

German Political Philosophy

The metaphysics of law

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5 The Young Hegelians and Karl Marx

Stahl and positive philosophy

The decades after the French Revolution in Germany were generally characterized by critical attitudes to the constitutional ideals arising from the Revolution. These attitudes at times expressed a full rejection of liberal ideas, but more generally they were marked by tentatively progressive attempts to incorporate these ideas within a gradually evolving state apparatus. Almost universal in the aftermath of the French Revolution, however, was a broad aversion to formal ius-naturalism and to the rational and individualistic concepts emerging from ius-natural political philosophy. The more conservative elements in this set of responses to the Revolution were reinforced during the period of political restoration after the end of the Congress of Vienna, which saw both the reconsolidation of monarchical government in the German territories that had been controlled by Napoleon, and the termination of the reforms that had been stimulated by Napoleonic ideas. As discussed, the post-Napoleonic backlash against reform and revolution found varied articulation in different romantic outlooks, but it reached perhaps its most exemplary status in the *personalism* of Schelling's positive philosophy.

Apart from Schelling, the most important representative of positive philosophy in political debate was Friedrich Julius Stahl, whose work both captured and pervasively influenced the spirit of reactionary consensus between 1820 and the revolutionary years of 1848–49. Like other conservatives, Stahl criticized political doctrines based in natural law,¹ he rejected contractarian political conceptions,² he wrote polemics against atomistic or individualistic ideas of legal entitlement,³ and he took a stance against institutional analyses that limited the personal authority of monarchs.⁴ Above all, Stahl reserved his most envenomed invectives for Hegelian ideas of legitimate statehood, and, like Schelling, he denounced what he viewed as an alleged *depersonalizing* tendency in Hegel's political thought: that is, a tendency to view processes of social formation and evolution as shaped by an overarching rationalism, not as the results of absolute personal decisions or absolute personal wills.⁵ For this reason, he rejected Hegel's claim that the legal origins of political order evolve from a socially embedded rationality

or from an 'impersonal substantial will', rather than from a personal centre of power, and he saw Hegel's rationalist ideas of freedom as responsible for a devaluation of personal authority in the state.⁶ Hegel's misinterpretation of political evolution, he in fact concluded, was caused by Hegel's insistence that God is a rational entity, not a personal will, and that God's freedom is a freedom of the rational will, not of the absolute will. Against Hegel, therefore, Stahl argued that the personal God is the unifying foundation of human life and human politics, and God's absolute will, not God's reason, is the origin of legitimate and enduring political orders. For Stahl, in other words, Hegelian rationalism disturbs the personal-metaphysical fundament of the world: it removes God from his position as an originating and positively revealed force in the world, and it consequently erodes the stable basis of will, character and personality upon which legitimate states are dependent. Stahl advocated a *personal polity*, united around a monarch representing God's personal will. The 'monarchical principle', he claimed, is the 'foundation of all German state law',⁷ and the monarch obtains legitimacy by enacting a 'personification' of divine will in the state.⁸ The 'basic structure' of the state is its division into 'authority and people', and this hierarchy is immediately founded in the personalist principles of Christian dogma: the state possesses its greatest legitimacy where it represents the absolute personality of God and where this personality acts as the cause or first mover of the freedom of the subjects living under the state.⁹ Indeed, Stahl argued that the church itself should be organized in an episcopal constitution, enabling the monarch to exercise 'external power over the church',¹⁰ and to cement an 'autocratic principle' at the centre of religious representation.¹¹

Despite this authoritarian attitude, however, if viewed against its contemporary background, Stahl's work also contains an intentionally moderating account of monarchical rule. At the core of his thought is an idea of 'limited monarchy',¹² which seeks, albeit cautiously, to combine personalist monarchism with elements of constitutional legal statism. Unlike the ultra-reactionary theorists around Haller, for instance, he insisted that a personal state must always necessarily be 'a legal state', in contrast to the 'patriarchal, patrimonial' state, and he was insistent that pure absolutism cannot produce a reliable state form.¹³ Stahl's personalism in fact revolves around a reiteration of the classical Evangelical attempt to fuse elements of personal voluntarism and universal normativism, and so to derive laws in the state, not from principles of human reason, but from the state's analogy to the divine will. He argued that personal states, united under Christian monarchies, are representatives of God's own personality, which is, necessarily, a moral personality. In consequence, such states always have the natural propensity to institute rule by universal moral laws, both for their subjects and for their own administrators, and they are naturally inclined to institute laws under which both state and subject are recognized as personalities, as agents endowed with wills, freedoms and entitlements.¹⁴ A polity concentrated in princely personality in fact contributes to the

formation of the ‘human personality’, and it elevates ‘the human community’ towards a condition of personal unity and freedom, under one will and one law.¹⁵ The prince is, therefore, bound simultaneously by laws that are deduced from God’s personality and laws that are deduced from the ideal personality of the subjects; these laws confer a universal legal fabric on the state, whose origin – dialectically – is in the prince’s own representative personality. The prince who exercises personal rule, consequently, can under no circumstances own the state, and he cannot act independently of the state’s laws. He is obliged by laws originally deducible from his own personality not to ‘contravene the law’,¹⁶ and to ensure that laws are communicated in procedurally correct manner.¹⁷ He must also provide for a condition in which all subjects are treated as equals (as persons) before the law, endowed with social rights and a ‘firmly delineated and assured legal position’.¹⁸

Stahl’s work, therefore, undoubtedly formed a conservative response to the constitutional and liberationist movements stimulated in both church and state by the French Revolution. Nonetheless, he did not deny that legally secured freedom is a necessary element of legitimate statehood, and he did not wish categorically to reverse the processes of legal positivization and structural liberation that he identified in post-1789 societies. On the contrary, implicit in Stahl’s political theology is the claim that the legal basis of the personally constituted state is always, in an eminent sense, *free*, and that divine personality in politics manifests itself in processes of representation, which do not preclude ‘reform’, change and legal transformation.¹⁹ Indeed, it is constitutive of princely power, as a personal will, that, like God’s will, it is positively free, that it enacts new principles of order, and that it cannot be bound by immutable constraints. He consequently did not conceive the representative personality of the prince as a theocratic body tied to immutable metaphysical ideas.²⁰ Instead, he saw the state founded in personality as a dynamically representative will, which is able to allow modification and flux into law and state without relinquishing all stable foundation. The positive alteration of the law’s foundation, Stahl thus concluded, is inevitable and desirable; alterations in the law constitute the dynamic element of freedom in the polity. It is, however, necessary to ensure that law does not become entirely positivized, and that it does not forfeit all foundation in substantial principles; it is necessary to ensure, in other words, that the ongoing reformulation of law – its ‘positive formation’ – remains connected to ‘God’s world order’, and is not severed from substantial ideas.²¹ This balance between positivization and order, for Stahl, can only be preserved through the origination of law in the princely will: the role of the prince is to ensure that processes of social change and legal positivization take place within certain guiding parameters and within an orderly representative structure. Indeed, one implication in Stahl’s work is that the principles of formal natural law, which have stimulated legal positivization through the Enlightenment, the French Revolution and early capitalism, do not constitute

reliable foundations for the free socio-political order, but in fact tie common life to static principles of unfreedom. The personal prince, however, embodies an alternative idea of natural law, whose originating personality is bound in two directions to God and to the people, and this idea contains stronger, more flexible and ultimately more enduring ideas of natural law and legal positivity than the static and intractable prescriptions of human rationality. Freedom in the state, in short, is obtained through God's absolute freedom embodied in the human will, and the personal will is always one element in God's own freedom.

For this reason, Stahl, who was in fact of Jewish origin, saw Protestantism as a distinctively modern theological-political doctrine, producing modern ideas of freedom inside and outside the state. Protestantism, he argued, is the religion of free personality, founded in a belief in God as a free and spontaneously creative person,²² and it is able to institute a genuine ethic of personality in the state. As a consequence, only Protestantism can meet the challenges of modern politics by establishing state forms that are not only positively free but also structured and ordered. Protestant states, Stahl explained, have the particular advantage that their monarchs are not bound by perennial legal or theocratic prescriptions; they can develop their personal rule in relative independence; and they can freely alter the conditions of governance for their subjects – but they also remain bound to the orderly representation of overarching ideas of divine-natural law.²³ Only Protestantism, therefore, can give substance to the progressive conservative state, which Stahl viewed as the necessary antidote to excessive reformism and revolutionary zeal.

