# TOCs r6

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#### Ethics must not only explain what a good action is but why agents ought to be good or else agents can reject the value of goodness itself – even if life is abstractly good I can question why I as a human have an obligation to commit myself to this goodness. This means ethics must be derived from what is constitutive of a subject, so they can’t choose to reject it, and that is practical reason – Ferrero 09,

Ferrero, Luca. “Constitutivism and the Inescapability of Agency,” 2009. //LHPYA

The second feature that makes agency stand apart from ordinary enterprises is agency’s closure. Agency is closed under the operation of reflective rational assessment. As the case of radical re-evaluations shows, ordinary enterprises are never fully closed under reflection. There is always the possibility of reflecting on their justification while standing outside of them. Not so for rational agency. The constitutive features of agency (no matter whether they are conceived as aims, motives, capacities, commitments, etc.) continue to operate even when the agent is assessing whether she is justified in her engagement in agency. One cannot put agency on hold while trying to determine whether agency is justified because this kind of practical reasoning is the exclusive job of intentional agency. This does not mean that agency falls outside the reach of reflection. But even reflection about agency is a manifestation of agency.¹⁴ Agency is not necessarily self-reflective but all instances of reflective assessment, including those directed at agency itself, fall under its jurisdiction; they are conducted in deference to the constitutive standards of agency. This kind of closure is unique to agency. What is at work in reflection is the distinctive operation of intentional agency in its discursive mode. What is at work is not simply the subject’s capacity to shape her conduct in response to reasons for action but also her capacity both to ask for these reasons and to give them. Hence, agency’s closure under reflective rational assessment is closure under agency’s own distinctive operation: Agency is closed under itself

#### However, human beings as subjects are rational but also sensible. While rationality decides, sensibility provides the choices between which rationality can choose from, making it intrinsic to agency as well – Gobsch 14

Wolfram Gobsch, The Idea of an Ethical Community: Kant and Hegel on the Necessity of Human Evil and the Love to Overcome It, 2014, LHP AM //RECUT LHP YA

To act as a human being is to actualize pure reason, if all goes well. But **no human being is pure reason. Human beings are rational animals. So they are animals, sensible organisms, too. Sensibility is a receptive capacity:** a **capacity to represent objects through being affected by them.** Affection happens at a time and a place, so sensible organisms are spatiotemporal beings. And it depends on the existence of its object, so the actualization of sensibility has conditions that cannot be satisfied through acts of this capacity itself. In virtue of these conditions, however, sensibility **is a limited, particular capacity, a capacity with a specific form. But if a capacity is limited, then its object – the content of its act in general – is limited, too:** its object cannot be that which is, simply as such. **It is for this reason that sensibility differs infinitely from reason, the unconditioned, so that no sensible organism can be pure reason, and so that the definition of a human being unites two distinct determinations**. To exist as an animal is to be engaged in sensible activity. So although human beings exist, if all goes well, **through actualizing pure reason, sensibility will have to play a role in their rational practical activity.** A merely prudentially rational animal, should such a thing be possible at all, would be determined to act by sensible desire, reason would merely serve to direct it toward happiness. In a human being, however, reason is, if all goes well, of itself practical; and so the role of sensible desire cannot, ideally, be that of the determinant, the motor, of its practical activity. **As the activity of an animal, human action, too, is oriented toward happiness. But the subjective principles of a human being’s practical activity, principles which, as such, determine the extent to which its orientation toward happiness becomes practical, are acts of *free choice*: acts of a capacity to “be determined to actions by pure will”,** maxims, as Kant calls them, acts which, as such, presuppose that their subject acknowledges her own happiness as prima facie good: as to be pursued in the activity of pure reason. In a human being, pure reason is of itself practical, if all goes well, but only by subjecting every maxim, which is not of itself an act of pure reason, to the moral law. Kant uses the terminology of form and matter to illuminate the relation between law and maxim: in knowing the moral law to be the sole determinant of our practical activity, if all goes well, we know it to constitute the form of our choice, without, therein, knowing it as providing for its matter, too. Acts of choice determine the extent to which a human being’s wish for happiness becomes practical. As such, choices look to sensible desire for their matter and to theoretical reason for direction in the pursuit of happiness. So it is in its acts of choice that a human being rationally displays its sensible nature: the individuality and finitude that make it an animal.

#### This means subjectivity is not simply one or the other, but rather the duality between sensibility and rationality. Furthermore, agency can only be properly exercised collectively.

#### As agents we apply our rationality to what our sensibility can access to generate our particular conception of the moral law. But sensibility is obviously limited and each person experiences the world differently. This means each individual’s commitment to the true moral law demands mutual recognition of other agents and their unconditional worth. We must build our understanding of the moral law through combining our particular understandings of it. Gobsch 2:

Wolfram Gobsch, “The Idea of an Ethical Community,” 2014 //LHP AV //RECUT LHPYA

To exist as a human being is, typically, to engage in the activity of free choice. In this activity, reason is employed theoretically, and most importantly it is of itself practical, if all goes well. Reason is the capacity to explain why a thing is determined the way it is in accordance with the laws that relate it to the activities of all other things. But the law of pure practical reason is law in virtue of no other. So in her activity of free choice, a human being is necessarily out to validate this law’s supreme reign in the world. That is to say that, should there be a plurality of laws, she is necessarily out to realize the moral law as the supreme principle of all the laws. Now, there is, in fact, more than one human being. And every human being is a person, a particular manifestation of the moral law. On the one hand this means that the particularity of a human being’s existence cannot be deduced from the moral law; and on the other it means that, as a manifestation of the law of pure reason, the reign of the moral law consists in every human being’s existence. Taken together, this implies that every human being constitutes a particular law in her own right: a law necessarily to be considered in the activity of validating the moral law’s supremacy in the world. So on condition of the fact of a multiplicity of human beings, every human being is, in her activity of free choice, out to be related to every other human being as a person. And this is to say that, because there is more than one human being, the activity of free choice is an activity in which everyone is out to be related to every other human being as bestowed with an unconditioned worth that is none other than the very supremacy of the moral law itself. So, in the light of human plurality, the reign of the moral law amounts to nothing less than the rule of unconditioned, universal human right. Because there is more than one human being, every human being is, in her activity of free choice, if all goes well, related to every other human being as a subject of free choice: as one person toward another. But this is to say that the notion of relationality, the second of the two sides of the idea of an ethical community, does indeed bring into view an essential aspect of the practical activity characteristic of human beings: the personhood in which a human being rationally displays her particularity, her sensible nature: the individuality and finitude that make her an animal.

