In Hegel’s *Phenomenology of Spirit*, the identification of the singular individual with the universal is initially expressed by means of the concepts of law and right. Developed by Hegel in ethical life and state of right,1 law and right enable a particular kind of being, self-knowledge, and interaction for their respective consciousnesses. These legal categories, however, virtually disappear in the remainder of the text, and whereas Hegel’s critique of law in these sections is important in its own right, attempts to bring it to bear on contemporary legal theory risk anachronism. What I will argue in this essay, however, is that the problem of law re-enters the text in Hegel’s discussion of forgiveness, and that we can look there for a modern resolution to the problematic dependence on law exhibited by the very different legal frameworks of ethical life and state of right. The ascendency of forgiveness as a fundamental organizational principle results in a radical circumscription of the role of law. It also represents the enduring force of Antigone’s political legacy, or so I will argue—both for Hegel and for us modern readers still grappling with her role in the *Phenomenology*.

In addition to developing the import of these legal insights for interpretation of the *Phenomenology*, I will also suggest that forgiveness’s resolution of the failed legal frameworks is helpful in the context of the contemporary skepticism (exhibited by feminist, race-theorist, queer, communitarian, and democratic perspectives, among others) regarding the purported critical efficacy and neutrality of legalism and the connection of legal advocacy with the “natural” aspects of human identity. Hegel’s theory of forgiveness provides a strategy for exposing the inequalities in access to power that the liberal protection of freedom and equality has been accused of concealing. His view of its priority over law can be used to transform law into an expression of a relationship between universal and individual that is neither composed prior to the production of that relationship, nor constituted by an assertion of power by defenders of the status quo, who deny the impact of difference on the law’s operation. I will argue that Hegel’s theory of forgiveness is productive in this context because it construes individual action as central to the universals that regulate our interaction and provides a critical way of thinking and representing the social “we” holistically. In order to construct the ground upon which to show the relevance of Hegel’s theory of forgiveness to his theory of law, I will discuss: a) the forms of social life in the *Phenomenology* that are organized according to law and right; b) forgiveness’ resolution of the difficulties they confront; and c) the critical transformation of law that Hegel’s account of forgiveness suggests.

The Law-Based Societies of the *Phenomenology*.

Ethical life and state of right are the only social forms of consciousness in the *Phenomenology* that are based specifically on law and right, and both are for Hegel inadequate expressions of spirit. The characters of ethical life identify immediately with their respective laws (Creon with human and Antigone with divine law); the positive aspect of this identification is their implication and agency in the laws and forms of social interaction that structure their political life, in whose production they are thus immediately engaged. The immediacy of this identification, however, precludes any recognition and expression of their particularity. Ethical characters are submerged in the universal ethical substance, such that the role
of their particularity in it is concealed until the “unsuppressable” assertion of the singular self renders ethical substance unsustainable. There is no mediation between them and the law; the substance is certain of itself, through them, and does not allow for their self-differentiation. Through their very obedience to universal law, however, they transgress the universality of right (as conscience does) and their particularity is “discovered.” Antigone and Creon identify with what they assume to be the universal, but in so doing inadvertently transgress it.

In state of right, on the other hand, the substance becomes the single person in his self-certainty. Personal right issues in the self-certainty of an individual, as substantial law issued in the self-certainty of a social substance. The advantage of this form of right over that of ethical life is that it congeals and protects the person’s fundamental independence and separability from his context. In doing so, however, the universality of right represses the person’s claim to difference and singularity while simultaneously preventing him from experiencing his continuity with others and the centrality of his action to the universal. He loses any positive or constructive relation to that which was previously essential—the ethical substance—because of the nature of selfhood as construed by right. A merely formal and dead universal, the sustenance of this right depends not on the collaborative activity of different persons but on the bland and indifferent assertion of power by one “judge,” the lord, whose authority as the representative of right is only contingent. Individual and universal are divided by the attribution of an isolating and ultimately disempowering self-certainty to the former; right has not succeeded in bringing the two together, as was its original purpose.

Jay Bernstein and Kelly Oliver have argued that in Hegel’s discussions of confession and forgiveness lies the resolution of Antigone and Creon’s conflict in ethical life—the opposition between individuality and universality. Oliver, for instance, writes that Hegel concludes spirit “with a discussion of forgiveness and confession that reconciles the Particular and the Universal, the unconscious and the conscious, which began in this section as the opposition between woman (Antigone) and man (Creon) that gave rise to the ethical order.” Similarly, Bernstein writes that “the agon between acting and judging consciousness means to resolve the matter between Antigone and Creon, between individuality and universality, unwritten and written law.” I will follow Oliver and Bernstein here by transferring the conflict between Antigone and Creon into the context of forgiveness, while adding the thesis that forgiveness is also importantly a response to state of right, whose “self-certain person” is comparable to the judging consciousness of forgiveness and the contemporary rights-bearing individual. I will argue, that is, that the framework of forgiveness resolves the extremes represented by ethical life and state of right—that is, an identification with universality that subordinates particularity, and an individual self-certainty that destroys any social bond—and thus is the third and culminating shape of the Phenomenology’s theory of law.