Heteronomy and the personal God

Reactionary thought in the period 1820–48, exemplified primarily by Schelling and Stahl, was thus shaped by the belief that God's personality exists as a unique, distinct and transcendent metaphysical subject and that the legitimate human polity is the personal state that positively represents this prior metaphysical subject in laws. These reactionary views saw the legitimate will of the state as a metaphysical or absolute will, and they saw the laws defining political legitimacy as derived, not from a human will or human needs, but from the divine personality represented in the state, which allocates certain rights and freedoms to citizens as (at most) externally imposed formal attributes. The metaphysical conception of the state as an absolute person had its corollary in a construction of individual subjects as absolute persons: that is, as formal bearers of positive wills, whose claims to rights and entitlements are contingent on their recognition by the person of the state, but who are invariably positioned outside the state. These views consequently supported a state centred in a monarchical executive, coupled with certain minimal constitutional constraints, sanctioning subjects as free in the exercise of private rights and entitlements.

For this reason, critics of monarchical legitimism in Germany often expressed their opposition to government in the era of restoration in theological categories, and dissenting political views were sustained by a metaphysical critique of personalism.²⁴ Indeed, the increasing groundswell of hostility to monarchical restoration which became vocal in the 1830s, and which ultimately led to the quasi-revolutionary upheavals of 1848, enunciated many of its guiding ideas in the form of an anti-metaphysical argument, and it explained its political content as a revolt against the presence of positive metaphysics in politics, law and religion. This was particularly characteristic of the works of the Young Hegelians, a group of intellectuals who took an emancipatory interpretation of Hegel's dialectics as the basis for an attack on absolute personalism in religion and politics, and who saw the critical transformation of metaphysics in religion as a constitutive precondition of human liberty in politics.

The major Young Hegelians, Bruno Bauer, David Friedrich Strauss and Ludwig Feuerbach, all organized their work, albeit in highly diverse manner, around an attempt to elucidate the contents of religion through anthropological categories, as accounts of human freedom. In this, all criticized the metaphysical foundations of positive philosophy, and all sought to provide a view on religion that might allow human beings to free their laws from religious ideas, and to interpret law, not as an emanation of absolute or divine personality, but as an expression of human essence and human freedom. Central to the work of all Young Hegelians was thus the insistence that positive philosophy stands in the way of legal positivization and human freedom under law. Positive philosophy, they claimed, is in fact a fully heteronomous legal doctrine, under which laws are detached from human freedom, and so inflict a condition of alienation throughout society. To develop these perspectives, the Young Hegelians proposed a reconception of Hegel's ideas in which they sought to separate the idea of rational freedom in Hegel's philosophy from its metaphysical substructure and from all attachment to political authoritarianism. Central to this, in fact, was the claim that Hegel had not developed his own philosophy as a doctrine of radical freedom because his thought had not liberated itself from metaphysics. Despite their metaphysical suspicion of Hegel, however, they drew extensively on his theory of the rational state, and they also called extensively on his philosophy of religion; especially in its insistence that ideas of freedom in religion are ideas of human freedom, imagining a 'unity of divine and human nature', and that human reason is operative in fulfilling these ideas.²⁵ This view gave a foundation on which the Young Hegelians were able to construe religious concepts as moments in a course of human formation and self-liberation, to convert religious narratives into signifiers of reason's own freedom and, most importantly, to divert religious and political thinking away from monadically substantial or pure-metaphysical accounts of truth as divine essence or personality.²⁶ Young Hegelian philosophy was thus centred on a reaction against positive philosophy and religious

personalism and on a critical move towards a philosophical *anthropology*, whose main principles were applied particularly to religion. Through this anthropological turn, they argued that the rational freedom of human personality, not the absolute will of the metaphysical personality, is the centre of religious analysis, and they claimed that the freedom of God is falsely reflected wherever it is identified as a will that is external or superior to human freedoms. Human freedom, they argued, is the only possible content of God's freedom, in its necessary difference to itself, and all objective obstruction of human freedom is an objective obstruction of God's freedom.

The early writings of Bruno Bauer, for instance, used religious analysis, scriptural exegesis and religious historiography to set out a critique of the religious-metaphysical and politically authoritarian ideas underlying positive philosophy and to transform religious reflection into an anthropological analysis of the ideas of human freedom. Bauer's earliest works still show a proximity to the more conservative or at least moderate wing of post-Hegelian religious-political philosophers. During his formative period, he did not formulate religious questions in exclusively anthropological terms, and he retained the belief that documents of religion have a real historical content.²⁷ In some respects, in his very early works Bauer was close to the post-Hegelian theology of Philipp Marheineke. Marheineke opposed Schelling's static personalism in religious inquiry,²⁸ and he negated all suggestions that human reason is indifferent in religion, or that there might exist a 'dualism between philosophy and religion'.²⁹ Nonetheless, he also asserted that reason accounts for its foundation when it recognizes its 'dependence' on God, that God has a personality prior to humanity, and that revelation, not reason, is the 'original source' of truth.³⁰ Despite this, however, even in his early works Bauer differed from more orthodox Christian Hegelians; he rejected the claim, exemplified by Marheineke, that the truthful content of human 'self-consciousness and worldly consciousness' is in fact the 'consciousness of God', whose personality is above that of humanity.³¹ In fact, even in his early works he described religious contents and revelations as moments in the formation of human self-consciousness, in which reason reflects the stages of its own ideas of 'freedom'.³² Human religious reflection, on Bauer's early account, is thus 'God's relation to himself', in which humanity progressively recognises God as the ground of its freedom.³³ In consequence, the early Bauer viewed religious reflection as a process of conscious formation in which the metaphysical 'strangeness' of God to humanity, and – in consequence – the 'otherness' of humanity to its own freedom is overcome. In religious reflection, the 'self-consciousness of God' is reflected in the human being, and, through this, God's freedom is formed as a human idea, or as humanity's consciousness of its own ideal form.³⁴ Consequently, he interpreted God's revelations as stages in a particular human course of human self-possession and realization, and he saw the contents of the scriptures as reflected ideas of human freedom. On this foundation,

then, Bauer ultimately proposed a strategy of religious hermeneutics and critique, claiming that the Christian scriptures should be interpreted as historical figures of human self-consciousness, in which the human spirit describes for itself the different stages of its self-alienation, renewal and ultimate free self-fulfilment.³⁵ He described the narratives of the New Testament as enacting a rebellion of human self-consciousness against the conditions of its first alienation and underdevelopment, symbolized by the purely metaphysical or theocratic God of the Old Testament. The revelation and incarnation of Christ in the New Testament, he then explained, marks a moment of reconciliation in self-consciousness, in which ‘subjective spirit’ unites itself with ‘divinity’, in which the human and the divine self-consciousness are reconciled, and in which human reason concretely reflects its own idea of freedom.³⁶ In this critical hermeneutical approach, Bauer began to interpret religious contents for their ideal-anthropological foundations and to construe these contents as real moments in the ideal evolution of the human being towards a realization of itself as free, in likeness to God.

Of great importance in this, moreover, is the fact that the early Bauer also interpreted religious narratives as *legal narratives*, and he saw stages in the ideal relationship between human and divine self-consciousness as articulated stages in the formation of human freedom *under law*.³⁷ He consequently saw Christian religion as enacting an overcoming of pure metaphysical (theocratic) law and as narratively figuring a legal realization of self-conscious human freedom, in which freedom is rationally reconciled with its laws. This process of reconciliation, he explained, began with the emergence of a subjective spirit of self-legislation, which sought to overcome the oppressive heteronomy of Old Testament theocracy;³⁸ Bauer saw the laws of the Old Testament as the laws of the absolute ‘person’, in which legal entitlement is determined statically and heteronomously, and in which human consciousness has no role in founding the conditions of entitlement and obligation.³⁹ This process of reconciliation is then completed in the ‘revealed religion’ of the New Testament, in which people encounter revealed law (the new law) as their *own law*, or law in their own likeness.⁴⁰ Biblical scriptures thus describe the formation of self-consciousness as a human liberation from the yoke of heteronomous or pure-metaphysical laws. Indeed, God’s revelation in Christ contradicts all objective or authoritarian law, for it represents a condition in which humanity is reflexively reconciled with its absolute essence, and where, consequently, it is no longer determined by law as an external or heteronomous edict.⁴¹ The telos of human self-consciousness, therefore, is to move away from theocratic or metaphysical legal orders, exemplified by the personal Jewish state of the Old Testament, and to elaborate a condition of non-metaphysical self-consciousness under own laws.⁴²

After the late 1830s, Bauer ceased to define himself as a theologian, and he came to the conclusion that only ‘materialism’ can provide for a plausible

