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**The Dialectic of Conscience within Hegel's
*Philosophy of Right***

by

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Abstract

This thesis provides a detailed analysis of the dialectic of conscience within Hegel's *Philosophy of Right*. It aims to show that Hegel provides a fundamental role for conscience within the state and, thus, that Hegel preserves the right to subjective freedom within ethical life. In doing so, it aims to unite divided opinion on the role of conscience within Hegel's political philosophy and to further disarm the charge that Hegel's state advocates repressive or authoritarian political structures.

In order to pursue this argument, this thesis first examines the emergence of conscience within the morality section of the text. It presents the moral conscience as the fruition of subjective freedom; as possessing the right to produce its *own* convictions and determine *for itself* what is good. However, it then continues to highlight the necessarily formal nature of the moral conscience and claims that, because of this formality, the content of conscience is always contingent. As such, the moral conscience is always in danger of willing evil; and it is precisely this danger that necessitates the move into ethics. The moral conscience is sublated by the true, ethical conscience.

This thesis presents its own reading of the *Aufhebung* from the moral conscience to the true conscience of ethical life, which it believes properly reflects the dialectical progression of freedom within the text. It argues that, during the process of *Aufhebung*, the essential moments of moral conscience are retained and only the negative aspects are lost. In particular, it claims that conscience's right to produce its own convictions (and, thus, the right to subjective freedom) is preserved within ethical life, but that the contingency of conscience is not. As such, true conscience (unlike the moral conscience) wills the good both *in and for itself*. This does not mean that true conscience cannot make mistakes. But it does entail that true conscience cannot put its own convictions beyond criticism. For this reason, this thesis also maintains that the formal conscience of morality, in its non-*aufgehoben* form, has no place within the ethical realm.

This thesis locates true conscience's function in the disparity between the actual and the existing state. It argues that, in recognising the rational principles inherent in society and by transforming the existing world to conform more faithfully to these principles, true conscience plays an essential role in keeping the state in line with its own, rational essence. However, it also maintains that this type of immanent critique extends only to reform, and not to radical, social criticism. The thesis concludes by describing true conscience's role in the legislative power.

List of Abbreviations

Throughout my thesis, I refer frequently to the Cambridge University Press edition of Hegel's *Elements of the Philosophy of Right*, edited by Allen W. Wood, translated by H. B. Nisbet and first published in 1991.

Quotations taken from a Remark are indicated with 'R'

Quotations taken from an Addition are indicated with 'A'

Introduction

Thanks to the recent work of philosophers such as Allen Wood, Paul Franco, Frederick Neuhouser, Stephen Houlgate and Allen Patten, who identify Hegel's political philosophy as a philosophy of freedom, the notorious charge against Hegel – that he advocates an authoritarian political state – is now, by and large, refuted.¹ At present, it is widely acknowledged that Hegel's state is based on freedom, and does not comprise repressive or totalitarian structures. As such, the infamous charge of authoritarianism, made by Rudolf Haym, Karl Popper and Ernst Tugendhat (among others), is, more or less, overturned in current Hegel scholarship.² However, even though this defence of Hegel has been generally successful, it remains incomplete, since there is still considerable disagreement about the role of conscience within Hegel's state. Even though Hegel's philosophy is widely accepted as a philosophy of freedom, it is often claimed that Hegel allows insufficient room for moral reflection within the political sphere.³ Therefore, it could still be argued that Hegel's state does not fully respect the right of subjective freedom. For this reason, there is still more to say in response to the initial charge of authoritarianism. Conscience was, after all, an integral part of the original objection. In his book, *Self-Consciousness and Self-Determination*, Tugendhat writes that, within the state, “the particular conscience of the individual must disappear” and, in his book, *The Open Society and its Critics*, Popper maintains that Hegel finds it necessary to “argue against the morality of conscience” (1986:315-6/1945:67). These

¹ Allen Wood [1990], Paul Franco [1999], Frederick Neuhouser [2000], Stephen Houlgate [1991], Allen Patten [1999]

² Karl Popper [1945:67], Rudolf Haym [1962:375-6], Ernst Tugendhat [1986:315]

³ J. N. Findlay [1958:317], Sidney Hook [1970b:97], Dudley Knowles [2002:282]

specific accusations remain valid. In order to refute these claims, we have to demonstrate that conscience fulfils an irreducible and meaningful function within Hegel's state. It is only by doing so that we can complete Hegel's defence against the charge of authoritarianism.

I believe the key to understanding the dialectic of conscience in the *Philosophy of Right* is to examine what happens to conscience during the *Aufhebung* of morality into ethical life. Conscience first emerges in morality, where it represents an essential moment of subjective freedom: the ability to produce its *own* convictions and to determine *for itself* what is good. However, with the transition into ethical life, the good ceases to be something purely subjective. Instead, it adopts a customary and objective nature; being ethical, for Hegel, involves affirming the rational, objective institutions of one's society. It could be assumed, therefore, that the type of ethical state Hegel describes is simply incompatible with the notion of conscience.⁴ This leads some commentators to conclude that, with the move into ethical life, conscience disappears, along with the right to subjective freedom. In order to refute this claim, we need to demonstrate that conscience is retained with the move into ethics.

I argue that conscience *is* retained in the ethical realm, but not in its pure, moral form. Conscience itself undergoes a process of *Aufhebung*. With the transition into ethics, the moral conscience is sublated by the true conscience of ethical life. However, when understood correctly, this process of *Aufhebung* does not represent a loss of subjective freedom. I argue that, with the move into ethics, all the essential features of conscience remain and only the negative aspects are lost. True conscience retains the right to produce its own convictions and to decide *for itself* how to best actualise the

good. However, unlike the moral conscience, the true conscience recognises that the good is both subjective *and* objective; therefore, it also wills what is good *in itself*. In other words, true conscience retains the right to subjective freedom whilst recognising the objectivity of ethics. I shall devote a large part of this thesis to examining the logical and concrete significance of this claim.

Even if we establish that conscience is preserved within the ethical realm, we have to examine where precisely it is located. Does it guide the decisions we make in our own, private lives, or does it help form public policy? Hegel says little about the specific role of true conscience within ethical life (this is, no doubt, partly responsible for the criticism that Hegel neglects the role of conscience within his political society). However, I believe that, by appealing to the logical development of conscience and the concrete institutions of ethical life, it *is* possible to identify a precise function for conscience within the state. I argue that this function is to be found in the legislative power.

Although the role of conscience within the *Philosophy of Right* is still debated, it is widely acknowledged that the dialectic of conscience is a central feature within the text. Many scholars claim that, through a proper understanding of the dialectic of conscience, we can illuminate Hegel's position on subjective freedom as a whole.⁵ If we can show that conscience is retained with the move into ethics, and if we can show that the conscience – the fruition of subjective freedom – has a meaningful role to play within the state, then we can show that Hegel does not dismiss the right to subjective

⁴ In a society in which the ethical is to “do what is prescribed, expressly stated and known”, it could be argued that conscience has no legitimate function (1991:193).

⁵ Frederick Neuhouser [2000:229], Dean Moyar [2008:3], Donald Dahlstrom [1993:186]

freedom. Therefore, we can finally disarm the charge that Hegel's state is founded on authoritarian structures. This is what I aim to do in my thesis.

Chapter One

The Truly Free Will and Abstract Right

The *Philosophy of Right* is primarily a philosophy of freedom. Although the text is often described as a political philosophy, this is only true in so far as the political structures presented within it are a direct result of the concept of freedom and its actualisation. Hegel does not attempt to construct political institutions ‘from scratch’ or from first principles; instead, he demonstrates how political structures emerge necessarily from the notion of freedom itself. Freedom is both the starting point and sole focus of the *Philosophy of Right*: Hegel begins the text with a discussion of the free will, and continues to describe how this freedom manifests itself into legal, moral, social, economic and political spheres. The culmination of this immanent, dialectical progression is the rational state. Therefore, it is no exaggeration to claim that freedom permeates the whole of Hegel’s political philosophy; it is precisely *because* Hegel examines the notion of freedom that the *Philosophy of Right* becomes a political philosophy. For this reason, I shall begin this chapter with a discussion of the free will. I shall examine the dialectical process whereby the implicitly free will becomes truly free, since this is a necessary condition for the actualisation of freedom. I shall then continue to discuss the first instance of right, abstract right, in order to identify the main, logical progression which necessitates the move into morality. However, since my thesis centres on the spheres of morality and ethical life, I shall limit my exposition to the moments of logical significance. I shall pay particular attention to the dialectic of crime and punishment and the transition into morality.

The will is necessarily free. In section four of the *Philosophy of Right*, Hegel writes that “freedom is just as much a basic determination of the will as weight is a basic determination of bodies” (1991:35). In the same way that objects are essentially heavy, so the will is essentially free. The will without freedom is an “empty word” (Hegel 1991:35). Having already derived the concept of the free will in the *Philosophy of Spirit*, Hegel doesn’t provide a proof of the free will in the *Philosophy of Right*; he simply asserts it as a point of departure: “the concept of right”, he remarks, “so far as its *coming into being* is concerned, falls outside the science of right; its deduction is presupposed here and is to be taken as a *given*” (1991:26). However, even though freedom is a necessary property inherent in all willing, if the will itself fails to recognise its own freedom, it remains only *implicitly* free. The will which is only implicitly free lacks an awareness of itself as a free being. The slave, for example, is only implicitly free, for he “does not know his essence, his infinity and freedom” (1991:53). In the *Philosophy of History*, Hegel also ascribes this implicitly free status to the Ancient Orientals.⁶ In order to become explicitly free (what Hegel calls “truly free”), the will must recognise its own freedom. It must acquire an awareness of itself as necessarily free and, what is more, it must commit itself to willing this freedom. Only at this point is the will *truly* free. In the Introduction to the *Philosophy of Right*, Hegel provides a comprehensive account of the will’s development from an implicitly free will to a truly free will. This development comprises three stages, which correspond to Hegel’s fundamental, dialectical logic and which reflect the structure of the *Philosophy of Right* as a whole: abstract universality, particularity and individuality. At each of these three

⁶ Hegel [2004:18] “*The Orientals have not attained the knowledge that Spirit – Man as such – is free; and because they do not know this, they are not free*” (or, to invoke Hegel’s vocabulary from the *Philosophy of Right*, they are not *truly* free).

stages, freedom is given a different expression. It is only after the stage of individuality that the will can commit itself to its freedom and become truly free. Let us first examine this dialectical process.

The first stage in the dialectical progression is abstract universality. At this stage, freedom is simply the ability to abstract from every particular determination and to think of oneself as a universal “I”. During this stage of abstract freedom, the will flees all determinacy, for it views every particular content as a limitation. Hegel describes this type of freedom as the “*absolute possibility of abstracting from every determination in which I find myself or which I have posited in myself, the flight from every content as limitation*” (1991:38R). Although it is ultimately incomplete to conceive of freedom as the ability to abstract from particularity, this stage of freedom contains within it an “essential determination” and should “therefore not be dismissed”, since it demonstrates the will’s capacity to withdraw from determinacy and to be with itself (Hegel 1991:39). In other words, it demonstrates the will’s capacity for *thought*, which, for Hegel, is precisely this ability to abstract from particularity and represent something as a universal.⁷ When the will thinks of itself as “I”, it negates all its particular properties (its age, physical condition, temperament, etc.) and conceives of itself as simple universality. It is this capacity for thought that distinguishes the human from the animal, since “the human being alone is able to abandon all things” (Hegel 1991:38). Unlike the animal, the human can think of itself as an abstract entity, in separation from its particular surroundings. This moment, although ultimately one-sided, is an essential part of freedom.

⁷ Hegel [1991:35] Paragraph 4: “*Every representation [Vorstellung] is a generalisation, and this is inherent in thought. To generalise something means to think it. “I” is thought and likewise the universal*”.

Since this stage of freedom involves a negation of the will's particular determinations, Hegel also refers to it as "negative freedom" (1991:38). It is important to note that Hegel's use of the term 'negative freedom' differs from Isaiah Berlin's subsequent use of the term in his essay *Two Concepts of Liberty*, first published in 1958. For Berlin, negative freedom refers to the ability to pursue one's particular, chosen desires in the absence of external constraints.⁸ To be negatively free, for Berlin, is to minimise restriction and to maximise choice. However, in the *Philosophy of Right*, negative freedom has nothing to do with the unrestricted pursuit of particular desires or maximising our ability to choose. In fact, it is precisely the notion of particularity from which the will flees. For Hegel, negative freedom represents the earliest stage of freedom there is: the ability to renounce all particular determinations and to think of oneself as an abstract being. So, unlike negative freedom in Berlin's sense, this first stage of freedom, for Hegel, demonstrates an intolerance of particularity. The negatively free will exists as pure thought. Whilst this is an essential stage of freedom (the will must recognise itself as a thinking being), Hegel warns that this type of abstract freedom, if actualised in the political realm, can have dangerous consequences. He refers to the Reign of Terror during the French Revolution as an example of negative freedom at its most damaging. The Terror, we learn, "was a time of trembling and quaking and intolerance towards everything particular" (1991:39A). Freedom, during this time, was present in only an abstract form (the "abstract self-consciousness of equality"), to which no particular institutions were compatible. Therefore, instead of creating new, stable political structures, the Reign of Terror led to the "fury of destruction", and "the people destroyed once more the institutions they themselves had

⁸ Berlin [1969:118-172]

created” (1991:38/39A). The negatively free will is never at home in the world, for it is forever fleeing particularity.

Having described the moment of abstract universality, Hegel moves onto the second stage in the dialectic: particularity. During this moment of freedom, the will no longer flees determinacy; instead, it gives itself a particular content. It wills *something*. Hegel describes this moment of particularisation as a “limitation”, since, by willing something determinate, the will has ceased to exist as an abstract universal (1991:40A). It has ‘limited’ itself to a particular content. However, this moment of limitation (or “finitude”), does not represent a loss of freedom: just as freedom involves the capacity to abstract from determinacy, so it requires that something be willed. Therefore, Hegel does not prioritise the first moment of indeterminacy. Instead, we learn that “the indeterminate will is ... just as one-sided as that which exists in mere determinacy” (1991:40A). The first and second moments of freedom, though essential parts of the dialectical structure, are equally one-sided. In order to overcome this, we require a synthesis of abstract universality and particularity.

This synthesis is the moment of individuality. The individually free will is able to give itself a particular content whilst maintaining an awareness of itself as a universal, thinking being. As such, it unites the first and second moments of freedom and supersedes the one-sidedness of both. The individual will limits itself (by giving itself a particular content), but it does so willingly, for it recognises that its universal status as a thinking being remains throughout its various determinations. Hegel describes this as “concrete freedom”, which, we are told, “is to will something determinate, yet to be with oneself [*bei sich*] in this determinacy and to return once more to the universal” (1991:42A). Hegel remarks that this type of concrete freedom, in

which we willingly limit ourselves, is already present in the form of feeling, such as friendship or love. In friendship and love we voluntarily limit ourselves in the other, but, throughout this limitation, we do not cease to know ourselves.

Having established that the individually free will is able to remain with itself in its determinacy, we now need to ask in which ways the will determines itself. There are two ways in which the will determines itself: in its form and in its content. The form of the will refers to the will's ability to transform a subjective end into objectivity. If the will's objective determination corresponds to its subjective intention, it can be called "its own" (1991:43). Content, on the other hand, refers to the specific determination the will gives itself. It is the notion of content (and not form) that occupies the majority of Hegel's subsequent discussion of the free will. If the will's content corresponds to the concept of the will (freedom), then its content is *true*. As such, the will that determines itself in accordance with its status as an essentially free being, has a true content. However, at this stage of the progression, this cannot be said for the individual will. The individual will is concretely free in so far as it remains with itself in its determinacy, but, at this stage, the *content* of the will does not correspond to its concept. This is because its content is still given to it by nature. It remains an "immediate will" or a "natural will", since its content consists of "*drives, desires and inclinations* by which the will finds itself naturally determined" (1991:45). The will does not yet have its own freedom as its content and, therefore, exists in a state of self-contradiction: its content does not match its concept. The natural will is free only *in itself*, i.e. in its concept, but it is not yet free *for itself*, for it has not yet elevated its own essence (freedom) to its content.

Of course, the natural will still contains essential moments of freedom. Firstly, the natural will is able to “stand above [its] drives”, even though these drives are provided by nature (1991:45). Unlike the animal, which must obey its natural inclinations, the natural will can evaluate its desires and select a desire with which to identify itself. Also, unlike the abstract will, the natural will is able to resolve on something particular.⁹ It is able to limit itself. This act of limitation, as we discussed earlier, is required for individuality. “By resolving”, Hegel writes, “the will posits itself as the will of a specific individual and as a will which distinguishes itself from everything else” (1991:46). However, even though the natural will is able to stand above its desires and resolve on a particular content, these desires *themselves* are still dictated by nature, and this is what prevents it from being truly free. The will can choose between various determinations, but the choice available to it is not a product of its own freedom. Because of this, the will remains “*tied* to [its] content” (1991:47).

The will which identifies freedom explicitly with the ability to choose between various natural determinations is called the “reflective will” (or “choosing” will) (1991:48). The reflective will is able to stand above its desires and select between them. However, since none of the determinations from which it chooses is a product of its own freedom, the reflective will doesn’t identify completely with any of its choices. As such, its choice is entirely arbitrary [*willkürlich*] and the will is liable to renounce its decision at any time. Hegel acknowledges that freedom is often understood in this way. He writes that arbitrary choice is “the commonest idea [*Vorstellung*] we have of freedom” (1991:48R). Understood as such, freedom consists simply in the ability to

⁹ See also Hegel’s account of the Beautiful Soul in the *Phenomenology of Spirit* [1977:407]. The Beautiful Soul is “discarded to the point of madness” and “wastes away in yearning” because of its inability to limit itself.

resolve on things “as one pleases” and to change one’s mind if desired (much like Berlin’s notion of negative freedom). However, for Hegel, this idea represents a “lack of intellectual culture”, for the notion of arbitrary choice is, ultimately, a deficient way to conceive of freedom (1991:48R). Hegel writes that, “instead of being the will in truth, arbitrariness is rather the will as *contradiction*” (1991:48R). The will that selects its determinations arbitrarily still has a content which is given by nature. In Hegel’s terms, it has a contingent [*zufällig*] content, for its content is provided by something other than its own freedom (its concept). The choosing will, therefore, remains free only *in itself*. In order to become free *in and for itself* – to become truly free – the will must adopt *freedom* as its content.

But how does the will do this? In section twenty-one, Hegel writes that it is through the process of *thought* that the will adopts freedom as its content. The will must think of itself as essentially free and develop a self-consciousness of freedom as its “substance and destiny”; something which, up until this point, was only an implicit part of its concept (1991:35). By becoming aware of freedom as its own essence, the will “purifies and raises its object, content and end to this universality” (1991:53). The will, by thinking of itself as essentially free, replaces its naturally-determined content with its own freedom. At this point in Hegel’s account, we are reminded of just how integral the notion of thought is to the concept of the will. Hegel writes that it is “only as *thinking* intelligence that the will is truly in itself and free” (1991:53). In other words, it is only because the will has the capacity to *think* of itself as necessarily free, that it can adopt freedom as its content. As we mentioned earlier, the slave is unable to do this and, thus, lacks the self-consciousness required for true freedom. The same is true for every civilisation that tolerates slavery. Hegel praises Christianity, especially the Christian

Reformation, for its insight and subsequent proclamation that *every* human being, simply by being human, is free.¹⁰ The Reformation, for Hegel, brought this fundamental awareness to the modern world.