#### Thus, the standard is consistency with the mutual recognition through the ethical comunity. Prefer it,

#### 1] The common conception of ‘natural rights’ is wrong – natural laws are causal and say nothing about freedom or rights. The simple potential to do something is not the same as the established and protected right or freedom to do it. Instead, rights are only created through the production of a legal, ethical community – Schroeder 05:

Schroeder, Jeanne L. "Unnatural rights: Hegel and intellectual property." U. Miami L. Rev. 60 (2005): 453.

In this section I will address three common mis-readings of Hegel's personality theory that might lead to the incorrect conclusion that logic dictates that society recognize intellectual property. First, I show that Hegel believes that there are no natural rights of any sort, let alone natu- ral property rights. Second, I address the closely related point that Hegel rejects a first-occupation justification of property rights. Third, I show that intellectual property has no privileged place in personality theory. For simplicity, I stated that Hegel started his analysis by contingently adopting the notion of the free individual in the state of nature. I now more carefully explain my terminology as we consider Hegel's theory of the relationship between freedom and nature. Hegel thought that the freedom of the autonomous individual in the "state of nature" was only potential. Hegel argued not merely that the individual must leave the state of nature and go out into the real world if he is to make his freedom actual as a matter of fact. He also believed that the individual is driven by a passionate desire to do so. A complete discussion as to why the individual would desire to leave this uterine state of ignorant bliss is beyond the scope of this Article. Suffice it to say, it relates to one of the fundamental points of Hegel's idealism and theism. Hegel's idealism should not be confused with a vulgar neo-Platonic concept of an ideal world "out there" beyond the imperfect physical world. Such a notion is more reminiscent of the Kantian notion of an unknowable, intellectual, necessary, eternal, and transcendent world of essences called the noumenon or "thing-in-itself' beyond the contingent, empirical, temporary, and immanent world of appearance that can be known by experience (the phenomena). Hegel's metaphysics is an extended critique of Kant's. Hegel rejects all concepts of transcendence. There is no essence beyond appearance. Essence only exists insofar as it appears. 1" Or more rad- ically, essence is nothing but appearance properly understood. Hegel's is a radically materialistic philosophy, but not an atheistic one. None-theless, Hegel's God, or Spirit, is not transcendent, but immanent in the material world. Why this is significant for our purposes is that it follows from Hegel's rejection of transcendence that there can be no potentiality with- out actuality-what claims to be potential must become actual or reveal itself a liar. Actually, the theory is even more radical than this. As I have argued elsewhere, Hegel's logic is retroactive, not prospective. Potentiality is only retroactively revealed after something becomes actual. Consequently, if the autonomous individual in the state of nature claims to be free, and if this radically negative freedom is only potential, then the individual's claims to freedom can only be retroactively tested after he leaves the state of nature and makes his freedom affirmative and actual. 103 Another way of saying this is that the liberal "state of nature" is not natural at all. Rather, it is a logically "necessary" hypothesis that is retroactively posited by the fact that we occasionally observe actualized freedom in modern constitutional states. As such, the "state of nature" is actually created by human thought. To Hegel, like Kant, real "nature" is the empirical, mechanical world governed by the causal laws of necessity where there is no freedom. Any freedoms and rights derived from the liberal conception of the hypothetical "state of nature" by definition cannot literally be natural. 2. NATURE AND RIGHTS Hegel sharply distinguishes between natural and positive law, and locates rights within the latter. He states, "[t]here are two kinds of laws, laws of nature and laws of right: the laws of nature are simply there and are valid as they stand ....The laws of right are something laid down, something derived from human beings."'" The liberal "state of nature" is, in fact, the hypothesis that autonomous individuality is a necessary, albeit inadequate, moment of human personality that we retroactively posit to understand political freedom. If so, what is the status of "nature" and its relationship to rights and freedom? Once again, I do not pretend to give a comprehensive account of Hegel's philosophy of nature, but will point out one aspect relevant to this Article. The first thing to note is to reiterate the simple point that there can be no "rights" in the hypothetical state of nature because the "state of nature" is defined as autonomy. Rights are necessarily interrelational. Hegel's point is more subtle and powerful than this, however. More specifically, there is no freedom in the empirical natural world. This can probably best be explained by going back to Kant's famous analysis of antinornies presented in his CritiqueofPureReason."5 An antimony is a logical paradox, or two statements that seem to be equally logically required yet are in contradiction. To say they are in contradiction means not merely that they are mutually inconsistent, but that they are the only logically possible alternatives. This suggests not merely that if one statement is true then the other must be false, but also that if one statement is proven to be false, the other is proven to be true. 0 6 For reasons that do not concern us here, Kant identifies four antinomies that he divides into two dyads: two "mathematical" antino- mies and two "dynamical" antinomies. He claims to solve the two mathematical antinomies by showing that neither statement is true because there is a heretofore unrealized third alternative that may be true. 10 7 He claims to solve the two dynamic antinomies by arguing that both statements are true, but that their contradiction is merely apparent so that, in fact, they can be reconciled.108 It is Kant's third antinomy of freedom and nature that concerns us. The thesis of Kant's first antinomy is that freedom can exist in the world.10 9 Kant is referring to negative freedom as the uncaused cause- the potential for pure spontaneity, action beyond necessity. Like all of Kant's theses, this is a dogmatic proposition posited by reason alone. 