‘philosophy of self-consciousness’.⁴³ At this point, Bauer asserted that religion cannot express ideas of freedom or account for a condition after heteronomy: all religion, he claimed, *is* heteronomy, and religion invariably subjugates humanity to an ‘alien, tyrannical law’.⁴⁴ In his works of this period, he concluded that only the ultimate overcoming of religion could bring about the act of liberation from false law, which he had once seen as the function of religion. Human freedom, he concluded, is not God’s freedom – it is merely human freedom, and it can only be freedom in so far as it is exclusively human freedom. Even after his anti-religious turn, Bauer did not wholly abandon his earlier scriptural hermeneutics, and he still argued that certain moments in Christianity describe an anthropologically constitutive negation of false law.⁴⁵ However, he asserted that religion can play no meaningful role in instituting the ‘moral world’, and all burdening of human existence with religious ideas can only impede the realization of human freedom.⁴⁶ The state, not religion, he in fact concluded, is the ‘sole form’ in which the ‘infinity of reason’ can be represented, and the institutions of religion can never be more than a subordinate element in the constitution of the state.⁴⁷ Religion has no ‘legal existence’ outside the state, he now argued, and it cannot generate reliable conditions of freedom and entitlement.⁴⁸ Authentic law, consequently, can only be instituted by a strong republican state, and it is only in the state that fully self-conscious ideas of freedom under law can be put into effect. Close to Fichte, then, he argued that a state guaranteeing freedom subordinates all spheres of intellectual exchange (including religion) to the sovereign will, and that this state is formed by a republican constitution that generates ideas of right and entitlement, not as metaphysical norms, but as commonly elaborated claims.

Bauer intended his earlier religious writings to salvage religious contents from the claims of theological metaphysics and positive philosophy. His later writings both transformed and extended this approach and sought to rescue human consciousness from *all* metaphysics, including religion itself. His later works therefore articulated an intense aversion to all metaphysical thinking, which he construed as a dragging and debilitating force in politics, philosophy and – above all – in *law*. The motives for this change of mind are expressed most evidently in Bauer’s later political writings, after the failure of the revolution of 1848–49. After 1849, he argued that the inability of the liberal revolutionaries in the Frankfurt Parliament to create a sustainable constitutional order had been ‘internally connected’ with the persistence of metaphysical ideas in philosophy.⁴⁹ The enduring influence of metaphysical constructions and intellectual schematism in this period, he claimed, testified to a pervasive weakness in human politics and to an under-evolution of human powers of rational self-assertion in the political domain. This made human political life highly susceptible to absolutism, both in intellectual life and in political organization. Metaphysics, he concluded, imposes intractable order on creative and personal life; it depreciates local or immanent expressions of freedom and reason; it makes human

existence accountable to chimerical and abstracted concepts of right, concentrated in reduced ideas of personality; and it leaves society reliant on absolute and universal descriptions of its own foundations. Societies which are not fully liberated from metaphysical universalism and which have not elaborated rational, anthropological and fully positive foundations for their own administration tend, therefore, to promote abstractly personalized ideas of legal and constitutional life and abstractly personalized models of governance, which give little opportunity for the genuine realization of freedom.⁵⁰ Above all, he argued, metaphysics tends to stimulate a legal hypertrophy throughout society, as metaphysical attitudes derive the values of political life from insubstantial, yet oppressively applied abstract laws. The failure of the republicans and the constitutionalists around 1848 to emancipate themselves from metaphysics was manifest, above all, in their inability to interpret law as a terrain of freedom and the rational will. Instead, they remained obsessed with ‘the cult of law’, which, with its ‘paragraphing’ of all vital aspects of political existence, did little more than replicate the ‘mania of earlier absolutism’ and to ‘dominate every sign of life with its regulations’.⁵¹ The positivist orientation in constitutional theory, Bauer indicated, was primarily responsible for disseminating a conception of rights that failed to understand rights as anything more than formally allocated adjuncts to monadic persons, and that simply transposed the fiction of personality from the metaphysical God to the personalities of state and subjects. Because of this, the rational will behind the revolution had been inhibited, and it had fatally compromised with metaphysical ideas of legal personality and freedom. Bauer’s later political view thus culminated in the claim that the survival of strong political cultures requires a constant critique of religion and metaphysics,⁵² and a ceaseless endeavour to separate political freedom and rational spontaneity from their domination by false – and falsely metaphysical – laws. Indeed, one guiding impulse throughout Bauer’s work is the claim that the dominant areas of human activity – religion, politics and philosophy – allow metaphysics to prevail over humanity and that in each of these areas humanity must reflect and assert its freedom as other than metaphysics. The outcome of this, if successful, will be a reliably human system of rational law.

Species-being and the law

David Friedrich Strauss moved towards still more resolutely anthropological perspectives in his reflections on politics and theology, and he placed himself at the left of the intellectual milieu around the Young Hegelians.⁵³ Unlike the early Bauer, Strauss denied the historical factuality of divine revelation,⁵⁴ and he was prepared to see the scriptures only as mythical forms or as ideal reflections or projections of human self-consciousness,⁵⁵ requiring rigorous analytical critique for their true content to be illuminated.⁵⁶ The stories of the birth and resurrection of Christ, he claimed,

above all, should not be approached as truthful historical narratives, but as myths in which human consciousness constructs and expresses *an idea* of its own essence and its own freedom. In Christ, therefore, the human mind interprets its own 'divine-human life' and, in consequence, it invigorates 'the idea of humanity' within itself. The figure of Christ is not one unique historical personality; it is an 'idea', symbolically embedded in historical form, through which the human mind configures the possibilities of humanity and freedom that are common to all human beings, as a species (*Gattung*).⁵⁷ Christ is the symbolic or ideal encompassing personality (*Allpersönlichkeit*) of the entire human species, and Christ's characteristics belong, not to one, but to an infinite number of persons.⁵⁸ Each person is, therefore, charged with responsibility for interpreting Christ's attributes of humanity and freedom as the attributes of all persons, binding all persons to all other persons.

Strauss did not see the revelation of Christ as an accomplished realization of human essence. Instead, he argued that religious figures of humanity always refract a disjuncture between human existence and its highest possibilities. Like Bauer, in fact, Strauss saw Christian dogma and church history as describing the gradual evolution of human species into a state of legal self-consciousness and freedom, and, at the same time, as perpetuating a complex 'alienation' of human beings from their own essence.⁵⁹ The contents of religion, he argued, are merely human contents, and these contents are alienated through their construction as divine or sacred. Humans are consequently called upon to reclaim or 'take back' the human ideas that have been objectivized as the contents and commands of religion.⁶⁰ It is the task of rational religious interpretation to transform religious symbols into human freedoms and to translate the externality of revealed commands into indices of human self-legislation. Religion is only fully understood and complete where its contents have been interpreted, through a critical hermeneutic, as mythical figurations of freedoms inherent in human species, not as external or metaphysical substances. It is, in consequence, only through the 'evolution of Christianity into pure humanism' that the true implications of religion can be redeemed.⁶¹

Amongst the Young Hegelians, the works of Ludwig Feuerbach contain the most critical analysis of religion. In his writings of the early 1840s, Feuerbach intensified the views of Strauss on religion and human species, and he argued that orthodox conceptions of divinity are merely distortions of the needs, desires and the possibilities of freedom, which are constitutive of the human species. God, in fact, is nothing more than a falsely alienated objectivization of the ideal and constitutive attributes of humanity: its species-being (*Gattungswesen*). God is a fictitious site onto which human beings are coerced into projecting the founding contents of their own nature, and in which they admire and fear attributes that are nothing but externally transformed elements of their own primary ideal nature and dispositions. God, consequently, is perceived as absolute freedom or an 'absolute

essence'. Yet this essence is factually humanity's 'own essence' or species-being, distortedly transmuted into a personality outside humanity and withholding from humanity the possibility of its personal freedom and self-possession.⁶² To a greater extent than Strauss, therefore, Feuerbach concluded that religion is a violation of human life and its originary dispositions. Religious constructs prevent human beings from accomplishing and fulfilling their own basic dispositions. Religion is a 'negation' of all that the human being truthfully is, and the symbols of species-being, which humanity encounters in religion, are sustained only because, in religion, humanity wilfully and paradoxically allows itself to be alienated from the conditions of its self-fulfilment and permits an alien God to stand in for the condition of its freedom and self-legislation.⁶³ The task of religious analysis is thus to conduct an anthropological or humanist reappropriation of theological ideas for human society, to understand the symbolic forms of religion as external and falsified indices of human essence, freedom and possibility, and to recuperate the elements of humanity objectivized as God for the self-formation of humanity itself.⁶⁴ For these reasons, Feuerbach's philosophy of religion contains a most vehement attack on theological personalism and on the doctrine of God's metaphysical personality.⁶⁵ God's absolute personality, Feuerbach argued, represents nothing less than the total alienation of humanity from itself; God's personality is the alienated essence of the human species, which has been violently 'transformed into a person' and removed from humanity as a set of formal predicates attached to a fictitiously projected divinity.⁶⁶ God's personality, therefore, is an expropriated form of the human personality, of the personality of the species, distortedly reflected as a metaphysical person. This metaphysical personality, then, is the paradox at the centre of the human universe; it is a personality that is abstracted without reality from human existence, yet prevails over the human will and controls human life with its commands and its regime of moral self-suppression. It is only where the metaphysical personality of God is recognized as paradoxical and where it is interpreted as the residue of a human personality or of many human personalities that the self-alienation of human species occurring as religion can be terminated.⁶⁷