In section twenty-one, Hegel provides his definition of the truly free will as the “free will which wills the free will” (1991:57). The truly free will no longer wills what is provided by nature; instead, it wills its own freedom. The truly free will is many things. Firstly, as its name suggests, the truly free will is “true”. This is because its content is now in accordance with its concept (freedom). Secondly, the truly free will is “infinite”, since it has itself as its object, and not something which it views as a limitation. Thirdly, the truly free will is “universal”, since it has superseded all particular limitations within itself, and can be at home with itself in the other (1991:53/4). In becoming truly free, the will has developed an awareness of itself as an essentially free being and it has committed itself to willing this freedom. As such, it has renounced its ability for arbitrary choice. It no longer associates its freedom with the unrestricted capacity to select between various natural determinations. Instead, it determines itself in a way that remains faithful to its free essence. It has become *rational*. In section twenty-four, Hegel writes that the rational is “the universal which has being in and for itself ” (1991:55). The rational will is the will that makes freedom its content.

We have now arrived at the concept of the truly free (or rational) will. However, it is not enough that the rational will remains as concept. The *Philosophy of Right*, as we learn from the very opening line, is about the Idea of right, which involves both “the

¹⁰ See Hegel’s *Philosophy of History* [2004:344-5] “Thought received its true material first with the Reformation, through the reviviscent concrete consciousness of Free Spirit” [2002:417] “This is the essence of the Reformation: Man is in his very nature destined to be free”

concept of right *and* its actualisation” (1991:25 my italics). In order to become Idea, the rational will has to develop itself into objectivity. It has to become actual. But this process of actualisation is not driven by factors external to the rational will. Essential to Hegel’s methodology is the claim that the free will “gives *itself* actuality and engenders *itself* in an existing world” (1991:60 my italics). As the rational will exercises its freedom and develops an understanding of what freedom entails, so the concept of freedom unfolds and assumes different determinations in the existing world (abstract right, morality and ethical life). The course of actualisation is not arbitrary; it follows a necessary, immanent, dialectical progression, whereby the implicit determinations contained within the concept of freedom are rendered explicit. It is the concept of freedom itself that propels this dialectical process. To invoke Hegel’s analogy, the “very soul” of freedom “puts forth its branches and fruit organically” (1991:60). The fruition of freedom’s actualisation is the rational state, for it is at this point that the will fully comprehends what it is to be free. The rational state is nothing “new” to the concept of the will, for all the eventual determinations of freedom are implicitly present within its concept. However, it does represent the point at which all these implicit determinations have been comprehended and realised in the existing world. As such, Hegel claims that “the last determination coincides in unity with the first” (1991:61). Every stage along the process of actualisation is a product of the concept of the truly free will.

As the logic of the concept unfolds, so freedom transforms itself into various existing forms. It is these existing forms of freedom that Hegel refers to as *right* [*Recht*]. In section twenty-nine, Hegel defines right as “any existence [*Dasein*] in general which is the *existence* of the *free will*” and, in section thirty, he describes right as “the existence of the absolute concept, of self-conscious freedom” (1991:58/9). So, in a

broad sense, right is *any* existing form of the rational will, i.e. any existing form of the will which has recognised and committed itself to its own freedom (or “self-conscious freedom”). This includes all legal, moral, social, economic and political instances of freedom that follow the will becoming truly free. As such, Hegel uses the term *right* in a wider sense than we commonly understand it. Right doesn’t refer simply to the notion of entitlement (such as legal rights or human rights), but also to “morality, ethics and world history” (1991:63). Right, for Hegel, is *any* existence of freedom in the world. However, Hegel also plays on the ambiguity of the word *Recht* in German (which can mean many things: ‘right’, ‘just’, ‘lawful’, etc.), in order to allude to right in the narrower sense of entitlement (and corresponding responsibility). He does so in order to bring out the fundamental relationship between the will and its own freedom. The truly free will, as we have discussed, has attained an awareness of itself as an essentially free being. As such, it understands its freedom as a right (as an entitlement). It has a right to its own freedom and to any subsequent form of freedom’s existence. For example, the will has a right to own property, to consult its conscience, to choose its own profession, to participate in the state, etc. However, an essential part of freedom within the *Philosophy of Right* is that, alongside the *right* to freedom, comes the *duty* to will what freedom demands; for it is only *as a free will* that the will enjoys a right to all of freedom’s determinations. Therefore, as well as the *right* to own property, the will also has a *duty* to own property, and as well as the *right* to consult its conscience, the will also has a *duty* to consult its conscience, and so on. Hegel presents this idea most comprehensively in section 486 of the *Philosophy of Spirit*. He claims, “That which is a right is also a duty, and what is a duty is also a right. For an embodiment is a right only on the basis of the free substantial will; the very same content, in relation to the will

differentiating itself as subjective and individual, is duty” (2007:218). The will, as an essentially free will, has a duty to will what freedom entails.

Of course, at this point in the dialectic, the will cannot say what this duty will involve, for it is unaware of the full content of freedom. It has committed itself to willing its freedom, but cannot foresee the ways in which freedom will actualise itself. All future determinations of freedom are, at this point, unknown to it. It may seem paradoxical that, at the point of becoming truly free, the will cannot determine the course of its own freedom. But this is precisely the idea that characterises freedom within the *Philosophy of Right*: that freedom is both within and without the will’s control. The will can claim its own freedom as a right, but it cannot dictate its content. So, at the point of becoming truly free, the will commits itself to future, unknown instances of freedom (to the stages of abstract right, morality and ethical life). However, even though the will cannot foresee the full content of freedom, it recognises that all future determinations of freedom further its status as an essentially free being. It is in this respect, i.e. in committing itself to willing what freedom demands, that the will remains in control of its own, free essence. The *Philosophy of Right*, therefore, becomes an account of what the rational will must uphold in order to remain truly free. The will progresses through three main stages of right: abstract right, morality and ethical life. In each of these stages, freedom is given a different expression, because the will understands differently what it is to be free. As the will progresses through the stages of abstract right, morality and ethical life, freedom is actualised in the world and the will develops an understanding of what true freedom entails. Each of these stages is right in the broad sense of the word – since it represents an existence of the rational will – and

also a right in the narrow sense of the word – since the rational will has an entitlement, and corresponding duty, to will it.

Having examined the dialectical progression whereby the implicitly free will becomes truly free, let us now examine the first stage of right: abstract right.

The abstractly free will has attained an awareness of its own freedom and has, thus, become truly free. However, at this stage, the abstract will has no conception of itself *other* than an essentially free will. It thinks of itself as a “completely abstract ‘I’” (1991:68R). As such, it conceives of its freedom purely formally and abstractly; it doesn’t associate its freedom with its particular characteristics, interests or desires. It thinks of itself simply as a universally and infinitely free being. This, for Hegel, is what constitutes *personality*. He defines personality as the “the will’s self-conscious (but otherwise contentless) and simple reference to itself in its individuality [*Einzelheit*]” (1991:67). He also claims that, in the person, “all concrete limitation and validity are negated and invalidated” (1991:68R). In this respect, personality resembles the negatively free will, which we discussed earlier in this chapter. The negatively free will also associates freedom with the ability to abstract from particularity and exist as a universal ‘I’. However, the fundamental difference between the negatively free will and freedom of personality is that the negatively free will is only *implicitly* free. The person, on the other hand, is truly free. The person understands its freedom as both a right and a duty and is, therefore, free both *in and for itself*. Although the person demonstrates a very abstract and limited understanding of what freedom entails, it *recognises* its essential freedom; and it is precisely this recognition that distinguishes it from the negatively free will.

However, even though personality *thinks* of itself as indeterminate and abstract universality, in reality, it is not. The person is determined in all sorts of ways; it has particular characteristics, particular interests, particular desires, etc. In short, it is “something wholly determinate” (1991:68A). Personality involves *being* something finite, yet *thinking* of oneself as infinite, universal and free. Therefore, personality is “at the same time the sublime and the wholly ordinary” (1991:68A). It exists as contradiction. The ability to support this contradiction, we are told, is the “supreme achievement” of the person (1991:68A). Hegel doesn’t dismiss the stage of personality; on the contrary, he values it at the point at which the will demonstrates an overwhelming, if ultimately abstract, awareness of its own freedom. However, because the person doesn’t associate its freedom with any of its particular determinations, its own particular content remains something external to it. Hegel writes that the person “encounters this content as an external world immediately confronting it” (1991:67). The person doesn’t determine its own particular content; instead, it simply exists alongside it and relates immediately to it (we shall return to this idea during our discussion on property).

Because of the formal and universal nature of freedom within abstract right, abstract right is the sphere of legality. It is concerned with protecting the universal rights of the person. Since the abstract will associates its freedom with its universal status as a free being, and not with its particular determinations, it must recognise that every other person lays claim to freedom in exactly the same way. Therefore, the commandment of abstract right is “*be a person and respect others as persons*” (1991:69). Abstract right is not concerned with promoting particular interests or welfare (this is the sphere of morality); it is simply concerned with upholding the rights of

personality. Of course, protecting the rights of personality is an essential part of freedom, and something that we value highly today. We like to believe that, irrespective of somebody's particular characteristics – age, gender, nationality, etc. – a person has entitlements simply because he/she is a person. This is the basis for our current system of human rights. However, Hegel also points out that rights, by themselves, are limited as a guide for action. In abstract right, no action is positively encouraged or recommended. Actions are simply permitted or forbidden; the only acts that can be 'commanded' are those whose omission is forbidden. As such, Hegel remarks that the whole of abstract right is "limited to the negative – *not to violate* personality and what ensues from personality" (1991:70). With such a limited, negative principle to guide behaviour, Hegel claims that moral and ethical relations are simply a "possibility" within abstract right (1991:69). The person does not consider what it *should* do, or *why* it should do it. It thinks only of what it must *not* do if it is *not* to violate its own rights or the rights of its fellow persons.

The first right of personality is the right to own property. Through the appropriation of external objects [*Sachen*], the person gives itself an external sphere of freedom. This is the first time in the *Philosophy of Right* that freedom actualises itself and, thus, the first time that freedom exists as Idea. The right to property is based on entitlement, and not utilitarian grounds. The will, as a free will, has an "absolute *right of appropriation*" over things which have no end in themselves (1991:75). As well as a *right* to own property, the will also has a *duty* to own property, for it is only through appropriating objects that the will can actualise its freedom in the external world. By owning property, the will overcomes the subjectivity of personality; it objectifies its will in an object, which, before its appropriation, had no will of its own. It gives the

object *its* will. However, at this stage in the dialectic, the will still thinks of itself as an abstractly free being and does not associate its freedom with its particular determinations. Its particular content, at this stage, is “a *matter of indifference* to it” (1991:69R). Therefore, even though the will knows it has a *right* to own property, it relates only *immediately* to the particular property it owns. Its freedom (as it understands it) dictates only *that* it appropriate objects; it says nothing about the *particular* objects to appropriate. Hegel writes, “this particular aspect, in the sphere of abstract personality, is not yet posited as identical with freedom” (1991:80). The will does not associate its freedom with *how much* or *what type* of property to own; its particular choice of property is, at this stage, unreflective and immediate. As such, its choice is also arbitrary. Just like the ‘choosing will’ in section fifteen, the abstract will of personality does not identify its freedom with the ability to determine its own, particular content.¹¹ Therefore, it’s choice of object is arbitrary and its content is contingent.

Because every person has the right to own property and must also respect the property rights of others, the person enters into contractual relationships with other wills. In *contract*, the person posits its freedom as part of a ‘common will’ between two or more contracting parties. In doing so, the person continues to exist as an owner of property, but it also exists for another will. Contract represents an important development in the will’s comprehension of its freedom, for it is the moment at which the will recognises the need for mutual recognition between property owners. As such, it is the first moment at which the person exists *for another*. However, contract is an ultimately deficient structure, because it is based on the will’s arbitrary appropriation of

¹¹ Of course, the fundamental difference between the ‘choosing will’ and the abstract will of personality

objects. Whilst the *form* of contract is a direct result of freedom, its *content* is simply an aggregation of arbitrary preferences. Therefore, the content of contract (just like the content of the will) is contingent. It is for this reason that Hegel is notoriously critical of the contractual relationship. He describes contract as an “appearance” of right, since its content is not determined by freedom (1991:115). He is also keen to point out that the contractual relationship does not form the basis of the rational state.¹² The common will, because of its arbitrary character, is instable. Just as the person can renounce its arbitrary choice of property, so it can renounce its contract. In other words, contracts are liable to be broken.

If the will renounces its contractual agreement, it commits *wrong*. During wrong, the will elevates its particular interests above the universal, common will. Whereas contract is only an “appearance” [*Erscheinung*] of right (since its content is only contingently related to freedom), the act of wrong is a complete “semblance” [*Schein*] of right, because, in negating the common will, the person wills something completely at odds with its own freedom (1991:115). It prioritises its particular interests over its universal interests. There are three types of wrong: *unintentional wrong*, *deception* and *crime*. Unintentional wrong is the least serious of the three, because, when the will commits an unintentional wrong, it negates the universal by mistake. As such, the will still recognises right (at this stage, the common will) as the “universal and deciding factor” (1991:117). Its respect for right remains intact, even if right is objectively negated. In deception, these subjective and objective considerations are inverted; the deceiving will no longer respects right, but its deception relies on right remaining objectively intact (at least in the eyes of the person being deceived).

is that the person understands its freedom as a matter of *right*.

However, it is the third moment of wrong, crime, that represents “wrong in the proper sense”, because, during crime, right is objectively negated along with the will’s respect for it (1991:119). To commit a crime, Hegel writes, is to “infringe right as right” (1991:121). The criminal elevates its particular interests above the universal in such a way that right is no longer subjectively nor objectively present. As such, crime is a complete denial of right.

At this point, let us recap briefly on the will’s logical structure leading up to and during crime. In property, the universal and particular moments of the will are united immediately in the object it owns. The will seeks an external form of freedom, but this freedom does not determine its particular choice of object. Its universal freedom is, therefore, bound immediately with its particular choice of property. During contract, the will continues to own property, but it elevates its universal freedom to a common will with other contracting parties. As such, its particular and universal moments are separated for the first time; it has both a particular will of its own and a universal, common will with other persons. However, it is during the moment of crime that the will first posits its particular content above that of the universal. In crime, will prioritises its particular interests – its desire for another’s property, etc. – over the universal, common will. This is the first moment in the *Philosophy of Right* at which the will’s particular and universal moments exist in opposition. By negating the common will, the will negates its freedom in favour of particular desires; it sacrifices its universal moment in search of its own, particular gain.

The criminal’s negation of right has two consequences. Firstly, in committing crime, the criminal negates right in the objective sense, i.e. the criminal negates freedom

¹² See the Remark from Paragraph 75 [1991:105] and the Remark from Paragraph 258 [1991:277]

as externally present in contract. However, in committing crime, the criminal also negates its *respect* for right and, therefore, does not honour its status as a free being.¹³ Both of these factors, Hegel claims, require that crime be punished. Punishment in the *Philosophy of Right* is fundamentally retributive. Hegel does not justify punishment on utilitarian principles or reasons of deterrent; it exists simply to negate the negation of crime. Punishment is required in the first case – the objective negation of right – in order to restore right and cancel a criminal act which would “*otherwise be regarded as valid*” (1991:124). This is what Hegel refers to as *justice*. However, as well as implementing justice, punishment is also required in order to restore the criminal’s *respect* for right. The criminal will, having negated its own freedom, needs to reaffirm right and reaffirm its status as an essentially free being. Interestingly, Hegel argues that the criminal, simply through its criminal act, consents to its own punishment. Let us explore this idea further.

In section 100, Hegel presents the idea that, as a rational will, the criminal wills its own punishment through its own criminal act. Because the criminal is formally free, when it acts criminally, it sets up a law that permits its action universally. As such, it implicitly consents to this law being carried out on it, too. Hegel writes, “it is implicit in his action, as that of a *rational* being, that it is universal in character, and that, by performing it, he has set up a law which he has recognised for himself in his action, and under which he may therefore be subsumed under *his* right” (1991:126). In other words, if the criminal will steals, it universalises the law that it is acceptable to steal and, thus, it implicitly permits theft against itself. In this way, the criminal can be said to consent

¹³ Of course, even during crime, the *concept* of the free will itself is not negated. The will remains an *essentially* free will. Hegel claims that, “right, as an absolute, cannot be cancelled” [1991:123]. However, during crime, the will negates the objective expression of its freedom (contract) and also its respect for its

to its own punishment; for it consents to its *own* law being turned on itself.¹⁴ If the criminal were to remain unpunished, his status as a free being would be denied. By punishing the criminal, on the other hand, the criminal is “honoured” as a free being (1991:126). As such, through punishment, the criminal is led to reaffirm its status as an essentially free being and as a bearer of rights.

The dialectic of crime and punishment is essential for the transition into morality, for it is through this progression that the will ceases to relate immediately to right. During crime, the will’s universal and particular moments – which were, previously, united immediately in an external object – exist separately and in opposition. It is through punishment that the will supersedes this opposition, because, during punishment, the will recognises that both its universal status as a free being *and* its particular content are essential parts of its freedom. Previous to punishment, the will related only immediately to its particular content. However, during punishment, the will recognises that its particularity also belongs to freedom. It can no longer allow itself to be determined by natural factors (desires, inclinations, etc.); instead, it has to determine *itself* in a way that remains faithful to its free essence. During punishment, the will reclaims its universal *and* particular moments. It is “confronted with itself” (1991:132A). As such, instead of seeking its freedom in something external, the will makes *itself* into its own object: “the next stage is for the will to have existence in itself, in something internal” (1991:132A). The will internalises its universality and particularity. As such, the will exists as *subjectivity*. However, even though its universal and particular moments are internalised, they are not identical. They remain separate (as

freedom. It is in this sense that “right as right” is negated [1991:121].

¹⁴ Punishment need not adopt the crime’s qualitative form (an eye for an eye, tooth for a tooth, etc.), but should be of the same *value*. See Paragraph 101 [1991:127-130]

they were during crime). It is the obligation of the moral subject to unite these two aspects of freedom. The moral subject must determine its particular content so that it corresponds to its universal moment of freedom. For this reason, the sphere of morality is the sphere of self-determination.

Chapter Two

Morality, the Good and Duty

Following the dialectic of crime and punishment, the will no longer relates immediately to right. Instead, it has to determine itself to recognise right. Having internalised its universal and particular moments, the will now has *itself*, and not an external thing, as its object. As such, it exists as subjectivity: “this reflection of the will into itself and its identity for itself ... determine the person as subject” (1991:135). The moral subject no longer seeks existence in something external, but in its own self. It has to determine its own, particular content so that it corresponds non-contingently with its universal freedom. In other words, it has to unite its moments of universality and particularity, which, although internalised, are not identical. In order to do this, the subject must reflect on its particular choices; unlike the abstract will of personality, it must consider matters such as intention, responsibility, satisfaction and conscience. By doing so, the moral subject attempts to determine itself in a way that freedom demands. It attempts to will the *good*. In this chapter, I shall examine the right that permeates the whole of morality: the right of subjectivity. Contained within this right are the moments of purpose and responsibility, intention and welfare, and the good and conscience. I shall provide an outline of all these moments, except conscience, which I discuss separately in the next chapter. I shall pay particular attention to the dialectical significance of the good and its first appearance as duty. I shall argue that, because of the logical structure of morality, the notion of duty is necessarily indeterminate. I shall then demonstrate

how the indeterminate nature of duty leads to the emergence of conscience.

