

Freedom as a Normative Concept in Hegel's *Philosophy of Right*

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I

Three fundamental concepts that play a normative function in philosophical theories contend with one another for primacy within the history of Western ethical and political philosophy: nature, the divine, and freedom. By a concept having a 'normative function', I mean that one uses it to justify, identify, or in part to constitute an ethical or political principle. Some configuration of the three concepts named may be found in all major philosophical systems. The way these concepts interrelate confers upon a system its fundamental character and expresses the deep structural relations it exhibits between ethics, political philosophy, and metaphysics.¹

¹ Three other fundamental concepts that can play a normative function must be mentioned, if only to be set aside: history, tradition, and self-sufficiency. History and tradition are obviously related, but their force is not identical. At its broadest the concept of history embraces all human happenings, while the concept of tradition can at most refer to one historical sequence that excludes others. One may invoke history in support of a state policy on the grounds that history demonstrates that states have always behaved in a certain way, e.g., selfishly; or one may invoke historical diversity to undermine the claim concerning the 'naturalness' of a human institution, say, the free market. One invokes tradition, however, when attempting to legitimate a given institution or practice, as with exclusively heterosexual marriage, or a social arrangement, as with a rigid class system. Hence, history tends towards being a neutral source of fact, while a tradition is, for its members, a normative reality. History is an object of study and something from which to derive lessons. Tradition is an object for emotions such as respect, love, and pride, and it is an object primarily of preservation and transmission. As for self-sufficiency, it is in effect a species of freedom, i.e., freedom from dependence on others, so is already covered in the triad of nature, the divine, and freedom. It is mentioned only because it does sometimes play a central role, as, for example, in the thought of Rousseau.

Whatever role history plays in Hegel's account, it is not an immediate source of normativity. Rather, historical spheres for Hegel are ranked according to how well they approximate to the structure of freedom explained in Hegel's *Philosophy of Right* (and in a sense in the whole system, as Hegel indicates that even logic is an expression of the spirit of an epoch). What holds for logic, likewise holds for art, religion, and science. Cf. *Wissenschaft der Logik: Lehre von Sein* (Hamburg: Felix Meiner), 1990. pg. 35:25ff. (35). *Hegel's Science of Logic* (Atlantic Highlands: Humanities Press), 1991, pg. 51). Tradition too plays no central normative role in Hegel's argument, except to indicate the kinds of actions and the kind of policies that can be undertaken with respect to a given tradition; for example, Hegel argues that it was pointless for Napoleon to have given the Spaniards a rational constitution, as their national spirit could not bear it. §274A. Suffice it here to say that Hegel would reject the normative role of history and positive tradition for the same reason that he ultimately rejects nature and divine will as self-sufficient standards of human

This thesis may, with some risk of oversimplification, be briefly illustrated by considering how this configuration is worked out in different philosophical systems and how these systems differ generally from the religious point-of-view. This brief survey must of necessity be very selective, but it will provide us with the minimum background needed to enable us to begin to situate Hegel in the philosophical tradition and thus better to appreciate what is distinctive in his treatment of normativity.

We will begin with Aristotle, whose understanding of the relation between the normative use of the three concepts named is arguably the least straightforward. Aristotle's ethics grounds the ultimate end of all choice and action, happiness (*eudaimonia*), in a dual appeal. First, he appeals to a standard of perfection that is rooted in human nature, namely the virtuous life. There are two kinds of virtuous life: the practical, which involves a unity of moral virtue and the intellectual virtue of prudence; and the theoretical, which involves the intellectual virtue of wisdom.² Second, to justify his claim that the life of the philosopher is the best, he appeals to the activity of divine thinking, which is the perfect, unqualified good.³ The naturalness of man's orientation and the divinity of the ultimate measure of his conduct jointly determine his highest good. Further, despite an absence of unequivocal textual evidence in favor of the thesis, one may reasonably argue that the appeal to the divine is silently operative in Aristotle's thesis that political action, as involving an activity of the intellect, is the second best mode of life.⁴ But this is a

conduct: they are simply imposed on human reason and so offend freedom as the highest purpose of man. Hence, we are justified in considering only the triad of nature (Cosmos), the divine (God), and freedom (Man).

² The idea of a 'virtuous life' is already implied in the combination of Aristotle's definition of happiness as 'a rational activity of the soul in accordance with virtue' and his qualification that a happy life must be 'complete' in the sense of corresponding to a human being's natural biological term. *Nic.Eth.* 1.7.1098a16-18. A happy life is life characterized by an activity of the soul in accordance with virtue, i.e. it is a virtuous life. Moral virtue is analyzed in Books 2-5. Intellectual virtue is analyzed in Book 6.

³ *Nic. Eth.*, 10.7.1177b-26-31; 10.8.1178b8-28; 10.9.1179a23-32.

⁴ The place of freedom in Aristotle is more complicated and will be dealt with in this note. Freedom possesses normative force in Aristotle's thought, but Aristotle uses the predicate 'free' to *characterize* the highest science; hence, one may infer that freedom characterizes the highest form of human happiness, namely philosophical contemplation. *Meta.* 1.2.982b24-27. By the standard he employs in the passage from the *Metaphysics*, namely that x is free if it exists for its own sake and does not exist for the sake of something beyond itself, another statement in the corpus implies that practical activity is in fact not free, as it always occurs for the sake of something outside itself. *Nic.Eth.* 10.7.1177b5ff. In any event, freedom is never, as with Fichte and Hegel, invoked as the *sole* end of human conduct, nor even as the property of a single faculty of the soul.

In connection with practice and politics, for Aristotle it is obviously better to be a natural master than to be a natural slave, and a natural master ought to be free in the legal sense. Cf. *Pol.* 1. Another important reference to freedom as a normative concept in Aristotle occurs in his analysis of democracy: *Pol.* 1317a40ff. But this is

controversial claim as Aristotle distinguishes the practical life, as concerned with merely human things, from the theoretical life, which is concerned with divine things or else participates in the divine.⁵ If an orientation towards the divine is operative even in connection with the kind of happiness associated with practice, then at most this can mean that the human being achieves a kind of perfection by exercising that faculty in virtue of which he most resembles the divine, but in a manner that is concerned with the human matters of politics and not with the divine itself. So much for a brief treatment of Aristotle's use of the highest normative concepts. Further points will become apparent below as we compare Aristotle's system to others.

Let us turn from Aristotle to Christian thought and what I will call 'Christian philosophy.' Christian thought in general grounds ethical and political norms in divine will. In comparison with Aristotle, it is immediately more economical, as it appeals to a simple principle as the source of normativity, but unlike Aristotle it involves a highest object that can only be known at best inadequately. But Christian *philosophy*, as is clearly illustrated in the case of Aquinas, invokes a concept of nature activated by and subordinate to the divine will.⁶ By contrast, Aristotle's God does not will the norms of nature, but at most provides an involuntary model of human aspiration, one that is the explicit model of emulation for the philosopher, but at the very most the implicit model for the citizen or statesman. Hence, in comparing Aristotle's ethical philosophy with its Christian alternatives one may conclude that Aristotle deliberately purges ethics and politics of all reference to divine will in favor of an appeal to the hierarchical order of the cosmos, which includes God.⁷ In sum, with respect to ethics and politics Aristotle's ultimate appeal

a discussion of the goal of a particular kind of regime – and one that Aristotle characterizes as corrupt. It is not a discussion of how freedom could serve as a principle legitimating more specific ethical principles or ideals. In sum, freedom is a central normative concept in Aristotle insofar as it characterizes the highest human activity, but it is not his fundamental normative concept precisely because its content is parasitic upon philosophical contemplation. For Hegel, freedom belongs to the inmost essence of human activities: theoretical activity *is* free, i.e., self-determining thought and practical activity in the modern world is free insofar as it is informed by normative principles that human beings have given themselves.

⁵ *Nic.Eth.* 10.6-9, esp. 8.1178a9–22.

⁶ Christian philosophy is often characterized as the project of demonstrating truths revealed in Scripture with the methods of natural reason. But one may also use the following criterion to distinguish Christian thought in general (theology, mysticism, devotional literature, scriptural hermeneutics, etc.) from Christian philosophy specifically: Christian thought need not make any appeal to the concept of *nature*, while such an appeal is precisely what particularizes Christian philosophy. The concept of nature straightaway expresses the idea of intelligible order that can be known through unassisted use of reason, i.e. by philosophy.

⁷ It goes without saying that the Greek pantheon was the object of Aristotle's purge, both with respect to its personalities and its conception of divine agency. A philosophical rejection of the latter on the presupposition that the highest beings do not change is at bottom what necessitates the purge of the former.