1 0 Its antithesis is that everything is subjected to the causal laws of nature-there are no uncaused causes and, therefore, no freedom.' Like all of Kant's antitheses, this is an empirical proposition reached by applying logic to our experience of the world.1 1 2 As this is a dynamic antinomy, Kant must solve this paradox by arguing that the contradiction between the two propositions is only apparent. If they are properly understood, then they can be reconciled. Kant argues that both propositions are true, but about different aspects of the world. Kant relies on his distinction between the phenomenal, or empirical, contingent, changing world of appearance that we can know from experience, and the noumenal, or transcendental, necessary, eternal world of essences, or the "thing-in-itself' which we do not know directly, but can infer through logic.113 It is true, Kant states, that the entire phenomenal world is natural and therefore subject to the laws of nature-i.e., everything empirical is caused.1 14 It is also true, however, that freedom exists in the transcendental, non-empirical world of the noumena.15 Indeed, these conclusions follow from his definitions of phenomena and noumena. 11 6 If a "noumenon" were caused by some- thing else, then it would be contingent on that other thing and, therefore, not a noumenon. Conversely, if a "phenomenon" were free of an exter- nal cause, then it would not be a mere phenomenon, but a noumenon. The question that this analysis proposes is, if freedom is noumenal, can it manifest itself in the phenomenal world, or is merely a theoretical construct?1 7 To put this in Kant's idiosyncratic terminology, is free- dom "practical?" ' 1 8 By extension, one might ask, since each individual human being is embodied and, therefore, phenomenal,119 can man achieve freedom? In the Critique of Pure Reason, Kant claims to show that freedom is at least theoretically possible in the phenomenal world. He argues that although all phenomena are caused by something else, the cause need not itself be phenomenal. A phenomenon can be caused by a nou- menon. 2 ° Because noumena are free (uncaused), their free acts can appear in the world through the phenomena they cause. Although each individual human being is phenomenal, man's essence (his spirit or soul, his status as the liberal, autonomous individual) is noumenal and there- fore free.12' This implies that it is at least theoretically possible that the noumenal aspect of man can actualize his freedom by causing his phe- nomenal self to act. In the Critiqueof PracticalReason, Kant tries to prove not merely that practical reason is theoretically possible but that we have good reason to think it exists. There are as many problems raised in this analysis as are solved. Even ardent Kantians are somewhat embarrassed by it.'2 2 Hegel called Kant's argument "a whole nest... of faulty procedure." 123 My simpli- fied account is not an attempt to develop a comprehensive critique of Kant. My limited point is that, as I have argued elsewhere, 24 much of Hegel's speculative logical method can be seen as being inspired by Kant's idea of antinomy. I characterize Hegel's complaint against Kant as an accusation that Kant does not have the courage of his own convictions and is afraid to follow his insights to their logical extremes. Hegel, in effect, criticizes Kant for thinking that there were only four antinomies. Rather, Hegel's entire universe is constituted by a fundamental, essential contradic- tion.125 Further, Hegel criticizes Kant for thinking that contradiction is a problem that must be "solved." Contradiction "is not to be taken merely as an abnormality which only occurs here and there, but is rather the negative as determined in the sphere of essence, the principle of all self- movement . "..."126 In other words, contradiction is a universal fact about the world. It is correct that contradictions are unstable and must be resolved, but each resolution is temporary and leads to a new contra- diction ad infinitum. Far from being frightening or disturbing, this merely means that the universe is dynamic, not static. Contradiction is the engine of change. This means that Hegel rejects the Kantian noume- nal-phenomenal distinction. To Hegel, there can be no necessary, perma- nent, unchanging essence (noumenon) behind the contingent, temporary, empirical world of appearances that is in a constant state of flux. To Hegel, it is appearance all the way down. Finally Hegel's sublative logic can be seen as a rejection of Kant's specific claims to have solved his four antinomies by assuming that he had to show either that both sides were true, but not in contradiction, or that both the thesis and antithesis were false because there is a third alternative. In contrast, through sublation (the standard but poor English translation of Hegel's term for the logical method of resolving contradic- tion) one realizes that both sides are simultaneously equally true and false, thereby generating a third alternative that simultaneously negates 127 Regardless of these differences between Hegel and Kant, I believe that the Philosophy of Right can be seen as Hegel's struggle to come to grips with the specific contradiction that Kant identifies in the third antinomy: freedom v. causality. In his analysis, Hegel accepts Kant's proposition drawn from experience that all nature is subject to natural laws of causation. This means that nature is fundamentally unfree and implies that actual (practical) freedom must be unnatural by definition. Yet on the other hand, Hegel also begins his analysis by contingently accepting Kant's presupposition that the most basic notion of human personality is self-consciousness as free will. Hegel seeks to prove this presupposition (that freedom is possible) by finding that freedom actually exists in the phenomenal world. Because Hegel rejected transcendence, he could not adopt Kant's proposed answer to this problem: freedom is noumenal, but noumena can cause phenomena. To Hegel, Kant's proposal answered nothing. According to Kant's own theory, we can know nothing about the noumenon. Consequently, Kant's proposition is equivalent to saying that we can know nothing about freedom. Hegel was, in effect, responding to Kant: "You are being inconsistent. Your philosophical writings show that you know a lot about freedom. By your definitions, therefore, free- dom must be actual." Hegel's counterproposal was that actual freedom is not natural but artificial: a human creation, created out of natural materials. Legal subjectivity (as well as higher stages of personhood) is, therefore, not a natural state but a hard-won achievement. The story of the development of human consciousness, to Hegel, was the struggle of man to free himself from and overcome his natural limitations. "Hence the personality of the will stands in opposition to nature as subjective.... Personality is that which acts to overcome [] this limitation and to give itself reality .... "128 Abstract rights are, therefore, the first most primitive step in man's attempt to actualize his freedom, understood as the overcoming of nature. The basis [] of right is the realm of spirit in general and its precise location and point of departure is the will; the will is free, so that freedom constitutes its substance and destiny [] and the system of right is the realm of actualized freedom, the world of spirit produced 1 29 Rights are, therefore, not merely unnatural in the sense of artificial (man made), they are a means by which man distinguishes himself from nature. 130

#### 2] The ethical community is also key to developing self-respect and allowing for claims to human rights, and it demands participation from its people – Buchwalter,

Buchwalter, Andrew. “Hegel, Human Rights, and Political Membership.”

