# Yale r2

## 1

#### Interpretation: The affirmative debater must specify what intellectual property protection will be reduced in a delineated text in the 1AC.

#### Violation: They don’t.

#### Vote neg –

#### 1] Stable ground – IP has massive range that is key to answering the aff – do they alter trips, most favored nation status, reduce timeframe, reduce penalties, reduce range of what qualifies? Absent this knowledge the aff can shift out of any neg args in the 1ar. Outweighs, a] reversibility – I cant read new 2n arguments so I just autolose, b] magnitude, they moot the 7 minute 1N which is the largest speech you can moot

#### 2] Policy making education – ambiguous plans could never pass as policies which removes the aspect of debating over legitimate policies from the round – outweighs on a] portability since there is legitimate out of round impacts to being able to defend a policy and b] magnitude since there isn’t a real policy to debate in the first place so policy ed is 0. Also is a solvency deficit to the aff since if you don’t know what policy you are voting for you can’t vote for it.

#### Vote on fairness since anything else arbitrarily skews the round to the unfair debater and education since that’s why schools fund it. Competing interps a] reasonability is arbitrary and encourages judge intervention, b] reasonability collapses when debating over brightlines. Drop the debater A] to deter future abuse and B] dropping the advocacy is functionally the same. No RVIs A] logic – im fair vote for me makes no sense, B] rvis make affs abusive to bait theory and win on a long counterinterp, C] chilling effect – people won’t read theory against good theory debaters which makes infinite uncheckable abuse that outweighs

## 2

### FW

#### Ethics must start from a conception of the subject – you must understand the self to prescribe it action. Anything else is circular by allowing moral conclusions to define the premise of subjectivity, which then can define morality.

#### The distinction between the noumenal and the phenomenal world is not an uncrossable bridge – this implies that freedom can be won via legal and socially recognized rights, 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 contin- gently adopting the notion of the free individual in the state of nature. I now more carefully explain my terminology as we consider Hegel's the- ory 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 Arti- cle. 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**. 9 8 **There is no essence beyond appearance.** 99 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, 01 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,102 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 neces- sity 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 laiddown, something derivedfrom 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 actu- ally 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 nou- menon. 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 sub- jectivity (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 him- self 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**

#### Property and legal contracts are the only medium of recognition and intersubjectivity, Schroeder 2:

\*bracketed for gendered language\* Schroeder, Jeanne L. "Unnatural rights: Hegel and intellectual property." *U. Miami L. Rev.* 60 (2005): 453.

