichtian origin of Schlegel’s subjectivistic theory of irony. Hence, Schlegel’s *Mittelpunkt* is considered by Hegel to be a creation of Schlegel’s ironical subject, which intends to create itself through its Non-Ego, but fails

<sup>50</sup> Schiller, *On the Aesthetic Education of Man* (Snell trans. 1954) 88.

<sup>51</sup> *Id.*

<sup>52</sup> 2 Hegel, *The Philosophy of Fine Art* (Osmaston trans. 1920) 303.

<sup>53</sup> 6 Jacob und Willhemn Grimm, *Deutsches Wörterbuch* 2407.

<sup>54</sup> Schlegel, *The Philosophy of Life and Philosophy of Language* (Morrison trans. 1881) 452.

<sup>55</sup> *Id.* at 454.

<sup>56</sup> Joachimi, *Die Weltanschauung der deutschen Romantik* (1905) 35.

<sup>57</sup> Allemann, *Ironie und Dichtung* (1956) 80.

<sup>58</sup> Jankélévitch, *L'Ironie* (1964) 62.



THE PLACE OF SOCRATES

341

because the Fichtian ego really cannot acknowledge a Non-Ego or object. The Ego, aware of such Fichtian stumbling and failure, becomes ironic and arbitrary in regard to its self-created object. Unlike the irony of Socrates, the irony of Schlegel, Hegel writes, "issues from the Fichtian philosophy, and is an essential point in the comprehension of the conceptions of the most recent times. It is when subjective consciousness maintains its independence of everything, that it says 'It is I who through my educated thoughts can annul all determinations of right, morality, good, etc., because I am clearly master of them, and I know that if anything seems good to me I can easily subvert it, because things are only true to me in so far as they please me now'".<sup>59</sup>

Hegel separates Socrates, as has been said, from the subjectivity of feudalized Fichtian or Schlegelian romantic irony.<sup>60</sup> He adds: "Hypocrisy, which is of the same nature, is the truest irony. Socrates and Plato were falsely stated to be the originators of this irony, of which it is said that it is the 'inmost and deepest life', although they possessed the element of subjectivity... Ast's 'inmost, deepest life' is just the subjective and arbitrary will, the inward divinity which knows itself to be exalted above all. The divine is said to be the purely negative attitude, the perception of the vanity of everything, in which my vanity alone remains. Making the consciousness of the nullity of everything ultimate, might indeed indicate depth of life, but it is only the depth of emptiness, as may be seen from the ancient comedies of Aristophanes. From this irony of our times, the irony of Socrates is far removed; as is also the case with Plato, it has significance which is limited. Socrates' premeditated irony may be called a manner of speech, a pleasant rallying; there is in it no satirical laughter or pretence, as though the idea were nothing but a joke. But his tragic irony is his opposition of subjective reflection to morality as it exists, not a consciousness of the fact that he stands above it, but the natural aim of leading men, through thought, to the true good and to the universal Idea."<sup>61</sup>

The activity of Fichte's Ego, Hegel writes, "is a yearning or striving—like the Kantian 'ought'".<sup>62</sup> Hegel emphasizes that the subjective irony of Fichte is similar to the arbitrariness or *Verstellung* of the holy moral legislator of the "ought" of Kant's categorical imperative. "The Fichtian philosophy", Hegel continues, "consequently has the same standpoint as the Kantian; the ultimate is always subjectivity, as existent in and for itself. Yearning, according to Fichte, is divine; in yearning I have not forgotten... that I possess a superiority in myself... This infinite yearning and desire has then been regarded as what is highest and most excellent

<sup>59</sup> Hegel, *op. cit.*, *supra* note 3 at 400.

<sup>60</sup> *Supra* note 5.

<sup>61</sup> Hegel, *op. cit.*, *supra* note 3 at 401.