In addition, Hegel asserts that **the very idea of autonomous personality presupposes and demands articulation in an existing system of law**. Hegel construes autonomy intersubjectively, as selfhood in otherness, or Bei-sich-selbstsein. **A comprehensive account of achieved intersubjectivity depends on establishing a legal-political community juridically committed to principles of respect and reciprocity.**3 On the one hand, **autonomous personality depends on a social order that recognises and supports that autonomy**. **Conversely, that order itself depends on individuals who recognize its authority and act accordingly**. Only in a lawfully ordered community is the individual ‘recognised and treated as a rational being, as free, as a person; and the individual, on his side, makes himself worthy of this recognition by overcoming the natural state of his selfconsciousness and obeying a universal, the will that is its essence and actuality, the law; he behaves, therefore, towards others in a manner that is universally valid, recognising them—as he wishes others to recognise him—as free, as persons’ (EM y432). It is no coincidence that Hegel construes the principle of autonomous personality in terms of a legal imperative: it is a commandment of right that one ‘be a person and respect others as persons’ (PR y36). Hegel may proceed from the seemingly abstract notion of autonomous personality, but **a proper account of the person itself depends on a developed system of legal relations**. The point is also central to Hegel’s concept of right itself. In line with the modern natural law tradition, Hegel understands right as a normative principle, one based on the principle of freedom and the free will. Indeed, for Hegel right is the idea of freedom itself. But an idea on his view is not an abstract principle contraposed to conditions of institutional embodiment. In line with his general conceptual realism, he maintains that an idea denotes a concept conjoined with its existence—an understanding consonant as well with a view of freedom as selfhood in otherness. As the idea of freedom, right itself is nothing but freedom under the conditions of its actualization; it is indeed the ‘existence of the free will’ (Dasein des freien Willens) (PR y29). **In its capacity as a principle of freedom, right is a general normative principle. But in that capacity it is also a principle of legal positivism, one tied to a legal system committed to its institutionalization and enforcement. Right for Hegel is the ‘realm of actualized freedom’, articulated in an existing system of positive law. A developed legal system is the domain in which ‘freedom attains its supreme right’** (PR y258) and ‘in which alone right has its actuality’ (EM y502). In fashioning an embodied account of right, Hegel demonstrates his distinctive relationship to the natural right tradition. To the extent that that tradition evinces an abstract prepolitical ahistoricism, he is opposed, proposing instead that natural law ‘be replaced with the designation philosophical doctrine of right’ (NRPS y2). Directed to the ‘idea’ of that under consideration (the concept joined with its realisation), a philosophical doctrine of right affirms that right is intelligible only within the framework of developed social and political institutions (PR y1). Elaboration of the idea of right is itself exeundum esse e statu naturae (VRP 1: 239f ). And lest there be any doubt about his distance from the natural right tradition, Hegel even suggests that the term right itself is inadequate to the requirements for institutional embodiment. While sometimes calling his practical philosophy a Philosophy of Right, he elsewhere, in his philosophical system, employs the title Theory of Objective Spirit. It is this account of spirit objectified that reflects the distinctiveness in Hegel’s notion of right as institutionally realised freedom. At the same time, however, Hegel’s departure from the natural right tradition should not be exaggerated. An early proponent of the method of immanent critique, Hegel maintains that the most consequential criticism of a contested position is one that confronts that position on its own terms. This expectation is no less in evidence in his reception of the tradition of natural right. Employing the dialectic of true and spurious being central to his principle of self-contradiction, Hegel criticizes the natural law doctrine because its liberal formulation conflicts not with an alien standard, but with its true self or ‘nature’. Thus an analysis of individual rights in terms of their inherent concept focuses not on an individual’s natural and immediate existence, but on his true being, what Hegel calls ‘die Natur der Sache’ (PR y57). For Hegel, a citizen is defined by a concept of autonomous personality which is realised only in developed political and cultural community.4 Hence, a defence of natural rights is likewise a defence of the principle of political community, just as a repudiation of the liberal approach to natural rights is a realisation of the concept of natural law. It is no coincidence that Hegel subtitles his Philosophy of Right ‘Natural Law and Political Science’, for the concept of natural law is meaningless on his view without an account of established political institutions. Hegel champions the idea of Objective Spirit over that of Natural Right, not because he opposes the principle of the latter, but because that principle only finds expression in a system of ethical life. The point may be made as well by noting how appeal to communal membership itself reaffirms elements of the tradition of natural right. For Hegel, **a proper account of communal membership depends on a self-awareness** (Selbstgefu¨hl) **on the part of members of their status as members** (PR y147). As Hegel says of political community generally, ‘[i]t is the self-awareness of individuals which constitutes the actuality of the state’ (PR y265A). **Proper to membership is an appreciation of oneself as a member of such community.** Such self-awareness is, however, no mere acknowledgement of the norms, practices, and traditions of a particular community. **Membership also involves, if in differing degrees, its acceptance and endorsement.** **Especially in an account of a polity, membership involves the capacity to affirm the validity of the norms and practices operative in a particular community.** Such norms and practices are not simply to be obeyed but must ‘have their assent, recognition, or even justification in y heart, sentiment, conscience, intelligence, etc.’ (EM y503). For Hegel, the capacity for cognitive affirmation—it has been termed ‘reflective acceptability’5 —is understood by means of the language of rights. A full account of membership rests on a ‘right of insight’, which itself expresses the right of subjectivity central to modern accounts of freedom. ‘The right to recognize nothing that I do not perceive as rational is the highest right of the subject’ (PR y132).6 Hegel claims that rights are not abstract normative principles but depend on conditions for membership in existing institutional settings. It is for this reason that he supplants a Theory of Right with a Doctrine of Objective Spirit. Yet the appeal to particular communities and institutions does not entail abrogation of conception of rights. Not only is membership in a political community a condition for realizing rights, **a proper account of communal membership itself entails affirmation of subjective rights and the right of subjectivity itself.