Contract solves this problem. To reiterate, Hegel believes that **subjectivity is created not by possession per se, but by intersubjective recognition by other subjects. Property is only a medium for this purpose. This regime of recognition is abstract right-the rule of law. Subjectiv- ity is the capacity to bear legal rights and duties recognized by, and enforceable against, other subjects**. To concentrate on the specific object of property is to conflate subject with object-the opposite of recognizing the person's unique subjectivity. This is in sharp contradis- tinction to Radin's proposition that the merging of owner with her per- sonal property furthers human flourishing. Hegel, looking forward to psychoanalysis, considers such a relationship to be destructive-an addiction, or more technically, fetishism. **In contract, each party remains identifiable as a rights-bearing sub- ject through object relations because the object [t]he[y] gives up in contract is simultaneously replaced by a new object. That is, the contracting parties recognize each other as rights-bearing subjects, or persons having the capacity not only to own property, but to respect the property rights of others, and to live up to his contractual obligations.** In Hegel's words: [Contract] contains the implication that each party, in accordance with his own and the other party's will, *ceases* to be an owner of property, *remains*one, and *becomes* one. This is the mediation of the will to give up a property (an individual property) and the will to accept such a property (and hence the property of someone else). The context of this mediation is one of identity, in that the one voli- tion comes to a decision only in so far as the other volition is present.74 Hegel went so far as to assert that "[tihe whole issue can also be viewed in such a way that alienation is regarded as a true mode of taking posses- sion. 75 That is, **possession is the recognition by others that a specific object belongs to a specific subject. Paradoxically, this recognition only *expressly* occurs *retroactively* when the owner contracts to sell that object to another person. In other words, the identification of subject to object in possession is only *effectively* recognized at the moment when another subject pays the first subject to release the object from her possession.** Once again, one must remember Hegel's radical definition of objects as anything that is not the individual herself. This includes not only intangibles, but also an individual's own labor is an object separate from her personhood. Consequently, service contracts, whereby the individual alienates part of her productive capacity in exchange for wages is, to the Hegelian analysis, a contract for the exchange of prop- erty. In fact, the service contract is an excellent example of the logic of Hegel's dialectic of recognition. In our modem capitalistic society, a primary way we recognize each other is through our occupations. **The mutual intersubjectivity of contract is necessary because**, according to Hegel, **one becomes a subject** (eine Person)**only when one is recognized as such by another subject. Subjectivity (the capacity to bear legal rights and duties) exists only insofar as rights are enforceable.** **Since all persons logically begin as abstract individuals (not subjects), in order to achieve subjectivity, each individual must first make other indi- viduals into subjects by recognizing them as such. This means that it is impossible to create rights by unilaterally claiming them for oneself.** Since rights are intersubjective they can only be created intersubjec- tively. This is one reason why the Lockean attempt to justify claims of property through first-appropriation fails. The conundrum should be obvious. How does anyone become a subject recognized by other subjects when there are no subjects in the state of nature? Where does thefirst subject come from? The Hegelian answer is that **multiple subjects must come into existence simultaneously**. This is the alchemy that Lacan calls "love"-the relationship in which each lover sees in his beloved more than she has, that empowers the beloved to live up to the lover's expectations and become more than she once was.76 Contract is the most primitive form of eroticism-albeit a pathetic, and unromantic one. **Each individual,by admitting that another individ- ual has legal rights** (i.e., the right to possess and contract to exchange the object to be acquired), **makes that individual into more than she once was-she is no longer an individual, but a subject**. 3. FORMALITY AND RECOGNITION The Hegelian logic of alienation confuses many commentators because they do not recognize the purely formal nature of subjectivity and abstractright. Here, **object relations are purely instrumental and subordinate to the goal of recognition.** Hegel, like Kant, defines a free individual as an end in and for her self, and not the means to the end of another. In contrast, an object is something that is the means to the ends of something else. **In abstract right, each individual paradoxically wants both-that other individuals help him reach his end of becoming a subject, and that other individuals remain an end in and to themselves rather than merely a means to the first person's ends. Subjectivity is only created through recognition as such by a person that one recognizes as another subject. To treat another person as one's means, rather than as his own ends, is to fail to recognize him as an individual or a subject. The question then becomes, how can one accomplish one's own ends (which requires action by another person) without impinging on the ends of that other person or treating her like a means (an object)?** The Hegelian answer is that subjects can mediate their relationship through objects. **Both subjects mutually exploit the objects of exchange as means of recognizing each other-each fulfills her own ends (becom- ing a subject) while respecting the ends of the other (also to become a subject). The two subjects are united in a common will, in the sense that each wills his own ends, but these potentially competing ends tempora- rily coincide in the meeting of minds known as contract.