<sup>62</sup> *Id.* at volume 3, page 498.

in the Beautiful, and in religious feelings likewise; and with it . . . is connected the irony of which we have spoken before'.<sup>63</sup>

Jankélévitch says that: "The subject of Kant, the ego of Fichte, . . . the genius of Schlegel" is "creator of its object".<sup>64</sup> Hence Hegel says that: "Irony, which can make every objective reality nought and vain, is itself the emptiness and vanity, which from itself, and therefore by chance and its own good pleasure, gives itself direction and content, remains master over, is not bound by it, —and, with the assertion that it stands on the very summit of religion and philosophy, falls rather back into the vanity of willfulness".<sup>65</sup>

With this Fichtian background, as described by Hegel, it is not surprising he says of Schlegel's irony that: "This is nothing less than making all that exists on its own actual and independent warranty a mere semblance, not true and a part of reality on account of itself and by its own instrumentality, but a mere *show* in virtue of the Ego, within whose power and caprice it remains at the free disposition of such. To suffer its presence and destroy it stands purely in the favor of the Ego . . ." <sup>66</sup> More than once, Hegel condemns the subjectivity of Schlegel's theory of irony. "The subject here knows itself to be within itself the Absolute, and all else to it is vain; all the conclusion which it draws for itself respecting the right and good, it likewise knows how to destroy again. It can make a pretence of knowing all things, but it only demonstrates vanity, hypocrisy, and effrontery. Irony knows itself to be the master of every possible content; it is serious about nothing, but plays with all forms."<sup>67</sup>

Sartre's concept of "bad faith" shows the influence of Hegel within existentialism. "In irony", Sartre says, "a man annihilates what he posits within one and the same act; he leads us to believe in order not to be believed; he affirms to deny and denies to affirm; he creates a positive object but it has no being other than its nothingness".<sup>68</sup>

In his *Philosophy of Law*, Hegel shows the role of romantic irony in the law. He calls this: "The culminating form of this subjectivity which conceives itself as the final court of appeal . . . You actually accept a law, it says, and respect it as absolute. So do I, but I go further than you, because I am beyond this law and can make it to suit myself. It is not the thing which is excellent, but I who am so; as the master of law and thing alike, I simply play with them as with my caprice; my consciously ironical attitude lets the highest perish and I merely hug myself at the thought. This type of subjectivism not merely substitutes a void for the whole content of ethics, rights, duties, and laws —and so is evil, in fact evil

<sup>63</sup> *Id.* at volume 3, page 498.

<sup>64</sup> Jankélévitch, *op. cit.*, *supra* note 58 at 17.

<sup>65</sup> Hegel, *Philosophy of Mind* (Wallace trans. 1894) 301.

<sup>66</sup> Hegel, *op. cit.*, *supra* note 52 at volume 1, page 89.

<sup>67</sup> Hegel, *op. cit.*, *supra* note 3 at volume 3, page 507.

<sup>68</sup> Sartre, *Being and Nothingness* (Barnes trans. 1956) 47.

through and through and universally— but in addition its form is a subjective void, i.e. it knows itself as this contentless void and in this knowledge knows itself as absolute. In my *Phenomenology of Mind*, I have shown how this absolute self-complacency fails to rest in a solitary worship of itself, but builds up a sort of community.”<sup>69</sup>

Thus, beginning with Socrates, for whom, according to Hegel, irony was a moment in *the mediation* or negation which itself necessarily must be negated, Hegel passed to the subjective irony of his contemporaries, the German romanticists, with whom *the mediator* chooses his freedom or his possibilities. Finally, in anticipation of the bourgeois situation of the twentieth-century he presented the matter of the subjective irony of whole classes and national states and privileged divisions of labor thereof.

V

This, then, is the historic situation in which Kierkegaard wrote his dissertation on the irony of Socrates, including his trial. In this activity Kierkegaard not only considers Hegel's discussion thereof, but also becomes involved in Hegel's discussion of the irony of German romanticism, with its outcome in the subjective irony of an entire social class and its organs.

Kierkegaard quotes and purports to agree with Hegel's conception of irony.<sup>70</sup> He says that “Here the irony of the world is quite correctly conceived. Inasmuch as each particular historical actuality is but a moment in the actualization of the Idea, it bears within itself the seeds of its own dissolution”.<sup>71</sup> However, Hegel and Kierkegaard clash in regard to the theory of the dissolution. With Hegel irony is a moment in the development of the negation which necessitates its own determinate negation. But with Kierkegaard in his dissertation irony is not negation, but negativity. It is blind negativity because it is an unknowable thing-in-itself. Kierkegaard's unknowable thing-in-itself is abstract or formal possibility.