** Indeed, basic to the idea of Objective Spirit—where spirit for Hegel is understood as the conjunction of substance and subjectivity7 —is the ontological dependence of a communal substance on the experience of subjective reflection. Hegel construes his philosophy of right as a theory at once of natural law and positive political science. The ‘interpenetration’ (PR y1A) of these two approaches is not only central to but constitutive of the idea of Objective Spirit.8 II In asserting that the meaning and reality of rights are linked to conditions of social membership, Hegel does not hold that any type of communal membership is acceptable. Needed rather is a community that can properly accommodate the requirements of an account of rights. Historically, Hegel claims that such requirements were at least minimally met with modern society and, in particular, modern civil society. Expressive of that ‘system of all-round interdependence’ (PR y183) diagnosed as well by theorists of political economy, modern civil society provides, on multiple counts, the conditions for a concrete realisation and embodiment of a system of right. First, civil society permits and fosters affirmation of a genuine account of human rights. Although critical of cosmopolitanism (PR y209), Hegel is not opposed to the concept of universal human rights. His position is rather that that concept cannot be asserted abstractly, but must be embodied in circumstances that accommodate and do justice to it. Historically, such concrete validation first occurred in modern civil society (PR y209). Previously, individuals may have been able to claim rights in virtue of particular status considerations, e.g., class, familial or ethnic background, social standing, or gender. In modern society, however, Hegel claims that the individual is now recognised, at least in principle, simply as such, in virtue of his/her very humanity (PR y124R). Inasmuch as a system of commercial exchange best functions only to the degree that individuals, for better or worse, are now valued simply for their economically and quantitatively relevant contributions, irrespective of other status considerations, civil society permits the realisation of right as a universal principle, indeed as a uniform principle of humanity. It is not coincidental that Hegel famously advanced his claim about the universality of rights only on his discussion of civil society, for here ‘I am apprehended as a universal person in which all are identical. A human being counts as such because he is a human being, not because he is Jew, Catholic, Protestant, German, Italian, etc.’ (PR y209, emphasis added). Modern civil society supplies the conditions for the realisation of a notion of right wherein ‘the individual as such has an infinite value’, and in the sense that freedom constitutes the ‘actuality of human beings—not something which they have, as men, but which they are’ (EM y482). Civil society is also important for Hegel in that it clarifies the binding nature of rights. One feature of modern civil society is its compulsory character. Given the complex, differentiated, interdependent nature of modern industrial society, individuals can pursue a livelihood only as a member of that society. Civil society is ‘that immense power which draws people to itself and requires them to work for it’ (PR y238). Indeed, life itself depends on such membership. For a system of realised freedom, then, membership in civil society itself entails certain rights, even as those rights also entail specific duties. ‘[I]f a human being is to be a member of civil society, he has rights and claims in relation to it. y Civil society must protect its members and defend their rights, just as the individual owes a duty to the right of civil society’ (PR y238A). Civil society further clarifies what counts as rights. Revolving around particular need satisfaction, modern societies give special place to ‘negative’ rights, those guaranteeing ‘the undisturbed security of persons and property’ (PR y230). The system of justice institutionalized with civil society secures recognition for the principle Hegel associates with the abstract right of persons: ‘not to violate (verletzen) personality and what ensues from personality’ (PR y38). For Hegel, civil society is also expected to secure certain ‘positive’ rights, those enabling individuals to realise themselves and the freedoms civil society is presumed to actualize (NRPS y118). Given that the livelihood and indeed the very existence of individuals is dependent on membership in civil society, society in turn has an obligation to provide the resources—e.g., subsistence, health, education, housing—enabling individuals to function effectively as members of society. The system of interdependence constituting civil society is such that ‘the livelihood and welfare of individuals should be secured—i.e., that particular welfare should be treated as a right and duly actualized’ (PR y230). Moreover, given that the right to life—that which is ‘absolutely essential’ (NRPS y118)—is presupposed in the protection of rights of person and property, Hegel assigns a measure of priority to positive rights.9 In addition, civil society gives rise to political rights, those enabling individuals to participate in collective efforts to define and shape the conditions of their shared existence. Such rights, to be sure, are fully articulated not in civil society itself, but in the state or political community proper. Yet the idea of political rights is entailed as well by requirements for full membership opportunities established with civil society. They are entailed as well by a full account of the reciprocity of rights and duties articulated by civil society. And they are entailed by the account of the complex and wide-ranging intermediation of individual and community facilitated through civil society. Certainly Hegel does not affirm a right to direct participation in public affairs. He also does not allow for universal suffrage, preferring instead a mode of political representation based on membership in intermediate associations, subpolitical bodies, municipalities, and community based organizations (PR yy308f). Yet far from militating against a notion of public autonomy on the part of the wider populace, participation in such entities can serve to facilitate it. Not only does membership in such bodies facilitate representation in modern societies, whose size and complexity have rendered all but impossible meaningful direct participation on the part of individuals in the affairs of state; citizen involvement in intermediate associations is a central factor in the very ‘constitution’ of a polity, itself based on the intermediation of objective institutional structures and subjective dispositions of individuals. In addition, Hegel maintains that governance of communities, intermediate associations, and subpolitical entities—many of which are already present in civil society—is itself linked to participatory rights. ‘This is the point of view of right, that individuals have the right to administer their resources’ (NRPS y141). Civil society is distinctive not just in that in articulates the three central rights attendant on social membership. It also gives voice to a meta-right, what Hegel calls the ‘absolute right’ (VPRHe: 127). Right on this account denotes not simply the possession of specific rights, but the general recognition, by those directly affected and by the community as a whole, that members of society are entitled to rights and their status as bearers of rights. This is indeed ‘the right to have rights’ (VPRHe: 127),10 and it is uniquely facilitated by civil society. **Predicated as it is on the comprehensive mediation of individual and community, civil society provides the institutional basis to recognise general claims to right**. For one thing, modern civil society underwrites the idea of a realised constitutional order, understood as a promulgated system of law applicable to society as a whole and committed to the dignity and equal treatment of each and every member of society. In addition, it furnishes the conditions for what Richard Rorty has termed a ‘human rights culture’,11 one in which individuals are recognised as entitled to rights and the protections they afford. **Not only does civil society nurture in individuals an understanding of themselves as holders of rights that are to be respected and honoured; through its system of wide-ranging interdependence, it provides the framework for a community in which individuals appreciate that support for the rights of others and the institutions providing such support is intertwined with their own rights and wellbeing.** Civil society ‘gives right an existence [Dasein] in which it is universally recognized, known and willed, and in which, through the mediation of this quality of being known and willed, its validity and objective actuality’ (PR y209). In terms of both institutional and cognitive requirements, civil society concretizes a right to have rights: it represents a social order in which individuals are recognised, by themselves and others, as subjects possessing rights (and corresponding duties)