We should also note that Aristotle suggests, quite strangely, that God is simultaneously a part of and beyond the cosmos, as he is located at its outermost

is to the cosmos, or what can be called the order of nature, while Christian philosophers rest all specific ethical and political norms and ideals on an appeal to the divine will.

As for freedom, it is considered to be a gift of God to man and angels, and as such it is already seen to embody a distinctive goodness. It is in virtue of being free, i.e. being an intelligent uncaused cause, that man is elevated to the position of being a contributor to the unfolding history of the cosmos. But man's freedom is not to 'create values' or moral principles, but to be exercised in obeying what God has willed. In Christianity, human freedom is a condition of ethical principles, but is not a principle justifying or constituting specific ethical rules or ideals.

Both Aristotle and the Christian alternatives offer accounts of normativity that are grounded in appeals to fundamental principles that are essentially teleological, albeit in different and even opposed ways. For the Christian, God's will involves purposes in at least two ways: first, the laws he imposes upon man are an expression of divine purpose; second, the existence of God himself enters into the definition of the purpose he imposes upon man, which is ultimately for human beings to approximate to or enter into an ideal God-Human relationship.⁸ For Aristotle, the norms of conduct – the virtues – are not willed but are the given, irreducible ends of human nature. But one must be careful to distinguish the concept of an Aristotelian natural 'end' from that of a purpose. A purpose presupposes a consciousness that expresses it; a natural end does not presuppose such a consciousness for it to be a natural end for a species, e.g., man. The difference between purpose and end corresponds precisely to the opposition of a created cosmos and an eternal cosmos that is uncreated. In a created cosmos, each species is to realize its appropriate natural form in accordance with divine intention. In Aristotle's uncreated, eternal cosmos, living individuals reach their natural end or 'good', 'always or for the most part.' This kind of natural consummation is simply a permanent feature of an eternal cosmos. As natural processes routinely lead to the realization of such 'good results' it would be entirely forced to maintain that they are products of accident.⁹ Hence, in order to understand what, say, a bear ought to be, one must look to a mature bear; but in order to understand how a human being should *act* one must appeal to the mature adult and the virtues he embodies as an ethical model. Christian morality rests on an appeal to divine purpose, Aristotelian morality to natural ends.

Nonetheless, one can still ask why these respective appeals have any force. The answer is that, in the case of Christianity, the will of God is *infallible*, while, in the case of Aristotle, nature, defined as a set of ends, by necessity *'always does what is*

perimeter. *Phys.* 8.10.267b6-9. Nonetheless, if we consider the cosmos as an eternal order that presents itself as a hierarchy, the Aristotelian God is necessarily included as its pinnacle and first principle.

⁸ One approximates to an ideal, i.e. more intimate, relationship to God through the sacraments, while one enters it through election into God's kingdom.

⁹ Such is the broad conclusion one can draw from *Physics* 2.8. In my reading of this chapter, I am influenced by John M. Cooper, 'Hypothetical Necessity and Natural Teleology' in Gotthelf & Lennox, *Philosophical Issues in Aristotle's Biology* (New York: Cambridge), 1987, pp. 243—274.

best.¹⁰ This is a metaphorical way of saying that natural processes are always suited to bring about their ends and that natural ends are always ideally constituted. I know of no single passage in which Aristotle undertakes a justification of this principle. Nonetheless, one can provide a sketch of an Aristotelian justification. If a type of natural process or a type of natural end were imperfect, then the imperfection would be measured by some other standard above nature. Such a standard would in effect function like a Platonic form separate from nature and standing on its own. Aristotle, for a whole host of reasons we need not review here, believes that the doctrine of separate forms is incoherent. Hence, nature contains its own standard of perfection, i.e., it inherently does what is best.

Before turning to Hegel, let us consider the thought of Thomas Hobbes, whose views on nature and normativity are directly opposed to any framework in which purposes or ends are part of the basic structure of the whole. Thus we may use Hobbes as our illustration of a materialist treatment of normativity. It will become plain that divine will and freedom do not for Hobbes play any fundamental role in determining the basic norms of conduct. On the contrary, limited freedom and the worship of a divine being are reduced to being instruments of other ends grounded in nature.¹¹

Hobbes grounds the binding norms of human conduct on a materialist and egoistic psychology in which self-preservation and comfort are the natural ends of human beings.¹² Self-preservation is straightaway more necessary than comfort. Hobbes then derives a set of natural laws concerning the treatment of others, the sum of which may be reduced to the imperative to establish peace when at all possible and, once it is established, to contribute to its maintenance through the civil treatment of others. This materialist natural law teaching is based entirely on natural reason appealing to the end of self-preservation. Thus, Hobbes' appeal to God as underwriting the same laws is at most a rhetorical concession to the Christian sensibilities of at least many of his contemporaries (and especially the Christian authorities). As for freedom, which he defines simply as an absence of external impediments, his view of it is, as already indicated, rigorously instrumental. His first concretely stated normative principle is a natural right in the state of nature to do anything that one deems necessary or advantageous to the preservation of one's person. Otherwise put, freedom is to be exercised for the sake of preservation; one does not preserve oneself for the sake of freedom understood as intrinsically good. Hobbes teaches that one should accept a set of restrictions placed on one's freedom on the condition that others do the same, so as to establish an encompassing peace, which dramatically increases the likelihood of one's preservation and, in particular, of avoiding a violent death. The degree and kind of freedom to be preserved against others is not maintained because freedom is an intrinsic good, but because some degree of freedom is required to satisfy basic needs and desires (and, in any event, restricting it past a certain point would be superfluous).

¹⁰ That Aristotle applies this cosmological principle to ethics and politics is obvious from *Pol.* 1.1.1252b1-3.

¹¹ In what follows, I interpret chapters 13-14 of *Leviathan*, Edwin Curley, ed., (Indianapolis: Hackett), 1991.

¹² Note how for Hobbes these fundamental purposes are universal and necessary, whereas for Aristotle the true ends of conduct can only be pursued in a healthy polis.

The appeal to nature involves a certain complication. First, it is equivalent to an appeal to the brute fact that self-preservation and comfort are desired by human beings; these ends are not good insofar as they are natural, but are only relatively good to those who necessarily desire them. As such the use of the concept of nature in Hobbes has a respect in which it is purely descriptive, which can never be the case for Aristotle or the Christian philosopher. Second, nature embraces more than the two ends of self-preservation and comfort, as Hobbes also maintains that human beings are naturally vain and thus seek to protect and enlarge their reputations – sometimes even at the cost of their own lives. But the putative fact that the fear of violent death is the most powerful passion – more powerful than vanity – is supposed to function, after Hobbes' points the fact out, to sober the reader in his pursuit of private glory and move him accordingly to assign greater importance to his own preservation. Hobbes' appeal to nature then has a rhetorical function in indicating to the reader (or, strictly, that reader who belongs to the majority of mankind for whom preservation is at least potentially more important, most of the time, than the gratification of vanity) what his fundamental natural desire is and, therefore, how he *ought* to conduct himself so as to conform to his own nature.¹³ Finally, the concept of nature has the broader normative function of legitimating a certain conception of man as a thoroughly selfish animal, which conception is then taken up at the foundation of ethics and political philosophy. The concept of nature plays a normative role for Hobbes not in setting a standard to which human beings ought to conform, but in expressing the necessity of certain ends. Recognizing self-preservation as a *natural* end is equivalent to recognizing that one is *rationally* required to acknowledge it as one's own end. Once the natural end has been recognized, the task for ethics is to identify which principles concerning the treatment of others best realizes the end. The task for political philosophy is to identify which kind of political society best realizes the same.

As a matter of fact for Hobbes ethics and political philosophy should not be presented separately from one another. For the first natural law states that one ought when possible to establish peace with others and the second prescribes that one ought to be willing to restrict one's original right to all things as a necessary condition for establishing that peace. Restricting one's right is the first step in founding a political community. Thus the first two laws, which precede the more strictly ethical principles that follow, are already political in their implications.¹⁴ In this manner, Hegel follows Hobbes, and in an important way Aristotle as well, as Hegel includes an account of both moral and social-political principles in one unified argument.

Whereas Aristotelian philosophy and Christianity share the attribute of recognizing ultimate principles that are teleological at their root, they differ in that the first appeals to an object that in principle stands open to the efforts of unassisted reason,

¹³ This part of my interpretation owes much to Leo Strauss, *The Political Philosophy of Hobbes* (Chicago: UC Press), 1952.