Hegel's position is formulated in his discussion of Solger, which has been recently reviewed by Behler.<sup>72</sup> Here Hegel attacks German romantic irony because it lacks “infinite absolute negativity”, part of which, as has been shown, Stiehler restates as an expression for negation of the negation.<sup>73</sup> “Solger was not, as the others were, satisfied with a superficial philosophical culture...” Hegel wrote, “[H]e came upon the dialectical phase of the Idea, that transition point which I call the infinite absolute negativity, the activity of the idea in its negation of itself as infinite and universal,

<sup>69</sup> Hegel, *op. cit.*, *supra* note 18 at 102.

<sup>70</sup> Kierkegaard, *op. cit.*, *supra* note 29 at 279.

<sup>71</sup> *Id.*

<sup>72</sup> Behler, *Friedrich Schlegel und Hegel, 2 Hegel-Studien* (1963) 203.

<sup>73</sup> *Supra* note 49.

in order to pass into finiteness and particularity, and with no less truth once more in order to annul this negation, and in so doing to establish again the universal and infinite within the finite and particular. Solger did not get beyond this negativity; and unquestionably it is a *phase* in the speculative idea; but nevertheless, as exclusively conceived in this dialectic unrest and dissolution of the infinite no less than the finite, it is *only* such a phase contributory, and not, as Solger imagined, the *Entire Idea*.”<sup>74</sup>

Kierkegaard seizes from Hegel the thought of irony as “infinite absolute negativity”. But he writes of it: “It is negativity because it only negates; it is infinite because it negates not this or that phenomenon; and it is absolute because it negates by virtue of a higher which is not. Irony establishes nothing, for that which is to be established lies behind it. It is a divine madness... Here, then, we have irony.”<sup>75</sup> What Kierkegaard here misunderstands is that Hegel’s “infinite absolute negativity” relates to the permanence of negation of the negation, which in the necessary rivalry of historically actual opposites has as its outcome new and necessary historical positing or historical determination. “...Negation is just as much Affirmation as Negation, or that what is self-contradictory resolves itself not into nullity, into abstract Nothingness”, Hegel writes, “but essentially only into the negation of its *particular* content, that such negation is not an all-embracing Negation, but is *the negation of a definite somewhat* which abolishes itself, and thus is a definite negation... Since what results, the negation, is a *definite* negation, it has a *content*. It is a new concept, but a higher richer concept than that which preceded...”<sup>76</sup> Kierkegaard’s conception of “infinite absolute negativity” which “only negates” is blind negativity because it is an unknowable thing-in-itself. This unknowable thing-in-itself preserves the activism and acrobaticism of the German romantic mediator, who both incarnated a god and who spiritualized man. However, with the Kierkegaard of the dissertation the unknowable thing-in-itself could become the mediator, because as absolute freedom or as formal possibility it could determine the man-god who had been the German romantic mediator. This may be Kierkegaard’s irony. Hegel’s considerations concerning the non-being of the unknowable thing-in-itself have already been presented.<sup>77</sup>

It could be suggested that Kierkegaard’s unknowable “infinite absolute negativity” merely strengthens that aspect of German romanticism which derived from the objective idealism of Schelling. German romanticism vacillated between the subjective idealism of Fichte and the objective idealism of Schelling. The idea of the *Mittelpunkt* or place of harmony or place of indifference sought to stabilize the instability of “doubled” or divided idealism. In his dissertation Kierkegaard may have veered perhaps toward objective

<sup>74</sup> Hegel, *op. cit.*, *supra* note 52, at volume 1, page 93.

<sup>75</sup> Kierkegaard, *op. cit.*, *supra* note 29 at 278.

<sup>76</sup> Hegel, *op. cit.*, *supra* note 31 at 65.

<sup>77</sup> *Supra* note 31.

idealism. Objective idealism appears in the work of German romanticists who were better educated than Kierkegaard. Savigny, the most important jurist of the nineteenth-century, regarded law as the revelation of the *Volksgeist* or what may be called the national spirit expressed through popular custom. But the *Volksgeist* was an unknowable thing-in-itself. Because Savigny was a theorist for renovated German feudalism and aristocracy the activism of Savigny's existentialist *Volksgeist* was secretive<sup>77</sup> or like Kierkegaard's "infinite absolute negativity" which "only negates" it was blind. The youthful Marx said of the Historical School of Law which Savigny headed that it was "A School of thought that legitimizes today's infamy by yesterday's, a school of thought that explains every cry of the serf against the knout as rebellion once the knout is time-honored, ancestral, and historical, a school to which history shows only its *a posteriori*..."<sup>79</sup> This, too, may explain the blindness of Kierkegaard's negativity which "only negates".