Feuerbach also gave clear articulation to the political implications of anti-personalist theological reflection. His philosophy of religion is pervaded by a Promethean impulse, which suggests that the final recuperation of human attributes from their metaphysical externality in religion will result in a utopian political condition. In this condition, human beings will be reunited with their common essence, and so freed from the life-denying tyranny of metaphysics and false personalism. This condition, moreover, will be one in which people are free authors and interpreters of *their own laws*, and where their laws reflect primary human orientations and needs. In this condition, metaphysical laws will be transformed into a 'personally living law, a law become flesh, a human law'.⁶⁸ More clearly still than other Young Hegelians, therefore, Feuerbach's view on religion provided for an

emancipatory political vision, which saw the overcoming of personalist metaphysics as the end of false laws and the beginning of shared freedom under laws.

At the heart of Feuerbach's philosophy, additionally, is a quasi-hermeneutical theoretical turn, which also contains distinctive implications for his legal and political ideas. Human beings understand each other, he argued, because they have a common species-being. Wherever a human being speaks, he or she speaks with another person as a member of the species, and the speech-acts occurring between these persons always mark an intersubjective elaboration and disclosure of capacities for commonality and shared insights which all people, as members of the species, possess.⁶⁹ Speech, consequently, is a process in which human beings gain greater understanding of each other, of themselves and, at the same time, of their ideal selves as bearers of species-being. On these grounds, Feuerbach indicated that the absolute human person – species-being – is falsely construed where it is seen as one solitary or monadic person, incorporating a stable and finally invariable set of qualities. Instead, the truly human person is a collective person, founded in shared dialogical processes of free elaboration and interpretation, in a constant process of evolution and self-formation. In this respect, therefore, Feuerbach's account of human essence fundamentally denounce the personalism of the religious thought and religious politics that surrounded him, and, similarly, it deeply undermine the legal and political preconditions distilled from such thought. His essential motive in this was to show that human personality is not only distorted where it is projected onto a metaphysical God, but that the metaphysical God, in turn, has led to a distortion of how human beings think of themselves as personalities, and of how they think of other human beings as personalities. The habitude in which people construe and presuppose the absolute subject of the metaphysical God as the supreme locus of truth, contained in itself and distinct from other subjects, has conditioned people to think of themselves and others as absolute subjects, fully self-contained and eternally distinct from other subjects. Because of this, human subjects ignore their constitutive relationships with other people; they tend to construct objectifying and purposive images both of themselves and of others; and they tend to accept social and political structures founded in absolute constructs of personality. Feuerbach's critical reading of religion was, therefore, most manifestly, intended to reclaim the metaphysical person of God as humanity's own person. But the hermeneutical aspect of this approach was also intended to redeem the human subject from its metaphysically deluded self-construction as an absolute person and to allow a reinterpretation of this subject as social, changeable and contingent on formative dialogue. Underlying this idea is the intimation that the end of humanity's fixation on God's absolute person will also permit people to see their own persons in conditions of reciprocity, shared freedom and commonality. The liberation of humanity from metaphysics will, in other words, be a collective liberation, and in this

condition of liberation people will not live under the laws of solitary subjects, but they will form laws as common laws, in which one person's freedom acts as the condition of the freedom of others. In this respect, Feuerbach's anti-personalism in religious critique clearly intersects with an anti-personalism in legal critique, which construes the abrogation of personalism as a new law, founded in a common, not a personal, will.

As an extension of this, Feuerbach also asserted that the metaphysical personalism of positive philosophy promoted dualistic or authoritarian conceptions of the state. Like Bauer, he saw personalism as the metaphysical basis of absolutism. In the same manner that personalism in religion effects a division between the absolute subject of God and the absolute subjects of self-alienated people, who are separated as creators and created, personalism in politics, he argued, effects a division between the absolute subject of the state and the formally purposive subjects of civil society, who are separated as legislators and legal addressees. Personalism thus creates an intellectual disposition that allows the state to stratify its functions above society and to disaggregate society and economy into a plurality of antagonistic and self-seeking individuals; that is, into a set of competitive economic agents, endowed with fixed rights of ownership, committed, as absolute persons, only to exercising rights of acquisition and self-furtherance.⁷⁰ In this, Feuerbach indicated that the political reality of pre-1848 Germany, structured around a late-absolutist political order and an early capitalist economy with little representative or organic mediation between them, was the material substrate of metaphysical personalism. The contemporary foundations of private law and public law, he concluded, have their origins in a falsely metaphysical view of God's personality and in the retraction of rational freedom that this enacts; the abstractly personalized state of public law and the abstractly personalized agents of private law are both derived, in equal measure, from an insufficiently human understanding of personality. Like Bauer, therefore, Feuerbach also came to the conclusion that the weakness and alienating intractability of German political life was induced by a persistence of metaphysics, which obstructed the evolution of a political culture permitting the positive production of free and rational laws.

Hegelians on the Left and Right: the schismatic personality

It is around the questions of personality and metaphysics that the religious and political doctrines of the Hegelian thinkers in the 1830s and 1840s were most sharply divided, and these questions formed the fault line separating more conservative Hegelians from the more radical younger generations of theorists. The most conservative Hegelians such as, first, Karl Friedrich Göschel and, later, Julius Schaller opposed all anthropological theories of God's personality. They argued instead that God should be viewed as a transcendent personality or 'highest personality' – or, in Hegelian terms, as the personal form of the 'absolute spirit'. God's personality, they claimed, is

absolutely prior to all the members of the human species and it is manifest in the historically unique revelation of Christ.⁷¹ Göschel especially insisted that 'the absolute personality of God' is the constant and positive 'condition of creation' and of the 'created personality' of all finite beings.⁷² Only revelation, not human reflection, can disclose God's personality.⁷³ Analogously, Schaller protested against the mythological interpretive approach pioneered by Strauss, and he insisted that the formal personality of Christ should be viewed as a historically unique figure,⁷⁴ and that the 'real revelation' of 'absolute personality' is the sole form of absolute human self-knowledge.⁷⁵

More moderate, or moderate conservative, Hegelians, such as Marheineke, Karl Ludwig Michelet and Karl Rosenkranz, also rejected the mythological and anthropological ideas of the left wing of the Young Hegelians. Marheineke accepted that God's historical revelation results in part from an 'idea of God' in human consciousness, and that human consciousness has a specific 'receptivity' for revelation; revelation is thus a distinctive event of human consciousness.⁷⁶ However, he also claimed that Christ's incarnation should only be seen as an incarnation of a prior personality, never 'anthropologically'.⁷⁷ Rosenkranz also defined God as an absolute subject or 'transcendent creator', albeit as a creator who remains present and active in the world and in human consciousness.⁷⁸ Michelet mediated between different post-Hegelian intellectual tendencies. He shared with Bauer, Feuerbach and Strauss the conviction that God's personality should not be viewed as metaphysical essence, but as God's own formative humanity.⁷⁹ Like Bauer, he concluded that the 'eternal personality of the spirit' is not God in abstraction or difference from humanity and creation, but 'God's self-consciousness', which can only be realized in the 'human spirit'.⁸⁰ He therefore sought at once to preserve the categorical distinction of divinity and humanity, yet also to construe divine personality, not as static essence, but as God's evolution *in* and *as* humanity. However, unlike the left-leaning Hegelians, Michelet opposed anthropological theories that defined God as a condensation of common human attributes. He saw in this, first, both a denial of the 'absolute objectivity of divine substance',⁸¹ and, second, a depreciation of the role of individual human subjectivity as the particular location and expression of divine substance.⁸² Michelet therefore never renounced the claim that God is metaphysically prior to humanity, and that human personality, either individual or collective, only assumes its greatest dignity as a necessary moment 'in the life of the absolute',⁸³ or in a relation of 'conscious unity' with the 'general divine personality'.⁸⁴ Although politically closer to the Hegelian left than Michelet, August Cieszkowski also occupied a mediating position between anthropological and transcendent personalist arguments. Cieszkowski saw human historical process as a divine/material elaboration of God's 'absolute personality'.⁸⁵