¹⁴ I earlier indicated my opinion that the concept of divine will at most serves an instrumental function in Hobbes. As I do not have the space to argue out my position on this point, I will restrict myself to pointing out that religion can support law-abidingness if there is a state church that interprets Scripture in a manner that makes obedience to the laws at once obedience to God's will.

while the second appeals to an inscrutable, yet infallible will.¹⁵ Aristotelian and Hobbist philosophy share an appeal to nature, but stand opposed insofar as Hobbes does not recognize the existence of processes or ends that are naturally good. None recognize freedom itself as the highest end of human existence except insofar as Aristotle indirectly characterizes philosophical contemplation as free. The first major figure to introduce freedom as an end in its own right is Rousseau. He is in essence followed by Kant, who distinguishes between freedom and autonomy as acting on one's own conception of law. Kant then argues that autonomy is the condition of will that human beings ought to aspire to. But we need not detain ourselves any further before proceeding to Hegel, whose philosophy, I suggest, is the most consequent attempt at thinking through the implications of taking freedom as the highest normative concept.

At the beginning of the essay, I stipulated that a concept performs a normative function if it is used to justify, identify, or constitute an ethical or moral principle. It is obvious that nature and divine will are invoked by way of justifying specific principles, but is difficult to see how they could help one in either identifying or constituting ethical or political principles.¹⁶ The concept of freedom, by contrast, can perform all three functions. First, a principle can be justified because it protects, promotes, or constitutes a freedom that is understood as intrinsically good; second, it can help identify specific principles that protect and promote specific kinds of freedom; third, specific freedoms will enter into the content of at least some, and indeed the fundamental, ethical principles.

In what follows I will use 'ethical philosophy' to refer to the entirety of what Hegel also calls his 'philosophy of objective spirit.'¹⁷ I choose this designation for simplicity, despite the fact that Hegel draws a technical distinction between *morality* and *ethics*. But my choice is partially supported by the facts that 'ethical life' for Hegel is realized in the institutions of family, civil society, and state, and that ethical-institutional life grants stability to all of the principles of human practice. Ultimately, the moral principles and property rights that Hegel analyzes prior to his account of ethical life must themselves be taken up into 'ethicality' (*Sittlichkeit*). In sum, Hegel's philosophy of right corresponds in its subject matter to what philosophers call 'ethics' and the designation 'ethical philosophy' corresponds to the ultimate result of his argument.

¹⁵ There is a difference of doctrine concerning the infinite behind the difference between the intelligibility of the highest normative principle. Aristotle denies that there is an actual infinite and thereby renders all beings definite and intelligible. Christianity posits an infinite will that is both infallible and inscrutable for that reason.

¹⁶ The important exception is a body of divine law concerning how humans are to act towards God, who is straightaway understood as most worthy of honor and love. This, however, provides minimal guidance concerning how to formulate or discover ethical principles that regulate human interaction.

¹⁷ The argument of the *Philosophy of Right* corresponds to what Hegel calls the 'philosophy of objective spirit' in his *Encyclopedia*.

Because of the emphasis on institutions, one could also with good justification call Hegel's doctrine a 'social philosophy' or a 'social theory.'¹⁸ But this designation draws attention away from Hegel's primary interest, namely in determining the conditions *under which the will can be self-determining*. His primary question is not 'what is the state?', 'what is society?', or even 'what are a human being's duties?', even though he answers these important subordinate questions in the process of his argument. The answer to the question concerning the conditions under which the will may be fully self-determining must take the form of an account of normative principles that regulate and inform relations between individual human beings, individuals and institutions, and between the institutions themselves. As basically concerned with such normative principles, one may refer to his account as an ethical philosophy, albeit in a broader sense of 'ethical' than is commonly in use. It is this breadth that extends his ethics into social philosophy. Otherwise put, Hegelian ethics embraces a universal account of the normative principles that apply to institutions as well as those that apply to individuals and grounds all of them in ethical life. His explanation of how the will can be genuinely self-determining, then, will ultimately take the form of an account of how the will can freely determine itself via ethical principles governing individual and institutional participants in family, civil society, and state. In what follows I will utilize the concept of an *institutionally defined function* as a key to understanding how ethical-institutional life makes the decisive contribution in defining or sustaining the normative principles that a fully developed will would determine itself to act upon.

II

The first concrete step to take in understanding Hegel's ethics of freedom is to think through the content of the concept itself and then to determine its implications for ethical and political philosophy. As has been indicated, Hegel takes up and extends the German idealistic understanding of freedom as self-determination.¹⁹ His adoption of this conception is motivated by the insight that freedom must combine two features: it must be independent of external influences and it must have self-imposed rules and norms for its operation, else it collapses into contingency. This quasi-Kantian starting point has three immediate consequences for Hegel: first,

¹⁸ This has been done in Frederick Neuhouser, *Foundations of Hegel's Social Theory: Actualizing Freedom*, (Cambridge: Harvard), 2000.

¹⁹ *Philosophy of Right (PR)*, §§ 4 A, 6, 7, 12R (on the etymology of two German words and its connotations in connection with self-determination), 15R (on how mere choice between indifferent alternatives is a contradictory and inadequate mode of self-determination), 20 (on the insufficiency of the concept of happiness for complete self-determination and the necessity of willing the will itself, i.e. freedom, as an end), 23 (on how the determination of the will is nothing other than its own existence relating to it as object), 27 (on absolute self-determination), 30R (on right as the existence of freedom as one of its *own* determinations).

I have used the following German edition: *Grundlinien der Philosophie des Rechts*, (Frankfurt a.M.: Suhrkamp), 1970. I have also consulted the English translation by Alan White, *Hegel's Philosophy of Right* (Newburyport, MA: Focus Publishing), 2002. White's translation is an extensive revision of T.M. Knox, with additional materials culled from Hegel's lectures. Cf. Knox, *Hegel's Philosophy of Right* (New York: OUP), 1967. All translations are from White's edition.

freedom is structured by an immanent development of 'determinations' or acts whereby it constitutes normative principles and purposes for itself; second, the opposition of freedom and necessity is 'resolved' into a unity, as freedom is to be realized in its own necessary 'self-determinations'; third, if the will is to realize itself fully as free, then it can never consciously act in mere obedience or conformity to externally imposed principles, whether these be justified with appeals to nature or divine will. At the very best, by consciously acting in accordance with a principle merely imposed on the will from without²⁰, freedom is only partially realized, as the content of the imposed principle cannot be drawn from freedom itself.

Further, one must note that Hegel places special emphasis on the idea of an 'external determination' of the will as inadequate to the will's own nature. This leads him to reject the idea that the will arbitrarily selecting between possibilities corresponds to an adequate level of self-determination, for such choice is simultaneously determined by 'external' factors such as upbringing, mood, chance association, arbitrary taste, whim, etc. Consequently, Hegel calls arbitrary choice (*Willkür*) 'contingency manifesting itself as will' and 'the will as contradiction.'²¹

A fourth consequence follows from the first three, namely that fully realized freedom will coincide with the culmination of a process of immanent development in which the identity of freedom with its own immanent necessity is realized. In the philosophy of right, this development proceeds through stages in which the will, which here corresponds to what philosophers up to Kant called 'human nature'²², progressively overcomes its entanglement with contingency and external necessity. In place of these entanglements it achieves a level of pure self-determination in which it is defined by ethical principles based on relationships of mutual recognition. The relationship of mutual recognition, I submit, helps one distinguish the philosophy of objective spirit from that of subjective spirit in which the individual is taken as opposed to and elevated above nature, and absolute spirit, in which the individual relates herself to the whole.²³ I wish to argue that the concept of recognition plays a

²⁰ The 'merely' in this clause expresses one of the major problems for Hegel interpretation. One must distinguish between principles that are imposed from without and which the individual fully accepts, but which nonetheless fail to realize the complete self-determination of the will, from principles that are imposed and accepted, but which *do*, in virtue of both being accepted *and* having the right kind of content, enable the will to achieve full self-determination. The question resolves itself into determining the right kind of content for an imposed principle to enable full self-determination. Hegel's answer to this question corresponds to his entire doctrine of ethical life.

²¹ §15R.

²² This is clear from the fact that the concept of the will, understood as a unity of theoretical and practical reason, encapsulates the argument of the section of his philosophy of spirit that Hegel calls 'subjective spirit', which contains materials (anthropology, phenomenology, and psychology) that would have been treated by Hegel's predecessors under the rubric of human nature. See *Enz. der phil. Wiss. III* (Frankfurt a.M.: Suhrkamp), 1970.