In section 107, Hegel defines the right of subjectivity as the will's right to "recognise something or to be something only in so far as that thing is its own, and in so far as the will is present to itself in its subjectivity" (1991:136). The moral subject is "present to itself" in its decisions and claims its decisions as "its own". It no longer acts unreflectively (as it did in abstract right). Therefore, the right to subjectivity is best described as the will's right to reflection, and the right to understand its decisions as a product of its *own* freedom. To put it another way, the right of subjectivity is the right to reflective, self-determination. As we will see, this right involves many things: the right to have intentions, the right to be judged only on these intentions, the right to find satisfaction in fulfilling these intentions, etc. And, most relevant to my thesis, it also involves the right to consult our conscience in order to determine, for ourselves, what is *good*. However, the right to subjectivity also entails that, as free agents, we assume responsibility for our actions. The fact that we are responsible for our actions follows directly from the fact that we determine *ourselves* and that our actions are to be regarded as *our own*. Responsibility does not make us less free. In fact, it reinforces the fact that our subjectivity is respected. In exercising our subjective freedom and accepting responsibility for our actions, we determine for ourselves the best way to act. We cease to assent to external, given factors, and we build up a personal knowledge of the difference between good and evil. This is absolutely fundamental to Hegel's account of subjective freedom. The right to subjectivity allows us to identify right with our own ability (and responsibility) for self-determination.

In section 132, Hegel provides another definition of the right to subjectivity: "The right of the subjective will is that whatever it is to recognise as valid should be

perceived *by it* as good” (1991:158). This is a crucial statement in the *Philosophy of Right*, for it confirms the idea that the moral subject should not assent to anything that *it* does not recognise as good (its own character, moral systems, political institutions, etc.). The moral subject is reflective and, as such, should not adhere blindly to external commands. It has to affirm the good *for itself*. Of course, the *extent* to which the moral subject (or the ethical subject) can assert its own, moral convictions against objective, political institutions is a notoriously difficult problem in the *Philosophy of Right*, and a problem which I aim to solve in my thesis. However, at this point in the text, it is important to recognise that the right of subjectivity rules out the possibility for unreflective moral behaviour. The moral subject can only endorse those determinations that *it* recognises as good. For Hegel, the right to subjectivity is an essential moment in the dialectic of freedom, and marks the onset of the modern age: “The uncivilised human being lets everything be dictated to him by brute force and by natural conditions ... but the cultivated and inwardly developing human being wills that he should himself be present in everything that he does” (1991:136-7A).

As has become evident, Hegel uses the term *morality* in a wider sense than we use it today. Morality, in the *Philosophy of Right*, encompasses everything that belongs to human subjectivity – interests, intentions, responsibility, happiness, etc. – and not just the morally good. Hegel does not refer to the *moral* in order to exclude the immoral. He writes, “The moral is not primarily defined simply as the opposite of the immoral, just as right is not in an immediate sense the opposite of wrong. On the contrary, the universal point of view of the moral and the immoral alike is based on the subjectivity of the will” (1991:137R). This passage is revealing, for it introduces the idea that subjectivity brings with it the potential for good, but also the potential for bad.

Both morality (in the narrow sense in which we use it today) and immorality can emerge from the right to subjectivity. The subjective will has the potential to get things wrong. As we shall see as my thesis continues, subjective freedom is a fundamental right of the moral subject, but one which is ultimately fallible.

The expression of the moral subject is *action*. Action, in the moral sense, is more than simply ‘what we do’. It is the positive representation of our subjectivity – our choices, intentions, motivations, etc. – in the objective world. Hegel highlights this idea by contrasting moral action with the legal ‘action’ of abstract right. Legal action is characterised by prohibition, so the content of legal action is not a positive representation of subjectivity; it is simply a process of obeying negative commandments. In the sphere of abstract right, the “moments of moral action proper” were only “externally present” in the will (1991:141R). The will was not determining *for itself* how to behave, it was merely following external demands. It is only with the onset of morality that we enter the sphere of action as a positive representation of our subjectivity. The moral subject is reflective, and this reflection is objectified in the external world through its action. Through engaging in the self-conscious implementation of ends in the public world, the will demonstrates its subjective freedom.

I will now continue to discuss the different stages of action, and how, as the moral subject learns more about its subjective freedom, its actions become increasingly permeated with its own subjectivity.

Given that the moral subject determines itself through its actions, it must first recognise the right to responsibility. The term *responsibility* has acquired negative connotations in our current, moral vocabulary – we force others to take responsibility

for their actions, or we condemn people for avoiding it – but, as we discussed above, in the *Philosophy of Right*, responsibility is something the moral subject claims for itself as a right. It is not something to be avoided, and it is not imposed upon the moral will by others. Responsibility is recognised by the moral subject as a right which is essential to action. This is because the moral will has a right to initiate actions and to recognise them as its own. It has the right to express its subjectivity through its actions. Therefore, it has the right to claim responsibility for them. By embracing the right to responsibility, the will declares that its actions are expressions of its own particularity. We could say that, in claiming responsibility for its actions, the moral subject is claiming ‘credit’ for them; it is declaring, to itself and to others, that its actions are the self-conscious implementations of its unique subjectivity in the public world. Whether or not its actions are good, or have good consequences, they are expressions of its own particularity, and this connection between actions and self-determination is what is so crucial about the right to responsibility. Of course, sometimes the right to responsibility will earn the moral subject prestige, and sometimes it may force the moral subject to repent for its actions; but, either way, the right to responsibility ensures that the moral subject recognises its actions as *its own*.

We have established that the moral subject is, and takes itself to be, responsible for its actions, but there is a fundamental difference between an *action* [*Handlung*] and a *deed* [*Tat*]. The moral subject lives against a backdrop of the external world, which Hegel calls the “finitude of the subjective will” (1991:143). When it engages in action, the moral subject causes an objective alteration to this backdrop. This objective alteration, taken in its entirety, is the *deed*. But the moral subject cannot always be held responsible for the entire alteration, because it is possible that some of the alteration was

beyond the subject's control (even the best of intentions can yield unwanted and unpredicted results). The moral subject is responsible for only the aspects of the deed which it knew to be contained within its purpose [*Vorsatz*], for this captures the aspect of the deed that expresses the subject's particularity. Hegel writes, "The deed posits an alteration to this given existence [*Dasein*], and the will is entirely responsible for it in so far as the predicate 'mine' attaches to the existence so altered" (1991:143). So an *action* is the part of the *deed* for which the moral subject is responsible; the part of the deed that is contained within its purpose and that it can claim as its own. For this reason, the moral subject cannot be held accountable for events that are committed in ignorance, or for consequences that spiral out of control. To be held responsible for something, the moral subject must have acted knowingly. Hegel calls this the "right to knowledge" (1991:144). Hegel claims that, for this reason, Oedipus cannot be charged with parricide; for, at the time of 'acting', Oedipus did not *knowingly* kill his father. Oedipus committed the *deed* but not the *action* of parricide. In Hegel's opinion, one of the flaws in ancient legal codes was that they neglected this subjective dimension of the action, and instead held people accountable for the deed in its entirety: "the legal codes of antiquity attached less importance to the subjective element, to responsibility, than is the case today. This is why sanctuaries were established in antiquity, to receive and protect fugitives from vengeance" (1991:144A). He continues this observation with a critique of the "heroic self-consciousness" of ancient tragedies, which he remarks has "not yet progressed from its unalloyed simplicity to reflect on the distinction between deed and action, between the external event and the purpose and knowledge of the circumstances." (1991:146R).

Having said this, the moral subject should be expected to understand the likely

consequences of its actions. As a responsible person, the moral will should be aware of the probable consequences of its conduct. It should understand not just the particular deed in which it is engaged, but the general character of the deed, and what is likely to happen as a result. In other words, the will has the right to intention. The right to intention allows the moral subject to be judged for only what it intended to do, but it also requires that the moral will understand the “universal content” of the deed, i.e. all the “various connections” contained within it (1991:147). In other words, it demands that the moral subject recognise that certain consequences are integral to certain actions. Intention is the universal aspect of the action, not the action taken in an isolated existence. Hegel uses arson and murder to illustrate this: the arsonists doesn’t intend to set fire to a single piece of wood, but the whole house; and the murderer doesn’t plan to destroy an isolated piece of flesh, but “the life within it”, i.e. the universal (1991:148R). It is not sufficient to isolate one’s intention to a specific unit in a chain of events, for, within each unit, there is a universal element, of which the moral subject should be aware. For this reason, the moral subject cannot reasonably claim that it intended to set fire to just one section of the wooden house, without being aware that this would almost definitely result in a blaze.

Of course, in the world of externality, in which the moral subject necessarily acts, things can go wrong. The moral subject cannot expect to anticipate every possible consequence of its action. In some cases, the disparity between intention and consequences may be vast; for example, it is possible that, in lighting the candles on my child’s birthday cake, I accidentally set fire to my house. In considering responsibility in cases like this, it is vital to take seriously the notion that it was not my intention to start a fire. But, in other cases, Hegel is less forgiving. Perhaps the arsonist doesn’t expect

the fire to spread so far, or unwittingly kills those inside the property. In these situations, the moral agent is responsible for the unforeseen consequences, since it inheres in such an action that it may extend to unpredictable and immeasurable consequences. To illustrate this, Hegel cites the old proverb, “The stone belongs to the devil when it leaves the hand that threw it” (1991:148A). The moral subject must anticipate that certain acts can have dangerous consequences. In other words, the action *itself* has a right to be understood properly. Hegel calls this the “right of objectivity of the action” (1991:148). The action has the right to be “known and willed by a thinking agent” (1991:148). Only those without the capacity for rational thought – “children, imbeciles, lunatics, etc.” – can escape this right.

Therefore, an irresolvable tension emerges in the *Philosophy of Right*: how far can I claim that my intention did not coincide with the consequences of my action? What do I hold myself responsible for and what do other people hold me responsible for? As a rational, moral subject, I am expected to have intelligent intentions; yet I cannot claim to predict every result of my conduct. So, how much of the deed can I subsume under my intention? In morality, there are no shared standards, so this tension remains unresolved. There exists a continual balancing act between intention and responsibility. This unresolved tension is another example of the fact that, in the *Philosophy of Right*, freedom is both within and without the will’s control. The will wants to determine *itself* to behave in accordance with right, but it acts in a world of contingency, where things can go wrong. The idea will become important in the later chapters of my thesis.

The moral subject has the right to understand its actions as the successful fulfilment of its intentions and, therefore, it has the right to find satisfaction in its

actions. The right to satisfaction relates to the particular aspect of intention; I perform a given act because of its “subjective value and interest *for me*” (1991:150 my emphasis). We usually refer to this as the ‘motive’ for an action. Let us return to the example of murder for a moment. Hegel writes, “The murder was not committed for the sake of murder; on the contrary, some particular positive end was also present” (1991:149). Perhaps the murder was carried out as a particular act of revenge. If so, this would be the “particular positive end”. To invoke another (legal) example: I may give to a particular charity because I like the specific work they do. In this case, I am satisfying my particular opinions through my action (we shall return to the notion of charity in Chapter Five). The right to satisfaction represents subjective freedom in its concrete form. The subject, when it acts, wills “the fulfilment of its desire and gratification of its passions” (1991:150A). For Hegel, fulfilling our desires is a fundamental aspect of morality; it is not something from which we should separate moral judgements. He describes the right to satisfaction as the “higher moral viewpoint”, in which we do not “[stop] short at the gulf between the self-consciousness of the human being and the objectivity of the deed” (1991:150A). Hegel considers the right to satisfaction as an essential mark of the modern age.

However, the *content* of satisfaction, at this point in the dialectic, still derives from the natural will, which consists of “needs, inclination, passions, opinions, fancies, etc.” (1991:150). Because this content is natural and given, when the will acts to satisfy it, the will does not determine itself in accordance with its own freedom. So, even though the will has a right to find satisfaction in its actions, the desires on which it acts are still provided by nature, and not its rationality. The aim to satisfy these natural desires is *welfare* or *happiness*. Of course, it is important to note that, contained within

the concept of welfare or happiness, is the moral subject's ability to stand above and evaluate its desires (just like the 'natural will' and the 'choosing will', which we discussed in the previous chapter). We learn in section twenty of the Introduction that, "in happiness, thought already has some power over the drives" (1991:52A). In order to maximise its happiness, the moral will has to order its preferences and decide which actions will result in the greatest satisfaction. However, at this stage, the content of satisfaction remains given (it is not until the moral subject adopts the *good* as its end, that it has freedom as its object). Hegel doesn't condemn the natural content of satisfaction. He is keen to point out that the natural passions of the moral subject belong to the moral subject as a living being, and are not simply opposed to freedom. Having questioned whether the moral subject has a right to set these natural drives as its end, Hegel claims, "The fact he is living is not contingent ... but in accordance with reason, and to that extent he has a right to make his need his end. There is nothing degrading about being alive" (1991:151A). For Hegel, right to find satisfaction is an essential part of morality (though it will eventually be preserved in the non-contingent and sublated form of the *good*). He claims that only "abstract reflection fixes this moment [satisfaction] in its difference from and opposition to the universal, and so produces a view of morality as a perennial and hostile struggle against one's own satisfaction, as in the injunction: 'Do with repugnance what duty commands'" (1991:152R). This obvious attack on Kant (or, more accurately, his misinterpretation of Kant) serves to highlight that Hegel includes the subject's right to satisfaction as an essential part of morality.

As we have seen, welfare concerns the particularity of the moral subject. In pursuing its own welfare, the moral subject evaluates its intentions and pursues those activities which bring it satisfaction. However, Hegel goes on to claim that, as well as

its own welfare, the moral subject should also take into account the welfare of others. He writes, “The welfare of many other particular beings in general is thus also an essential end and right of subjectivity” (1991:153). This move from the welfare of the self to the welfare of others is made rather swiftly in Hegel’s account, but it is possible to identify the fundamental, logical move behind it: the moral will actively determines itself to be free. But, the ‘self’ that it determines is both particular *and* universal. So, in as far as it is universal, it is, indeed, the self of others, too. It is a necessary part of freedom that *every* moral subject pursues its own happiness. Therefore, Hegel writes that, “The implementation of my end ... has [the] identity of my will and the will of others in it – it has a positive reference to the will of others” (1991:139). As a moral subject, I should act not only for the sake of my happiness, but also for the happiness of others.

In welfare, the moral subject pursues its own *particular* desires (and, as we have just established, the *particular* desires of other moral subjects). However, it is possible that, without anything to constrain it, the pursuit of particular interests can lead to an infringement of the legal rights of personality that form the basis of abstract right. If the moral subject has nothing but its own/others’ welfare to guide its decisions, then the fundamental rights of personality could be under threat. For example, if I pursue my desire to accumulate possessions to the extent that I am stealing from or murdering people for them, then I am violating the fundamental rights of personality which are essential to freedom. Hegel is adamant that this should not be so. He writes, “My particularity, ... like that of others, is only a right at all in so far as I am free. It cannot therefore assert itself in contradiction to this substantial basis on which it rests” (1991:153). The intention to promote welfare cannot justify an action which runs

contrary to the rights of the free person. So the moral will, at this stage, remains reliant upon the abstract rights of personality for its universal element. Welfare must be restrained by *right*, so as to prevent it negating the universal aspect freedom; to prevent it becoming a “one-sided” and standard-less subjectivism. Right (and by this I mean the upholding of the rights of personality, as discussed in abstract right) must be considered alongside welfare when considering how to act. The moral will can only pursue happiness to the extent that it does not infringe right.

Welfare without right is inadequate and one-sided. But right without welfare is equally insufficient. In certain situations, we have to sacrifice the rights of personality in order to live. Hegel describes this as the “right of necessity” (1991:154). Hegel uses the example of stealing a loaf of bread in order to survive and claims that “it would be wrong to regard such an action as common theft” (1991:155A). Life itself has a right in opposition to the abstract right of personality. And if we were not allowed to take certain measures in order to preserve our life, then our life itself, and thus our entire freedom, would be negated. Hegel describes this as the “ultimate wrong” (1991:155A). So, at times, we have to exercise the right of necessity and prioritise welfare over right. By doing so, we avoid the guiding principle attributed to the Holy Roman Emperor Ferdinand I, *Let justice be done, even if the world should perish*, to which Hegel alludes in section 130.

By themselves, welfare and right are insufficient as a guide for action. Welfare has particularity without universality, and right has universality without particularity. In order to prevent a one-sided moral decision, welfare and right must coincide. However, since the content of welfare is still natural and given, it remains a matter of contingency as to whether welfare and right will coincide. The will’s particular desires may *happen*

to coincide with its universal freedom, but they may not (as we discussed in the ‘stealing’ and ‘murdering’ examples above). To put it into logical terms, the particular and universal moments of the will are, at present, only contingently related. What is required is a concept that unites welfare and right in a non-contingent fashion. The will requires a concept that, if adopted, will ensure that the will’s particular desires always conform to the universal principles of freedom. This concept is the *good*. The good, we are told, “has a complete content whose import encompasses both right and welfare” (1991:157A). But the good does more than simply ‘contain’ right and welfare; it is an idea which unites the *concept* of the will – freedom – with the *particular* will. The good is a fundamental dialectical point in the *Philosophy of Right* because, when the will pursues the good as its end, it no longer has merely natural or given inclinations as its content (as it did in welfare). Instead, it wills its own freedom and unites its universal and particular moments. It was precisely this requirement – that the will, in its particularity, will the universal – that led us into morality in the first place. So, when we arrive at the good, we arrive at a resolution of the dialectic of freedom in the *Philosophy of Right*. The good is the moment at which the ideal of morality is realised and the obligation of the particular will to will the universal is fulfilled (although, it will become apparent that this obligation cannot be realised in morality). As such, Hegel describes the good as “realised freedom, the absolute and ultimate end of the world” (1991:157).

However, it seems as though we encounter a difficulty when we arrive at *duty*, which is the first determination of the good. So far we have been told that the good unites welfare and right in a non-contingent manner; yet, as soon as the good is characterised as duty, Hegel claims that it is impossible to arrive at any determinate

instances of the good. His notorious critique of Kantian duty is used to illustrate that duty is insufficient as a guide for action.¹⁵ Irrespective of whether Hegel's critique of Kant is successful, it is essential to recognise that, even within Hegel's *own* system, the concept of duty is the object of criticism. Hegel describes duty as "indeterminate" and "identity without content" (1991:162). But, surely, within Hegel's account, duty does have content: welfare and right. So why does Hegel describe duty as indeterminate? Is there an inconsistency in Hegel's account?

I don't believe there is. In my opinion, this apparent inconsistency can be explained by appealing to the relationship at the heart of morality: the relationship of unqualified obligation that exists between the particular moral subject and the universal. Let us explore this further.

Ever since the dialectical moment of crime and punishment in abstract right, the will has had to determine itself to recognise the universal. Before crime, the will related immediately to the universal. But, having negated right (in crime), the will is forced to re-examine and reaffirm what it takes right to be. It turns towards its own subjectivity to explore, for itself, the nature of its own freedom and the best way to remain faithful to it. In other words, it aims to unite its particular and universal moments. This is the goal of morality. From the moment we enter morality, the moral subject exercises its subjectivity in an attempt to reaffirm right and determine for itself what is good. But, throughout this process, the moral subject remains confronted by the presence of a right *in itself*, from which it departed during crime.¹⁶ It recognises that, whilst it must learn to will the universal, it is *different* from the universal. It no longer enjoys an immediate

¹⁵ Hegel [1991:162-3]

¹⁶ Hegel claims that, even during crime, "right, as an absolute, cannot be cancelled". In other words, even though the appearance of right (contract) is negated in crime, right *in itself* – the will's essential freedom

relationship with the universal; instead, the universal becomes something with which it must align its particularity. And, in morality, we witness the moral subject's endeavour to close the gap between its particularity and the universal, i.e. its attempt to will the good. Hegel writes, "In the moral sphere, the will still relates to that which has being in itself; it is thus the point of view of difference, and the process associated with it is that whereby the subjective will achieves identity with its concept" (1991:137A). So, whilst the moral will has the freedom to exercise its subjectivity, its ultimate obligation is towards the universal and to its essence as a free will. In one of the opening sections of morality, Hegel writes, "the moral point of view is one of *relationship, obligation, or requirement*" (1991:137). The moral subject stands in *relationship* to the good as something it *ought* to determine. Morality is the sphere of "perennial obligation" (1991:163R).