The different views on the divine personality in post-Hegelian thought were closely bound up with the different political attitudes of these

philosophers. The more conservative Hegelians adapted their emphasis on God's absolute personality to endorse authoritarian political attitudes, defining the personal executive as the focus of state authority. Göschel's personalism, for instance, led him to claim that monarchical systems are most likely to foster a climate of 'real personality' and personal freedom and formation.⁸⁶ Other conservatives argued that the ideal state is one that is both closely integrated with the church, and in which princely power enjoys divine sanction.⁸⁷ These theorists thus tended to deny that the state is an arena of independent will-formation and self-realization, and they founded the personality of the state in its constitutional unity with God's own personality. The more moderate personalists tended to support monarchical political systems in which the personality of the state is expressed in socially accountable constitutions.⁸⁸ These views construed the constitution as the human element of state's personality. Michelet's moderate personalism, for example, led him to support a constitutional state, in which the 'personal freedom' of individual citizens is secured by a 'representative constitution'.⁸⁹ He thus endorsed a progressive 'constitutional monarchy, surrounded by democratic institutions'.⁹⁰ In addition, then, the three major thinkers to the left of the Young Hegelian milieu developed their anti-personalism to insist that the substantial and self-interpreting personality of humanity must form the constitutive basis of all political authority. Strauss supported a progressive constitutional system. Bauer opted for an actionistic republicanism, framed within a strong representative monarchy.⁹¹ Feuerbach was close to aspects of early socialist thought, and he saw liberation from God's metaphysical personality as the precondition for an emancipatory or republican politics.

The post-personal state

The left-leaning Young Hegelians construed the political sphere as the sole sphere of society in which human beings, if liberated from false ideas of personality, can express their ideas of freedom. They condemned all contamination of politics by religious ideas as the persistence of false metaphysics in a region of activity properly determined only by human reason and human laws. They consequently demanded either, as in the case of Strauss, that church and state should be completely separated,⁹² or, more vehemently, as in the case of Bauer, they argued that only a fully secular community can form a legitimate state,⁹³ and that the 'personal existence' of human freedom can only be safeguarded by the state.⁹⁴

The secular-republican and anti-metaphysical idea of the state was most pronounced, however, in the works of Arnold Ruge, a radical delegate in the 1848 parliament, who stood some distance to the political left of other Young Hegelians. Ruge argued that the free 'unfolding of the spirit' could only occur only in the state,⁹⁵ and was currently impeded in its formation by quasi-theocratic influences, and especially by the 'political pope' in the

figure of the Prussian monarch.⁹⁶ Like earlier Young Hegelians, therefore, Ruge saw his objective as the liberation of the state and the sphere of political freedom from falsely metaphysical ideas. However, whilst other Young Hegelians saw the political liberation of humanity as a critical-theoretical or interpretive process, Ruge argued that human liberty can only be secured through collective *action*, and that *praxis* is the sole medium of emancipation. In fact, whilst other Young Hegelians identified the anthropological critique of religion as the path beyond metaphysics, Ruge saw these approaches as still ensnared in metaphysical analysis, and as failing to appreciate the emancipatory primacy of *praxis*. The theory of *praxis*, he thus argued, marks a 'radical reform of consciousness' and only such reform can free humanity from false determinacy.⁹⁷ *Theoretical* reflection that has not yet become *practical*, and that does not seek to validate itself in *praxis*, is nothing other than a renewal of metaphysics, and it cannot contribute meaningfully to the task of human liberation.⁹⁸ As an extension of this, then, Ruge viewed the constitutionalist liberalism of 1848 as a theoretically overburdened or residually metaphysical political perspective that was still focused on abstractly personal ideas of legal statehood. This perspective failed adequately to acknowledge the active-practical aspect of political foundation, and, instead of recognizing full popular sovereignty and active participation as the source of legitimate order, it falsely assumed that a weak fabric of possessive legal rights and formal constraints could provide a sufficient bedrock for an enduring polity.⁹⁹ In consequence, it is only where liberalism is replaced by a radical democratic outlook, sustained by an actively enfranchised 'public sphere', that the metaphysical formalism and theoretical ponderousness of liberalism might be superseded.¹⁰⁰ Like Cieszkowski, therefore, Ruge viewed active political foundation – 'post-theoretical *praxis*' – as the highest condition of human self-realization, and he argued that actively formed political orders are the supreme expression of human personality.¹⁰¹

This anti-liberal element in the works of the more radical Young Hegelians was also articulated in the works of Max Stirner. The theoretical centre of Stirner's work was the assertion that liberalism effected a false overcoming of religion and metaphysics, and it founded its political ideals in false constructs of human personality. Liberalism, based in universal humanism, proclaimed the category of the human being as the foundation for its post-metaphysical theories and post-metaphysical politics, and it sought to justify its politics through reference to universal ideas of human need and interest. The humanism of this liberalism, however, succeeded only in reconstituting the false freedoms of religion on new and newly distorted foundations. In assuming that a unitary human personality could be posited as the source of all politics, liberalism formed a 'human religion' in which 'God has had to make way for the human being', but in which individual – or authentically *personal* – human needs are subsumed under universally personalized categories and not fully addressed.¹⁰² Moreover, as it assumed

that the state alone is able to provide for the universal interests of the human being (perhaps by granting ‘human rights’ or ‘natural rights’ to individual citizens), liberalism enchained human life to falsely universalized laws derived from falsely abstracted ideas of the person, and it narrowed human freedom to a sequence of formal guarantees of universal rights before the law. This freedom, as a consequence, lacks all substantial content. The religion of humanism and liberalism, in short, is a ‘state religion’, founded in a derivatively metaphysical notion of the human being as an absolute person, and in formalized accounts of the laws adequate to this human being.¹⁰³ All ‘existing law’ of this state can only be metaphysical law: it is ‘alien law’.¹⁰⁴ Whereas Ruge proposed a radical-republican path beyond the metaphysics of liberalism, therefore, Stirner supported a voluntaristic praxis of radical self-authorization and individual self-legislation. The authentic person, he argued, is the originator of its own law – this person expresses itself, not in the residual category of ‘human being’, but as an intensely particularized individual, and it recognizes ‘no other source of law’ but itself.¹⁰⁵ Underlying this analysis was the belief that all universalized outlooks generate heteronomy or false freedom. Liberalism and humanism, therefore, are simply new expressions of abstract personalism, and they cannot lead to experiences of genuinely realized emancipation or self-legislation.

Despite these differences, however, these Young Hegelian views converged in two central claims. First, they argued that politics is the site where human species frees itself from metaphysical form. In contemporary society, however, political institutions are burdened by the personalist or absolutist residues of metaphysical reflection (of which positive philosophy is the most salient example), and these decelerate the process of human self-liberation. In politics, therefore, humanity is charged with responsibility for disencumbering itself of personalism and metaphysics and for forming societies reflecting fully human interests and commitments. Second, then, the more theoretically refined Young Hegelians also indicated that metaphysics also intertwines with the rationality of liberalism early capitalism and early capitalist law, and that the rationality of early capitalism extends and exacerbates the pernicious illusions of metaphysics. On this view, the legal paradigms underpinning capitalism – the legal subject, the possessive individual and the contract-forming juridical agent – are themselves outgrowths of a mental attitude formed around false and paradoxical constructs of personality, originally deriving from theological metaphysics, but lacking all substantial or human foundation. Indeed, the legal idea underlying much Young Hegelian doctrine is that division of society into a set of purposive legal subjects reflects a dispersal of the originary paradox of God’s personality, so that all society, although interpreting itself as secular, orders itself around chimerically auto-generated, yet also universally coercive, principles of right and obligation. Personalism, in short, creates heteronomy at a religious, a political and a legal level. The unifying legal-political project of the Young Hegelians was thus an attempt to free human life and human agency

from all theocratic or metaphysical heteronomy, and, in relation to this, to free human life and human agency from all domination by falsely metaphysical determinations of itself as a formally purposive proprietorial agent under the state and under law.