** This means that, as a logical matter, one does not enter into object relations for the sake of the object itself or for the "natural" or other concrete functions they might serve. The specific characteristics of any object of a property claim is irrelevant and should be a matter of indifference to the subjects, from a logical standpoint. Right is something utterly sacre dfor the simple reason that it is the existence [ ] of the absolute concept, of self-conscious freedom. But the formalism of right-and also of duty-arises out of the dif- ferent stages in the development of the concept of freedom. In oppo- sition to the more formal, i.e. more abstractand hence more limited kind of right, that the sphere and stage of the spirit in which the spirit has determined and actualized within itself the further moments con- tained in its Idea possesses a higher right, for it is the more concrete sphere, richer within itself and more truly universal. Each stage in the development of the Idea of freedom has its distinctive right, because it is the existence of freedom in one of its own determinations. When we speak of the opposition between morality or ethics and right, the right in question is merely the initial and formal right of abstract personality. Morality, ethics, and the interest of the state-each of these is a distinct variety of right, because each of them gives determinate shape and existence to freedom.77 In other words, a full concrete personality requires the entire regime that Hegel calls Recht, which includes not only abstract right (property and contract), but morality and ethics. Abstract right is the most primitive form of right that only creates the form necessary for freedom-the empty vessel of legal subjectivity understood as the mere ability to accept legal rights and duties imposed by others. The content of person- ality will be added by morality and ethics. Consequently, Hegel states with respect to the legal subject: Since particularity, in the person [i.e. what I am calling the subject], is not yet present as freedom, everything which depends on particu- larity is here a matter of indifference. If someone is interested only in his formal right, this may be pure stubbornness, such as is often encountered in emotionally limited people; for uncultured people insist most strongly on their rights, whereas those of nobler mind seek to discover what other aspects there are to the matter in ques- tion. Thus abstract right is initially a mere possibility, and in that respect is formal in character as compared with the whole extent of the relationship. Consequently, a determination of right gives me a warrant, but it is not absolutely necessary that I should pursue my rights, because this is only one aspect of the whole relationship. For possibility is being, which also has the significance of not being. 78 Indeed, it is precisely the function of the element of alienation to make this irrelevance and indifference manifest. Nevertheless, even as subtle an analyst as Hughes, who expressly recognizes that the fact that object relations can also serve natural functions (food and shelter) is irrelevant to a Hegelian analysis, 79 misses this point. Hughes finds alienation "incoherent"80 because the subject loses the object that supposedly makes the subject recognizable.8' He finds this particularly problematic in Hegel's discussion of copyright, because the objects of copyright, being the author's creations, seem intrinsically linked to the author's personality.82 Consequently, he infers that the objects of copyright uniquely serve the goal of differentiating and identifying the author and concludes that complete alienation of artistic works might defeat the goal of the creation of personality. Consequently, he sees the Hegelian analysis of property as supporting certain restraints on alienation of copyrightable material, such as in the droit morale under which an artist retains some control over her creations after sale.83 But this critique is based on the misimpression that, to Hegel, the legal right of property relates to the creation of the full complex per- sonhood of empirical human beings situated in relations of family, civil society, and state.84 But **legal relationships relate only to the creation of legal subjects-persons capable of bearing rights and duties. The legal subjectivity mutually constituted with abstract right is, therefore, equally abstract and formal. Moreover, it is precisely abstractness and formality that enable abstract right and legal subjectivity to serve as the substra- tum for the concrete freedom of citizenship.** Above, I mentioned in passing an analysis that I have developed extensively elsewhere: Hegel's property jurisprudence is essentially erotic because contract is a primitive type of "love."8 5 My goal in doing so was to break down the dichotomy between rationality and passion that implicitly underlies both utilitarianism and romanticism. To Hegel's jurisprudence, rationality and passion are two sides of the same coin.86 **Reason tells the autonomous individual that he must actualize his freedom and to do so requires recognition by other subjects. Conse- quently, the free individual rationally decides that he must give way to the desire for others. Because abstract right is created in order to enable the interrelationship of mutual recognition to occur, it is erotic.** The "love" and desire that exist at the level of abstract right are only a pale shadow of the passions we feel towards our family, lovers, and friends. Consequently, I have argued vociferously that although utilitarians like Posner are right in seeing a parallel between economic activity and sexuality, they are wrong in trying to reduce the latter to a form of the former.87 Rather, from the Hegelian position, the former (economics) is merely a step that makes the latter (eroticism) possible. That is, contract establishes the form of love, not its content. Conversely, Hughes and Radin are equally mistaken in trying to argue that property can perform a direct function in the creation of the full, loving artistic personality. Although Hegel was a great defender of legalism and capitalistic markets, he also insisted that they be limited to their appropriate sphere. To analyze more complex interrelationships in terms of abstract right (property) is not merely erroneous. Never one to mince words, Hegel called it "crude" and shameful.88 Consequently, only the most base persons stand on their rights.8 9 The noble person accords rights to others. This is why Hegel condemns the classical lib- eral concept of government as social contract-citizenship is Hegel's most highly developed level of personality, and therefore, unlike the subject, cannot be comprised solely by legal categories. A corollary of this is that it is equally incorrect, indeed shameful, to adopt the romantic position towards copyright that conflates the legal relationship of property with the flowering of personality in artistic expression. From a Lacanian point of view, to do so is literally per- verse. Specifically it is fetishistic-the identification of objects with subjects.90 The specific content of objects of copyright has nothing to do with their status as a legal concept. To Hegel, saying copyright is "property" is not to say that society must or should establish a copyright regime. This decision can only be made by pragmatic reasoning. In this sense, Hegel's theory has a surprising utilitarian twist. Society's desire to further creativity may, however, be a good pragmatic argument in favor of such a regime.