It is worth noting at this point that, if we take Hegel's "perennial obligation" claim seriously, it doesn't appear that the moral will can ever fulfil its requirement to determine the good. All it can do is strive towards it. This idea is supported by Hegel's characterisation of the moral will as "sheer restless activity which cannot yet arrive at something *that is*" (1991:137A). It is only in the ethical sphere that the will achieves identity with the good. And when we stop to consider the logical character of the good, this is not surprising. The good is such an important dialectical moment in the *Philosophy of Right* precisely because, in willing it, the will unites its particularity with its universal status as an essentially free being. In willing the good, the will is guaranteeing that, whatever its particular interests, it will not violate what is right *in itself*, i.e. its own freedom. In morality, we are introduced to the logical structure of the

– remains constant.

good, but as something to which the moral will stands in a relationship of obligation: the will is not able to actualise the good until we reach ethical life. It is only in *Sittlichkeit* that the good as “fundamental realised freedom, the absolute and ultimate end of the world” emerges (1991:157).

However, for the moment, let us return our attention to Hegel’s claim that duty is indeterminate.

I believe that the key to understanding Hegel’s claim lies in section 133. At the outset of this section, Hegel asserts, “The relation of the good to the particular subject is that the good is the *essential* character of the subject’s will” (1991:161). He then goes onto claim that, because of this relation, the particular subject has an “unqualified obligation in this connection” (1991:161). This is unproblematic. We have already seen that, with the move into morality, the moral subject is defined by its quest to will the universal, thus remaining true to its status as an essentially free being. In order to remain faithful to its own freedom, the moral subject must seek to will the good. But Hegel then goes onto claim that, “Because *particularity* is distinct from the good and falls within the subjective will, the good is initially determined only as *universal abstract essentiality* – i.e. as *duty*” (1991:161). Why is this so? Why is the particular will distinct from the good and not part of the good? Is Hegel correct to claim this and therefore correct to claim that duty is abstract? I believe he is correct to claim this, because, at this stage in the dialectic, the moral will is *different from* the universal. It stands in a *relation* to the universal (i.e. it is striving to will it), but it knows also that *it is not* the universal. It departed from the universal during the crime, and it now associates its freedom with its ability for self-determination. So we arrive at the fundamental contradiction at the heart of morality, and one which explains Hegel’s

seemingly inconsistent remarks about the indeterminate nature of duty: the moral will thinks of itself as both different from and identical to the universal. It is universally free, but it has to determine for itself how to remain faithful to this freedom. It is for this reason that the good is both the “essential character” of the particular will but why Hegel describes the particular will as “distinct from the good” (1991:161).

Given that the particular will is, at this stage, distinct from the good, duty is rendered abstract, i.e. it is regarded, by the will, as something separate from it. We could say that duty is simply a reminder of the moral will’s unconditional obligation to pursue the good. This, in itself, is an important notion; the moral subject must appreciate its duty to will the good (and this is something for which Hegel praises Kant’s moral philosophy). But, when we enquire into what the moral will’s determinate duties are, *duty* cannot provide any answers. In section 134, Hegel writes, “*what is duty?* For this determination, all that is available so far is this: to do right, and to promote welfare, one’s own welfare and ... the welfare of others” (1991:161). But this is not sufficient. Although welfare and right “give rise” to duty, they are not contained in duty itself, for, once we arrive at duty, we enter the “higher sphere of the unconditional” (1991:162). We become aware of our “unqualified obligation” to will the good and remain faithful to our own freedom (1991:161). Right and welfare are “conditional and limited” and, once we reach the unconditional realm of duty, it is impossible to return to them as a guide for action. To put this another way: the moral will approaches duty through its considerations of welfare and right but, having encountered duty, is overtaken by its requirement to will the good. Duty is a necessary moment in morality, since it reinforces the relationship of obligation between the moral will and the universal (for this reason, Hegel describes it as “the essential or universal

element in the moral self-consciousness” (1991:162)) but, by itself, it is empty. It has no determinate content. Duty encapsulates the essence of morality – that the moral will must strive to determine the good – but cannot provide us with anything determinate. In the hope of discovering specific instances of the good, the moral will must turn inwards and appeal to its conscience.

In the next chapter, I shall examine Hegel’s account of conscience within morality.

Chapter Three

Moral Conscience and Evil

The moral subject strives to will the unconditional good. However, as we established in chapter two, the moral subject recognises the unconditional good as something *distinct* from it and, therefore, the notion of duty – the unqualified obligation to will the good – is rendered abstract: the moral subject knows it must do its duty, but it cannot derive any *particular* duties from the notion of duty itself. Duty is thus indeterminate. We have reached a stage in the dialectic at which the moral subject is aware of its formal obligation to ‘act for the sake of duty’, but it has no specific duties on which to act. This is problematic because, as a *particular* subject, the moral subject requires *particular* moral principles to guide its behaviour. So, whilst it is essential to recognise the importance of duty, the moral subject requires more than this abstract obligation; it needs to relate its duty to the particular choices it makes in its own life. The moral subject inhabits a world of determinacy – it is *this* subject, living in *this* community, with *this* vocation and *these* interests, making *these* choices – and it is precisely these determinate factors that the moral subject needs to reconcile with the unconditional good. This is the goal of morality. However, this cannot be achieved if we conceive of the good in terms of abstract duty. In paragraph 136, we learn that, “One may speak of duty in the most sublime manner ... But if it leads to nothing determinate, it ultimately grows tedious, for the spirit *requires* that particularity to which it is entitled” (1991:163A my italics). The moral subject “requires” determinate obligations on which

to act. It is, therefore, essential that the moral subject develop a system of determinate moral principles. It is only through doing so that the moral subject can realise the good.

But from where is the moral subject going to derive particular moral obligations? We have established that it cannot derive any from the abstract notion of duty. Nor can it look towards its society or community for objective, shared standards, because, at this stage in the dialectical progression, there is none (the whole purpose of morality is to establish what these should be). In an attempt to obtain particular instances of the good, the moral will must turn towards its own subjectivity. Hegel writes, “Because of the abstract character of the good ... *particularity* in general, falls within subjectivity” (1991:163). The moral will must examine its subjectivity in order to construct a system of determinate moral principles.

Of course, from the outset, the morality section of the *Philosophy of Right* centres around the moral will’s right to self-determination and the ability to express its own subjectivity through its actions. In this respect, the exercising of subjectivity is nothing new; the moral will has always understood its actions as expressions of its subjectivity. After all, the moral will *is* the self-determining will. However, the extent to which action is permeated by subjectivity increases as we progress through morality (from purpose, to knowledge, intention, welfare, etc.), and we now encounter the moment at which the right to exercise subjectivity reaches fruition. The moral will, having realised the abstract and indeterminate nature of duty, has *nothing other* than its own subjectivity on which to rely as a guide for action (there are, as yet, no shared, objective, social standards on which to base its moral decisions). The moral subject has to provide a content for duty from *within itself*. It has to decide *for itself* what is right and what is wrong; and it is only through doing so that the moral subject can produce

particular duties on which to base its actions. Hegel writes, “Subjectivity, in its universality reflected into itself, is the absolute certainty of itself; it is that which posits particularity, and it is the determining and decisive factor” (1991:163). This type of subjectivity is the moral conscience.

The moral conscience marks the fruition of subjective freedom in the *Philosophy of Right*, for it is the moment in which the moral subject is bound by nothing other than its own subjectivity. The right which permeates the entire moral sphere, the *right of the subjective will*¹⁷, finds its ultimate expression in the moral conscience: in appealing to its conscience, the moral subject recognises *itself* as the only legitimate moral authority. It withdraws from externality in an attempt to determine, for itself, what is good. It is the “decisive factor” and the “absolute inward certainty of itself” (1991:163). Conscience posits its own convictions as determinate instances of the good and, in doing so, refuses to submit to external moral demands. As such, conscience captures the essence of morality, which is to play an active role in determining moral structures and to reject unreflective moral behaviour. For this reason, I consider conscience to be an extremely important phenomenon in the *Philosophy of Right*, and one which, when understood correctly, illuminates Hegel’s position on subjective freedom as a whole. This is a view which is supported by current Hegel scholarship. In his book, *Foundations of Hegel’s Social Theory*, Neuhouser refers to conscience as the “central feature” of moral subjectivity and suggests that, when investigating the notoriously problematic relationship between morality and ethical life in Hegel’s *Philosophy of Right*, it is essential to ask whether or not ethical life can accommodate conscience (2000:229). Similarly, Dean Moyar characterises conscience as the “central figure” in

¹⁷ See chapter two for a discussion of the right of the subjective will [Paragraph 132: *The right of the*

the transition from morality to Ethical life, and argues that, “once [the status of conscience within ethical life] is understood, [Hegel’s] transition from morality to ethical life is both more comprehensible and less threatening to liberal freedom” (2008:3). And, echoing this sentiment, Dahlstrom claims, “Demonstrating the dialectic of conscience is a way of establishing the necessity of morality for-and-within ethical life” (1993:186). All three of these commentators recommend that we approach the question of subjective freedom within the *Philosophy of Right* (and the essential question of whether or not Hegel respects it) via a detailed examination of the dialectic of conscience. If we can establish that conscience – the fruition of subjective freedom – has a meaningful function within ethical life, we can further undermine the infamous criticism that Hegel allows little or no room for subjective freedom within his political sphere. My thesis will argue that conscience *does* play a meaningful role within ethical life and, thus, that Hegel is not dismissive of subjective freedom.¹⁸ In order to do this, it is first necessary to look at how Hegel introduces conscience in the moral sphere. This will occupy the remainder of this chapter.

The obligation that permeates the entire morality section of the *Philosophy of Right* is that the moral subject align its particularity with the unconditional good. However, as we have seen, conceiving of this obligation in terms of ‘duty’ only leads to a moral impasse. The notion of duty, by itself, takes the form of an abstract obligation (the moral subject knows it must act for the sake of duty, but it cannot derive any particular duties from the notion of duty itself). It is the moment of *conscience* that promises a way out of this impasse, for it is during the moment of conscience that the

subjective will is that whatever it is to recognise as valid should be *perceived* by it as good]

¹⁸ I shall, in later chapters, argue that the right to subjective freedom is retained in the *Aufhebung* from the moral conscience to true conscience of ethical life.

abstract idea of duty can become actual. Through examining its conscience, the moral subject attempts to give content to the abstract notion of duty. Hegel writes that conscience is “the power to which the good, which is at first only Idea and *obligation*, owes its *actuality*” (1991:166). Without the moment of conscience, the moral subject would recognise its unconditional obligation to act for the sake of duty, but it would not be able to produce any particular duties. It would remain in a sphere of perennial obligation, without content. It is conscience that holds the promise of fulfilling the goal of morality; for it is conscience that allows the moral subject to give itself a particular content.

But what exactly is the moment of conscience? What goes into this process of providing content to the abstract nature of duty?

Conscience is the process through which the moral will makes a judgement about whether or not a specific action accords with the good. By consulting its conscience, the moral will aims to acquire a motivating belief or conviction, which will give it a reason for acting in a particular way. Hegel describes this process as “the power of judgement which determines solely from itself what is good”(1991:166). The first thing to notice from this quotation is that consulting one’s conscience is a solitary process: conscience produces its convictions “from itself”. This will, of course, become important later. But, the second thing to notice is that Hegel refers to this deliberative process as the power of *judgement*. To which type of judgement is Hegel referring here? Is Hegel using the term loosely, to mean something like ‘conviction’ or ‘sensation’? Or is he using the term in a stricter sense? Dudley explores this question in his book, *Hegel, Nietzsche and Philosophy*. He argues that Hegel uses the term ‘judgement’ purposefully, and that the type of judgement in which the conscience engages

corresponds to the *Judgement of the Concept* in Hegel's *Logic*. This is because, as conscience, the moral will tries to decide whether or not a given object (in this case, an action), measures up to a given concept (in this case, the unconditional good). The moral will must "compare its individual actions with the concept of a good action, so as to judge in each case whether an action is good and required by (or at least in accordance with) its freedom" (2002:51). This seems plausible. The moral will, by exercising its conscience, judges whether or not a specific action is in accordance with the concept of the unconditional good; whether or not a specific action fulfils its duty. However, Dudley continues to explain why it is problematic to conceive of conscience in this way. In order to articulate his concerns, we need to indulge temporarily in some of Hegel's logical terminology. But, by doing so, we can highlight rather succinctly the dangers of claiming that conscience is the power of judgement.

Contained within the Judgement of the Concept are three types of judgement: assertoric, problematic and apodeictic. An assertoric judgement simply identifies an individual subject with a universal predicate; for example, as Dudley suggests, 'this action is good' (2002:51). This is exactly the kind of claim that the moral conscience makes (and, if it is successful, will unite the universal and particular). But, the difficulty with this kind of judgement – as the name suggests – is that it is merely asserted and its justification is, therefore, only subjective. The objective truth of the judgement is not guaranteed. So, in the case of conscience, whether or not a given action *does* indeed conform to the unconditional good is a simply matter of contingency. Because the assertoric judgement is subjective, it is also problematic. A problematic judgement is one that can be "confronted with equal right by its contradictory." (Hegel 1969:660). In other words, because a judgement is merely asserted, it is possible to assert the opposite

and for *both* of these judgements to have an equal claim to the truth. For example, my conscience may tell me that ‘this action is good’, and another conscience may claim that ‘this action is bad’. With only subjective justifications available, both judgements are equally defensible. The moral conscience experiences this problem. If conscience recognises its own entitlement to assert what is good, then, in turn, it must recognise another conscience’s right to do exactly the same. The claims of the two consciences may disagree, yet it is impossible to choose between them. In an attempt to do so, we could employ an apodeictic judgement. This type of judgement tries to solve the problem of subjective justification by constituting the particular in such a way that it can be legitimately subsumed under the concept. As Dudley writes, “here there is a specified criterion (having a particular constitution) that justifies the application of the universal predicate” (2002:52). So, for example, we could say, ‘if we constitute a particular action in this way, we can subsume it under the universal good’. But the problem is obvious. We cannot know how to constitute a particular action unless we already know the content of the universal predicate (i.e. the good). And if we already knew the content of the good, we wouldn’t need to consult our conscience in the first place! We are confronted with a paradoxical situation. And, as a result of this, Dudley argues, it is a mistake to say that conscience can always use the power of judgement to successfully determine which actions correspond to the good. He concludes, “All that the moral will can use to determine its duties is its subjective certainty” (2002:52).

Of course, this somewhat swift discussion highlights many difficulties to which we shall return, both in this chapter and later chapters (since an integral theme in my thesis is the debilitating subjectivity of the moral conscience). However, I think it is helpful to examine what Hegel means when he refers to conscience as the power of

judgement. What Dudley accurately shows in the previous analysis is that, if we identify conscience with Hegel's *judgement of the concept*, saying that conscience has the 'power of judgement' doesn't amount to anything more than saying that conscience has the power of 'subjective conviction'. There is nothing to separate an assertoric judgement from mere opinion (albeit an opinion strongly believed). We therefore have to be careful, when reading Hegel's account of conscience, not to attribute this term 'judgement' with any kind of objective validity. Of course, it is possible that conscience *might* make a correct judgement; Dudley does not deny the possibility of objectively true judgements. But what he does emphasise is that this objective truth is not guaranteed. Therefore, when we read that conscience 'judges' an action to be good, we should read it along the same lines as 'conscience has a *conviction* that this is good', or 'conscience *strongly believes* that this is good'. Within the section on moral conscience, judgements, opinions and convictions are all subjective in character.

With this in mind, let us return to Hegel's description of conscience in section 136 and 137. Another thing we learn about conscience is that it involves a complete withdrawal into the self. We learn that conscience is the "deepest inner solitude within oneself in which all externals and all limitation have disappeared" (1991:164A). Conscience is not bound by the external and determinate world. During the moment of conscience, the moral subject abstracts from the world and is guided by nothing other than its own subjectivity. It performs a "descent into the self" (1991:164A). This type of radical subjectivity *is* the moral conscience. Having abstracted from the world, conscience can reflect on itself and arrive at particular duties that it thinks fulfil its obligation to will the good. But what criteria does conscience have for arriving at a particular duty? Well, at this stage, the only criterion conscience has is that it *believes*

the action to be good. Conscience gives itself content through an immediate conviction that something fulfils its duty. If conscience *judges* a particular act to be good, then it is good. The conscience is “pure certainty of itself alone” (1991:166). We will return to this idea shortly.

Conscience has long been a powerful term in moral philosophy, valued for its ability to speak to everybody in a recognisable voice: the authentic voice of the innermost self. It represents the uniquely modern ethical view that, irrespective of social conditions, it is possible to access an uncorrupted, moral authority; namely, our own conviction. I think that, to this day, we value conscience for the same reason. We cherish the idea that our moral behaviour is not limited to obedience; that we can possess convictions, even if these run contrary to what society demands. And we believe, perhaps naively, that if we remain faithful to our convictions, we cannot go wrong (we shall return to this idea later in my thesis). Conscience takes us beyond ethical immediacy. It requires us to reflect on moral principles and determine, for ourselves, how to act. For Hegel, the moral conscience is also a valuable mark of modernity. In the lecture notes¹⁹ which accompany paragraph 136 of the *Philosophy of Right*, it states:

conscience represents an exalted point of view, a point of view of the modern world, which has for the first time attained this consciousness, this descent into the self. Earlier and more sensuous ages have before them something external and given ... but my conscience knows itself

¹⁹ The lecture notes (marked as *Additions*) in the Cambridge text (1991) are taken from an edition of the *Philosophy of Right* compiled by Eduard Gans and first published in 1833. The lecture notes themselves were compiled by H. G. Hotho, who attended Hegel’s lectures of 1822-1823, and K. G. von Griesheim,

as thought, and that this thought of mine is my sole source of obligation.

In this passage, Hegel praises conscience for taking us beyond the stage at which we submit to that which is “external and given” (by this, Hegel may have in mind the demands of the church or a non-rational state). For Hegel, unreflective submission to external authority demonstrates a primitive understanding of freedom, for it neglects the right of the subjective will. Despite his reverence for the Ancient Greek world, Hegel did not believe that the pre-Socratic, Greek Polis had progressed beyond this early stage of freedom.²⁰ The Greeks had a customary ethics, which was unreflective and immediate. In the *Philosophy of History*, Hegel writes that “morality properly so called – subjective conviction and intention – ha[d] not yet manifested itself” in the Greek world (2004:251). It was Socrates who first challenged this system. Hegel describes Socrates as the “inventor of morality”, since he was the first to proclaim that citizens could discover *for themselves* what is good. By questioning the customs of Ancient Greece, Socrates encouraged the Greek citizens to develop moral insight and conviction. He appealed to his infamous ‘daimon’ to guide his behaviour; thus shifting the locus of moral truth, from external laws, to his own subjectivity. For Hegel, this move was the beginning of a long, historical process whereby *subjectivity*, and not the customary objectivity, laid claim to the good. However, in an ethically-immediate society, in which only external authority prevails, such examples of conscientious objection threaten the state. Therefore, Socrates’ challenge was met with hostility: “That very subjective Freedom which constitutes the principle and determines the

who attended Hegel’s lectures of 1824-1825.

peculiar form of Freedom in *our* world – which forms the absolute basis of our political and religious life, could not manifest itself in Greece otherwise than as a *destructive* element” (2002:252). Even so, Socrates remains the earliest example of moral conscience, and, for this, Hegel reveres him.