Marx, metaphysics and capitalism

It has been widely documented that the young Karl Marx was greatly influenced by certain tendencies of left-Hegelian thinking in the late 1830s and early 1840s, and it is equally well known that he also did much to distance himself from the Young Hegelian milieu. The following discussion does not intend to document all aspects of Marx's appropriation of left-Hegelian thought. However, it seeks to show that the political principles of Marx's theory, and especially of his earlier work, were not discontinuous with the anti-metaphysical critiques of the Young Hegelians. Marx in fact both rearticulated and reconfigured certain underlying impulses in the critiques of metaphysics and in the anti-personalism of the Young Hegelians.

Most obviously, Marx's early works borrowed and modified from Feuerbach a universal-anthropological concept of human essence or species-being, whose elaboration he saw as the precondition of human freedom. Marx's definition of species-being was centred on the claim that the essence of the human species resides in its active orientation towards sociality and commonality. Human beings are essentially social in nature; they realize themselves in relations of commonality with others and, where they interact naturally with each other, they form societies based in shared freedoms and reciprocally contingent self-realization. In addition, where human beings follow the impetus of sociality and commonality, they create historically enriching and enduring social conditions, so that common actions build the bedrock for a wider socio-political reality that people recognize as their own, and in which their actions contribute to the utility and well-being of different generations across time. Elaborated species-being, therefore, institutes social orders characterized by non-instrumental interactions between human beings, by the employment of natural goods in the service of shared self-realization, and by common experiences of freedom and historical authorship. Societies underpinned by elaborated species-being are thus founded in the *second nature* of the human species. These are societies in which humanism and naturalism have become inseparable; they are societies where the founding potentials of human nature and species are unified with external nature to constitute an overarching condition where nature is moulded to human needs and human needs reflect underlying natural dispositions.¹⁰⁶

In this modified reading of Feuerbach, Marx argued that species-being is not an object that can be liberated or fulfilled through interpretive processes of moral self-recuperation or religious critique or that inheres abstractly in each individual exemplar of the species. In fact, he viewed human essence as

an active content, which naturally unites all members of the species, and is manifestly enacted in collective human *praxis*.¹⁰⁷ The natural medium for the externalization of species-being is consequently *labour*: labour is the activity through which human beings manifest and relate to their particular and collective essence and create historical conditions approximating to common human freedom. In free labour, human beings shape and alter the 'inorganic body' of the natural world, they enact a vital process of transformative interaction with external nature, and they form first nature as a humanly realized and inhabitable environment.¹⁰⁸ In freely labouring, likewise, human beings construct an 'objective world' of useful things, which contribute to the evolution of human society and produce a commonly humanized historical world, in which, even across lengthy periods of time, people can encounter and recognize each other as equal and equally participant species-members.¹⁰⁹ The 'object of labour' is, therefore, the 'objectivization of the species-life of humanity'. In societies dominated by the capitalist organization of labour, however, labour is impeded, divided, or *unfree*. In consequence, the free manifestation of species-being is impossible and other more revolutionary modes of self-realization become necessary in order to adjust social conditions to the needs incorporated in species-being.¹¹⁰

In capitalist societies, Marx explained, the realization of species-being is obstructed by a number of different factors. Human beings are prevented from elaborating their species-being because their labour is divided in the process of industrial production, and because it is expropriated and alienated from them and formally transmuted into *exchange value*. Through this expropriation, the commodities produced by human labour are integrated into nexi of financial exchange and technical regulation, over which individual producers have no determinate control, and labourers are allowed to encounter their labour only as a content which is entirely 'independent' of their labour and so 'alien' to them.¹¹¹ Consequently, under capitalism, human labour does not act as a medium of self-realization, and it does not contribute freely to the evolution and benefit of human societies. Instead, individual labourers are prevented from gaining any understanding of themselves as formed and expressed by the products of labour and all manifest experiences of self-formation are denied to them, as their labour appears only in the falsely externalized medium of exchange or prices, which have no integral connection to the labour originally invested. As a result, capitalist societies are fragmented through labour, and members of modern society are alienated from each other through the alienation of their labour. Similarly, in modern societies, labourers lose all vital connection with the natural world, as their labouring transformation of this world is pursued to obtain ends that they cannot determine. Their liberty to form nature as their own second nature, or as the material base of a shared society, is foreclosed. The humanization of nature that is central to an authentic society is consequently obstructed, and society evolves, not as the

'essential unity of humanity and nature',¹¹² but as an abstract system of alienated forms. In high capitalism, in short, labour is alienated from the producer of commodities, and the society that the producer inhabits is transformed into a set of objectively alienated relations. All modern society and all social relations within this society are, therefore, structurally determined by the alienation of labour, and this alienation thwarts all possibilities for particular and collective self-realization or freedom. The alienation of labour and the private interests served by this alienation then also form the basis for the objective structures that regulate human activity; the objective conditions of human life in capitalist societies are shaped by entirely heteronomous and coercive laws that exclusively serve the interests of private property and exchange and so compound the universal experience of alienation. The material reality of modern society is thus underscored by a corrupt construction of the law, which at once evolves from and perpetuates an intense alienation of the social, natural and material basis of human life.¹¹³

At the centre of Marx's early analyses was an attempt to adapt left-Hegelian anthropological critiques to a socially determinate account of the reality and the causes of alienation. Marx restated Feuerbach's assertion that modern society is founded in heteronomy, formed by the distortion of constitutively human qualities and emphases, so that integral experiences of freedom and self-encounter are rendered impossible. Moreover, he also argued that the critical analysis of alienation is a precondition of human freedom and self-realization, and that human freedom is obtained through a recuperation of conditions allowing the elaboration of species-being. His earliest accounts of class-conflict and materialist dialectics thus originated in the humanist idea that authentic history is driven by the dynamic evolution of species-being and that human activity has its gravitational centre in the realization of species-being. In contrast to the Young Hegelians, however, Marx clearly saw capitalism, not religion, as the source of human alienation, and he interpreted alienation as a primarily material, not spiritual, condition. Self-evidently, Marx saw the fact that the Young Hegelians still organized their work around speculative critique and religious inquiry as indicating that the social/material origins of human alienation and the social/material basis of human society remained hidden to them. Equally, he saw the fact that they structured their theories around historically invariable accounts of human essence and socially indeterminate analyses of human consciousness as demonstrating that their naturalist or natural-anthropological turn had only been incompletely fulfilled, and that they had not fully concentrated their analysis on determinately human conditions and experiences. Moreover, he saw the fact that they deduced the false laws of modern society, not from economic processes, but from prevalent ideas of personality as implying that they were unable to think in genuinely non-metaphysical terms, and they imputed excessive causal influence to the ideal and intellectual elements of human life.

Marx believed, in other words, that common Young Hegelian ideas of humanity and human freedom still remained at a metaphysical or ideological level of refinement and were tainted by attachment to the principles of static personalism that they purported to negate. In defining the human being as an invariable personal substrate of all social formation and in presupposing that the alienation of human beings could be terminated through a simple recuperation of this substrate, the Young Hegelians failed, on Marx's account, to see the human being, and its alienation, as the determinate result of material and evolutionary forces, and they failed to recognize how human personality, and its alienation, are constituted by processes of determinately material causation.¹¹⁴ A genuine analysis of human alienation, Marx concluded, must be a material-historical or material-causal analysis, which examines the forms of human consciousness and self-experience as produced by economic relationships, which rejects hypostatic anthropological accounts of human essence, and which recognizes that only a transformation in the material forces bearing on human life can lead to its emancipation. In interpreting the history of capitalist economic exploitation as the causal centre of alienation, therefore, Marx sought to translate the analysis of the corruption of species-being proposed by the Young Hegelians into a thoroughly material and, so, resolutely post-metaphysical and post-personalist analysis. This analysis was designed to consolidate both the primary object of Young Hegelian analysis (human nature) and the processes bearing on this object (capitalist production and exchange) as fully post-metaphysical contents, and so to organize the critique of the conditions of species-being around accountably non-metaphysical objectives.

Despite his sense that the Young Hegelians had not fully moved beyond metaphysical interpretation, however, Marx's account of alienation always reflected its origins in the metaphysical critiques set out by Feuerbach and others. Although stressing the material determinacy of capitalist alienation and the necessary materialism of all inquiry into the process of capitalist commodity production, Marx also indicated that the capitalist production process acts as an analogue to the modes of tyranny and oppression associated with metaphysics. The capitalist production process performs an assimilation of human life and labour into an abstract system of exchange relations, in which producers lose all integral anthropological connection with the products of their labour, and in which commodities are magically altered and distorted through their transformation into objects of exchange.¹¹⁵ As a consequence of this, Marx claimed, under social conditions created by capitalism human existence can only encounter itself as paradoxically or metaphysically dislocated and it can only experience itself and the objective forms of its life as determined by metaphysically untransparent processes. For this reason, human life under capitalism struggles to recognize itself as able independently to bring about its truthful self-realization, and human agents are prevented from recognizing other people as like, equal and reciprocally implicated in the process of human self-realization.