²³ The importance of the concept of recognition for the philosophy of objective spirit has been defended by Robert Williams: *Hegel's Ethics of Recognition* (Berkeley: UC

major role in Hegel's account of the conceptual stages through which normative principles become increasingly adequate to a fully self-determining will, even if the fact is not as plainly obvious in Hegel's text as one could hope. My thesis is that the recognition²⁴ of a specific mode of freedom either *constitutes* a normative principle – a 'right' – or else necessarily assists in its constitution. It accomplishes this by making a mode of freedom socially actual and effective. Mutual recognition corresponds to what Hegel, when defining a right, calls the 'existence (*Dasein*)' of freedom, i.e., a mode of freedom having been constituted as a right. Assigning recognition this function is consonant with Hegel's whole approach to normativity, as it allows for one to develop normative principles out of the concept of a free will via a free operation of the will itself (or 'wills themselves'), namely recognition. Of course recognition is usually associated with the intellect rather than the will, but Hegel does not draw an absolute distinction between the two.²⁵ An operation of the intellect is just as much an expression of the will as is the setting of a purpose.

Freedom for Hegel is not to be conceived as a faculty that enables one to act as one wishes, so that one would remain equally free whether or not one acted in accordance with 'objective' normative principles or not. Rather freedom *gives itself content* by 'determining' itself in such a way that its operation is wholly in accord with purposes and principles that it has constituted. Hence, fully realized freedom is a life led in accordance with a structure of normative principles that is a product of nothing other than freedom itself. Genuine freedom can only be realized in a self-determined *space of freedom*. Freedom understood in this way is the end of the modern epoch and those who have failed to recognize this fact are to Hegel's mind simply ignorant of modernity's (and, implicitly, humanity's) central ideal. Further, most of those who have in fact recognized freedom as an end have had a limited or distorted conception of it. Hegel would direct this charge at libertarians, who rest content with a kind of freedom that is as yet still compromised by contingency. He also criticized the French revolutionaries, who enjoyed the advantage of

Press), 1996. By the strict letter of Hegel's doctrine, the philosophy of subjective spirit corresponds to the human soul as a whole, the philosophy of objective spirit corresponds to the will, and the philosophy of absolute spirit corresponds to the intellect. I know of no single passage in Hegel's corpus that describes the differentia between the spheres of treatment via the *relata* I identify, but I believe that my alternative way of capturing the distinctions amounts at minimum to a true characterization, even if it does not correspond to a strict definition by Hegel's standards. It is therefore useful to the extent that it focuses the mind on important differences.

²⁴ By 'mutual recognition', I mean a reciprocal acknowledgement that involves at least the minimum number of individuals necessary for the performance of the various functions that define and sustain the life of a political community, a *Staat*, under the condition that the persons who recognize one another perform those necessary functions. But one should also allow for the significance of relations of the mutual recognition of modes of freedom between any number of persons from two and up. When such recognition occurs in a society that does not possess institutions promoting freedom, then there is the possibility, however remote, of revolution. However, such mutuality would not constitute a right until the appropriate institutions had been established. Take for example, two women in Saudi Arabia who recognize one another's claims to freedom.

²⁵ §4A.

understanding that a fully consummated freedom is the inevitable and necessary end of the modern epoch, but who willed a wholly abstract freedom that could not tolerate any specific institutional embodiment.²⁶ Thus Hegel maintained that the destructive consequences of the revolution were the inevitable expression of its relatively abstract conception of absolute freedom.²⁷

What has been implicit in everything stated thus far is that the will can only be fully self-determining if it poses itself, i.e. *freedom*, as its ultimate end.²⁸ This alone allows the will to satisfy the rational requirement that its highest purpose be drawn from itself, i.e. that it give itself content from its own 'form.'²⁹ Freedom as such is a quite general end that requires determinate content before it can act as a meaningful source of orientation. Now we must turn to how Hegel generates specific normative principles, i.e. rights, from the concept of the will as such.

III

A free will requires normative principles that it determines itself to follow if it is completely to realize its inward potential for self-determination.³⁰ One general

²⁶ §5R, 29R.

²⁷ Hegel would also criticize one conceivable brand of conservative thought that would argue that freedom is a 'gift' of tradition to be cherished and protected, but not because freedom is intrinsically good, but because it is the inheritance of tradition. Hegel argues that historical tradition indeed is necessary to constitute the sphere of ethical life in which modern individuals can fully realize their freedom. But the normative principles that inform ethical life are binding because they enable the will to fully realize itself as free, not because the main outcome of a tradition is necessarily unimpeachable. On the contrary, for Hegel there are traditions that fail to bring their participants to full freedom. In this connection, it is useful to recall that Hegel both criticized the French Revolution and saw it as an absolutely necessary historical step.

²⁸ Hegel uses 'will' and 'freedom' interchangeably.

²⁹ Freedom is formal for Hegel insofar as it is one and the same throughout its stages of its self-determination. The most primitive and abstract conception of freedom is, in Hegel's technical formulation, merely 'in itself', but as such it stands in an internal relation to how it will appear later as 'for itself' in relation to the content – the normative principles – that it can develop out of itself. Through the steps of the argument the 'form' and 'content' of freedom come increasingly to converge until an "identity within difference" is achieved at its end. At this point the will is 'in and for itself.' It is useful to think of the will qua form as one and same throughout the account, but progressively differing in modality (in itself, for itself, in and for itself) in accordance with its relation to its developing content. I use the term 'modality' because this process corresponds to the will becoming actually what it is merely potentially.

³⁰ Hegel refers to realizing the potential for self-determination as the concept (= abstract thought) of the will achieving its Idea (full articulation in a set of immanently connected rights). In the main, in the body of this paper I will attempt to keep Hegelian technical jargon to a minimum, so as to enable the reader to attain

statement can be made immediately, namely that the will cannot conceivably admit a general principle of coercion towards free individuals, as this would be tantamount to willing a principle that would restrict freedom rather than realize its full potential. Likewise, no single individual could successfully develop a normative principle from the concept of freedom itself that would legitimate that individual's unique right to coerce others as he saw fit for her own benefit or even self-preservation.³¹ If she attempted to justify such a principle with reference to some distinguishing feature that elevates her above others – say, great strength, beauty, or noble lineage – then she would not have constituted her principle from the concept of freedom and thus would restrict her own will by adopting something external to it as determining it. But if she applies normative principles on the basis of her being a free being, then she has in effect adopted principles that apply to all such beings. Let us have a closer look at how such principles can be developed from the concept of freedom itself.

Hegel calls all of his normative principles 'rights' and defines right as the 'existence of freedom.' More precisely, each right is identical with or else corresponds to a specific mode of freedom that has been granted effective normative status, i.e., has been made to 'exist' in the real world. The act whereby such status is granted is the recognition of a specific mode of freedom. If we simplify matters somewhat, the entire problem then reduces to the technical matter of distinguishing the various modes of freedom that can and ought to be recognized and thus taken to correspond to what Joseph Raz has aptly called 'core rights.'³² It should come as little surprise that here Hegel relies upon his dialectical logical doctrine to enable one to draw the appropriate distinctions. Scholars who have adopted an empirical approach to the problem of how freedom has functioned normatively inevitably object that Hegel has imposed an external a priori conceptual scheme on the subject matter at hand. But it would be better to say that Hegel addressed himself to his period in history and its factual details with his logic as the means that would enable one to develop and immanently connect various modes of freedom and right with one another. Hegel's logical method is in fact inevitable for him because he understood his logic as determining the conceptual structures that enable one to think about anything whatsoever. How the logic guides his thought in the philosophy of right is a subject for a distinct study. As even Hegel does not bother to state the exact correspondences, move by conceptual move³³, between his logic and his philosophy

an understanding of Hegel that does not presuppose a mastery of his peculiar conceptual apparatus.

³¹ Hence, beginning with freedom rules out Hobbes' fundamental natural right.

³² Joseph Raz, *The Morality of Freedom* (New York: OUP), 1985, pp. 168-9. The meaning of this concept can be made plain by a contrast: the right to property is a core right, while the right to whistle a theme by Schubert is not. Generally, by 'core right' I mean a principle that has a universal structural effect on a human life or the existence of an institution. Property rights and what Hegel calls the right of insight, i.e. of conscience, determine the kind of life individuals can lead because they characterize, universally, the kind of historical world that they live in.

³³ It should be emphasized that he does in fact *invoke* the categories of the logic very often. However, this is different from explaining the parallels between his logical and 'real' arguments in maximum detail.

of right, we may legitimately restrict ourselves to only the most general characterization.