In forgiveness we see the obstacles of ethical life and state of right overcome, and the immediately political character of ethical life reconciled with the abstract independence of state of right. Spirit, through forgiveness, is composed of individuals acting for the purpose of self-determination (which was impossible in ethical life), while simultaneously engendering active interaction with others and with the universals that structure social life (which was impossible in state of right). Law is transformed by forgiveness, which succeeds in expressing the dynamic relation between universal and individual that law could not.

**Conscience, Evil, and Its Forgiveness**

Before further elaborating the relevance of forgiveness to law, however, I want to follow the development in the Phenomenology that brings about the former. With the figure of the conscientious self described in “conscience, evil, and its forgiveness,” we encounter a decisively modern subject who reserves the right to judge the standards of his society and of other “consciences.” This implicitly universal self-consciousness knows its duty as its own as well as “the universal for all self-consciousnesses, that which is recognized and acknowledged and thus positively is.” Notwithstanding this characterization of conscience, however, it is not initially portrayed in the most favorable of terms. What Hegel calls “acting consciousness” is said to commit evil by asserting that it...
acts “in opposition to the acknowledged universal, according to its own inner law and conscience.”5 In so doing it wrongs others; it brings about a “non-identity with the other, since this other does not believe it or acknowledge it.”6 There is a second figure in this scenario, however, and that is the other whose universal is transgressed. It, or what Hegel calls “judging consciousness,” judges acting consciousness as evil. But with this act of judgment judging consciousness also commits an evil act, since it appeals in its judgment to its own law, and refrains from any action whatsoever. It, hypocritically, wants to retain its purity; it “wants its judging to be taken for an actual deed, and instead of proving its rectitude by actions, does so by uttering fine sentiments.”7

Acting consciousness, the agent who initiated this scenario, confesses its evil, and thus “gives expression to their common identity in his confession.”8 What it renounces in its confession is its disparity from the other, and attempts to re-establish the continuity between them by admitting that its particular action is not solely the expression of an inner law but arises from identification (and the desire for communication) with others in a shared context. It thus supersedes “its particularity, and in so doing posit[s] itself in continuity with the other as a universal.”9 It posits itself as a moment, knowing itself to be a part of a larger whole in separation from which it cannot make sense of its own action, being, and speech.

But judging consciousness does not reciprocate. In its refusal to act and to identify with the other, it denies and is forsaken by spirit, says Hegel, and so precludes his own participation in “the spiritual existence of speech” and in “the identity of Spirit.”10 But acting consciousness, superseding its own particularity by confessing it, has displayed itself “as in fact a universal”;11 it attains universality by transferring its particularity over to the other in which it recognizes itself, by acknowledging the contingency of its identity on the other and their shared framework of meaning and communication. This leads judging consciousness to in turn perceive in acting consciousness what it has tried to obtain—identity with the universal—and thus it also comes to see itself (and what it had tried to achieve) in the other. It is thus also moved to renounce its judgment, forgive the other and itself, and acknowledge the solidarity that acting consciousness had expressed. This “word of reconciliation” is, Hegel claims, “objectively existent spirit”;12 it is the foundational act/word that brings spirit into being in/as the shared world. Objectively existent spirit beholds, as Hegel writes, “the pure knowledge of itself qua universal essence, in its opposite, in the pure knowledge of itself qua absolutely self-contained and exclusive individuality—a reciprocal recognition which is absolute Spirit.”13 The existence of absolute spirit is its knowledge of itself as this alternation between the two aspects—between universal essence and individuality.