Moreover, human life under capitalism is also unable to act politically or construct legal-political orders which place human freedom at their centre, and it can only envision its laws and natural rights as *unnatural laws*, distilling human existence into a false account of its naturally necessary form and detaching human beings from the original natural commonality enshrined in species-being.¹¹⁶ The objective or normative structures of capitalism, Marx thus explained, are 'ideological forms', in which human beings believe to find reflections of their thoughts and liberties, but which in fact merely distil and refract economic antagonisms.¹¹⁷ At the heart of Marx's thought, consequently, was the sense that the alienation caused by capitalism is at once a material and a metaphysical fact, which, although caused by dynamics of material expropriation, nonetheless replicates (in materialized form) the ancient order of metaphysics by disseminating coercive laws through state and society and by sustaining itself through deeply fraudulent and abstracted explanations of its origin and validity. The vocabulary of metaphysical critique was therefore not wholly alien to Marx's analysis of the real and material conditions of capitalism, and his account of capitalism as a system of material paradoxes, ideological alienation and *false laws* is not completely outside the tradition of earlier critical metaphysical commentary.

What troubled Marx in the social theories of the Young Hegelians, therefore, was not necessarily that they condemned alienation and heteronomy as a metaphysical condition, but rather that they failed to see the heteronomy of metaphysics in its fully materialized substructure. Because of this false analysis, they also failed to identify the correct material antidote for alienation and heteronomy, and they failed to identify the necessarily materialist path beyond metaphysics. For Marx, simply, the form of alienation (and of metaphysics) is not religion, but capitalism. In Marx's analysis, capitalism takes the place of metaphysics as the cause of human impoverishment. However, this does not mean that Marx did not see capitalism as obtaining metaphysical features or as possessing the nihilistic consequences originally imputed to metaphysics. On the contrary, his work might be seen to hinge on the intimation that the adequately modern critique of metaphysics must either be a critique of capitalism or it must resign itself to remaining metaphysical.

Marx, law and metaphysics

The point over which Marx disagreed most decisively with Young Hegelian perspectives was his view on politics and law. The most influential Young Hegelians saw the persistence of metaphysical or personalist ideas in the law as the most damaging problem of modern political life, and they sought to constitute the state as a republican political order, freed from all obligation to laws which are not rationally accountable. It is for this reason, primarily, that they placed themselves to the left of Hegel; they saw Hegel's partial

conservatism as a result of the fact that he had not fully accounted for the state as a place of human reason, action and freedom, and still reflected the state as embodying paradoxical and metaphysically realized ideas of freedom. In fact, Bauer and Ruge both concurred in claiming that failure in the practical quest for political and legal liberation around 1848 had been the concrete result of the residues of political metaphysics in the law.

In contrast to this, Marx, ostensibly at least, denied that politics and law are locations of particular emancipatory significance.¹¹⁸ Indeed, as the Young Hegelians saw the Hegelian state of freedom as a paradoxical state of freedom, the young Marx derided all claims that the political state is a distinctive or privileged arena of human liberty as the outcome of naive or metaphysically unformed analysis, and he saw all assertions that the state can practically guarantee freedom under law as illusory. He consequently described Hegel's philosophy of state, for example, as a 'mystical abstraction', incapable of accounting for the factual material origins of political power.¹¹⁹ The conviction that the state gives realized legal form to the idea of freedom, he argued, obscures the foundation of political power in bureaucratic regulation and private property, and it draws a veil over the determination of laws in the state by powerful private and economic purposes and over the insidious modes of social coercion exercised by these purposes. He therefore denounced Hegel's political philosophy as a doctrine that idealizes *political* freedoms in the state but that sustains its account of these freedoms only by placing them in a fetishistic relation of abstract dualism against the factual material or the *social* unfreedom of the human beings, whom the state and its laws are intended to represent and liberate. This abstracted or falsely dualistic account of the state was then, for Marx, not effectively surmounted by theorists who declared political opposition to Hegel, and it remained a persistent feature of political reflection amongst the Young Hegelians. He saw Bauer's republicanism, for example, not as a repudiation of Hegelian political metaphysics, but as a doctrine still ensnared in metaphysical fallacy and deluded by the 'illusion' that laws of state are founded in 'the *free will*' of citizens. He thus viewed Bauer's strong-state republicanism as evidence that Bauer had not fully renounced his earlier religious ideas, and that he had simply transposed his original belief in 'religious authority' into a parallel belief in 'political authority'.¹²⁰ Underlying the statist tendencies of the Young Hegelians, therefore, Marx discerned a residual trace of political personalism and metaphysics. This personalism allowed the state, as notionally rational and secular, to supersede the free personality of God in earlier variants on personalism, and it transferred the elements of religious personalism onto the belief that the state is the sole centre of human dignity and liberty, and that the state, detached from its social and material determinacy, is uniquely able to represent and fulfil the free personality of citizens.¹²¹

For Marx, in short, the modern state has its centre in the metaphysical or ideological myth that it serves and represents the politically liberated human

being, defined as a 'sovereign' or as a 'highest being'.¹²² This myth is reinforced by all theories, including those of the Young Hegelians, that see the state as an agent of liberty. Factually, however, the modern state is founded in the 'unfree person', living in a condition of 'realized alienation',¹²³ and the state, in its public paradox of freedom, can do nothing to alter this unfreedom and alienation. Alienation, in fact, is the precondition of the state, for the modern state is always a capitalist state, and its laws refract the primary functional necessities of the capitalist economy. Whereas the Young Hegelians saw alienation and the paradoxicality as attributes of the dominion of the false metaphysical God, therefore, Marx saw the state as a new metaphysical fiction, to which the Young Hegelians themselves helped to give credence and substance. For Marx, in fact, the state is the contemporary form of the false God. As a false God, the state claims to sanction and give general form to human freedom, but it sustains this claim only by imposing and accepting manifest conditions of unfreedom throughout civil society. At the heart of the state is a duality between the apparent freedom that it claims to guarantee and the factual unfreedom that it necessitates, and in this duality it immediately replicates the metaphysical duality between God's freedom and humanity's imperfection originally stabilized by religious personalist ideas of divinity.¹²⁴

To understand the role of politics and law in contemporary societies, Marx argued, the political apparatus must be thoroughly demystified and made transparent to the economic interests that it serves and stabilizes. The state can never offer liberties that contradict the interests of the ruling groups in civil society, who use the state as their instrument, and its primary function is to maintain conditions of contractual stability and legal security for interactions in the economic base. Even the rational and centralized states of emerging liberal or constitutional democracies, he asserted, do not offer conditions for human fulfilment and freedom. The apparent guarantees of freedom or autonomy contained in the public laws of seemingly rational and legitimate modern states are, in fact, highly illusory or metaphysical fixtures, allocated to citizens as formal or possessive rights in order to preserve the interests vested in the state, but impeding the elaboration of full rights of citizenship. The main function of these constitutional or natural rights, in fact, is to engender a contractual underpinning for the circulation of commodities and the exploitative engagement of labour, and they are simply the apparatus of private egotism. Likewise, the formulae of freedom enshrined in capitalist private law – particularly the legal subject or the legal personality of Roman law – are not genuine tokens of liberty and autonomy.¹²⁵ Instead, they are malign fictions of personality that the economy imposes on human wills as the false form of their freedom: they are coercive constructs of legal personality which focus human subjective life on minimally prescribed freedoms of contractual interaction, exchange, and monetary disposition over resources and labour. The 'character of the laws' of modern states, Marx therefore argued, is 'cruelty', 'cowardice' and

‘inhumanity’, and these laws generate ideas of freedom and personality only insofar as these sustain the idea of the person as a schematic bearer of economic interests, supported by the legal apparatus of the state.¹²⁶ Laws, consequently, can only *appear* to enable the exercise of a free will in the state, or to ensure citizenship and political participation. Law obtains this appearance where it is ‘torn away from its real base’ in relations of property and exploitation, and where it is counter-factually proposed to its addressees as a universal medium of equality and justice.¹²⁷ Behind and beneath the laws, however, there is always a profound condition of estrangement and denaturation, in which human existence suffers a metaphysical violation and experiences the form of its objective life as wholly bereft of real freedom and real personality.