Hegel's logic proceeds by beginning with the most abstract formulation of the concept it sets out to comprehend, e.g., Being, Essence, Concept, Nature, Soul, Will, or Intellect. It then proceeds to follow out the implications of the concept itself, which implications put an end to its abstract 'immediacy' and bring about a condition of 'mediation', i.e. one in which various 'determinations' are thought in relation to it.³⁴ The mediated concept is then related back to its immediate form and comprehended as a 'mediated immediacy' or a unity of the two previous sides in a higher sphere.³⁵ This threadbare description of Hegel's conceptual method corresponds to the following stages in his philosophy of right. The will taken in its immediate form is the abstract, embodied subject standing in opposition to externality: 'inner choice, drives, and desires, as well as . . . existence that is immediate and external.'³⁶ Such an abstract subject is conceived simply as self-conscious without as yet being determined as having any definite purposes that it has formulated for itself. This abstract conception of the will is succeeded, in the section entitled 'Morality', by a conception of it as engaged in the activity of setting purposes for itself and ultimately as determining an opinion of the good on the bases of its own isolated intellect. Here the will is understood as moral subjectivity able to oppose itself to its own inward acts and is thus 'mediated' in the sense that what it is is essentially a relation to its inward determinations.³⁷ The final stage involves i) a synthesis and ii) a grounding of personality (immediacy) and moral subjectivity in ethical life, which consists of institutions that promote and protect the rights associated with the previous two spheres, while providing the normative context within which the will can be fully self-determining. This final stage is necessary, we

³⁴ For simplicity, here one may think of the relation between predicates and subject or properties and entity. But one should not reduce the relation between a concept and its 'determinations' to these oppositions, as Hegel's conceptual logic is far richer.

³⁵ For a useful description of this typical dialectical move, see Hegel, *Wissenschaft der Logik: Lehre von Sein* (Hamburg: Felix Meiner), 1990. pg. 363. *Hegel's Science of Logic*, A.V. Miller, tr. (Atlantic Highlands: Humanities Press), 1991, pg. 323.

The concept of self-determination also requires that the very *method* through which different modes of freedom are identified be a product of freedom as well. Hegel in effect believes that he has satisfied this requirement in his logic, which is the unfolding of self-determining thought thinking itself.

³⁶ §35.

³⁷ One will note that I have claimed that the first move beyond the initial posing of the concept is already a move that negates immediacy and constitutes mediation. Hence, one may object that, as the steps taken within the sphere of personality already establish the will's mediation, one does not have to wait for the sphere of morality to encounter this concept. This is true. But as the whole sphere of personality presupposes an abstraction from the setting of purposes it reduces the individual to the analogue of a bare, immediate particular; any developments within this sphere must be conceived as mediations *within* the *general* context of immediacy. The mediation that characterizes morality throughout sets it in clear structural opposition to personality. Morality too has its own immediacy, namely the first thought of a subject setting ends before one proceeds to distinguish different modes of end-setting and the rights associated with them.

will see, because neither personality nor morality provide for an adequate kind of self-determination, even though they do provide necessary stages on the way towards the adequate formulation of the will's self-determining capacity. It is necessary now that we look at these three stages in greater detail.

One must begin with personality. Here the individual, as conceived abstractly, is set in opposition to externality as defined above. With this abstract external relation there is as yet no question of the will having a capacity to set ends.³⁸ All that is important is that the relation that the abstract will has to externality be clarified further. As there can be no requirement to do anything or to set any definite end at this stage, the only mode of freedom that can be identified here is a general capacity to determine externality. While in the actual world, such rational determination of externality will always involve purposes, this fact must not prevent one from seeing what is present here in its structural purity, namely a general possibility to determine external being and a corresponding permission to do so, *abstraction being made from any determinate purpose*. This permission to determine externality is of course limited against other wills, for a reason stated earlier, but in relation to mere *things* it takes the form of a general permission 'to determine' them in any manner a person wishes. For a person to use a thing that is not already the possession of another is for that thing to be positively and exclusively related to the will of that person.³⁹ Further, there are no temporal restrictions placed upon this use. Likewise, a person has a permission to establish that a thing is hers to use at any time she pleases over the period of her whole life.⁴⁰ When a thing is related to a person as something that that person has an exclusive right to use, that thing has come to 'objectify' that person's freedom. Property is that which 'objectifies' the freedom of a person. Thus the sphere of abstract right is that of the right to property. Relative to this permissive right is the negative duty not to violate personality.⁴¹

The whole sphere of objective spirit and right presupposes that the freedom and dignity of individuals has already been recognized. Before proceeding with Hegel's argument, it will be useful to have some more background. The general normative status of freedom was established prior to the philosophy of right in the conclusion of

³⁸ §37. Note that in §44 Hegel does claim that the person has the 'substantial end of putting its will into any and every thing and thereby making it "mine" . . .' But this 'substantial end' is not as yet conceived as a purpose that the person has formulated for herself. Rather, it is an 'end of reason', i.e. it brings the world one step closer to the goal of constituting a complete space of freedom for human beings. §45 distinguishes between a person's motives, which are extrinsic to personality and property, and the fact that person objectifies her freedom in the thing, which makes the latter property. See above for further clarification.

³⁹ Of course there can be collective persons: cities, states, religious organizations, clubs, etc. But each of these collectives is exclusive of other collectives and individuals (even their own members acting independently of the collective). Further, each presupposes the basic model of the particular person.

⁴⁰ §§51-58. Needless to say, this includes allowing others to use the item while maintaining the right to decide who may do so, when, and under what conditions.

⁴¹ §39.

Hegel's famous master-slave dialectic.⁴² This section describes the establishment and unfolding of a relationship of domination between an individual who exemplifies 'being-for-self' (the master) and another who exemplifies 'being-for-another' (the slave). We need only comment on the general structure of the relationship itself. 'Being-for-self' refers to the master's certainty of his own worth (his 'self-recognition'), while 'being-for-another' refers to the slave's recognition of the master. This social arrangement makes explicit the two psychological attitudes that must be brought together at a higher level in order for there to be a consensus on the basis of which there can be a 'stable community with shared judgments.'⁴³ What this means for our problem is that a stable community in which shared judgments concerning rights prevail presupposes the psychological integration of the two moments of recognition in each of its members: each such individual recognizes others and herself. In short, such a society involves mutual recognition and, specifically, the mutual recognition of one another *as free and because* each is free. Such recognition of another in virtue of her freedom is simultaneously the self-recognition of the agent. Specific principles determining how free individuals ought to be treated are developed within a context of mutual recognition.

Let us now return to the sphere of personality or 'abstract right.' In this sphere a specific mode of freedom defined with reference to an abstract conception of the will is accredited through the recognition of its status and normative claim.⁴⁴ Thus the mode of freedom that embodies itself in things is demonstrated in its 'existence' as an effective normative principle, or right; the same is true for the related powers to disown property, conclude contracts, etc. The basic appeal is one may say to a respect for freedom and never to the utilitarian principle of the greatest good for the greatest number. This general pattern of demonstrating the existence of a right continues throughout Hegel's argument, though there are complications that will be duly noted below.

⁴² *Phän. des Geistes* (Frankfurt a.M.: Felix Meiner Verlag), 1988, pp.127-36 (*Hegel's Phen. . . .* [New York: Oxford, 1977], pp. 111-19; *Enz. der phil. Wiss. III* (Frankfurt a.M.: Suhrkamp), 1970, §§ 430-435.

⁴³ The quote is from Michael Forster, *Hegel's Idea of a Phenomenology of Spirit* (Chicago: CUP), 1998, pg. 252. His whole discussion of the master-slave dialectic from 248-255 is helpful.

⁴⁴ The act of recognition is attributed to the person, but must also be performed by the theorist thinking through Hegel's argument. This implies that only a person habituated within modernity can follow Hegel's argument. Anyone lacking a respect for freedom, or even a concept of it, could not really carry out the argument.

Generally, one must distinguish the recognition that the theorist has of the various rights that are constituted in the argument from the concept of the mutual recognition of individuals who are the 'objects' of the argument. The concept of *mutual* recognition enters immediately after the identification of the right to appropriation in the form of the demand that a person take physical possession of a thing to satisfy the condition that others be able to *recognize* her claim to it before it can genuinely be her property. It enters even more explicitly in the form of a contract.