#### Thus, the standard is consistency with abstract right.

### Offense

#### Abstract right is materialized in the community in the legal order. Violating them undermines the system through which we manifest our rights, meaning it violates our freedom as subjects and outweighs. 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)

#### The affs international imposition of trade policies violates the legal sovereignty of states to develop trade policy. Herrmann-Pillath,

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Hegel had argued against Kant’s formal foundation of ethics in stating that real-world commitments to universal values can only emerge in a historical process that links those values to specific commitments in particular societies (Hicks 2012). His position reveals some deep affinities with the economist’s viewpoint as one reason for this insufficiency of purely abstract and rational principles is that there would be no incentivization for acting accordingly ithin particularistic contexts. Hegel’s distinctiveness and similarity with Sen is also obvious from his conceptualization of ‘freedom’, which he regards as the most pivotal ethical value, but does not conceive merely as an abstract human right. According to Hegel, **freedom is nothing what exists as a ‘natural’ claim, but what is constituted by concrete historically evolved institutions out of which the abstract conception of values emerges, and in which individuals are enabled to realize their freedom in communities of ethical life** (Neuhouser 2008). This clearly resonates with Sen’s ideas about positive freedoms in his theory of capabilities (Boldyrev and Herrmann-Pillath 2013). **Hegel was the founding father of the idea of ‘civil society’** (for an assessment of this concept in the context of international relations, see Stillman 2012). **By this he referred to a historically emergent structure of institutions that are geared towards the division of labour and market relations, embedded into generalized notions of cooperation and shared commitments to values. Apart from the rule of law, this structure includes a web of associational relationships, mostly organized along professional and occupational lines, and a representational setting in the context of the state (which he conceived as a constitutional monarchy). The state is the primordial unit that encompasses all these structures and stands in a higher-order relationship with other states. Citizenship as defined by states is a core criterion for individual identities beyond their associational ascriptions.** Hence, on first sight Hegel perceived international relations in what today are called ‘realist’ terms, with an apparently Hobbesian flavour. Thus, we might conclude that Hegel’s approach fits nicely into the standard view underlying hegemonial theory. Hegemonial theory clearly puts states and their relative power positions at the centre, and explains institutions as reflecting those international structures. A leader is a country that assumes as pivotal role in these power structures and can therefore incentivize other countries in taking actions. However, as the recent discussion of the Hegelian theory of international relations has shown, this view would be overly narrow (Vincent 1983; Buchwalter 2012). Matching with these contributions, I propose a Hegelian framework for deliberative trade policy that differs from these simplistic realist interpretations. At the same time, this Hegelian view also differs from current institutionalist approaches (which are mainly inspired by the ‘New Institutional Economics’) and ties up with the recent revival of ‘ideational’ studies in political science. In ddition, the Hegelian approach is congenial to game theoretic analyses of international relations which have shown that realism and institutionalism can be reconciled if incentive structures, communication patterns and information flows are properly detailed (for a seminal approach, see Snidal 1993). In order to make the essentials of a Hegelian approach clear, it is necessary to reflect upon the most basic notion of ‘freedom’ and to apply this on the notion of ‘free trade’ (Neuhouser 2008; Buchwalter 2012: 214f). Neuhouser distinguishes between ‘personal freedom’, ‘moral freedom’ and ‘social freedom’: Personal freedom refers to the autonomy of the will, moral freedom means the autonomy to commit oneself to moral constraints on one’s own actions, and social freedom means to have the necessary capacities to realize the other freedoms in the context of a concrete community. I argue that these three dimensions also apply on the notion of ‘freedom’ in international trade. **Hegel’s concept of personal freedom as applied on individuals means autonomy and self-determination, clearly building on Kant. Now, in the very first place this means autonomy from natural urges to action, that is, refers to one’s own nature, and only secondarily freedom relative to others. To be free means to be able to reflect upon one’s desires, and to determine actions based on autonomous decisions of will.