This anti-legal attitude, however, does not mean that Marx dismissed law *per se*, that he viewed the fulfilment of species-being as a legally irrelevant condition, or that he saw legal critique as marginal to the course of human liberation. In fact, the contrary is the case. In his earliest writings, for example, he denounced historicist deductions of legal validity based solely in positivist conceptions of validity,¹²⁸ and he wrote long invectives against the exclusion of moral contents from laws and against the application of laws as pure ‘material instruments of private interest’.¹²⁹ In these early works, he argued that modern legal states, which reduce laws to devices for stabilizing private interests, are not legal states at all: they are merely coercive organs, founded in an ‘exception from the law’, and they cannot claim validity for their laws.¹³⁰ He thus saw the reduction of state and law to formal utensils of capital as an exceptional betrayal of true law and of the universal potentials of the law, and he clearly intimated that the law could, if authentically formed, act to ensure common justice. More generally, in fact, Marx’s early concept of species-being also contained certain primary notions of justice, legal personality and common entitlement, which remained pervasive influences throughout his work. Labour not regulated by exchange, he argued, tends to produce substantial laws, which give a juridical expression to species-being and which have greater moral validity than all ‘general law’. The organic ‘customs of the impoverished class’, which have evolved through common labour on nature, he explained, show an ‘instinctual legal sense’,¹³¹ and they articulate a relationship between human beings and the natural world which produces distinctively legitimate (that is, anthropologically integral) legal claims. Above all, human labour on nature generates natural rights of entitlement and common property, and it shapes human agency into collective forms of legal recognition.¹³² Human custom, historically cemented through interaction between humans and nature, contains a legal expression of species-being, and, as such, it is a source of authentic natural law, against which the laws of abstracted private interest are merely metaphysical or exceptional.

These early legal arguments expressed the sense that the organic labour on nature through which species-being is articulated contains a legal orientation

which is suppressed by the juridical apparatus of modern states. It is specific to capitalist states, Marx asserted, that they found their legal orders in concepts of right which are distilled from anthropologically depleted ideas of human integrity, and they construe the subjectivity or the personality of social and legal agents around an 'isolated and withdrawn monad'. The modern (or capitalist) foundation of right thus depends on the exclusion of all interpersonal, collective or eminently *social* aspects of human existence: it defines right solely as the 'right of the limited individual' (of the individual seeking only private purposes), without any 'relation to other people'.¹³³ If the monadic subject is the false form of subjectivity, however, the human being engaged in the active and authentic elaboration of species-being is formed as an eminently 'social being' and its individual or subjective life is inseparable from the 'totality' of all conditions of human social freedom.¹³⁴ The natural emphases of species-being thus allow the human subject to evolve as the subject of society or as a social subject, and subjects are created as social as they recognize that they *need* other human beings as the integrally constitutive conditions of their own natural self-realization.¹³⁵ If the monadic or asocial subject is the source and form of false (or capitalist) law, then, it can be assumed that the social subject gives rise to legal claims, entitlements and expectations, which are very distinct from those borne by the purposive or monadic legal subjects of capitalist law. Indeed, it can be presupposed that, if human subjects abandon their self-concentration on ownership and if they freely interact with the natural world and with other people in the natural world, they will, according to Marx, arrive at ideas of obligation which deduce law, not from the proprietorial interests of private-legal subjects, but from more communal modes of human interaction and collective needs. Where individuals realize themselves as species-being, and where, because of this, they abdicate their position as purposive and self-seeking individuals, Marx intimated, they will emancipate themselves from their self-reflection in merely abstract or formal laws, and they will elaborate fully emancipatory rights, founded in the practical-moral inclusion of shared material needs.¹³⁶ In this respect, rather than finally contradicting Young Hegelian ideas on law, Marx intensified the earlier notion of the Young Hegelians that modern capitalist law (especially the private law of Roman law) creates metaphysical subjects, and it fragments common subjectivity into atomized and narrowly purposive constructions of rights, freedom and integrity. Human freedom, therefore, is not a condition in which law plays no role, but rather one which emerges through the destruction of the metaphysical laws of capitalism.

Marx's work was, therefore, deeply committed to articulating new ideas of legal validity and legal personality, and the law occupied a central, though at times unfocused, position in his work. His critique of the legal personality of capitalism was particularly influenced by Eduard Gans, who also used modified Hegelian ideas to oppose the influence of economically derived concepts of legal validity and legal subjectivity. Gans turned with

particular vehemence against Savigny, whose positivist and volitional approach to law foundation he saw as neglecting the ethical dimension in human legal agreements, especially of those pertaining to property. The legal subject, he claimed, cannot be constructed from factually existing legal relations and cannot be presupposed as a morally neutral basis for ownership, but must be construed as a manifestation of the historically operative and socially recognized moral will.¹³⁷ Valid law, therefore, should not be viewed as a system of purely positive norms protecting the possessive rights of solitary legal agents, but as a substantial order enshrining socially and consensually mediated rights. All legal formation, he concluded, is the result of the self-elaboration of the moral will of the human person in the originally 'unfree and lawless' realm of nature.¹³⁸ The self-elaboration of the moral will leads to the objectivization of natural right in the world as a moment in a common will and to the formation of legal subjects as agents of universally acceptable moral laws, not as solitary subjects or solitary self-seeking personalities. The justification of a legal right, consequently, resides in the fact that a shared moral will views this right as necessary and as contributing to wider conditions of personal freedom and self-realization. Gans therefore defined the free ownership of property as a right, for he construed property as an essential precondition and expression of human freedom.¹³⁹ Marx clearly did not share Gans's belief that property could be legitimately held as an extension of the substantial moral will. However, the legal elements of Marx's concept of species-being incorporated a constructive appropriation of Gans's view that the legal person must be defined as a person actively engaged in the formation of rights, not as a person to whom prior or formal rights are positively imputed. Indeed, close to other Young Hegelians, Gans viewed elaborated freedom as a condition of commonly formed and recognized natural rights. For Marx, however, the full elaboration of species-being necessarily creates a condition in which entitlements are fully separated from the possessive will and from the possessive personality.

Marx claimed, to conclude, that modern laws offer at most an illusion of freedom and participatory enfranchisement, and they ideologically obscure the extent to which political reality is founded in universal unfreedom, resulting from the alienation of labour in the capitalist production process. The assertion that politics, law or the state might provide an arena for the freedom of species-being demonstrates, in consequence, a wilfully paradoxical approach to theoretical analysis, which abstracts a coercive apparatus from the material processes of its evolution and proclaims then that it is an organ of human self-liberation. Where capitalism remains the pervasive mode of production, for Marx, all appearance of political liberation must have an ideological or metaphysical character. The state under capitalism can only ever be a dualistically split expression of species-being, in which the free human person, as a citizen, encounters its freedom as a formally meaningless experience, to which its factual unfreedom as an economic agent appears as an irreducible 'contradiction'. Under the rule of the capitalist

state, the citizen only obtains its freedom in that section of his or her life that is not legally determined by material and economic compulsion and not subject to private laws of exchange and exploitation, whilst the material life of the citizens remains in absolute heteronomy, under laws reflecting a private-legal rationality of divided labour and economic expropriation.¹⁴⁰ The state's claim to uphold the freedom of citizens thus merely reflects an ideological/metaphysical form, in which the factual unfreedom of these citizens is perpetuated and intensified. Unlike the Young Hegelians, therefore, Marx had no faith in the ability of a modified or constitutionally formed political apparatus to construct a socio-economic order founded in the realization of common needs and the abolition of the unjust scarcity of natural goods. To obtain a politics of authentic and integral freedom, he indicated, it is necessary to free human thinking from all traces of metaphysical ideology: in fact, it is necessary to free human thinking from the state itself, and from the falsely metaphysical laws of the state. The politics that Marx envisaged in this instance would be a *post-state* politics, founded in a thoroughly post-personal elaboration of species-being. This condition would be a condition of natural commonality, integrating a goods economy based in shared utility, and a social order in which commonly evolving natural/human essence, not norms or values abstracted from statically purposive or possessive persons, shape the material structure of human existence.

Marx's account of elaborated species-being, however, need not be viewed as a *post-legal* condition. On the contrary, the idea of species-being always contains an echo of the claim that surfaced intermittently in Young Hegelian thought – that the realization of human substance will form a condition in which human law will lose all traces of objectivity, purposive coercion and metaphysical force. Such effortlessly universal law will, for Marx, not be the law of state, but of society, as the formed natural/human reality of species-life. Marx was thus clearly far removed from the religious or essential anthropological conceptions of the Young Hegelians. However, he duplicated certain aspects of their argument that the elaboration of human essence can only occur as a revolt against heteronomy, as a revolt against all existing legal forms and the traces of alienation which infiltrate these, and so as a revolt *against metaphysics*.