Allemann holds that Kierkegaard conceived that "the problem of irony was not other than the problem of irony as standpoint (*Ironie als Standpunkt*)" or rather as "standpointlessness (*Standpunktlosigkeit*)".<sup>80</sup> Allemann thus nicely states the mission of Kierkegaard as a theorist of the *Stände* of renovated feudalism. The endeavor of the irony of Kierkegaard, Allemann says, "is to sublimate all reality and in its place to posit a reality which is no reality".<sup>81</sup> Whether or not Kierkegaard careens between subjective and objective idealism, his negativity eliminates the traces of pseudo-dialectic in German romanticism,<sup>82</sup> and preserves the formal possibility of the ironic romantic mediator or subject as an unknowable thing-in-itself. Kierkegaard says that the irony of German romanticism failed because it was "serious". This means that he condemns such irony because the agility or acrobaticism or *Verstellung* of German romantic irony was sincerely directed toward realizing a goal or a vocation, whereas he believed his conception of irony as blind negativity was a superior weapon. He writes: "[T]his does not mean that Hegel was wrong regarding the Schlegels or that the Schlegelian irony was not an extremely serious error... This does mean, on the other hand, that Hegel... has overlooked the truth of irony".<sup>83</sup> He continues:

<sup>78</sup> Franklin, *The Kantian Foundations of the Historical School of Law of Savigny*, 22 *Revista jurídica de la Universidad de Puerto Rico*. 64, 85 (1952/1953). Cf. Schrader, *Existential Philosophy: Resurgent Humanism*, in Schrader (ed.), *Existential Philosophers: Kierkegaard to Merleau-Ponty* (1967) 1, 15-16 (on Kierkegaard's "...leap of faith which places absolute trust in the wisdom, power, and goodness of God)."

<sup>79</sup> Marx, *Toward the Critique of Hegel's Philosophy of Law*. Introduction, in *Writings of the Young Marx on Philosophy and Society* (Easton and Guddat trans. 1967) 249, 251. Some commentators make the mistake of regarding Marx here as criticizing Hegel instead of Savigny and Hugo.

<sup>80</sup> Allemann, *op. cit.*, *supra* note 57 at 96.

<sup>81</sup> *Id.* at 97.

<sup>82</sup> *Supra* note 50.

<sup>83</sup> Kierkegaard, *op. cit.*, note 29 at 282.

"Hence when Schlegel or Solger affirms that actuality is mere appearance, mere illusion, mere vanity, a nothingness, they manifestly intend it seriously, yet Hegel supposes that this is irony. The difficulty here encountered is essentially that irony in a strict sense can never set forth a thesis, because irony is a determination of the being-for-himself subject, who, with perpetual agility, allows nothing to endure... and because of this agility is unable to consolidate himself in the total view that he causes nothingness to exist... In the last analysis the ironist must always posit something, but what he posits in this way is nothingness... Irony is the infinitely delicate play with nothingness..."<sup>84</sup>

Kierkegaard develops his theory of history from his idea of negativity. He writes that: "Irony is a determination of subjectivity. With irony the subject is negatively free. The actuality which shall give him content is not, hence he is free from the restraint in which the given actuality binds him, yet negatively free, and as such hovering, because there is nothing which binds him".<sup>85</sup> He says that "... [T]here appears a contradiction which the development of the world occurs. The given actuality of a certain age is valid for a people and the individuals constituting that people. To the extent that one does not wish to say that this development is past, however, this actuality must be displaced by another actuality, and this must take place through this people and those individuals".<sup>86</sup> He continues: "With every such turning point in history there are two movements to be observed. On the one hand, the new shall come forth; on the other, the old must be displaced... [T]he old must be displaced and seen in all its imperfection, and here we meet the ironic subject. For the ironic subject the given actuality has completely lost its validity..."<sup>87</sup> Though Kierkegaard conceives here that irony is historical, nevertheless, the ironist, he believes, is not master of the motion of such history. This is because his negation is an unknowable negativity. He says: "The ironist is in one sense prophetic, to be sure, for he constantly points to something future; but what it is he knows not... The ironist... has advanced beyond the reach of his age and opened a front against it."<sup>88</sup>

The social identity between Kierkegaard and the German romantics, whose theory of irony he condemned, appears in his theory of history. Both conceive of the social struggles of their time not as between the renovated feudal and bourgeois worlds, but as between the "old" and the "new", in which the "new", which they both support, is renovated feudalism. Kierkegaard agrees with the German romantic thinkers, Savigny<sup>89</sup> and Schlegel,<sup>90</sup> that

<sup>84</sup> *Id.* at 286.