Hegel’s celebration of conscience is not limited to his discussion of Socrates. In fact, in other passages, Hegel becomes rather emphatic in his praise of conscience. As well as describing conscience as an “exalted point of view”, he also refers to it as the “absolute entitlement of the subjective self-consciousness” and a “sanctuary which it would be sacrilege to violate” (1991:164R). Since Hegel is so often accused of hostility towards the moral conscience, it is essential to take seriously the claims he makes here. However, Hegel’s account of conscience within morality seems to take on a contradictory character once he begins to criticise its ability to determine the good. Having just hailed conscience as a necessary expression of subjective freedom and the mark of modernity, Hegel goes on to claim that conscience has “no distinctive content of its own”, that “the state cannot recognise the conscience ... any more than science can grant any validity to subjective opinion” and also that conscience “consists simply in the possibility of turning at any moment into evil” (1991:164/165R/167R). Can we reconcile these claims? Is there an ambiguity within Hegel’s account of conscience?

I believe we can reconcile these claims and that the ambiguity lies not in Hegel’s *account* of conscience, but in the very concept of moral conscience itself. This ambiguity is only resolved with the *Aufhebung* from moral conscience to the true conscience of ethical life. Let us explore this further.

²⁰ See Hegel’s *Philosophy of History* [2004:250-256]

As with most stages in the *Philosophy of Right*, contained within the moral conscience is an implicit contradiction. The moral subject turns towards its conscience because it requires determinate principles on which to act; duty cannot provide these principles, so the moral subject must examine its own subjectivity in an attempt to actualise the unconditional good. It is, therefore, the subjective quality of conscience that *qualifies* it as a guide for moral action. Based on this, the moral subject should follow its convictions. However, it is precisely this subjective quality of conscience that also *disqualifies* it as a guide for action. This is because, by appealing to itself alone, the moral conscience cannot provide objectively-valid principles; it can provide only subjective, one-sided convictions. To put it in more Hegelian terms, the conscience, at this stage in the *Philosophy of Right*, wills only the *form* of the good.

The moral subject has an “unqualified” obligation to will the good. Its appeal to conscience follows logically from the indeterminate nature of duty and is part of the moral subject’s obligation to align particular and universal moments. As such, an appeal to conscience has the *form* of the good, because freedom demands *that* the moral subject consult its conscience. By doing so, the moral subject recognises its obligation towards the good and *the process* by which it should will it. However, at this stage in the *Philosophy of Right*, there is no guarantee that the *content* of conscience, i.e. the specific moral principle on which the conscience decides to act, will coincide with what is objectively good. The moral subject may *intend* to will the good through a genuine appeal to conscience, but, its success is not guaranteed: “The conscience is ... subject to judgement as to its truth or falsity” (1991:165R). In short, conscience is fallible. And this is because conscience provides the content of duty from *itself alone*. The moment of conscience is a “total withdrawal into the self”, during which the moral subject

becomes its own moral authority (1991:164A). Conscience gives *itself* content. It produces *its own* moral convictions. Hence, these convictions are subjective, and may or may not form part of the unconditional good (as we discussed earlier with reference to assertoric judgements). Therefore, all we can achieve through an appeal to conscience, is the “certainty of *this* subject” (1991:164). Even though the individual moral conscience may be convinced that it is willing the good, we cannot guarantee that the content of conscience will coincide with what is *objectively* good.

And simply ‘trying harder’ does not help, for built into the very concept of conscience is the notion that it is *its own* authority. We saw earlier that conscience understands *itself* as its “sole source of obligation” (1991:164A). So, even if we aimed to consult conscience at a deeper level, we would simply be entering an infinite regress, or begging the question. Conscience has nothing other than itself for moral calibration. This is what Wood refers to when he claims that, “Conscience cannot ... avoid an attitude of self-worship” (1990:174). And it is precisely this fact that makes conscience a one-sided and potentially unreliable guide for moral action. Subjectivity is, therefore, both the conscience’s defining feature and its downfall. Hegel writes that conscience’s “appeal solely to itself is directly opposed to what it seeks to be – that is, the rule for a rational and universal mode of action which is valid in and for itself” (1991:165). Hegel refers to this as the “ambiguity” of conscience (1991:165R).

As such, Hegel claims:

Here, within the formal point of view of morality, conscience lacks this objective content, and is thus for itself the infinite

formal certainty of itself, which for this very reason is at the same time the certainty of *this* subject. (1991:164)

So, as we have seen, the moral conscience cannot lay claim to objectively-valid moral principles. All it can say is that, as a *particular* subject, it has a *particular* conviction. Conscience, at this stage in the *Philosophy of Right*, is purely formal. It knows that, in order to will the good, it must provide a content to duty. But, because conscience provides this content from *within itself alone*, only the *form* of the good is present. The objective truth of the content of conscience is not guaranteed. The moral conscience is simply “infinite, formal certainty of itself” (1991:164). And this is precisely why Hegel claims in section 137 that, “The point of view of morality ... contains only the formal conscience” (1991:165R).

There is a second sense in which the moral conscience is necessarily formal, and this relates to the contingent nature of its content. Although the moral will has internalised its moments of particularity and universality, it has not yet learned to align these with each other. This alignment, in itself, is the task of morality. However, for as long as these two moments remain separate, the moral will cannot guarantee that whatever it claims (as a particular subject) will correspond to the universal. This is why it is such a problem that the conscience *gives itself* content; because, as a moral will, its own particular content is not *necessarily* in line with what is universally good (if we were in the sphere of ethics, it would be a different story). This is the true meaning of being ‘formal’: that the content of the moral will is only contingently related to its true concept, i.e. its universal nature as a free being (in this case, what is unconditionally good). And this is precisely what gives conscience the potential to get things wrong. Of

course, it may happen that the conscience correctly judges something to be inline with its universal nature, but, as we saw earlier, this success is not guaranteed. The content of the moral conscience is not intrinsic to its concept as a free being, and, therefore, it remains formal. The moral will has to rely on something *other* than its universal nature as a free being to give itself content. In this instance, the moral will relies on its own convictions, which, although internal to it, are still a product of contingent particularity; which, in itself, is a type of authority. Conscience is still guided by that which doesn't stem from its universal nature, even if these are its own subjective opinions. These subjective opinions are still 'given' to it. And this is the problem when we say that moral conscience is formal.

What if we were to establish a community of moral consciences? If we could establish a 'consensus' of moral conviction, would this solve the problem of formality? Not surprisingly, the problem of formality would still remain. Firstly, there is no guarantee that the community of consciences could establish a consensus. And, even if they could, this consensus in itself would be contingent, since the content of each particular conscience is contingent (think back to 'contract' in abstract right). As soon as one member of the moral community changed its mind, the common agreement would collapse, along with the conviction. The limitations of the formal conscience cannot be solved by reaching out to the community. As we shall see later, Hegel does regard the ethical will as necessarily social, but, it is not the 'sheer number of people' that makes the difference: the ethical will has a subjective *and* objective content. Within morality, conscience lacks this objective content. So the problem of formality remains.

We have already established that, because the moral conscience is formal, it has the potential to get things wrong. Moral conscience is fallible. Because of this, Hegel

claims that, “Conscience, as formal subjectivity, consists simply in the possibility of turning at any moment into evil” (1991:167R). For Hegel, evil [*Böse*], is simply the moment at which the moral subject consciously gives itself a content that does not accord with its universal nature as a free being, i.e. a content which does not conform to the unconditional good (“something opposed to the universality of the will” (1991: 169R)). It is, therefore, clear to see that the formal conscience – whose content is only *contingently* linked to its universal nature – has the potential to be evil; for it is possible that the moral conscience gives itself a particular content that does not conform to the unconditional good. Not surprisingly, this is a worry for Hegel, and the dialectical progression from conscience to evil will eventually necessitate the move into ethical life. However, before we continue to discuss the dangers of moral conscience’s ability to will evil (and the six different types of evil), I first want to emphasise Hegel’s claim that, even though evil is undesirable, it is a *necessary* danger that emerges from the moral subject’s right to consult its own conscience.

As we discussed earlier, Hegel considers the right of the subjective will as an indispensable mark of modernity. The right to consult one’s conscience, to reflect for oneself on what is good and to reject external, moral authorities, is something to be cherished, for it marks a necessary departure from unreflective, ethical immediacy. It was a feature that, for all his reverence of ancient Greek society, Hegel considered lacking from the Greek Polis. And, according to Hegel, it is a feature that it would be “sacrilege to violate” (1991:164R). However, with this indispensable right of subjectivity, the possibility for evil *necessarily* emerges; for, built into the very concept of conscience is the idea that conscience may get things wrong. The right to subjectivity does not entail that our subjective convictions will always be in line with the good (as

we discussed in previous paragraphs). The very fact *that* the moral subject consults its conscience, opens up the possibility for evil. This is why Hegel claims that the formal conscience is the “common root” of both good and evil (1991:167R). Consulting one’s conscience can lead to good (if the moral subject gives itself a content which accords with its universal nature), or it can lead to evil (if the moral subject gives itself a content which does not accord with its universal nature; which is, instead, based on arbitrary choice, needs, preferences, desires, etc.). It all depends on the particular content that conscience gives itself. So, the possibility to will the good and to will evil go hand-in-hand. The possibility of evil emerges from exactly the same right as the possibility for good: the right of the subjective will. As such, Hegel goes on to claim that, “Thus, evil as well as good has its origin in the will, and the will in its concept is both good and evil” (1991:169R).

In an interesting passage in the additional lecture notes by Hotho in Section 139, Hegel discusses how his conception of the origin of evil differs considerably from the Christian account of the origin of evil. In Hegel’s dialectical account, evil is something internal to the concept of the moral subject, and, as this concept unfolds, evil emerges *alongside* the possibility to will the good. Hegel acknowledges that, initially, this idea may seem counterintuitive, since we don’t immediately consider (or want to consider) evil as something inherent in our nature, “The difficulty about the question of how the will can also be evil usually arises because we think of the will as having only a positive relationship to itself, and envisage it as something which exists for itself, i.e. as the good” (1991:169R). But, in order to avoid this difficulty, he suggests that, when considering the origin of evil, we reformulate the question as follows: “How does the negative come into the positive?” (1991:169A). For Hegel, the answer is clear: the

negative follows necessarily from the right of the subjective will and is, therefore, inseparable from the good. However, for Christianity, the idea that God, “the absolutely positive”, could allow the negative to come into the positive, i.e. could create space for evil within the world, is “unsatisfactory and meaningless” (1991:169R). Instead, Christians view evil as not originating from the concept of the will, but, instead, as something which “comes to the positive from outside” (1991:169R). In the biblical account of the Fall of Man, it is the devil who ‘tempts’ Eve to eat the apple. The departure from a prelapsarian paradise into a world in which man has the potential to sin, is based on this *external* confrontation. As such, Hegel goes on to claim that, “in religious myth, the origin of evil is not comprehended”. (1991:169R). He argues that, if we refuse to see the negative as itself rooted in the positive, then we “have an empty determination of the understanding which clings to one-sided abstractions” (1991:169R). Reason demands that we go further than this type of understanding. In Hegel’s opinion, it is absolutely fundamental that we recognise both good *and* evil as a necessary part of the concept of the will.

The inseparability of good and evil is an essential feature of morality, and I consider it significant for two reasons. Firstly, and rather positively, the fact that Hegel roots evil in the possibility for good, means that he takes seriously the claim the conscience has the right to decide *for itself* what its duties are. The very fact that good and evil follow from the same right – the right of the subjective will – means that Hegel respects the idea that the subjective will has to think *for itself*. However, as has become apparent, a negative consequence of this inseparability is that Hegel posits conscience as always in danger of willing what is evil. This is the feature that explains some of Hegel’s disparaging remarks about conscience in section 137 (“the state cannot

recognise conscience ... any more than science can grant validity to subjective opinion”, etc.). Even though Hegel views conscience as an essential right of the subjective will, he argues that its potential to give itself a content which does not correspond to the good, means that, by itself, it is an unreliable guide for moral action. Conscience is always in danger of being evil.

Hegel describes six types of evil in the *Philosophy of Right*: bad conscience, hypocrisy, probabilism, good intention, conviction and irony. I will now discuss these six moments of evil in turn, paying particular attention to the final three, which, I argue, are at the centre of Hegel’s critique of the formal conscience.

Bad conscience is the first type of evil. It occurs when the moral subject claims to have knowledge of the true universal²¹, but gives itself a content which opposes this universal. The bad conscience has a choice between acting in accordance with the good, or elevating its own, subjective, contingent, preferences above the good; and it opts for the latter. For example, if I am aware that I shouldn’t steal and, despite this, I rob a bank, I am acting in bad conscience. I am prioritising my subjective preferences – greed, the desire not to work, etc. – above the universal good. And I do this consciously. Hegel writes that bad conscience makes “a knowing comparison” between the universal and the opposing, particular action it wishes to pursue, and decides in favour of the particular action (1991:171R). It *consciously* wills what is at odds with the universal and is, therefore, aware of itself as evil. We could say that this is the ‘simplest’ and most honest form of evil there is: to know what is right, and to do the opposite.

²¹ Whether or not bad conscience knows *objectively* what is universally good is questionable (we are still in the sphere of morality). Hegel remarks that this “knowledge” could take the form of a “*feeling* of right and duty” or a “more advanced knowledge” (1991:171 my italics). However, what is important here is the *form* of bad conscience: that it *claims* to have knowledge of the universally good (whether or not it actually does) and yet, *despite this*, it wills the opposite. This also applies to hypocrisy and probabilism.

Of course, when we speak of a ‘bad conscience’ nowadays, we are usually referring to a feeling which *follows* a morally-dubious action; most likely a feeling of guilt or remorse. For example, if I lie to a friend, I could claim to have a ‘bad conscience’ afterwards. This, in our modern vocabulary, amounts to saying that we feel guilty, or that we regret the action. But this is not the way to understand bad conscience within the *Philosophy of Right*. In Hegel’s terminology, bad conscience simply means to know what is right and to do the opposite. It says nothing about regret, remorse or guilt. Instead of thinking about bad conscience as ‘conscience *feeling* bad’, we should think of it as ‘conscience *gone* bad’, i.e. conscience choosing to give itself a content which does not conform to the universal good.

The second type of evil, hypocrisy, goes one stage further than bad conscience: the hypocrite knows he is acting in a way which opposes the universal (just like the bad conscience), but he tries to represent what he does as good to others. So, as Hegel writes, “the evildoer pretends in all external respects to be good” (1991:172R). Hypocrisy, therefore, involves an element of untruthfulness. Not only is the hypocrite consciously acting against the universal, but he is disguising this fact. The hypocrite wants to appear to others as conscientious, virtuous, or pious. But, as Hegel writes, this is “merely a trick to deceive others” (1991:172R). In reality, the hypocrite is simply *pretending* that an action is good, when he knows it is not. To invoke the above example of stealing: the hypocrite knows it is wrong to rob the bank, yet he does so, and, moreover, attempts to present his action to others as morally justifiable. Trying to appear noble to the outside world is the mark of the hypocrite. However, this element of untruthfulness can become even more subtle, and take the form of the hypocrite deceiving *himself* about the acceptability of an action. Hegel refers to the Jesuit doctrine

of *probabilism* as an example of this kind of deception. According to Hegel's interpretation of probabilism, an act can be done "in good conscience" if the moral subject can find *any* good reason for doing it; even if this reason is outnumbered by reasons *not* to do it (1991:172R). An example of such a reason could be, "the authority of a single theologian, ... even if other theologians are known to diverge very considerably from the former's judgement" (1991:173R). In this example, the permission of one theologian is enough to convince the subject that he is acting with a good conscience. It provides a *reason* to act in a particular way. Of course, we could argue that, in *Probabilism*, the very fact that the moral subject wishes to base his moral decisions on *reasons*, means he wants to do what is objectively good; that the moral conscience seeks an *objective* justification for his actions and is, therefore, not evil. But this suggestion is clearly flawed, since the moral subject purposely chooses a reason which justifies his action *even though* this reason is accompanied by many other reasons, which prescribe the opposite. In a somewhat complex move to deceive *himself* that he is acting in good conscience, the moral subject consciously selects a reason that legitimates what, in reality, he knows to be a bad action. So the presence of *a reason*, in itself, doesn't justify the probabilist; for the decision to follow *this* reason (as opposed to *that* reason), is a *subjective* decision. Hegel writes that "subjectivity ... is the decisive factor" (1991:173R). The probabilist can always find a reason for acting in such a way that simply furthers his own, subjective desires.

Bad conscience, hypocrisy and probabilism are all types of evil, since, in all three instances, the moral subject consciously wills what is opposed to the universal good. However, in all three of these cases, there is still an *objective* distinction between right and wrong. In bad conscience, the moral subject knows what is good, but decides

to will the opposite. And, in hypocrisy, the moral subject knows what is good, wills the opposite, and tries to pretend to others (or, in the case of *probabilism*, to himself), that the action is, in fact, good. In all three cases, there is the presence of an objective good, which, for subjective reasons – needs, desires, greed, etc. –, is ignored. So, for example, even though the hypocrite chooses to commit a wrong action, he does so against an objective backdrop of right and wrong; and it is precisely this objective backdrop that classifies him *as* a hypocrite. However, as we progress to the fourth type of evil, which I call *good intention*, this objective distinction between right and wrong disappears, and it is the moral subject itself who becomes the standard of right and wrong. The evil which lies at the heart of good intention, conviction and irony is not the choice to commit an action which is objectively wrong, but the choice to elevate one's subjectivity to such an extent that it can *never* be wrong, i.e. to make oneself the sole standard of good and evil. In these three moments of evil, the moral subject doesn't simply claim the *right* to give itself a content (as in bad conscience, hypocrisy and probabilism), it claims that *whatever* it wills *is right*. And this, for Hegel, is the most worrying type of evil. Let us explore this idea further.

Good intention is the fourth moment of evil. At first glance, it may seem counterintuitive to categorise 'good intention' as a type of evil; after all, when I act with good intentions, I am, sincerely, trying to be good. To describe this as 'evil' appears somewhat absurd. Of course, on one level, this is true: good intentions, by themselves, are admirable. Hegel is definitely not criticising the idea that we act on good intentions (he certainly doesn't want us to act on bad ones!). However, what Hegel is criticising, is the idea that we can appeal to our good intentions to justify *any* action, even if this action is objectively wrong. For Hegel, it is perfectly acceptable to *have* good

intentions, but we must be willing to accept their fallibility, i.e. that it is possible to make an objectively incorrect moral judgement, even if this judgement is based on good intentions. If we do not accept this fallibility, then we elevate our intentions to such an extent that they become the sole moral authority on our action; as long as we *meant* to do the right thing, we acted correctly. To put it another way: if our intention was good, our action was also good. In such circumstances, the objective distinction between good and evil disappears, and subjectivity becomes the measure of moral truth; for, if only our *intentions* matter, then, what we *actually* do is irrelevant to our moral culpability. We can justify theft, violence and murder, so long as our intentions are admirable. And it is precisely this idea – that we can legitimate any action based on our intentions – that Hegel categorises as evil, “*merely ... to have a good intention in one’s action is more like evil than good*” (1991:175 my italics).