#### 3] Only the ethical community enables us to overcome any evil, without it no method or theory can exist because humans take advantage of their situation and refuse to adhere to it Gobsch 3:

Wolfram Gobsch, “The Idea of an Ethical Community,” 2014 //LHP AV

Hegel agrees with Kant that **to be conscious of oneself as a human being**, as a rational animal, **is to be conscious of oneself as evil.**51 And he praises him for attending to the intimate connection between reason and sin: 190 [In the] Religion Within the Boundaries of Pure Reason [. . .] Kant reminded us of the ideas of reason contained in the positive dogmatics of religion [allegedly] overcome by the Enlightenment [Aufklärung] (the Clearing Out [Ausklärung]): [he reminded us of] the rational (and initially moral) meaning of [. . .] original sin. He is much more reasonable than the Clearing Out [Ausklärung] which is ashamed to speak of it.52 But, of course, Hegel continues to insist that **we are to be able to knowingly consti- tute an ethical community. So he is committed to denying Kant’s conception of the necessity of human evil as merely subjective**. And it is this which allows Hegel to complete the Kantian project of a decidedly modern moral philosophy for which **the acknowledgment of human viciousness is more than the observation of a mere accident that has nothing to do with what it is to be a human being and which enables us to** thereby—by taking responsibility for it—begin to **actually overcome it**. Kant writes: [T]he first really good thing that a human being can do is to extricate himself from an evil which is to be sought [. . .] in freedom itself.53 **In granting the necessity of human evil the same objectivity as the** necessity of the possibility of the **highest good**, **Hegel** goes even further: he **conceives of the** activ- ity whose end is the **highest good**, the activity of pure reason, **as** an activity that is, objectively speaking, **nothing but the activity of overcoming evil.** “Evil,” Hegel writes, “retention of the finite,” “vanity,” is “the ultimate immersion into [spirit’s] own subjectivity and [its] innermost contradiction and therefore [its] turning- point,” which is to say that spirit, rational activity, “is itself nothing but this: the act of the nullification of nullity, the frustrating of vanity [das Vereiteln des Eitlen] within itself.”54 To say that rational activity is itself nothing but the frustration of vanity within itself is not to say, as Kant would have it, that the activity of pure reason, should it find itself confronted with vanity, as something alien to its objec- tive nature, would consist in the activity of frustrating it. Rather, it is to say that **rational activity is** in itself **nothing but the activity of overcoming evil**. Therefore, to acknowledge the objectivity of the necessity of human evil is to attribute to the human being the capacity to actually know that pure reason is of itself practical in her activity, which is the activity of overcoming evil.55 To acknowledge the objectivity of the necessity of human evil, however, might still seem, in the eyes of the Naïve Hegelian, to amount to the assertion of the contradiction that ethical life is the actuality of a community of evildoers. In fact, however, it cannot amount to this. **The result of Hegel’s criticism of Kant**, the truth of Naïve Hegelianism, was this**: to have the idea of ethical life is to actualize it.** Now, to abide with this result in the light of Kant’s insight is to conceive of the idea of ethical life, the highest good, as necessarily permeated with a particularity not contained in the very idea of pure reason, a particularity Kant and the Naïve Hegelian would therefore take—but now: per impossibile—as a sign of the evil nature of its subjects. In the light of Kant’s insight, that is, the result of Hegel’s 191 criticism of Kant implies that the highest possible good of pure reason is necessarily impure. That is to say that **ethical life and holiness, the perfection of pure reason’s practicality, must be conceived as essentially limited, which, in turn, allows the Hegelian to claim that evil, though objectively necessary as a starting point, can actually be overcome in human ethical life**. And it is to say that the idea of **an ethi- cal community cannot be the idea of the community of all possible human (or rational) beings; it will be the idea of the particular community one knowingly co-constitutes, a community that is essentially limited**: should it be universal, then only accidentally so.56 In the Religion, Kant characterizes the ideal of a holy human being as the idea of “the son of God.”57 Now, although he notes many parallels between this ideal and the hero of the New Testament, he nowhere identifies the two: wisely, for the latter—according to Christian doctrine, not just fully God, but also fully man— cannot be holy in Kant’s sense. In a situation he knows to be God’s will, i.e. good in the light of pure reason, a holy man in Kant’s sense, as a being in whom pure reason has managed to silence sensibility completely, would never cry: “My God, my God, why have you forsaken me?”58 A fully virtuous human being in Hegel’s sense, however, might. The I-Thou of ethical life is a peculiar kind of love, as we saw. Kant had to conceive of this love as a way of being toward another in which pure reason has managed to completely “silence” the particularity and finitude of the lover—a form of relationship hardly recognizable as love at all. The I-Thou of Hegelian ethical life, however, is well recognizable as what we would ordinarily call love: it is the unconditioned practical approval on part of a particular, finite human being of the other in her very particularity and finitude.59 However, **the essential particularity of an ethical community**, though not con- ceivable as indicating the viciousness of its constituents, exactly not, **does con- tradict the unconditioned universality of reason**, its origin. **As the highest good cannot be improved, its particularity cannot be overcome**. And so **this contra- diction in the very form of ethical life cannot be resolved** in practice. **Therefore, the Hegelian is committed to reconciling**, in philosophical theory, **the particular- ity of ethical life with the unconditioned universality of its origin**. She is, that is, **committed to a philosophy capable of demonstrating that self-particularization belongs to the very idea of pure reason**, objectively conceived. Otherwise, the alter- native to Kant she is presenting would amount to the in itself merely ideological allegation that pure reason—who knows why—cannot be practical of itself, but is—somehow—“always already” materially determined: a pronouncement, unfor- tunately, often enough taken to be Hegel’s “argument” against Kant.60 This essay was meant to make plausible the viability of such a philosophical demonstration by presenting a systematic argument that takes as its starting point a conception of reason’s unconditioned universality a Kantian may accept and reaches a Hegelian, particularist conception of ethical life in the end.