In asserting the identity of its inner law and the universal, acting consciousness transgressed both the universal and the other, and thus the existing standards that, as Bernstein writes, “are constitutive of what is universal ‘in us.’”14 Through conscientious action, the relation between the individual and the universality that structures human interaction is made into an opposition, and thereby fragile. But with the forgiveness that ushers in absolute spirit, Hegel shows the inevitability of this fragility, or the fact that ethical life can only exist by putting itself at risk in the face of the individual’s action and inevitable transgression of the concrete universal. He shows that what it means to be an individual human actor is to act as an individual and at the same time for the universal—as it manifests itself in the other in whose being individual action finds its truth. Thus the solidarity that is produced is a solidarity of “differents.” What we share with each other, what constitutes the universal, is our particular individuality, which means that what is common among us is what makes us different from each other.15 Forgiveness resolves the problem of individuality’s inherent opposition to the universal by revealing it to be the only avenue by which we can become social beings. Only as individual can we demand consideration as agents who participate in and are held accountable to social life. This is a radical notion, in that it suggests, as Oliver writes, that:

Hegelian identification is precisely with the otherness of the other, with the other’s difference. The identification comes with

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the realization of the particularity of individuals, a particularity so radical that it is only by virtue of the recognition of this universal property of individuality, of difference itself, that the judge and agent find any common ground. In one sense, Hegelian identification is already an identification with the impossibility of identification.16

This is emphatically not the formula of state of right, which declares all persons identical and construes agents whose differences are masked and irrelevant to the existence of the universal. It is this difference, in the case of forgiveness, that gives life to the universal, that endows it with a responsiveness or cultivates it as a relation of individual and universal, a unity of identity and difference.

According to Bernstein, “ethical universals are not independent existences” but living universals.17 Without the input of conscientious, transgressive action, these universals would be merely abstract and inert. Action is always a reconfiguration of existing norms and practices, a transfiguration of “the meaning of given principles and norms” that keeps them accountable to human interaction, in which the concrete universal takes root.18 And though this action is that of different individuals, since conscience recognises that universality is attainable only through identification with and forgiveness from the other whom it has wronged, solidarity replaces the formal universal. When an individual acts, this action is not directed to and motivated solely by the moral or legal universal, but to and by other selves.19 Action is inevitably the sacrifice of control, for through it the individual gives up to others exclusive control over its self-determination. Action is performed with the knowledge that in it I express my solidarity with the other, and we construct the universal together. Laws and norms, as the expression of this solidarity, are contingent upon it and must be responsive to it. The self-knowledge of the individual is an active knowing of the ways its action influences others, unlike that of judging consciousness; the universal only exists in the active expression of solidarity.

Spirit, or ethical life, is forgiveness—the structural forgiving of the inevitable particularity of human action, whose errant individuality continuously and inevitably challenges and constitutes the universal. The “word of reconciliation,” objectively existing spirit, beholds its existence as universal essence in its opposite, the knowledge of itself as individuality.20 Even though that individuality errs in its incomplete knowledge and transgressive action, only by the mutual recognition between universal and individual does spirit exist.

The Return of Ethical Life

The significance of forgiveness as the dynamic that produces the “we” as such cannot be overestimated; this fact is demonstrated by forgiveness’s resolution of the very movement by which the Phenomenology has developed—the measurement of certainty against truth (the former of which ethical life and state of right manifest in different ways). Spirit arrives through the self-motivated and mutual sacrifice of the self-certain self and the self-certain substance. Individual and universal—the opposed poles represented by ethical life and state of right—are mediated by the individual’s expression of a lack of certainty, of its inability to approximate the universal in its knowledge and action, and of the universal’s inability to exist without the transgressive input of that knowledge and action. Evil consciousness confesses that it has not found the universal in its own self-certainty, and finds it in the relation and solidarity between it and judging consciousness. The movement through which absolute spirit comes into existence is the truth of certainty, which is that it is not true.21

The imperative facing the conscientious self is to learn and not unreflectively embrace (as in ethical life) the fact of this solidarity through action, to know itself in its embeddedness in the universal and to recognize itself as implicated in its construction, even through its transgressive activity. The medium of human interaction is the universals that solicit participation and solidarity. The dynamic between universal and individual is a fragile resolution in which both are beholden to the other and neither can depend on the achievement of any sort of finality, both regarding their own self-knowledge and their fidelity to the other.
In this context we can see the relevance of ethical life and state of right to forgiveness, and thus follow the conflict between the two law-based societies brought up again in a particularly modern framework. As both Oliver and Bernstein suggest, in the framework of conscience and its forgiveness, to which they are transported, Antigone represents the conscientious self whose individual actions in the name of the universal transgress the concretely universal standards of the community, and whose confession suggests the possibility of the perpetual integration of transgressive singular action and the universal standards constituting the lives and worth of social human beings. Creon represents the judging consciousness, the hard heart, the breaking of which suggests that the universal only exists in their interaction and solidarity. The confession and forgiveness of this modern Antigone and Creon transform the inert universality of state of right, and the isolated, self-positied universality of conscience, into a concrete, negotiable, and responsive one. They also, however, transform the suppressed particularity of selfhood in ethical life into a central constituent of the universal. The universal only exists between and among them, and only as a consequence of forgiveness; it cannot be represented by laws, norms, and customs that are unresponsive to their action.