With the same underlying criticism, Hegel continues to discuss the fifth type of evil, conviction. Conviction leads on from good intention and further erodes the objective distinction between right and wrong. During this moment of evil, the moral subject equates the good with its own conviction; as long as the moral subject is *convinced* of something, it cannot be wrong. This is, of course, worrying for Hegel. It is all very well to *have* convictions, but, as a moral subject, I must be willing to accept that my convictions are fallible (just as, in the case of good intention, I must be willing to accept that my intentions could be wrong). If I do not accept this possibility, and I insist on the infallibility of my convictions, then I place my convictions at the centre of all moral truth: simply because I sincerely and passionately believe that an action is right, the action *is* right. I elevate my convictions and, therefore, my actions, beyond all moral criticism. In doing so, I attribute myself with a type of moral invincibility; I can

never be wrong. And it is precisely this move to which Hegel objects. In a society in which the good is determined solely on the basis of conviction, there is no room for ethical objectivity. The good becomes *completely* dependent on the convictions of its members; and, because convictions are purely subjective, there is no guarantee that these convictions will coincide. Hegel writes that, in such a society, “the determination of the good is the responsibility of the *subject*. Under these circumstances, any semblance of ethical objectivity has completely disappeared” (1991:177R).

Of course, as with good intention, the problem with categorising conviction as a type of evil is that, if I am *convinced* of something – for example, that there should be equal rights for women, that we should allow homosexual marriage, etc. – then I believe sincerely and passionately that I am right, and that my conviction can improve society. I am acting with honourable intentions. To be convinced of something is to genuinely believe (with no hint of hypocrisy) that an action is part of the universal good. This is what makes conviction so morally ambiguous; there is no doubt that, when I am convinced by a moral action, I am acting out of sincerity. However, having said this, it is clearly apparent that a conviction, although sincerely and passionately held, can be wrong (unfortunately, we do not have to search very hard to find examples of this). For example, if I partake in religious fundamentalism, there is little doubt that my actions are misguided. Yet these actions are also based on conviction. Hegel maintains, therefore, that simply because my convictions are sincere, this does not place them beyond moral reproach. The evil which lies at the heart of conviction in the *Philosophy of Right* is precisely this attempt to deny the fallibility of my own moral opinions.

Conviction is an important dialectical moment in the *Philosophy of Right*, because it is the moment at which the good is directly equated with subjectivity: simply

because the moral subject *believes* an action is right, the action *is* right. Hegel writes that, with the onset of conviction, “*Subjective opinion* is at last expressly acknowledged as the criterion of right and duty” (1991:176R). We have reached a stage at which all action is subjectively justified. Of course, whilst Hegel recognises the importance of subjectivity within an ethical system, in his opinion, a system based *entirely* on the subjective convictions of its members is dangerous, for it removes something essential from an ethical community: the presence of objective standards by which to judge our action. Without these objective standards, the ethical sphere is reduced to the subjective preferences of moral subjects, and there is no recourse beyond moral conviction. Hegel believed that the intellectual climate of his time was in danger of falling victim to this radical subjectivity. In section 140, Hegel describes such a subjective morality as intimately connected to the “self-styled philosophy” of Fries and other proponents of the *Gefühlphilosophie*, prevalent in Prussia at the time Hegel was writing (1991:177R). This type of philosophy, which “denies that truth ... can be recognised” and “equates the ethical with the *distinctive* outlook of the individual and his *particular conviction*” has, in Hegel’s view, permeated the sphere of ethics to such an extent that it is no longer possible to maintain an objective distinction between good and evil (1991:177R). In this section, Hegel laments the days in which the most prevalent form of evil was not conviction, but hypocrisy; because at least hypocrisy is accompanied by an appreciation that certain acts are wrong *in themselves*. In a society in which hypocrisy is the dominant form of evil, it is recognised that certain acts are criminal and that one should be held responsible for one’s misdemeanours. The hypocrite acts incorrectly, but the *objective* distinction between right and wrong remains. However, once we move to a society in which conviction prevails, there ceases to be any such thing as an objectively

wrong act. Instead, the truth is determined on a purely individual basis. It “wells up from each individual’s heart, emotion and enthusiasm” (Hegel 1991:15). This romantic idea, central to Fries’ *Ethics of Conviction* (to which I will return in more detail), amounts to the claim that *any* action can be subjectively justified; for each person creates his/her own moral truth. When I sincerely believe an action is right, I *make* it right. Hegel thus claims that, “if a good heart, good intentions, and subjective conviction are said to be the factors which give actions their value, there is no longer any hypocrisy or evil at all ... the element of conviction renders it good” (1991:178R). Hegel is adamantly sceptical of such a subject-centred morality; for he believes that many objectively wrong acts, which violate both the right of personality and welfare – for example, the murder of the Russian diplomat and playwright, Kotzebue, in 1819 –, can be committed under the guise of conviction.

We can now appreciate why Hegel categorises conviction as a type of evil: because, if I equate the good with my conviction, I can justify *any* action subjectively (even if this action is objectively wrong). However, having said this, conviction stops short of irony because, when I act out of conviction, it is still the conviction *itself* which motivates my action. For example, if I am convinced that we should implement all-women short lists for MPs, then it is my sincere belief *about all-women short lists* that guides my behaviour. Of course, it is wrong for me to deny that this conviction is fallible (this is the ‘evil’ at the heart of conviction), but, at least I can claim that I am sincerely motivated *by a particular issue* and that my conviction will, most likely, remain constant over time. However, once we move to the sixth type of evil, irony, even the nature of conviction changes; for the ironic subject is convicted of only one thing, and this is *its* ability to determine good and evil.

Unlike the subject with good intentions or convictions – who, by refusing to admit the fallibility of their beliefs, *unwittingly* place their subjectivity at the centre of morality – the ironic subject *consciously* assumes the power to determine right and wrong. The ironic subject knowingly claims that anything it wills is good, simply because *it* wills it. In doing so, it thinks of itself as the only available moral authority. Hegel writes, “... it knows *itself* as the absolute” (1991:182R). Even though its beliefs may change over time, its belief in its own moral supremacy remains stable. Therefore, the ironic subject can turn good into evil, and evil into good, if it so wishes. In section 140, Hegel provides us with a rather colourful description of this type of unrestricted moral subjectivism:

I am ... beyond this law and can do ‘this’ or ‘that’ as I please. It is not the thing that is excellent, it is I who is excellent and master of both law and thing; I merely play with them as with my own caprice, and in this ironic consciousness in which I let the highest of things perish, I merely enjoy myself. (1991:182)

Irony marks that culmination of evil within the *Philosophy of Right*, and I believe that – unlike good intention and conviction – the evil in question here is fairly unambiguous; any notion of sincerity has disappeared. The ironic subject does not value its convictions *qua* convictions, but simply as expressions of its own subjectivity. It values itself so highly as a moral authority that it can “play” with its convictions. This, in Hegel’s opinion, is an expression of vanity. For Hegel, the ironic conscience marks

the most extreme and dangerous moment of subjectivity: the point at which the moral subject *consciously* places itself above the universal and recognises only itself as a moral authority. And, as we shall see in the next chapter, such an approach to morality can have a potentially damaging effect on society.

However, let's not forget why we discussed evil in the first place. We have to remember that this moment of irony – and the five preceding moments of evil – is a logical development of the *formal* nature of conscience. It is the fact that conscience gives *itself* content, and that this content is only *contingently* linked to its universal nature, that means it can will evil in the first place, i.e. that conscience can give itself a content that does not accord with the universal good. And the ironic conscience can go one stage further, and claim the right to self-certainty as part of this conviction. The formal conscience is, thus, always in danger of becoming ironic. This is a paradoxical situation, for, in trying to will the good, the formal conscience has the possibility to turn into one of the most dangerous forms of evil possible: that of putting one's own convictions beyond criticism. But this paradox highlights (and is, in fact, a result of), the paradox at the heart of morality: that the moral will cannot be what it wants to be. We first entered the sphere of morality in an attempt to reconcile the universal good with the particularity of the will and provide a determinate content to the notion of duty. The idea was that, by uniting its universal and particular moments, the moral subject could *become* good, and the good could *become* actual. But this unification cannot take place. The moral will is perpetually formal. It realises its *obligation* to will the good, but it can never fulfil this requirement. The harder it tries, the more it reinforces the mutual externality of its universal and particular moments. At the end of morality, we find ourselves in the realm of abstract subjectivity (the moment of irony). This, for

Hegel, is the farthest point imaginable from the goal of morality. The formal conscience, simply because it is formal, cannot reliably produce determinate duties which accord with its universal nature. In order to to this, the formal conscience of morality must become the true conscience of ethical life. Hegel writes, “The obligation which is ... present in morality is fulfilled only in the ethical realm” (1991:137A).

In the next chapter, I shall present my reading of the *Aufhebung* from the formal conscience of morality to the true conscience of ethical life.

Chapter Four

The *Aufhebung* from Moral Conscience to the True Conscience of Ethical Life

In the previous chapter, we established that the moral conscience is necessarily formal and that, because of this, it is always in danger of giving itself a content which is evil. Let us now specify exactly what we mean when we talk of the moral conscience being ‘formal’. I define the formal conscience as follows:

Formal conscience 1. gives itself a particular content, which is 2. only *contingently* related to the moral subject’s universal nature as a free being.

There are two parts to the formal conscience. The first part – that it gives itself a content – follows from the fact that the moral subject requires particular duties on which to act. Duty, by itself, is indeterminate and cannot provide specific duties, so the moral subject looks to its own subjectivity for guidance. It gives itself content and decides for itself what is good. This is the moral subject’s right: to consult its conscience and produce its own convictions. Of course, it is another question as to whether these convictions are correct (and the moral subject shouldn’t place these convictions beyond criticism), but, the right to *consult* its conscience and *produce* convictions is a necessary part of freedom within *The Philosophy of Right*. The second part of formal conscience – that its content is only contingently linked to the universal nature, i.e. to what is

universally good – is what makes formal conscience problematic. We have already established that the formal conscience has a right to give itself a content, but, as we also discussed in the previous chapter, this content is not guaranteed to be good. At this stage in the logical progression of the text, the universal and particular moments of the subject, though both internalised, remain separate. As such, the formal conscience can logically give itself a particular content which opposes the universal. The formal conscience has the potential to will evil. And, moreover, contained within this potential to will evil, is the potential for the formal conscience to insist on the infallibility of its own convictions; to insist that whatever it wills is right. The more the formal conscience insists on the correctness of its own contingent content, the further it diverges from its universal nature. The culmination of this attitude is the ironic conscience, which knowingly elevates its own moral authority to such an extent that it can never be wrong. During the moment of irony, the moral subject is at the farthest point possible from realising the goal of morality. This shows that, if we take the formal conscience to its logical conclusions, instead of uniting its universal and particular moments, it forces them further apart. The formal conscience cannot fulfil the obligation which permeates the entire moral sphere.

Paradoxically, the goal of morality – to align the universal and particular moments of the will – can only be achieved once we leave morality and enter ethical life. In ethical life, the will thinks of its freedom differently. Unlike the moral will, which identifies its freedom with subjectivity, i.e. with its *own* ability to determine the good, the ethical will recognises that freedom is both objective and subjective. It is objective, since it is present in the laws and institutions around it, but it is also subjective, because the ethical will recognises itself in these institutions, and recognises

that these institutions are the actualisation of its own freedom. In this sense, the universal and particular moments of the will are united: the ethical will recognises that both its status as a *particular* will and a *universally free* being are embodied in the objective institutions around it. We shall, of course, return to the structures of ethical life in more detail, but, for now, it is important to establish what this move into the ethical sphere means for conscience. Hegel is clear that the ethical conscience is different from the moral conscience. In section 137, he claims that morality contains only the formal conscience, whereas ethical life contains the “true conscience” (1991:164). Conscience itself changes with the dialectical move into ethical life. Just as morality is sublated [*aufgehoben*] by ethics, so the formal conscience is sublated by the true conscience of ethical life. Conscience undergoes a process of *Aufhebung*. But what exactly is involved in this transition from the formal conscience to the true conscience? Which aspects of formal conscience remain, and which are lost? And what does this *Aufhebung* mean for the role of true conscience within the ethical sphere?

In my opinion, this dialectical move from formal conscience to true conscience is a key moment in the *Philosophy of Right*, because, by examining this progression, we can help solve the notorious problem of whether Hegel allows enough room for subjective freedom within the ethical sphere. If we can establish that, during this dialectical move, true conscience retains all the positive features of formal conscience and has a meaningful role to play within ethical life, then we can undermine the claim that Hegel dismisses the right of subjective freedom within the ethical realm. As we discussed in the previous chapter, the significance of this dialectical move is also recognised in current Hegel scholarship²². It is generally accepted amongst Hegel

²² Dahlstrom 1993, Neuhouser 2000, Moyar 2008 (see Chapter Two).

commentators that the transition from formal to true conscience is a central and illuminating feature within the *Philosophy of Right*. But, even so, this transition has not yet received sufficient attention and, as a result, commentators still disagree widely on the role of true conscience within ethical life. Allen Wood²³, for example, claims that true conscience can take a radically critical role within ethical life, whereas Frederick Neuhouser²⁴ attributes true conscience with the power of gradual reform. Daniel Dahlstrom²⁵ argues that the formal conscience is not lost with the transition into ethical life, whereas John Findlay²⁶ claims that formal conscience must “surrender” with the onset of ethics. Other commentators, such as Sidney Hook²⁷, accuse Hegel of restricting the role of conscience within ethical life, whilst commentators such as Karl Popper²⁸, Ernst Tugendhat²⁹ and Rudolf Haym³⁰ go as far as to say that Hegel’s ethical system allows no room for conscience at all. There is still a lot to be said about the role of conscience within ethical life.

With this in mind, I shall now present my reading of the *Aufhebung* from formal to true conscience within the *Philosophy of Right*. In order to do this, we need to return our attention to the definition of formal conscience at the beginning of this chapter. My argument is that, with the move from formal conscience to true conscience, we retain the first part of formal conscience – that it gives itself content – , but we lose the second part – that the content of conscience is only *contingently* linked to the will’s universal nature. I argue that, if we understand the process of *Aufhebung* in this way, the move

²³ Wood [2005:155]

²⁴ Nuehouser [1998:44]

²⁵ Dahlstrom [1993:187]

²⁶ Findlay [1958:317]

²⁷ Hook [1970b:97]

²⁸ Popper [1945:67]

²⁹ Tugendhat [1986:315]

³⁰ Haym [1962:375-6]

from formal conscience to true conscience is not worrying; for we retain what makes formal conscience the fruition of subjective freedom, but we lose the aspect of formal conscience that makes it a potentially dangerous guide for ethical action; the idea that it can insist on the infallibility of its convictions. The fact *that* formal conscience gives itself content (irrespective of the *particular* content) is what marks it as the pinnacle of subjective freedom within the morality section of the text: conscience claims the right to abstract from the world, to examine its own subjectivity and to produce its own, moral convictions. I argue that this right is not lost within ethical life. There will always be times when the ethical will needs to think *for itself* how to act. The political and social world which Hegel describes, though built on the fundamental principles of freedom, is not static; it develops alongside new empirical discoveries and new technologies. As such, the ethical will is always going to be faced with unprecedented situations and choices. It is for this reason that true conscience must retain the ability to distance itself temporarily from the determinate world and consider, for itself, what is right. True conscience retains the right to produce its own convictions. However, what we do lose in the process of *Aufhebung*, is the *contingent* nature of these convictions. The ethical will understands its freedom differently from the moral will. Unlike the moral will, the ethical will, by willing the institutions of ethical life, has learned to align its particular and universal moments. Therefore, the particular content it gives itself, as opposed to being contingent, will be in line with its universal nature as a free being. In other words, the content of the true conscience will be good *in itself*. Formal conscience cannot claim this ability. Whereas both the formal conscience and the true conscience can decide *for themselves* what is good, i.e. they can both give themselves content, only the true conscience can claim that this content is good *in itself*. Thus, Hegel writes in section

137, “True conscience is the disposition to will what is good *in and for itself*” (1991:164).

I also wish to argue that the disposition to will what is good *in and for itself* does not mean that true conscience will make the correct decision in every particular situation. True conscience can still make mistakes. Instead, I claim that an essential part of willing what is good *in itself* is recognising that the good is not completely subjective. This has two implications. Firstly, it requires that true conscience recognise the society it inhabits as already fundamentally rational, and that it locate its ethical standards *within* society itself (I shall return to this idea in Chapter Five). Secondly, the very fact that the ethical will conceives of the good as both subjective *and* objective (and positively affirms the objective institutions of ethical life) means that, unlike the moral will, it cannot think of its own convictions as the only available moral authority. The true conscience has a right to produce its own convictions, but, unlike the formal conscience, it cannot insist on the infallibility of its findings. It has to accept the possibility that it could be wrong. Therefore, instead of clinging to its own convictions, true conscience refers its convictions back to the state. It allows them to be discussed by public institutions, because it understands that these institutions are fundamentally good. As such, true conscience plays a meaningful role in preserving (and improving) the social and political world, without indulging in the potentially destructive act of moral heroism. This is the fundamental difference between the formal and the true conscience. The formal conscience can, logically, elevate its own convictions to such an extent that it equates its own subjectivity with the universal good. But the true conscience cannot do this, for it recognises that the universal good is both subjective *and* objective.

The process of *Aufhebung* I describe above remains faithful to the logical structure of the *Philosophy of Right* and also allows true conscience to play an active role within the ethical sphere. I shall, of course, expand on these ideas as my thesis continues, but, for now, it is important to present the fundamental, dialectical move. My argument is that true conscience retains the positive element of formal conscience (that it can give itself content), but it loses the negative aspect (that this content is only contingently related to the universal good). True conscience claims the right to produce its own convictions, but it is also able to guarantee that these convictions are good (if not in their *particular* content, then by the appreciation that its convictions are not beyond criticism). In order to look more concretely at this process of *Aufhebung*, I would now like to outline the structures of ethical life, and how these structures relate to the previous two sections of the text.

Ethical life [*Sittlichkeit*] is the synthesis of abstract right and morality. In abstract right, the will conceived of its freedom objectively (in property ownership) and, in morality, the will conceived of its freedom subjectively (in the right to self-determination). However, in ethical life, the will thinks of its freedom as both subjective *and* objective. It understands that its freedom is objectified in the social and political institutions around it, and, because of this, the ethical will positively affirms these institutions. However, it also recognises its own subjectivity in these institutions. The ethical will recognises that these objective institutions not only allow it to be universally free, but also allow it to be the *particular* will that it is. Therefore, in ethical life, the particular and universal moments of the will are finally united in a non-contingent manner: the ethical will recognises that the objective institutions of ethical life facilitate its existence as both a particular will – with its own specific interests, desires,

ambitions, etc. – and also its existence as a universally free being. Ethical life unites the concept of the will, i.e. freedom, with the will's particular existence. Let us put this into the context of Hegel's overall system.

In Hegel's system, the institutions of ethical life – family, civil society and the state – are the objective manifestations of the idea of freedom. At the beginning of the *Philosophy of Right*, we learn that the truly free will is “*the free will which wills the free will*” (1991: 57). In other words, the truly free will recognises it is free and commits itself to willing this freedom. As we progress through the various stages of the *Philosophy of Right*, the free will learns to understand its freedom properly, and it transforms the objective world accordingly; for example, the abstract will appropriated property and drafted contracts, whereas the moral will tried to form the objective world around its *own*, subjective idea of the good. The ethical will, however, understands that its freedom is best secured by the objective structures of the family, civil society and the state. So, within Hegel's system, these institutions are the necessary, objective result of the unfolding of the concept of freedom. As such, they are fundamentally rational: “their determination ... issues from the nature of the thing [*Sache*]” (1991:189A). These institutions do not emerge overnight. Instead, they reveal themselves through a deliberative process, whereby the will comprehends its own freedom and also comprehends what it is to live in a world with other free wills. They are, therefore, “endowed with a consciousness” (1991:144A). They are not alien to the ethical will. Hegel writes that, “On the contrary, the subject bears spiritual witness to them as to its own essence ... and lives in its element which is not distinct from itself” (1991:191). The ethical will recognises that the institutions of ethical life reflect its own essence as a free being. They allow it to be free. As such, Hegel writes in section 142, “Ethical life is

accordingly the concept of freedom which has become the existing [vorhandenen] world and the nature of self-consciousness” (1991:189).