The fine details of the sphere of personality are not here a concern, so we will turn immediately to how Hegel explains the transition from abstract right to morality. Abstract right as a sphere of normativity abstracts from the free individual's setting purposes for herself and considers merely her capacity to embody her freedom in things. But this implies that the sphere of abstract right does not include the concept of a will setting itself the purpose of maintaining property rights. Now, while the implication that the sphere of abstract right requires supplementation by another normative sphere in order to be sustained is immediately plausible, Hegel's procedure in establishing this point is actually rather complicated. Instead of simply noting the insufficiency of abstract right and then making an immediate transition to another normative sphere in which the basic conception is that of the will setting purposes, he shows how through the concrete case of crime the sphere of abstract right must ultimately *at the ultimate moment of its unfolding* also include the idea of abstract right being a purpose of the will. The punishment of the criminal is the manifestation of the fact that the preservation of the integrity of the institution of property rights has been adopted as a purpose of the will. But the manifestation of purpose *within* the sphere of abstract right is incompatible with the basic conception of the sphere as such, so produces a contradiction. This contradiction 'propels' abstract right beyond itself to the sphere of morality, in which the will setting purposes is thematized throughout. Abstract right demonstrates its own link to morality. But once this is accomplished, morality presses itself forward in accordance with its own inner logic to a point where its own inadequacy is demonstrated and it makes the transition to ethical life.

If one looks closely at the transition from abstract right to morality, it becomes plain that there are in fact two contradictions. First, the fact that abstract right cannot at first make itself its own purpose allows the possibility of crime as an immanent moment of abstract right itself. The bare presence of a prohibition against violating property rights without any will having as yet willed that the principle be upheld is compatible with a will violating that principle. The contradiction occurs between the following propositions: 1) abstract right is a stable normative sphere that 'exists' in the sense of being actually effective in human life; and 2) abstract right is compatible with its own negation in crime.⁴⁵ A normative sphere cannot exist as a stable feature of human existence and be perfectly compatible with its own negation or non-existence. Hence, abstract right is compelled to adopt itself as an end in punishing criminals. This introduces the second contradiction, namely that between the fundamental determination of abstract right and its consummation.

But one should be careful to note that abstract right is not an end for which punishment is merely instrumental in its deterrent or rehabilitative effect. Rather, Hegel interprets punishment as a means for restoring the criminal to 'rightfulness' by negating the negation of right inherent in crime. Punishment does not provide right with a shield, but directly heals the wounds inflicted upon it by crime. It is a matter of principle and not consequence.

The justification of Hegel's doctrine of punishment is not our concern, so we may turn immediately to the sphere of morality, that in which personality has given way

⁴⁵ In my understanding of this part of Hegel's argument, I am influenced by Peter Benson, 'The Priority of Abstract Right and Constructivism in Hegel's Legal Philosophy' in *Hegel and Legal Theory* (Routledge), 1991, pp. 174–204. But I believe that he misunderstands the precise nature of the transition to morality.

to subjectivity, and a set of prohibitions has been replaced by positive duties. Here we encounter the whole domain of modern inwardness or what Hegel calls the 'reflection of the will in itself.' Our main concern is of course with understanding how freedom functions as a normative concept in relation to the domain of subjective inwardness. Hence, we must look to how the various modes of subjective freedom can be accredited as corresponding to so many rights. Hegel's account of morality identifies six principal rights: the right of intention, the right to know, the right of objectivity, the right of welfare, the right of distress, and the right of insight. We are justified in restricting our comments on these rights to what is necessary for an overview of Hegel's understanding of the sphere of moral subjectivity.

It perhaps does not need emphasizing at this point, but given the history of misunderstanding that Hegel's ethical philosophy has been subjected to, it seems necessary to point out that the rights of subjectivity considered in abstraction from ethical life are essential to the realization of complete self-determination.⁴⁶ This is true not merely because these rights are necessary stages on the way towards ethical life, but because one in particular, the right of insight, is taken up into ethical life, so as to place the individual in the rightful position of placing a claim upon her institutions to a kind of transparency that can allow her to evaluate and judge them. It is only when she can understand and affirm, i.e. will, the normative principles embedded within ethical-institutional life that she can be said to have achieved full self-determination. Hence, moral subjectivity plays a central role in the carrying out of the argument to its ultimate consummation.

For our purposes, we may concentrate on five of the abovementioned rights: the right to know, the right of objectivity, the right of welfare, the right of satisfaction, and the right to insight. The right to know is based on the freedom that each person possesses to intend a definite purpose.⁴⁷ As a free individual formulates her own purposes and is thus the master of her own actions, she has a right only to be held responsible for that in her action which she in fact intended. Hence, it would be unjust to punish a messenger for having delivered bad news, as he intended only to convey news, whatever it may have been, and not to deliver *bad* news in particular.

The right to know is counterbalanced by a corresponding right to objectivity. The right of objectivity is in effect the right of the observer of an action to hold another person responsible for the unintended consequences of an action that was performed with an unacceptable level of risk. Throwing a baseball at high speed on a crowded beach provides a ready example.⁴⁸ What is of interest for us in connection with the right of objectivity is how it relates to the concept of freedom. It is not constituted through the independent recognition of a mode of freedom – the freedom to hold others responsible for their actions – but is parasitic upon and limiting of a right based on another mode of freedom, namely to intend one's actions. But it does involve an exercise of freedom, namely the freedom to form an opinion concerning

⁴⁶ §106 'Only in the will as subjective can freedom, or the will that is in itself, be actual.'

⁴⁷ In this and the next paragraph, I am interpreting §§ 119-120.

⁴⁸ Note that one may blame another for doing this *at all*, as well as for injuring another person on account of not having taken the risk into account or having deliberately overlooked it.

another's intention, to judge her action, and to assign responsibility. It also involves the principle that an individual is responsible for reflecting on the probable outcomes of an action, i.e. that she is morally required to exercise her free capacity for reflection in this way. In essence then the right of objectivity is based on a relation between a duty on the part of the actor to act circumspectly and a corresponding right on the part of those observing or affected by her action to hold her responsible on the assumption that she is subject to that duty of circumspection.

The mode of freedom corresponding to conceiving intentions and acting on them involves a reference to how others are affected, i.e., it is decidedly a moral capacity. The right that Hegel says is relative to this mode of freedom is to a certain kind of treatment by those *judging* the actor, i.e. it is the duty of those judging to recognize the intentions of the actor. Accordingly, they ought not to go too far in assigning responsibility. But by the same token, those judging have a right⁴⁹ corresponding to the duty not to go too far, namely a right to hold an individual responsible for more than what she intended when the circumstances make this appropriate. Judgment should aim at a mean between going too far and falling short in assigning responsibility. This right to go beyond an evaluation of intentions in assigning responsibility corresponds to a mode of freedom that the agent has a duty to exercise, namely the freedom to reflect circumspectly on the possible consequences of realizing her intention. The sum of these remarks is that rights and duties within the sphere of morality are not merely intersubjective – property rights are ultimately that as well – but presuppose how one is to exercise one's reflective capacities with reference to the actions and intentions of others in light of the fact that actions and intentions are expressions of freedom.

What has not as yet been mentioned is a right to act on one's own intentions. Hegel presupposes this unnamed, but necessary, right in §121-124. Here he discusses the right of satisfaction:

the subject . . . has in its aim its own particular content, and this content is the determinative soul of the act. That this moment of particularity of the agent is contained and accomplished in the act constitutes subjective freedom in its more concrete determination, the right of the subject to find its satisfaction in the act.

What Hegel means by this is not that an agent has a right to have all of her desires satisfied. As the remark to §124 makes clearer, the right to satisfaction is based on the freedom that the individual expresses in conceiving of her private satisfaction as

⁴⁹ Hegel does not refer to a *duty* to hold individuals responsible for more than they intend, though one would expect that this would apply under certain circumstances, as with his example of setting a torch to a single shingle on a house. But his omission is interesting in that one can imagine circumstances in which how far one should go in assigning responsibility is indeterminate. In such cases, Hegel seems to be saying, humans have a right to assign responsibility beyond what an agent intended. If one wished to work out the implications of this thought, one would have to acknowledge the role of public debate in forming determinate judgments concerning responsibility, or else in undermining the possibility of assigning it. Looked at this way, Hegel seems to be very close to suggesting that a person is responsible for an unintended consequence if enough people agree that she is. But this is justification for scapegoating.

part of her overall purpose. The key is that the individual has a right to determine what her satisfaction is and to pursue it. In short, each individual has a right to formulate an independent conception of what a completely satisfied (or "happy") life is and to set about living it. Hence, any paternalistic scheme that imposes either an end or the means would amount to a violation of this right. The institutionalization of this right leads to what Hegel calls civil society, the sphere in which each individual pursues her private interests.⁵⁰ Further, this right takes up an agent's capacity to form her own intentions and connects it with the general idea of pursuing *overall* satisfaction. Relative to this pursuit, it is simply an extension of the underlying logic of self-determination that precludes the legitimacy of externally imposed norms. Hence, Aristotelian and Hobbist conceptions of happiness⁵¹ as based on nature are ruled out precisely at this point in the argument as is a Christian doctrine of grace.