The immediacy of Antigone and Creon’s implication in ethical life undergoes a process of mediation throughout the Phenomenology, in which the three selves of the text, the legal, cultural, and moral selves, are developed in tandem with the development of the society that sustains them. The Phenomenology tracks this development of a relationship between the one and the many, the universal and the individual. The force that sustains this movement is the moment of forgiveness, but just as absolute knowing is simply sense-certainty in its truth, so also is the forgiving community merely the truth of ethical life. In ethical life, the relationship between the individual and the whole was one by which the individual was completely defined. The conscientious self, again, must learn solidarity through action, must come to recognize its singular action as complicit in the construction of the universal. Individuals participate in maintaining the universal, which in turn grants them worth, dignity, and meaning, thus further ensuring their participation.

The right of the person, on the other hand, is inadequate to this task, and is challenged on each side by ethical life and forgiveness. The universal here is one that shuts the person out of that system which defines him, inhibits the possibility of solidarity and, by draining social life of its import, actually inhibits the possibility of self-determination. The universals of the forgiving community do not found an individual who, upon claiming her rights against the state, is free to neglect her own implication in and significance to the universal, in a system in which power is relative and unequally apportioned. Individual difference is of import to the life of the universal and the differing ways in which others have access to it.

Law, in this context, is not a static mechanism for deciding social relations once and for all, a self-certain universal deaf to the particularity and actual inequalities of those whom it regulates. If the law operates on the basis of the formal and equal identity of all, it does an injustice to the difference of the individuals that constitute it. The individual is called to participate (as Antigone does) in the ongoing life of the law, in its elaboration and transformation, by virtue of her particular difference and the way in which it gives her access to a particular form of solidarity and relationship with others. The state, laws, and other individuals are not merely external, and her relationship to them cannot be conceived as consequent to her individual right. They, on the contrary, situate and enable that right, demanding her response and responsibility. One’s “own” version of the universal—individual right—is granted by others, by a community of individuals whose solidarity with each other is the universal’s medium.

The concept of forgiveness thus suggests an alternative to the opposition between individual and universal created by an abstract right. As Bernstein argues, it is not enough to develop rules and principles that express the fact of mutual recognition. This political strategy creates judging consciousnesses who merely “judge the correspondence between particular actions and collective principles,” and who thus preserve their moral purity by not acting at all. Action is necessary to this universal, as it was for Antigone, and must be conceived as

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contingent on particular social and institutional configurations and ethical solidaristic relations. Individual reason and action unfolds out of such institutions and relations, and the world, as Kimerer Lamothe argues, must be transfigured in such a way that it allows for the emergence of individuals capable of bringing ethical relations into being that in turn support their individual capacities and claims to difference.25

Law

How, then, should we conceive of the place and purpose of existent legal universals? Forgive ness, as I have suggested, brings the abandoned law-based societies back to the text, but they are transformed in their return. In confession and forgiveness we are finally shown an alternative universal, one produced through transgressive action. In all of the many forms law takes throughout the Phenomenology, it is not capable of expressing, as was intended, the type of relation between universality and individuality that spirit demands and forgiveness shows is possible. Confession of the persistent evil of human action, on the other hand, brings the individual back to the universal, and this movement shows itself to be in fact necessary to the latter’s existence as a concrete and responsive universal. Neither the universal nor the individual can live its universals in abstraction from its return to solidarity with the other.

Bernstein argues, however, that “the ‘law’ obligating us to the other must remain ‘unwritten’,” or that “each such proffered good reason, each written law, each moral logic involves a turning of one’s back upon those others to whom one is already bound.”26 Such written laws or moral logics are conceptual mediations that, for Bernstein, simultaneously encode and disavow “our recognitional dependencies.”27 These dependencies always already structure our participation; laws emerge “too late to lead us on the basis of them to recognize ourselves in others.”28 In this interpretation, of course, Bernstein is expressing a common (and justifiable) concern among left and post-structuralist critics, one in relation to which this essay is situated: that is, that the laws of the liberal state merely entrench existing inequalities and secure the means by which any transformation of the social powers that produce them is off limits.