Of course, as readers of the *Philosophy of Right*, from the perspective of our twenty-first century world, we may disagree that the *specific* institutions Hegel describes are in fact the best way to organise society. We may, for example, deny the importance of the traditional family unit, or disagree with the concept of hereditary monarchy (a necessary part of Hegel’s state). However, what is important here is not whether we agree or disagree with the institutions of ethical life *per se*, but whether or not Hegel’s description of these institutions remains faithful to his notion of freedom. Throughout my thesis, I have presented a highly systematic reading of the *Philosophy of Right*; discussing each dialectical moment in relation to the will’s freedom and the overall, logical structure of the text. It is important that we judge Hegel’s description of ethical life within this context, and not in isolation. In other words, we need to assess the legitimacy of ethical life from within Hegel’s system itself. So, given that Hegel has a specific notion of what it is to be free, do the structures of ethical life facilitate this freedom in the objective world? Do they follow logically from the preceding moments of the text? And, moreover, do they preserve sufficiently the necessary forms of freedom contained within abstract right and morality? It is this type of immanent critique I shall use to assess the process of *Aufhebung* from the formal conscience of morality to the true conscience of ethical life.

Before we turn our attention to the role of true conscience within the ethical sphere, it is first necessary to provide a brief overview of the three stages of ethical life.

As with the two previous sections of the *Philosophy of Right*, ethical life contains within it its own dialectical movement: the family, civil society and the state.

The family represents the first truly ethical moment within the *Philosophy of Right*, for it is the first time that the particular will identifies itself with the universal, which, at this stage, is the family unit. As such, the family captures what it is to be ethical; which is to conceive of oneself as part of a larger substantiality. Within the family, individuals do not relate to each other as contracting parties, but as members of a greater whole, in which they find their essential identity. Hegel writes, “Thus, the disposition [appropriate to the family] is to have self-consciousness of one’s individuality *within this unity* as essentiality which has being in and for itself, so that one is present in it not as an independent person ... but as a member” (1991:199). He later refers to the family as the “first ethical root” of the state (1991:272).

The family unit Hegel describes comprises a heterosexual, married couple, who unite through love and objectify this love by having children. To put it into modern terminology, we could say that the type of family Hegel presents in ethical life is the ‘traditional, nuclear family’. Of course, as we discussed earlier, it is distracting for us to question whether or not this institution is good *per se* (we might argue that non-traditional family set-ups are just as valuable as traditional ones). However, for Hegel, the traditional family fulfils the rational structure which permeates his entire, logical system: the unification of two, distinct opposites (in marriage) and the objectification of this unity (in the production of children). It is for this reason that Hegel advocates the traditional family unit as the ideal family unit³¹.

As we discussed previously, the family is the first moment in which the particular will identifies itself with the universal (the family unit) and views this universal as an essential part of its own identity. Members of a family do not work

against each other; instead, they view themselves as a unity and strive for a common goal. This is why, for Hegel, the family represents “ethical spirit”, in which “the family is a *single person* and its members are its accidents” (1991:203R). However, even though the particular will identifies itself with the universal, family unit, this identification is *immediate*, since it is based on the feeling of love. The ethical will does not *reflect* on its status as part of a family; it simply feels an immediate connection to the other family members. As such, the identification of the particular and the universal, within the family, is natural and immediate. It is based on a feeling (for this reason, Hegel clearly distinguishes this type of identity from the identity found in the state, which is fully comprehended, and mediated through reason and law). Love, precisely because it is a feeling, can fade. The family is, therefore, always in danger of disbanding. Another problem for the family unit is that (male) children grow up to become free citizens in their own right, and, thus, leave the family. Therefore, in order to allow the next generation take their place in the social and political world, the family unit has to dissolve. It is for this reason that the family, although the first essentially ethical moment, necessarily leads onto civil society.

Civil society is an ethical sphere, distinct from the state, in which the ethical will can further its freedom as a *particular* will. In civil society, the will pursues its own welfare and seeks to protect its own rights. The first stage of civil society is the system of needs, which we could describe as the modern, free market economy. Within the system of needs, the ethical will identifies itself with the universal (which, in this case, is the larger, economic community), but its relationship to the universal is no longer immediate; instead, it is mediated by the will’s own, particular welfare. In the system of

³¹ See Thom Brooks [2009], Chapter 5 for a discussion of Hegel’s justification of the traditional family

needs, the ethical will views the universal purely as a means to satisfy its own interests. It does not recognise the universal as an end in itself. As such, the system of needs is the sphere in which the ethical will is primarily concerned with its own particularity and can exercise its own subjective freedom: it can choose its *own* vocation and pursue those activities which *it* finds rewarding and satisfying. Hegel is adamant that everybody eligible to work (which, unfortunately, excludes women)³² has the *right* to work, so that everybody has the necessary resources to further their status as a particular individual.

In this respect, the system of needs is the sphere in which the right to subjective freedom is given expression. Within the system of needs, the ethical will can decide *for itself* what it desires and, within certain constraints, use the universal in order to satisfy these interests. The system of needs is, therefore, an ethical manifestation of the right at the heart of morality: it is the sphere in which *subjectivity* is central. In his article, “Hegel’s Critique of morality”, Allen Wood claims that civil society “gives ethical reality to the standpoint of morality itself ... and shows how an ethical life which includes this standpoint is higher and freer than all other forms of ethical life” (2005:151). Hegel ensures that the subjective rights of morality are included, albeit in a sublated form, within the sphere of ethics. Of course, it is still contested as to whether Hegel *limits* subjective freedom to the sphere of civil society, or whether he allows it a public role in the state. One could argue that the right to select one’s vocation and make decisions about one’s private life does not amount to a meaningful role for subjective freedom; and that, by restricting to subjective freedom to civil society, Hegel allows the political sphere to function completely independently of subjective reflection. I believe

on non-traditional grounds.

these claims are valid, and, throughout my thesis, I will argue that Hegel should and, indeed, *does*, grant subjective freedom a political function.

Although the system of needs is fundamental to the will's fulfilment of its particular freedom, it is, essentially, a limited structure. This is because it relies on the right to work, which is, by the very nature of the system of needs, unobtainable. In the free market economy, the ethical will prioritises the satisfaction of its desires above the universal. It strives to meet its own needs. However, as these needs are met, the desire for new things emerges, and this leads to a "multiplication and expansion of needs" (Hegel 1991:231). This, in turn, results in the specialisation of labour, which, inevitably, forces some workers out of the labour market. The very concept of the system of needs – that everybody looks after their own interests – results in necessary, structural unemployment and poverty. As such, there will always be those who are unable to work and, thus, unable to fulfil their particular freedom. So, built into the very concept of the system of needs is that a section of society remain 'unfree'; and this unfreedom results from a misplaced emphasis on particular interests over the universal. In order to influence the system of needs, so that people concentrate more on the universal than their own, particular interests, we move to the second and third stage of civil society: the administration of justice, and the police and corporations.

The administration of justice repairs infringements of the rights that underlie the system of needs. As we discussed previously, the relationship between the particular will and the universal is no longer immediate (as in was in the family); instead, it is mediated by the will's particular needs and desires. Therefore, the possibility exists that the ethical will pursues a particular interest which is not in line with its universal nature.

³² Hegel [1991:206-207]

In other words, in the striving to fulfil its own, particular ambitions, it is possible that the will commits crime. The administration of justice cannot prevent crime, but it can restore the universal by punishing the criminal. We will discuss Hegel's description of the legal system at length in Chapter Six, but, one important thing to mention here is that Hegel insists on trial by jury. Jury trials ensure that justice remains in the hands of the community, and not an elite power. This is inextricably linked with Hegel's demand that law be accessible to everybody, not simply a select few.

Given that the administration of justice can only restore the universal in retrospect, we require institutions that help *prevent* infringements of justice, i.e. institutions that enable the will to recognise the universal as an end in itself, and not simply as a means to an end. Even though the will has a right to pursue its own interests, Hegel admits that the "more blindly it immerses itself in its selfish ends, the more it requires ... regulation to bring it back to the universal" (1991:262R). This is the job of the police. The police in Hegel's system have a much wider function than the police of today. In the *Philosophy of Right*, the police mediate between the individual and the universal. They help to regulate the market economy so that the welfare of each will is secured. The police oversee education and monitor the upbringing of children. They also contribute to society's infrastructure; for example, by providing street lighting and bridges. Another function of the police is to regulate the pricing of daily commodities, and they also play a part in the provision of public healthcare. Hegel recognises a necessary tension between regulation and the mechanisms of the free market economy, but, ultimately, he falls on the side of securing freedom for all: "...the freedom of free trade should not be such as to prejudice the general good" (1991:263A). As such, the police are a necessary, regulating, public authority.

However, even in a regulated economy, society is still driven by competition and people's desire to out-do one another (in order to secure their own welfare). Because of this, there will always be a section of society that remains unfree. In order to dampen this desire to pursue one's own good at the expense of others, Hegel introduces the corporation. The corporation is a fundamental structure within the *Philosophy of Right*, since it provides its voluntary members with a universal identity, whilst facilitating their place within the market economy. As such, it forms a bridge between civil society and the state. Hegel describes the corporation as a "second family", because, within the corporation, individuals relate to one another as members of a larger, ethical community; not simply as private individuals with private interests. The member of a corporation learns to dampen his private interests and promote the interests of the corporation *for their own sake* (and not simply as a means to an end). The individual is not forced to become a member of a corporation; on the contrary, he feels honoured to be part of a universal which provides his "individual trade" with an "ethical status, admitting it to a circle in which it gains strength and honour" (1991:273A). Hegel goes as far to say that, outside of a corporation, the individual will cannot realise his freedom, for he remains in the "selfish aspect of his trade" and his livelihood "lack[s] stability" (1991:272R). He will also claim that individuals only have a right to vote as part of a corporation. For Hegel, the corporation enables the will to view itself as part of a larger, rational community. It is, therefore, a precursor to the state. However, the corporation and the state differ in a fundamental way: the corporation is still a *particular* universal. Each corporation, though considered as a universal, has its own *particular* interests, which may conflict with the *particular* interests of other corporations. The corporation is not truly universal. As such, it is ultimately deficient,

and must give way to the state. In the state, the individual will can reconcile its particularity with a more comprehensive universal: it can acquire an identity as a citizen.

The state is the synthesis of the family and civil society. In the state, the ethical will relates both immediately *and* mediately to the universal. It relates immediately through the feeling of patriotism, which Hegel also calls the “political disposition” (1991:288). Patriotism in Hegel’s sense is different from the way we understand patriotism today. In our current political climate, we associate patriotism with highly emotive and demonstrative – perhaps even exclusionary – acts of national solidarity. However, in the *Philosophy of Right*, patriotism is more of an underlying disposition, whereby the citizen immediately identifies the universal good of the state with his own good. Hegel writes that patriotism is “a volition which has become *habitual*”. He also describes it as “consciousness” and a feeling of “trust” (1991:288). The patriotic citizen lives with an underlying assurance that his own interests are in line with the state’s interests. However, Hegel also writes that such a political disposition is “based on truth”, which means that it relies on the institutions of the state *actually* being good and securing the freedom of their citizens (1991:288). Patriotism in a repressive state is misplaced. The feeling of patriotism can only emerge if the ethical will recognises that the institutions of the state are, in fact, objective manifestations of its own freedom. So, the relationship between the individual and the state is also mediated: the citizen must *understand* the state as rational. The state therefore combines the positive features of both the family and civil society: in the state, the citizen feels an immediate affinity with the universal (as in the family), but it also understands this universal as securing and protecting its own particular good (as in civil society). The citizen of Hegel’s state

has finally learned to understand its freedom properly, i.e. as part of its own nature and also as existing in the world around it.

Having provided an overview of the structures of ethical life, I will now return to the dialectic of conscience. I would first like to ascertain whether or not the formal conscience of morality (in its non-*aufgehoben* form) has a place within the ethical sphere. In order to do this, let us first examine the idea of duty within ethical life. The importance of ‘doing one’s duty’ was first revealed in the moral sphere; but it became evident that, within morality, the obligation to produce particular, binding duties could not be fulfilled. This obligation is only fulfilled in ethical life. But, in ethical life, how does the will know *what* its duties are? Where does it look to find them?

Unlike the moral will, which looked inwards, towards its own subjectivity, in order to create particular duties, the ethical will looks outwards and discovers its duties in the objective institutions of its society. The ethical will does not *create* duties, instead, it *recognises* them as already inherent in the institutions of ethical life; namely, the family, civil society and the state. So, in order to know what the good is, the ethical will simply has to comprehend and adhere to the rational practices of its community. Hegel calls this ethical disposition *rectitude*. He writes that, “In an ethical community, it is easy to say *what* someone must do and *what* the duties are he has to fulfil in order to be virtuous. He simply must do what is prescribed, expressly stated, and known to him within his situation” (1991:193R). The ethical will has to will the institutions of ethical life. This contrasts with morality, in which there existed a perennial obligation to determine the good subjectively. Hegel underlines this difference, and distinguishes the “ethical theory of duties ... in its *objective* sense” from the theory of duties as “supposedly comprehended in the empty principle of moral subjectivity, which in fact

determines nothing” (1991:192-3R). Hegel’s claim is that, with the transition into ethics, we learn to comprehend our duties properly, i.e. we recognise them as objective, rather than subjective. In ethics, we locate our duties in the fundamentally rational structures of society, and not in the individual, contingent conscience (i.e. the formal conscience). As such, being ethical simply involves living in accordance with the rational practices of our community.

It is important to clarify at this point that rectitude does not amount to blind obedience. Even though Hegel maintains that the ethical will should adhere to the institutions of ethical life, he is clear that the ethical will should *understand* these rational structures and adhere to them precisely because they are rational. Being ethical is, therefore, not the same as unreflectively following the commands of any given authority. In fact, we learn from an earlier passage in the *Philosophy of Right* that only the “uncivilised [*ungebildete*] human being lets everything be dictated to him by brute force and natural conditions” (1991:136A). Hegel is against this type of unreflective rule-worship. It is essential that the ethical will is educated to understand the customs of its society and to recognise their fundamentally rational nature (although, unfortunately, Hegel says little about the role of education within *Sittlichkeit*)³³. The ethical disposition is, therefore, not reducible to servility; the ethical will must comprehend the rationality of the objective world it inhabits.³⁴ Having said this, there is still a fundamental difference between the ethical perspective and the moral perspective; because, even though the ethical will *understands* the rationality of the society in which it lives – and,

³³ See Knowles [2002:265]

³⁴ This comprehension can take the form of “more *or* less educated insight”, but must be based on the “*consciousness* that my substantial and particular interest is preserved and contained in the interest and end of the other (in this case, the state)” [1991:288 *my italics*]

therefore, understands the rationality behind its duties – the ethical will, unlike the moral will, does not *create* these duties. Instead, it finds them in the objective world.

The difference between what it is to be ethical and what it is to be moral is essential to understanding the dialectic of conscience within the *Philosophy of Right*, and will underpin my reading of the *Aufhebung* from the formal to the true conscience. The ethical disposition I have described – in which one’s duties are *objectively* determined – clearly contrasts with the moral position, in which duties are *subjectively* produced. The moral will wants to determine *for itself* what is good and, in order to do this, it consults its own, individual conscience. Therefore, the ethical attitude we have been describing – in which the good is simply recognised in pre-existing institutions –, when seen from a purely *moral* perspective, is potentially unsatisfying. Hegel writes that, “from the point of view of morality, rectitude can easily appear as something of a lower order” (1991:193R). This is because the moral will associates the good with *its own* subjectivity and *its own* ability to determine its duties; but, within ethical life, the good is not determined purely subjectively. The emphasis is no longer on the individual and the individual’s ability to produce binding convictions. The obligation which permeated the entire sphere of morality – to align one’s particularity with the universal good – is no longer present, because, in ethical life, the good is already actualised in the objective structures of society. Therefore, the ethical will, unlike the moral will, no longer has to assume the responsibility of determining the good all by itself. Willing the good ceases to be a process of continuous introspection and moral discoveries. Instead, it becomes a “custom”, “habit” or “second nature” (1991:195).

Hegel acknowledges that, “from the point of view of *morality*”, rectitude can appear as a “lower order” (my emphasis), but, of course, this is not a view that Hegel

shares. For Hegel, ethical life is the actualisation of freedom in the objective world, and it is therefore absolutely proper that the ethical will conceives of its duties objectively. The reason that, from a moral perspective, this may seem worrying, is that, within Hegel's dialectic, the moral will has not yet progressed to a stage where it understands its freedom properly, i.e. as objectified in the institutions around it. The moral will still associates its freedom with its own ability to determine the good; and, even though this is a *necessary* stage in the dialectic of freedom (the will has a right to recognise its own subjectivity as a part of freedom), for Hegel, this is, ultimately, an incomplete way to conceive of the good. In Hegel's system, the moral sphere is sublated by the ethical sphere, in which the good is *objectively* present in the institutions of society. These institutions guarantee the will's freedom and the will recognises that, in adhering to these institutions, it adheres to its own freedom. Therefore, in such an *ethical* society, it is unnecessary to attempt to determine the good subjectively. As well as being unnecessary, it is also potentially damaging, since, in assuming the ability to determine duties purely subjectively, one ignores the rational structures of one's community (we shall return to this idea).

Hegel is notoriously scathing of the individual who takes it upon himself to determine the good subjectively and insists on the infallibility of his convictions, even if these convictions run contrary to the objective structures of society (in which the good is actually already present). I will refer to such a figure as the 'moral hero'. Hegel accepts there will be times in which this type of action is perfectly legitimate, but, on my reading of the *Philosophy of Right*, such occasions are only appropriate if we have not yet reached the stage of ethical life, or if we have somehow allowed ethical life to decay. In a pre- or non-ethical society, it is entirely legitimate to adopt the stance of a

moral hero. Hegel writes that, “in uncivilised societies ... the ethical and its actualisation depend more on individual discretion and on the distinctive natural genius of individuals” (1991:193-4R). He also praises Socrates as the individual who appeared “at the time when Athenian democracy had fallen into ruin”, and “retreated into himself in search of the right and the good” (1991:167A). However, in such circumstances, we are not in ethical life. We are in “uncivilised” societies, or societies that have “fallen into ruin”. Hegel also writes that, in the states of antiquity, society “had not yet evolved into [a] free system of self-sufficient development and objectivity” and that “this deficiency had to be made good by the distinctive genius of individuals” (1991:194R). But, once again, we only rely on the “distinctive genius of individuals” because we are in a *pre-ethical* society. Once we enter the sphere of ethics, the good does not have to be determined in such a way, because the structures of society are rational.

Hegel is adamant that, *within* an ethical society, doing one’s duty does not involve gallant quests of moral heroism, and he is extremely suspicious of anybody who tries to elevate his moral opinion above the social order. We learn from an early section of the text that the “rational is the high road which everyone follows and where no one sticks out from the rest” (1991:49A). And, in section 150, Hegel claims that the “craving to be something *special* [*Besonderes*] is not satisfied within the universal” (1991:193R). In other words, there is no room in an ethical society for those who claim a privileged access to moral truth. Within *Sittlichkeit*, anybody who can understand and will the institutions of the community, can be ethical. There is no longer any need to determine the good *by oneself*, and, moreover, it could be dangerous to do so. In the same paragraph, Hegel questions the motives of those who “invent” unnecessary moral challenges for themselves within an ethical society; his implication is that the moral

hero acts out of vanity, rather than a genuine attempt to will the good. He writes that, “moral reflection can invent collisions for itself wherever it likes and so give itself a consciousness that something *special* [*Besonderem*] is involved and that *sacrifices* have to be made” (1991:193R). Already we can identify Hegel’s distrust of the moral hero emerging. For Hegel, moral heroism, within an ethical society, is misplaced; there is no need to make such moral sacrifices, for the good is already present in rational, objective institutions.