The right of satisfaction leads to the right of well-being. This is based on a generalization of the right to satisfaction to all human beings and then a reflection on how the normative basis of this right entails that each person act with a view towards the satisfaction of others. The nerve of the argument for this right is that if the freedom of a particular individual is sufficient for that individual to have a right against others (and especially against institutions) to determine the purpose of her life and the means towards realizing that purpose, then that same freedom is sufficient to impose upon that individual a duty to take into account not merely the particular effects of her actions on others, but their own satisfaction or happiness, and to lend aid when it is possible and appropriate. One might accuse Hegel of a non sequitur. One cannot infer a duty to benefit others from a right not to suffer interference in the pursuit of one's own satisfaction. At most, one could infer a duty not to interfere with others pursuing their own happiness. But perhaps what Hegel means is that if we respect individuals on account of their being free, then we will also be concerned for their well-being and act to promote it by *assisting them whenever possible in their pursuit of their own conception of a happy life*. This is a more plausible line of argument and could possibly be developed in defense of Hegel's right of well-being. What is interesting about Hegel's position, whatever the precise justification for it may be, is that it grounds what is commonly called the principle of beneficence in a recognition of freedom. Unlike Kant, who also argues that we have a duty to promote the happiness of others, but for whom happiness is only instrumentally good because it increases the likelihood of genuine autonomy, Hegel recognizes a duty to acknowledge and be responsive to the conceptions of happiness that others possess on account of the fact that these conceptions are an expression of freedom. Once again, a 'moral' right, and the corresponding duty, is linked with the recognition of the freedom of others.

⁵⁰ Of course, Hegel did not believe that women could be full participants in civil society, but as his views on gender roles have been demonstrated to be false, we may ignore this feature of his doctrine. Doing so introduces a minor historical inaccuracy, which will do one no harm so long as one is aware of the letter of Hegel's doctrine. If the main line of Hegel's argument is still defensible, then it must be able to accommodate itself to the facts concerning the capacities of women. I think this can be rather easily allowed, but cannot pursue the matter at all here.

⁵¹ Hobbes uses the term 'felicity.'

The moral subject wills that both abstract right be upheld and that well-being be promoted.⁵² Neither abstract right nor well-being is absolute, as each is limited by the other. Abstract right is not to be pursued at the cost of the world, nor does the pursuit of well-being justify systematically ignoring rights. The right balance of abstract right and well-being is what Hegel calls the 'Good.' The project of moral subjectivity is to determine the Good on the basis of its own insight. Hegel both acknowledges a right of insight – a right of the modern subject to form her own opinion concerning the principles underlying moral goodness – and subjects this right to a rather severe critique that is designed to limit it and thereby to reduce it to its positive potential, namely the activity of knowingly willing universal principles as opposed to blindly obeying authority. But while Hegel affirms the aspiration of knowingly willing universals, he denies that subjectivity has the resources on its own to determine what those universals are. Ethical life supplies these universals.⁵³ While moral subjectivity is a systematic feature of modern individuality, one must also recognize how moral subjectivity can falsely arrogate all authority unto itself with terribly destructive consequences.⁵⁴ Hegel's favorite example of the destructiveness of modern moral subjectivity is the French Revolution.⁵⁵ Unlike Burke, however, Hegel accepts this destructive *potential* as a necessary part of modern life and seeks to limit it, not by suppressing moral subjectivity beneath the wisdom embodied in tradition, but by recognizing it in a higher sphere, that of ethical life, that both respects moral reflection and provides it with sure guidance.⁵⁶

The problem with moral subjectivity is its abstractness. It is nothing other, again, than the project of determining the Good *in deliberate abstraction from the traditions of one's community, that is, from ethical life and its institutional structure, and therefore from all possible specific content*. Hegel denies, contra Kant and Fichte, that moral subjectivity has the resources to provide itself with definite practical orientation.⁵⁷ In the final analysis it collapses into mere self-certainty. This

⁵² Cf. §129.

⁵³ Cf. M.B. Foster, *The Political Philosophies of Plato and Hegel* (New York: Russell & Russell), 1965, pp. 83-84.

⁵⁴ Neuhouser, *op. cit.*, Ch. 7, esp. 248ff., offers some very good insights into the problem of what one may call 'moral stubbornness' and how it must be overcome before moral subjectivity can realize its positive potential in ethical life. Cf. Michael Hardimon, *Hegel's Social Philosophy: The Project of Reconciliation* (New York: Cambridge), p. 166.

⁵⁵ See §29R.

⁵⁶ Hegel distinguishes moral from ethical conscience, but this is not because they are atomically distinct, but because they correspond to different levels of freedom. Moral conscience is present in all human beings qua human, but as abstract lacks sure guidance in its project to will the universal (i.e., to enact its freedom entirely on its own through independent insight). Ethical conscience is conscience guided by norms that structure ethical life. What remains the same between the two is willing on the basis of a true subjective insight into what is objectively universal. Cf. Neuhouser, *op. cit.*, pp. 231-6.

⁵⁷ It is certain that Hegel was unfair in his criticism of Kant's procedure for determining moral rules on the basis of the criterion of universalizability as embodied

produces a contradiction akin to the first contradiction associated with the sphere of abstract. Morality has now shown itself to be both i) an activity of determining the Good and ii) a failure to determine the Good in any but a thoroughly generic sense. But determining only a generic concept of the good is in effect a failure to determine that concept. Thus morality contradicts itself and requires a transition to a higher sphere via a negation of one of its distinguishing attributes, namely that the subject be taken in abstraction from its participation in institutions. In Hegel's opinion shared modes of life, defined by ethical institutions and the functions that individuals perform in them, can and do provide the specificity that morality is incapable of providing.⁵⁸ Let us turn immediately to a brief treatment of his basic strategy for arguing that ethical-institutional life can complete an ethical philosophy rooted in the concept of self-determination.

IV

Abstract right and morality are complementary spheres of normativity that are neither singly, nor jointly sufficient for either human life or the adequate self-determination of the will. Nonetheless, they provide normative elements called 'rights' that constitute a necessary part of the will's self-determination. In particular, one may emphasize property rights, the right of satisfaction, and the right of insight as not merely occupying positions in the structure of the will's self-determination, but as actually being taken up, along with every other right, into the sphere of ethical life. In brief, ethical life is the locus of the reconciliation of modern individualism with the claims of communities and groups. Hegel believes that he can accomplish this by making the norms of abstract right and morality belong to the very essence of those institutions.⁵⁹ For example, the family is so to speak a training ground within which children are raised to rational independence and a position within civil society. Civil society itself is the most obvious example of a sphere of ethical life in which individual rights are effective.⁶⁰ The state, I will argue, is not merely the organ of governance, but provides the occasion for the reflective individual to rise above the contingency of everyday affairs and perceive what is rational in ethical life as a whole. This allows her to adopt an intellectual position

in the categorical imperative, 'act only on that maxim which you can at the same time will as universal law.' Nonetheless, I doubt that Kant's procedure can account for all of the moral rules that a majority of persons would recognize, so I would argue that one can as yet justify Hegel's appeal to the necessity of a transition to ethical life. One might also mention that Hegel rejects Kant's thesis that motivations from love or concern fall outside of ethics or morals, as is abundantly clear from Hegel's treatment of the family as the embodiment of love. See §158.

⁵⁸ The debt to Aristotle here is obvious. Cf. *Politics*, I, ii, 1253a18ff. The performance of one's institutionally defined functions is not a restriction of freedom if this performance is part of an order that upholds the rights of particulars and the agent knows this. Hence, the performance of institutional functions will be a source of meaning and purpose for the sufficiently reflective agent.

⁵⁹ This has been argued by Neuhaus, *op. cit.* Including these rights in its 'essence', while specifying a mode of life that can be lived by means of them, is how ethical life provides a grounding for these rights.

⁶⁰ Cf. §183.

from which she can affirm the institutions of ethical life and thereby achieve a fully adequate mode of self-determination. This affirmation activates the complete space of freedom in which the will bases its acts on nothing other than the determinations of freedom itself.

One of the chief problems for modern liberalism is finding a justification for the authority of the state. Hegel in effect takes up this problem, but includes the family and civil society within its scope, as each has its own distinctive right over its participants.⁶¹ His central thesis is that by providing definite content to the concept of the Good through the determination of ethical functions, ethical institutions liberate the will from inner contingency of choice and allow it to achieve perfect self-determination. This claim will only prove convincing if indeed the structure of ethical life can be shown to be objectively rational, so that acting in accordance with its requirements is not equivalent to another species of arbitrariness. A justification of the rationality of the institutional structures that Hegel describes lies well beyond the scope of this paper. What follows is only a general description of his account.