### Contention

#### Hegel affirms –

#### 1] Making claims to things in space which are external to the scope of the ethical community falls prey to the absolute injustice of the state of nature protected against by the community making it definitionally unjust – also unilateral appropriation even within the state is unjust.

Stilz (Anna Stilz, Anna Stilz is Laurance S. Rockefeller Professor of Politics and the University Center for Human Values. Her research focuses on questions of political membership, authority and political obligation, nationalism and self-determination, rights to land and territory, and collective agency. , 2009, accessed on 12-18-2021, Muse.jhu, "Project MUSE - Liberal Loyalty", https://muse.jhu.edu/book/30179)//phs st

The Problem of Unilateral Interpretation Kant centrally appeals to the idea that to conclusively possess a right, it must be an objective right, rather than a subjective right based on one individual’s private interpretation of what justice requires. A subjective right is an individual’s good-faith belief about his rights: this belief gives him title to coerce others to keep off his property or to allow him bodily inviolability. But it does not yet place other people under a correlative duty. That would be so only if all individuals shared [their] interpretation of justice. But since individuals are equally authoritative judges in the state of nature, whenever they do not share another person’s belief about jus- tice, his belief imposes no duty on them at all. Instead, they are obliged only by the duties imposed by their own good-faith interpretation of jus- tice, which may not be concordant with his. It might be said, by someone of a more Lockean persuasion, that one of these competing interpreta- tions is the one that simply is valid as a matter of moral fact. That may be so. But as long as we remain in a state of nature, even this true view of right must remain unrealized, since each person, being an equally au- thoritative judge, has a right to enforce [their] own interpretation of justice, which means the true view of right places the person under no duties when it does not correspond with the person’s own. So as long as we remain our own judges and self-enforcers, there is no means by which we might establish which interpretation of right is morally valid without claiming the authority to serve as judge in another person’s behalf and forcibly subject the person to our will. And to claim that authority over someone else, Kant thinks, is refuse to recognize a person’s independence as an equally free being. For this reason, Kant thinks a procedure for the determination of objec- tive rights is a constitutive feature of justice, since a common process of adjudication is logically necessary if anyone’s rights are to impose any objective duties on other people.33 Objective rights are rights that are de- termined through such a process of adjudication, and that impose recog- nizable duties on us even when we disagree about what justice requires. If each person is threatened with violence every time another person’s private interpretation of justice disagrees with her own, [they] cannot possi- bly enjoy a secure sphere of freedom, since this other person is able to interfere with it whenever he sees fit. Instead, it is a constitutive part of justice that there be one univocal interpretation of the rights and duties to which everyone is subject, because only then can people securely enjoy independence from each other. Part of what justice demands, then, is a mechanism by which people can have their rights guaranteed in the exter- nal world without depending on the concordance of other people’s beliefs. Justice cannot be attained in the absence of such a procedure: only once it is in place are we fully independent of interference by other people, as we have an innate claim to be. To see how the unilateralism of interpretation undermines indepen- dence, imagine for a moment that you and I are state-of-nature neighbors. Say we have managed to resolve the indeterminacy of our property rights somewhat, perhaps by appropriating only in accordance with our inter- pretation of Kant’s a priori general will, or by coordinating our expecta- tions based on the most salient just system. So we have hit on some right- ful boundary that sets off your property from mine, such that if I desire to live side by side with you in peace, simply by respecting your basic rights, I ought to be able to do so. Let’s call our initial “property-owning” equilibrium E1. Now suppose some dispute arises between us over whether your prop- erty right has in fact been infringed. Perhaps I have built a huge garage in my area, which blocks the sunlight to your property and makes your gar- den unusable. Any number of examples are possible; what unites them all is that they represent new contingencies, the disposition of which is going to be indefinite enough according to whatever original criterion of appro- priation we are working with to make it likely parties acting in good faith might disagree. In our state-of-nature system, however, the interpretation of what right actually requires in this contingency is left up to you, along with the choice of whether or not to exercise your coercive rights to re- dress any (perceived) violation. So let’s say that you decide my garage is a violation of your acquired rights, since it makes your entire garden unusable, and so you cross our boundary in order to prevent me from blocking the light and to exact compensation from me. If I do not agree with your interpretation of your rights, I am under no obligation to submit to you: I am an equally authori- tative interpreter of justice. I may object to the rightfulness of your bound- ary-crossing in this case, or, even if I concede that you had a right to exact punishment, I may (in all good faith) think that you have exceeded the bounds of the compensation you are entitled to. So I may struggle against you, and regard myself as doing so rightfully. In this situation we both regard ourselves as having a claim of justice, and since we both act in good faith, we act with full subjective right. But in our state of nature, the only thing that can decide the matter between us is a contest of strength, since both sides are equally right from their point of view. As Jeremy Waldron puts it: there is an affront to the idea of justice when force is used by opposing sides, confrontationally and contradictorily, in justice’s name. The point of using force in the name of justice is to assure people of that to which they are entitled. But if force is being used to further contradic- tory ends, then its connection with assurance is ruptured.3 Let’s say that in this case you are the stronger, and that you succeed in demolishing my garage and in exacting what you regard as rightful com- pensation for my supposed infringement—say, one-quarter of my property. Now we have a new property-owning equilibrium, E2, in which you possess 125 percent of our combined share and I possess only 75 percent. And keeping with our initial assumption that both parties were acting in good faith, with full subjective right, this new equilibrium would not have come about unrightfully. Yet there is a real sense in which I retain a claim here, since the only reason you now possess more of the total is that you were stronger, not that I was convinced by your interpretation of justice. But the bounds of our sphere of control in the external world ought not to depend on the contingencies of who is stronger, and our innate independence ought not to be subject to continual interference by others who may coerce us at any moment in accordance with their private views. For this reason, Kant thinks it is a constitutive feature of justice that it be administered by an authoritative legal system, which can impose one set of objective rules about what constitutes an infringement of property—rules we must re- spect even when we disagree about what justice requires—and adjudicate our conflicting claims in a way that is consistent with our continued inde- pendence from each other. The idea is that if we want to possess claims that, as objective rights, are actually respected by others in the external world, we will need to recognize one and only one common set of rules about rights, not a variety of competing private interpretations that coer- cively struggle for the upper hand.