<sup>85</sup> *Id.* at 279.

<sup>86</sup> *Id.* at 277.

<sup>87</sup> *Id.* at 277.

<sup>88</sup> *Id.* at 278.

<sup>89</sup> See Strauch, *Recht Gesetz und Staat bei Friedrich von Savigny* (1960) 164.

<sup>90</sup> Schlegel, *op. cit.*, *supra* note 54 at 15.

the "new" is feudalism. Kierkegaard formulated his support of the feudal "new" less than a decade before the revolutions of 1848.

## VI

Although Kierkegaard's conception of Socrates' irony leads him to "hover" subjectively and negatively over actuality, he nevertheless declares the positivity of the "community" of ironists which Hegel had condemned.<sup>91</sup> The subjective or Socratic ironist, Kierkegaard believes, must live poetically or authentically, which means to be "assimilated into the age in which "the ironist" lives, when he is positively free within the actuality to which he belongs. But to live poetically in this way is attainable for every other individual".<sup>92</sup>

Kierkegaard makes a statement as to the course of the nineteenth and perhaps twentieth-centuries. "In a much later age, after these Ideas have acquired their actuality, personality its absolute fullness... when subjectivity again seeks to isolate itself and infinite negativity once more exposes its abyss in order to engulf the actuality of this mind or spirit, irony will then exhibit itself in an even more dangerous and precarious shape."<sup>93</sup>

Thus, through the midwifery of the trial of Socrates and of the struggle over German romanticism between Hegel and Kierkegaard there has emerged the twentieth-century rivalry over irony, negativity, possibility and alienation. In the first thesis on Feuerbach, Marx says that defect of previous materialism was that the object was not conceived subjectively. "[T]he active side was developed abstractly by idealism", he writes.<sup>94</sup> In the third thesis he says that the previous "materialist doctrine concerning the changing of circumstances and upbringing forgets that circumstances are changed by men and that it is essential to educate the educator himself. The doctrine must, therefore, divide society into two parts, one of which is superior to society."<sup>95</sup> Marx here is referring to the role of the unhistoric prince of eighteenth-century theory whose unambiguous "pure and simple", enlightened bourgeois civil codes and laws were to alienate feudal alienation. To what Marx says may be added that through Kant and certain of his successors German idealism developed the activist hegemony of the unhistoric prince or unhistoric mediator of the eighteenth-century, but not always as an enlightened hegemony. The unhistoric prince reappears in the activism of

<sup>91</sup> *Supra* note 69.

<sup>92</sup> Kierkegaard, *op. cit.*, *supra* note 29 at 338.

<sup>93</sup> *Id.* at 221. If the word "precarious" has the meaning in Danish that it has in Roman and civil law, it is a word of terrific legal force, suggesting the power of possibility exercised through the will of the subject-of-law.

<sup>94</sup> Marx, *Theses on Feuerbach*, in Marx and Engels, *The German Ideology* (Ryazanskaya trans. 1964) 659.

<sup>95</sup> *Id.* at 660.

the ambiguous subject of Kant's *Critique of Pure Reason*, in the activism of the acrobatic holy moral legislator of Kant's *Critique of Practical Reason*, in the activism of the agile artist or genius of Kant's *Critique of Judgment*. He is veered into the activism of the man-god subjective ironist of German feudal romanticism and into the possibilist activism of Socrates in the ironist existentialism of Kierkegaard. Hegel, too, justifies the activism of idealism, but he condemns the subjective irony, arbitrariness, *Verstellung*, *déplacement* of all external mediators; and in his considerations on the trial of Socrates makes it possible to relate subjective agility and equivocation to the contradictions of the historic infra-structure.