** Basically, this idea of freedom, firstly unfolded in the Phenomenology, also underlies the notion of sovereignty of the state, deployed in the Philosophy of Right (as embodied in Hegel’s figure of the monarch). Now, consider **the typical structure of economic theories of trade policy, including hegemonial theories. They share one important property with ‘naturalistic’ theories of the individual in being mechanistic theories. That means they identify a causal structure by which observed actions of governments result into certain institutions**. For example, there are political support functions that directly translate into certain institutions; given certain assumptions about the generic incentive structure of governments (such as aiming at reelection) (classical approaches are Grossman and Helpman 1994, 1996). That corresponds to the simple picture of ‘natural desires’ driving the actions of the individuals, given certain goal functions, if we approach both on an abstract level as ‘mechanistic’ theories of action, individual or political. **Hence, we can make a rather surprising Hegelian point about trade policy, namely that, in the first place, ‘freedom’ means autonomy of governments in setting trade policies: ‘autonomy’ is manifest in the capacity to act independently from any domestic or international pressures to take a particular action in trade policy** (this idea is also familiar from political science approaches to the role of domestic constraints on international relations, see Deese 2008: 32ff.). In the Hegelian view, ‘**free trade’ therefore needs to be based on the idea of sovereignty of governments in terms of trade policies. This implies that trade policy cannot be justified by imposing certain external norms of ‘free trade’ on countries.** Indeed, although today most people would agree that high tariffs are bad, the issues at stake in the GMO controversy seem much more contentious. In this context, **the first Hegelian principle implies that countries should be free in determining the institutional setting of their trade policy.** It is important to notice that this principle guided the old GATT, but has been partly weakened as a result of the Uruguay round, leading to the current stalemate of the Doha round. For example, whereas under the old GATT countries actually negotiated about mutually valued rights to market access, **the ‘single undertaking’ approach of the WTO partly imposes the same institutions on all member countries, such as in the TRIPS agreement, if they want to enjoy the benefits of other parts of the agreement** (Finger and Nogués 2002). In transferring the logic of Hegel’s reasoning from the individual to entire countries, we follow his own approach in equating the sovereignty of the state with the free will of the monarch, but there is also another, more systematic rationale. **Why are countries the ultimate actors in trade policy, and not individuals,** as in the Kantian constitutional view? **This is because in the absence of a unified international law and hence, world government, individual freedom to trade can only be enshrined in rights that are contained in national laws, such that in the international domain, this freedom can only be established in coordinating those national laws. This coordination cannot be achieved on the individual level, but always needs to involve the governments as representatives of the individuals qua citizens of their nations, and as being the only institutions that have the right to enforce legal norms (monopoly of violence). Therefore, even if one adopts the view that freedom to trade is an individual right, this right cannot come into existence but by means of coordinated actions by governments, both in their role as representatives and enforcers.** This argument can be supported by further considerations, such as considering the use of domestic public goods in conducting international trade, which I leave out for reasons of space (see Herrmann-Pillath 2009). This view is also bolstered by an argument in the standard theory of trade policy which builds on the terms-of-trade effects of tariffs (Bagwell and Staiger 2002). The argument can be easily related with Hegel’s notion of individual freedom, because the sovereign freedom of governments to impose tariffs on international trade does not only affect their own citizens, but may also cause ToT externalities on citizens of other countries if the country imposing tariffs has market power (which is often the case if one considers specific industries and products). These externalities work via the international price system and therefore directly affect individual welfare, hence curtail the sphere of personal freedom in the international marketplace: In fact, it means that the government does not only tax its own citizens, but also citizens of other countries, who have no channel of political influence, however (a tax without representation). So, these ToT externalities cannot be countervailed by individual actions directly: Therefore, only an international agreement among governments can result into institutions that also safeguard individual freedom. It is important to notice that the ToT argument, though disputed in the literature (see e.g. Ethier 2004), is sufficiently powerful to explain a number of specific features of the current multilateral trading systems, such as the Most Favoured Nation principle. Now, one most interesting Hegelian turn results to be the insight that the autonomy of states also applies to domestic politics: **Sovereignty as freedom means that states can overcome the mechanisms of domestic political economy as scrutinized by the economic approaches.** This linkage, following seminal approaches such as Putnam’s ‘two-level games’, has also been recently explored by many political science contributions (for an overview, see Snidal and Thompson 2004).