By the 'rationality' of ethical-institutional life, Hegel means in part what every political philosopher from Plato to Rousseau meant, namely that all of the parts cohere to form a whole, so that no part subordinates the remainder to its own interest. Hegel describes this idea in connection with his definition of the inner sovereignty of the state, which consists of two parts⁶²: i) each part of the state must stand under the authority of the whole, just as an organism has a kind of 'authority' over its parts; ii) no particular office of the state may be the possession of any one individual; otherwise put, there must be thoroughgoing rule-of-law. Now, this account of the rationality of ethical-institutional life may seem dissatisfying insofar as it makes reference to just the parts of the state and not to civil society or the family. But Hegel's doctrine is that the estates and the various sectors of the economy, which is the main part of civil society, are to participate in the legislative power of the state through representation, so that the institutions of civil society mediate between individuals and the state of which they are citizens.⁶³ This mediation prevents an external relation obtaining between civil society and state, between state and individual, and between individual and civil society.⁶⁴ This mediation also succeeds in integrating individuals (the vast majority of whom are for Hegel heads of families) into the state, which they ought not regard with an attitude of mistrust as if it were a foreign power.⁶⁵ Otherwise put, the family, as represented by its heads,

⁶¹ §§163, 167, (cf. 171, 174), 176, 186-7. 258.

⁶² §§276-278.

⁶³ Two further institutions of civil society are taken up into the executive branch of the state: the judiciary and public administration. §287.

⁶⁴ More specifically, representation by agents of civil society establishes a positive relation between citizens and state; the interests of private individuals mediate between civil society and the state; and the state's administrative function mediates between individuals and civil society. The final form of mediation requires the publicity of parliamentary proceedings, as will be explained above.

⁶⁵ Cf. §324 and §325 on patriotism. One may also compare what Hegel has to say on the closely related topic of courage in §§327-328.

and civil society are taken up into the structure of the state.⁶⁶ As a rational, 'domination-free' organic system characterized by rule-of-law, ethical life is structured by normative principles that the free individual can affirm as rational.

But one may take this line of thought one step further. Hegel characterizes ethical life as an organic whole that as such exhibits the form of ideal self-determination, as its structure and mode of activity is determined by nothing outside itself. Its organic character, however, transcends that of animal and plant life, as it involves members that are self-conscious and self-consciously active in reproducing that society.⁶⁷ Thus it is a 'free totality' that has the potential of being recognized as such. I wish to argue that as the object of such recognition it is possessed of a supreme right, i.e. a right that outweighs all others. This mode of justification for the right of the state would block the criticism, often made against Hegel, that he effectively divinizes the state by attributing an infallible will to it. It is true that Hegel describes the state with theological language, but it is at once true that the state, precisely because it is administered by fallible agents, cannot for Hegel be infallible. On the contrary, it is fallible and private persons have a right to criticize it, even if their lack of expertise in public affairs makes many of these criticisms miss the mark, as Hegel believed was the case.⁶⁸

A more commonly encountered argument for the authority of the state – its superior right in Hegel's vocabulary – is that participating in the benefits it confers justifies being subject to the duties it imposes. Hegel provides a distinctive ground for establishing its authority, namely its constituting a free, self-determining whole that realizes the structure of self-determination in a manner that is clearly superior to how it is realized in its citizens.⁶⁹ If it is necessary that a right requires the actual recognition of a mode of freedom, then the right of the state requires at least the recognition of representative members of its citizenry. Thus, it is obvious that Hegel regarded himself as having satisfied this condition. It is also clear that public

⁶⁶ One should also mention the sphere of public opinion is a part of the state. This will be discussed below.

⁶⁷ In stressing the organic, self-determining character of ethical life, and the self-consciousness of its members, I am in the main following Neuhaus, op cit. But I place a distinctive stress on the role that recognition can play in this connection.

⁶⁸ Another way of putting this is to say that Hegel's doctrine is not decisionistic.

⁶⁹ But this is necessarily true only of *Hegel's* model of ethical life, which, despite his asseverations concerning philosophy not describing the state as it ought to be, has never been realized anywhere and when employed as a measure, makes all historical states seem to fall short. How this can be true and his philosophy of objective spirit can its time captured in thought is a difficult problem. But the solution to it would clearly involve the premise that Hegel's ideal model is nothing other than an extension of principles acknowledged by representative modern states. By demonstrating that the implications of their own principles imply a perfectly rational state, Hegel vindicates modern society. In sum, the philosophical comprehension of the present is not a mere description of existing institutions. We should not forget that Hegel regards Plato's *Republic* as an ideal expression of Greek ethical life.

officials and representatives would be in a position to have this insight.⁷⁰ But there is also reason to believe that it can be satisfied by private persons who have not mastered the philosophy of objective spirit, as will be explained shortly.

Ethical life habituates its members to a certain outlook on life. As it protects and promotes all of the rights of individuals, it habituates its participants to reflect on it and to demand justifications for the norms it upholds. This practice of reflection and the corresponding demand for justification is present in the citizenry at large and not just amongst philosophers.⁷¹ Thus it tends to promote the very satisfaction of the condition that must be satisfied for the right of the state to be actualized.

The principal arena where an insight into the rationality of the state occurs is the parliamentary debates. It is the publicity of the parliamentary debates that enables the individual to gain an insight into matters of state and the public interest being ministered to before her very eyes.⁷² Hegel is decidedly negative on the contribution that public opinion can make to political debate.⁷³ He looks upon the political conversations of the inexperienced citizen as no more than an expression of vanity. But he nonetheless assigns it two necessary political functions: i) it functions as a spur to the rectitude of representatives and thus contributes to actually bringing about a state of affairs in which the public interest is genuinely being ministered to⁷⁴; ii) it allows the individual to get a glimpse into the political whole, including civil society, with two results: first she ceases being merely passively determined by forces outside of her control, and can gain a synopsis of the economic forces that she participates in and which are a necessary expression of the normative principles she upholds.⁷⁵ Thus she is placed in a position to affirm the necessity of the whole system, including the state constitution, and achieve the perfect kind of self-determination relative to the sphere of objective spirit. Second, she is elevated above the standpoint from which her particular interests appear to be paramount and gains an insight into the universal interest of society as a whole.

I wish to add iii) that she is also in a position to gain an insight into the rational nature of the state and thereby recognize it as a *self-determining institution* (even if she does not formulate its rationality by means of Hegel's technical concepts). Her insight would have to involve the following moments in order to constitute the kind of understanding that would satisfy the state's need for recognition: first, she would have to understand that it constitutes a whole that genuinely ministers to the public

⁷⁰ §§ 297, 300.

⁷¹ Hegel makes an exception for the agrarian class, which in his opinion is not reflective enough to rise to an insight into the nature of ethical life. They relate to the state through trust – an emotion, not a thought.

⁷² §§ 314-315; cf. 301+R, 319.

⁷³ On the history of public opinion, or the 'public sphere', see Jürgen Habermas, *The Structural Transformation of the Public Sphere* (Cambridge: MIT Press), 1991.

⁷⁴ §301R.

⁷⁵ This follows because all of the productive sectors of the economy have representatives in parliament.

interest, i.e. while it is beset by particular interests, it is not dominated by any faction or party; second, she would have to understand it as a complex system, the parts of which are functionally determined by their contribution to the whole and cooperate with one another to produce the intended consequences, namely the administration of public affairs; third, she would have to understand that the members of this system are self-conscious, individuals who perform their political functions in accordance with their understanding of their functions and of the institution in which they participate. If she succeeded in having these three quite accessible insights, then she would have conceived of the state as a self-conscious (via its agents), self-determining (via its organic nature), domination-free whole dedicated to the public interest. One may then add the enlightened citizen to the list that includes the philosopher and the public servant as persons who are in a position to recognize the freedom and rationality of the state. In sum, the rational state produces the conditions under which the recognition of its rationality by some of its citizens is inevitable and this recognition constitutes its supreme right.⁷⁶

A purely intellectual appreciation of the rationality of the state and, by implication, ethical life as a whole would not satisfy the needs of human beings to feel at home in their ethical world. Hence, it is necessary that persons find their participation in ethical life meaningful, so that they would freely will their participation in it. The meaningfulness of participation in ethical life is not a purely emotional matter, but in the main consists in the feelings of love (family), professional honor (civil society), and patriotism (the state). This more subjective and emotional relation to the spheres of ethical life, when added to insight into the rational character of the state, satisfies everything required for individuals to affirm the norms of ethical life and thereby achieve perfect self-determination by willing the very space of freedom in which they lead out their lives.

⁷⁶ Hegel describes the relation between citizens as engaged in the activity of knowing and the state in §258.