#### 2] The current status of the ethical community entails that space is publicly owned making private appropriation unjust – even if civil disobedience is good we must hold to our current conceptions of justice while the community undergoes change – Tronchetti 07:

Tronchetti, Fabio. “The Non-Appropriation Principle under Attack: Using Article II of the Outer Space Treaty in its Defence.” International Institute of Space Law 50 (2007): 10. // LHP PS

**Since the beginning of the space era, States agreed to consider outer space, including the Moon and other celestial bodies as a res communis omnium, i.e. as an area open for free exploration and use by all States which is not subject to national appropriation.** **The non-appropriative nature of outer space, first declared in the UN General Assembly Resolution 1721 and 1962, was formally laid down in Article II of the 1967 Outer Space Treaty**. Since then, **the non-appropriation principle has provided guidance and direction for all activities in the space beyond the earth’s atmosphere. Nowadays**, however, the non-**appropriation principle is under** **attack**. Some **proposals**, **arguing the need of abolishing this principle in order to promote commercial use of outer space or claiming private ownership rights over the Moon and other celestial bodies,** are **undermining its importance and questioning its role as a guiding principle for present and future space activities**. In order to counter such proposals and to demonstrate their fallacy, this paper stresses **the binding legal value of the non-appropriation principle contained in Article II of the Outer Space Treaty by arguing that such principle should be considered a rule of customary international law holding a special character**. Indeed, not only is **the principle prohibiting national appropriation of outer space affirmed in the main space law treaties and declarations, but it also represents the basis of approach followed by States in elaborating and setting up international space law itself**. Therefore, **following this interpretation, neither States nor private entities are allowed to act in contrast with the nonappropriation principle and any amendment or modification thereof should only be carried out by all States acting collectively.**

### UV

#### Evaluate intent not consequences –

#### 1] Actors can only be culpable for their rational decision, not the outcomes. Anything else means actors have no control over the morality of decisions meaning it is impossible for them to be obligated to act.

#### 2] Induction is circular since it is only justified because it worked in the past, which is just induction. That means attempts to predict consequences have no justification, and only the rational decisions behind actions can be evaluated.

#### 3] Consequences are infinie – I could save someone that turns out to be a mass murderer – unpredictability means they are not a stable basis for ethics which freezes action since agents never know what action to take

#### 1] 1AR Theory Paradigm –

#### Grant me it or else the neg can be infinitely abusive

#### Competing interps because reasonability incentivizes defensive dumps to overwhelm the short 2ar

#### Drop the debater because the 2ar is too short to win theory and substance

#### No RVIs or else 6 minutes in the 2n on theory makes the 2ar impossible

#### And 1AR theory outweighs –

#### A] I can’t win on the neg shell and my shell in the 3-minute 2ar.

#### B] Epistemic indict – if the 1n was abusive I couldn’t respond it, so you can’t evaluate their args.

#### 2] Fairness first –

#### A] testing – if an argument is abusive I can’t engage properly so you can’t evaluate the truth claims

#### B] proximity – the ballot can’t alter subjectivity or grant education but voting actually solves fairness impacts

#### C] the ballot says vote for the better debater not the better cheater which is a metaconstraint

#### Presumption and permissibility affirm

#### 1] affirming is harder, this is the only implication

#### A] 4 minute 1ar needs to answer 7 and hedge against 6 minute collapse

#### B] neg is reactionary and thus gets to tailor

#### C] empirics – there’s a rigorous methodology and large sample size – Shah 1-29,

[Sachin Shah “A Statistical Analysis of the Impact of the Transition to Online Tournaments in Lincoln-Douglas Debate by Sachin Shah.” January 29, 2021, http://nsdupdate.com/2021/a-statistical-analysis-of-the-impact-of-the-transition-to-online-tournaments-in-lincoln-douglas-debate-by-sachin-shah/]

It is also interesting to look at the trend **over** multiple topics. Of the **238 bid** distributing **tournaments from** August **2015** to present[7], **the negative won 52.32% of rounds** (p-value < 10^-30, 99% confidence interval [51.84%, 52.81%]). Of elimination rounds, the negative won 55.79% of rounds (p-value < 10^-15, 99% confidence interval [54.08%, 57.50%]). This continues to suggest **the bias might be structural and not topic specific as this analysis now includes 18 topics.**

#### If we are tied on the flow I did the better debating to overcome the skew.