But Bernstein simultaneously makes repeated reference to the universal that “grants worth, dignity, and meaning to individuals.”29 In our political context, universals find expression in laws and rights, which have become central to our conceptualization of agency and dignity. The possibility of undertaking responsive and solidaristic action exists to a certain extent by virtue of these laws and rights, through strategic reference to which we speak and act against injustice. This is a point that Derrida also recognizes when he says that if one wants forgiveness to arrive, it is necessary that its purity engage itself in conditions of all kinds—that it be inscribed in history, law, politics.30 Additionally, implicit in Hegel’s view of consciousness is a demand for the preservation of existing legal categories, since consciousness is a result of the specific historical rationality of our context and its practices. We do not have the option of exempting ourselves from them. As Hegel’s description of judging consciousness shows, we are simply not free to sit back and pass judgment on an “objective spirit” that exists beyond us; every judgment is an act that disavows our prior implication in what we judge. The central commitment of the Phenomenology is the co-implication of knower and known in the same material, complex, and self-changing reality—as Kimberly Hutchings describes it, “the medium through which claims to knowledge and self-conscious action are possible.”31 The authority of an individual’s judgment and the effect of her action is contingent upon the authority and constitution of the material reality in which she is implicated, and vice versa, and to step back from that contingency is to undermine both.

We must of course heed Bernstein’s warning, and struggle to hold laws accountable to the expression of solidarity, challenging those universals that disavow their emergence out of historical struggles for access to power. As Bernstein writes, law cannot be a “structure of universality indifferent to the claims of individuality,” but neither can it simply be “the claims of individuality and its ‘unwritten law’ against the . . . laws of community.”32 It must allow for the interaction of the two, the fusing of universality and individuality. In order to do
so, it must not be construed as an abstract and “independent universal to which [one’s] deeds might correspond or fail to correspond.” If there is any law, it must be one that allows continuous negotiation of our recognitional dependencies, not one that disavows them. It must express and not deny solidarity, and be its product, not the abstract measure by which it is judged.

As Hegel suggests throughout the Phenomenology, law cannot coherently be expressed as a means of organizing the world into the opposed poles of universal and particular in a way that precludes their interaction. Consciousness, whether individual or social, is the very traversal of these poles. Because this traversal is always necessary, we must have ways of representing their movement into each other, even while rights and laws must always be subordinate to the solidarity that inspires and guides all action, and to understanding the import of our differences to the existence of these universals. Participation in this system of right is contingent upon our access to its laws and norms, access through which the system and its universals can be transformed. Forgiveness simply renders agency a function of our relationships to each other and the whole, not simply a function of an asserted individual right against a community.

Law is dependent on the transgressive action of the conscientious self who acts against the community and its universals, or the modern Antigone whose capacity to act against it, and against her society’s interpretation of the import of her natural (female) difference, gives law its very power and effect. This universal, however, is nothing apart from the collective that enacts it; laws are not the abstract and independent dictates of a judge who stands above the fray. The conflict between acting and judging consciousness shows the inevitability of human solidarity in individual action, and the hypocrisy of the perspective that grants a life to law that is other than the life of collective and strategic action and transgression.

Spirit is the forgiving community that, in its acknowledgement of the centrality of individual activity to its body, but also of the inevitability of individual transgression of the universal that gives individuals their being, worth, and dignity, must continuously restructure itself to accommodate it. It is the role of legal and institutional forms to reflect our prior and more fundamental sociality and leave room for solidaristic action against the injustices they sometimes perpetrate. The tragic fate of both ethical life and state of right is transformed with the influx of forgiveness, and so also can the fate of our law-based society and the complicity of legal categories in exploitation and injustice be transformed by the demands of forgiveness: that is, that we acknowledge the relativity of our social positions and invest ourselves anew in the social realm that exists only through our action and solidarity.

ENDNOTES

1. “State of right” is my translation of Rechtzustand, which A. V. Miller calls “legal status.” Miller’s translation is problematic for several reasons. “Legal status” doesn’t reflect the difference between Gesetz and Recht (though Hegel’s use of these terms is meticulous), and the German zustand is typically translated as “condition” or “state,” not as “status.”


6. Ibid., §662 (486).

7. Ibid.

8. Ibid., §664 (487).

9. Ibid., §666 (490).

10. Ibid.

11. Ibid., §70 (493).

12. Ibid.

13. Ibid.

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18. Ibid., 52.
19. Ibid., 47.
21. It is interesting to note here that what is translated as “conscience” is *Gewissen*, related to *Gewissheit* and *gewiss*, which mean “certainty” and “certain,” respectively. Additionally, *wissen* means “to know.” Conscience’s all-knowing “certainty” is what is given up to the other through confession.
23. Ibid., 51.
24. Ibid., 37. Bernstein compares the perspective of “judging consciousness” to the employment of “the Rawlsian veil of ignorance or the adoption and employment of Habermas’ principle D” (36).
26. Ibid., 49.
27. Ibid., 50.
28. Ibid., 49.
33. Ibid., 44.
34. Ibid., 50.