Let us recap briefly. We have been discussing what it is to ‘do one’s duty’ within an ethical society. We have established that, in an ethical society, doing one’s duty amounts to affirming the rational, objective principles of one’s community (this contrasts with morality, in which the moral will attempts to produce its duties subjectively). With this in mind, let us return our attention to the dialectic of conscience. Given that the ethical will locates its duties in the objective sphere, and not in its own subjectivity, can the formal conscience of morality play a role within ethical life?

I wish to argue that the formal conscience of morality does not have a place within the ethical sphere. This does not mean that there isn’t a role for *conscience* within ethics, but it does mean that there isn’t space for the *formal conscience*, as defined at the beginning of this chapter. In my opinion, the formal conscience cannot coexist alongside the requirement that the ethical will affirms the objective institutions of ethical life. And this is because the content of the formal conscience is contingent (we are reminded in section 152 that, “at the level of morality, [subjectivity] is still distinct from its concept” (1991:196A)). I will argue that this notion of *contingency* is what disqualifies the formal conscience from a role within the ethical sphere. Let us explore this further.

What exactly does it mean to say that the content of the formal conscience is contingent? Logically, it means that the particular content of the moral will is not necessarily linked to its universal nature as a free being (as we discussed in the previous chapter). But, what does this mean in practice for the formal conscience within an ethical community? Firstly, it means that the formal conscience can give itself a content which is not guaranteed to coincide with the rational principles of society. In other words, the formal conscience can give itself a content which is objectively wrong. If it does this by mistake, then the formal conscience is simply misguided, but, if it does it intentionally, then the formal conscience has committed evil. We could argue that, if this were the only consequence, then the notion of contingency isn't too debilitating; one could claim that, even within the sphere of ethics, it is possible to make mistakes (I will later argue that true conscience can, mistakenly, give itself an incorrect content). One could also argue that, built into the sphere of ethics is the acknowledgement that, from time to time, the ethical will may *intentionally* will something opposed to the rational principles of society, i.e. commit crime. After all, this is why we have an administration of justice. These objections are valid. It is true that, built into the very concept of ethical life is the assumption that it is *possible* to diverge temporarily from the rational. The police, corporations and the administration of justice exist in order to either prevent or repair infringements of this very possibility. But, what the ethical sphere *does* rely on, is an underlying respect for rational institutions *as* rational, i.e. as institutions that secure the will's own freedom and well-being. Therefore, if the ethical will, mistakenly, gives itself an incorrect content, it should welcome being corrected. And, if the ethical will commits crime, it should *recognise* this as wrong, and accept the punishment issued to it by the courts. This is because, ultimately, the ethical will

recognises that its own interests are secured by, and not threatened by, the universal. This fundamental sense of identity (between the individual and the universal) forms the basis of ethical life. So, even though ethical society can cope with the fact that, once in a while, the ethical will is *objectively* wrong (either intentionally or unintentionally), what it *does* require is that the ethical will, at no point, lose its underlying appreciation of the rational nature of objective institutions. The ethical will is, therefore, always prepared to stand corrected.

This is where the formal conscience faces problems, because, as a consequence of its contingent nature, it can also claim (as part of its content) that its convictions are infallible. Because the formal conscience can give itself *any* content, it can insist that, simply because *it* holds a conviction, this conviction is correct. This is where the notion of contingency becomes damaging. As we established in the previous paragraph, ethical life can accommodate the possibility that conscience gives itself a content which is objectively wrong. However, what ethical life *cannot* accommodate, is formal conscience declaring that *whatever* it wills is good. These two scenarios are very different. Once the formal conscience insists on the infallibility of its own convictions, it elevates its subjectivity to such a level that *it*, and not the objective institutions of the community, becomes the standard of what is right and wrong. Formal conscience can claim that, simply because *it* holds a conviction, this conviction is good. This attitude is characteristic of the final three types of evil we discussed in the previous chapter: good intention, conviction and irony. Of course, it is true that, in the moments of good intention and conviction, formal conscience acts out of sincerity. As such, its claim to infallibility is only implicit and results from a genuine attempt to do good. But, however well-intentioned, the claim to infallibility is *still present*: the ‘convinced’ conscience is

still unwilling to stand corrected. Therefore, we shouldn't underestimate the potential risk these moments pose to an ethical society. It is during the third moment of evil, irony, that the formal conscience *knowingly* puts itself at the centre of all moral truth and claims that, simply because *it* believes something, this makes it right. The ironic conscience acts on the belief that its subjectivity alone is enough to make something good. As we discussed in the previous chapter, the ironic will is motivated, not by a genuine cause, but by the self-important attempt to exist as the sole source of good and evil. As such, the ironic conscience completely extinguishes ethical objectivity.

On my reading of the dialectic of conscience within the *Philosophy of Right*, the potential for formal conscience to claim infallibility is what renders it unethical and prevents it obtaining a public function within ethical life. It is simply impossible for the formal conscience to both insist on the infallibility of its own subjectivity whilst simultaneously respecting the rationality of the objective institutions around it (a requirement of *Sittlichkeit*). The formal conscience has the ability to stick to its convictions come what may; even if these convictions run contrary to the institutions of ethical life. The formal conscience can, therefore, posit itself against society. It can view itself as a moral hero, disregard the objective structures of the community and maintain that *it* holds the key to moral truth. In a pre-ethical society, such an attitude could be helpful (there are, no doubt, repressive states that could benefit from moral heroism). But, in an ethical society, where the objective institutions are *already* rational and secure the freedom of the ethical will, this type of heroism can only damage the bond between the individual and the universal. It is for this reason that I maintain that ethical life cannot accommodate the formal conscience. I argue that, with the *Aufhebung* from morality into ethical life, formal conscience, as defined at the beginning of this

chapter, is lost. This thesis is supported by Hegel's claim in Section 152 that, with the move into ethics, "the self-will of the individual and his own conscience in its attempt to exist for itself and in opposition to the ethical substantiality, have disappeared" (1991:195-6).

It is easy to misread the above quotation and protest that Hegel is eradicating all types of conscience from ethical life.³⁵ Such a misreading could give rise to claims that Hegel ignores the right of subjectivity within ethics, or that he advocates a repressive political structure. But such claims are unfounded, because Hegel is not denying a role for conscience *per se* within the ethical realm. He is simply denying a role for the *type* of conscience that "attempt[s] to exist *for itself* and *in opposition* to the ethical substantiality", i.e. the type of conscience that adheres to its own, subjective convictions, even if these convictions oppose the objective, rational structures of society (1991:196 my emphasis). In other words, he is denying a role for the formal conscience. I wish to argue that the loss of formal conscience within ethics is no worrying matter. After all, there is no guarantee that formal conscience will get things right. And, as we established above (because of its contingent character), formal conscience has the potential to elevate potentially misguided convictions above the universal. Even more worrying than this, is formal conscience's potential to develop into the ironic conscience, which merely plays with its conviction, so that *it* can always remain at the centre of moral truth.³⁶ In this situation, ethics is reduced to the vanity of the self-righteous, though, not necessarily *righteous*, individual. It is not the case that the formal conscience will always mutate into this type of evil, but, logically, it has the potential to

³⁵ See Popper [1945:67]

³⁶ See Paragraph 140, Page 182

do so. Whilst this type of radical self-certitude and subjective authority could be helpful in a pre-ethical world – Hegel writes that, “uncivilised” societies sometimes rely on the “genius of individuals” (1991:194R) –, within the sphere of ethics, this attempt to elevate oneself above the rational principles of society is potentially harmful, and, in Hegel’s words, a demonstration of “vanity” (1991:184A). There is simply no requirement to oppose the objective structures of society, if these structures are rational. To do so is to ignore the rationality within the objective world and, therefore, to ignore one’s own freedom.

The loss of formal conscience within ethics should, therefore, not be viewed as a weakness in Hegel’s dialectic. With the transition into ethics, we lose only the negative aspects of conscience; namely, the contingent nature of conscience and, thus, the danger that conscience sticks unreservedly to a misguided conviction. In his article, *The ‘Aufhebung’ of morality in Ethical Life*, Ludwig Siep also argues that this aspect of conscience is, legitimately, lost within the ethical realm. He writes that, “what [Hegel] rejects is simply the veneration for the decisions of conscience as beyond criticism” (1983:153). Frederick Neuhouser is of the same opinion. In his book, *The Foundations of Hegel’s Social Theory*, he also claims that ethical life cannot accommodate the formal conscience, and that this is entirely legitimate. He describes the formal conscience as a “debased form of [conscience], one informed by an exaggerated version of the individual’s claim to moral sovereignty” (2000:247). So, like Siep, Neuhouser identifies formal conscience’s “moral sovereignty” as the feature which strips it of any ethical validity. Of course, we must bear in mind that the formal conscience is a product of morality and, therefore, has *nothing other* than its own subjectivity on which to base its decisions (it has not yet learned to align its particular content with objective, social

practices). It is, therefore, to be expected that the formal conscience awards itself moral sovereignty, for it views itself as the *only* moral authority available. But this is precisely the point: the formal conscience is a product of morality, in which the good is determined entirely subjectively. And such a moral phenomenon has no place within the ethical sphere, in which the good is already present in objective institutions. In Hegel's dialectic, it is ultimately inadequate to view the good as entirely subjective. For Hegel, the sphere of morality, although a necessary part of the will's freedom, eventually gives way to a more comprehensive understanding of the good, in which the will recognises its freedom as objectified in the practices of ethical life. Therefore, if we continue to insist that our own, subjective opinion should be the source of all good, we remain at an incomplete understanding of our own freedom.

Hegel is famously critical of subjective moralities. His preface to the *Philosophy of Right* is primarily a critique of the type of "superficial philosophy", which equates the good with subjective feelings (1991:18). The primary target of this attack is Hegel's contemporary and rival, J.F. Fries and his *Ethics of Conviction*. Although Fries believes that conscience is "educable", the *Ethics of Conviction* ultimately holds that, if one's conviction is morally genuine, it cannot be wrong (1818:214). Like Fichte before him, who said that the binding principle of morality was to "Act according to your best conviction of your duty, or: Act according to your conscience", Fries believes that conscience is essentially infallible (1907:164). This is where Hegel's account of conscience differs, because, according to Hegel, conscience *can* be objectively wrong. In Hegel's dialectic, formal conscience has a contingent content, which is not guaranteed to coincide with the objective good. It is, therefore, inappropriate to award conscience the final say on ethical matters. Within Hegel's dialectic, subjective moral

philosophies, such as the *Ethics of Conviction*, rely on an inadequate comprehension of the good, i.e. they mistakenly believe that the good is purely subjective in character.

As we mentioned in the previous chapter, Hegel feared that the intellectual climate of his time was adopting such a misguided conception of the good. He was notoriously sceptical of the romantic sentiment thriving in the *Studentenburschenschaften* and further promulgated by their figurehead, J. F. Fries. In an allusion to Fries' speech at the Wartburg Festival of 1817, Hegel claims that such subjective moralities "reduce the complex inner articulation of the ethical ... to a mush of 'heart, friendship and enthusiasm'" (1991:16). In Hegel's opinion, it is misguided to mistake a conviction, albeit strongly held, for a rational, ethical principle. Hegel continues to highlight the absurdity of attributing ethical validity to a subjective conviction; he writes that, if we adhere to the "declamations and presumptions of outbursts against philosophy which are so common in our time", then the "most criminal convictions – since they are also *convictions* – are accorded the same status as [law]" (1991:19). Here, Hegel reinforces the idea that conscience can get things wrong. Unlike Fries, who deems conscience infallible, Hegel maintains that subjective convictions are only contingently related to the good (as we described above). It is, therefore, entirely possible that conscience gives itself a "criminal conviction". Because such misguided convictions are still *convictions*, they are – irrespective of their *particular* content – elevated to the sphere of ethics. In other words, in a subjective philosophy, any principle is legitimised, so long as it is strongly believed³⁷.

³⁷ It is likely that, in this quotation, Hegel is making reference to the murder of the Russian playwright and diplomat, Kotzebue, who was killed by Sand, a member of the *Studentenburschenschaften*, in 1819. Sand regarded Kotzebue as an enemy to the 'progressive' cause of German unification, and defended his action on purely subjective grounds. In a letter of condolence to Sand's mother, de Wette (then a theologian at Berlin University) added weight to this subjective justification, claiming that the "pious and

Far from respecting the right of subjectivity, Hegel believes that prioritising convictions to such an extent, within an ethical society, “lead[s] to the destruction of inner ethics and the *upright conscience*”, by which he means the true conscience of ethical life (1991:18 my emphasis). This passage is illuminating, for it confirms the idea that Hegel is not eliminating all types of conscience and inner contemplation from the ethical sphere. Far from it; Hegel wants to protect the “upright conscience” and “inner ethics”, and it is for this reason that he warns against the purely formal conscience. For Hegel, it is still imperative that we maintain a role for conscience and subjective freedom within ethical life, but he does not view subjective moralities as the best way to achieve this. As opposed to *facilitating* the role for subjectivity within ethical life, Hegel believes that subjective moralities actually *destroy* the possibility for subjective freedom. This is because, within the ethical sphere, subjective freedom and objective freedom do not work in opposition. In order to exercise its subjective freedom, the ethical will does not need to oppose the objective institutions around it. Such an attempt to do so actually hinders the subjective freedom of the will, for it is precisely these rational, objective structures that protect its status as a subjective will and allow it to be free. The true conscience of ethics does not place itself above the objective structures of ethical life (we shall turn to this in the next chapter).

At this point, I would like to reiterate that conceiving of one’s duties objectively relies on the objective institutions of society *actually* being rational. In Hegel’s dialectic, the institutions of ethical life (the family, civil society and the state) are the actualisation of freedom in the objective world. As such, the will identifies with them and recognises that they secure its own freedom. The ethical will is not restricted by or

virtuous” Sand was “certain of his cause. He believed it was right to do what he did, *and so he did right.*”

alienated from objective institutions. Instead, it views them as a necessary part of its own essence as a free being. Hegel writes that, in ethical life, the will “...lives in its element which is not distinct from itself” (1991:191). This is fundamental to my reading of the dialectic of conscience. In claiming that, in ethical life, we conceive of the good objectively, Hegel is not advocating that we adhere to the prescriptions of *any* given society. Society must be rational. As such, it must secure the freedom and well-being of the ethical will (we shall return to the difference between the *existing* state and the *actual* state in the next chapter).

In this chapter, I have argued that, because of its contingent content, the formal conscience of morality, as defined at the beginning of this chapter, is not retained with the transition into ethical life. However, this does not mean that there is no room for *conscience* within the sphere of ethics. With the move into ethics, the formal conscience of morality is sublated by the true conscience of ethical life. I have argued that, in this process of *Aufhebung*, the ability for conscience to produce its own convictions is preserved (part one of my definition of formal conscience – that conscience ‘give itself a particular content’). True conscience maintains the right to think *for itself*, and, as such, the right of subjective freedom is retained within ethical life (I shall expand on this in the next chapter). However, I have also argued that, with the move into ethical life, the contingent nature of conscience is lost (part two of my definition of formal conscience). True conscience, as an ethical phenomenon, has aligned its particular identity with the universal. It recognises that the good is already present in the rational structures of society and, thus, that the good is not entirely subjective. Therefore, whilst

(Levinger 2000:142).

maintaining the right to produce its *own* convictions, true conscience also affirms the rational structures of ethical life: it wills what is good *in and for itself*.

In the next chapter, I shall examine exactly what it means to say that true wills what is good *in and for itself* within the rational structures of ethical life.

Chapter Five

True Conscience within Ethical Life

It is widely acknowledged that, within the *Philosophy of Right*, Hegel says little about the precise role of the true conscience of ethical life³⁸. He introduces the concept of the true conscience within the morality section of the text, during a discussion of the formal conscience, but only to “indicate its different character” and to anticipate what will follow in the ethical realm (1991:165R). However, once we reach the discussion of ethical life, Hegel seldom refers to the true conscience or the precise role it can play within society. It appears as though the idea, to which he alluded in morality, doesn’t re-emerge within ethics. It is perhaps for this reason that Hegel is often accused of ignoring the importance of conscience within ethical life, or of advocating a state which does not value the subjective input of its citizens. I would like to argue against these accusations. I believe that, despite the infrequency of Hegel’s direct references to true conscience, there is a fundamental and meaningful function for true conscience within the ethical sphere. Up until now, this specific function has not been drawn out. But, by carefully examining the logical structure of the text and conscience’s process of *Aufhebung*, and by understanding the concrete institutions of ethical life, I aim to do

³⁸ Dahlstrom 1993 p. 185, “Hegel has ... notoriously little to say about this genuine conscience as such within the third part of the *Philosophy of Right*”. Neuhaus 2000 p.256 “[there is] not much in the *Philosophy of Right* about conscience’s right to discuss and criticise the social order”.

exactly this. I wish to present true conscience as an irreducible and essential part of the ethical realm.

I would first like to establish whether true conscience finds its place in the private realm of civil society or the public realm of the state. As we discussed in the previous chapter, civil society is the realm of ethical life which preserves the right at the heart of morality: the right of subjective freedom. In civil society, the ethical will actualises its own subjectivity by pursuing its own welfare and needs. It makes decisions about its own, private life and furthers its status as a *particular* will; for example, it decides which career to pursue, which interests to develop, etc. It is by making such decisions, *for itself*, that the ethical will expresses its subjective freedom. The sphere of civil society, as a space in which the ethical will can give expression to its own subjectivity, is an essential part of ethics, and one which Hegel values highly. For Hegel, it is a fundamental part of a modern society that individuals are able to make their *own* decisions about their own lives: “subjective freedom, *which must be respected*, requires freedom of choice on the part of individuals” (1991:286A my emphasis). In fact, it is precisely for this reason that Hegel frequently criticises Plato’s conception of the state. In Hegel’s opinion, Plato’s *Republic* ignores the right of subjectivity and, therefore, falls short of the ethical ideal; in particular, Hegel laments that Plato denies the individual a free choice of vocation: “In Plato’s *Republic*, subjective freedom is not yet recognised, because individuals still have their tasks assigned to them by the authorities” (1991:286A). The sphere of civil society, in which individuals enjoy subjective freedom, is what differentiates Hegel’s conception of ethical life from the ethical life of ancient Greece, in which individuals related immediately to the state. As such, it marks the difference between the modern and the

ancient society. As Allen Wood writes, “Civil society, ... by displaying modern society as a higher and freer social order than any previous one, ... shows how an ethical life which includes this standpoint is higher and freer than all earlier forms of ethical life” (2005:151).

Because civil society is the sphere in which morality achieves its ethical reality, it could be assumed that this is also the sphere in which the formal conscience of morality is sublated by the true conscience of ethical life. In other words, it could be argued that true conscience finds its home within civil society, in helping the ethical will make decisions about its own welfare and needs. This is an understandable assumption, but, in my opinion, one that is ultimately mistaken. I do not believe we can restrict the role of true conscience to civil society, because, in civil society, not *all* the aspects of subjective freedom are present. It is true that, in making decisions about its own well-being, the ethical will exercises its subjective freedom; but, in the *Philosophy of Right*, subjective freedom is a broad concept. It includes the moments of ‘purpose and responsibility’, ‘intention and welfare’ and ‘the good and conscience’ (see Chapter Two). And, as Ludwig Siep remarks, civil society “contains only the stages purpose, intention and welfare” (1983:149). It contains purpose and intention, because, by pursuing its own, particular needs in civil society, the ethical will has the right to understand its actions properly, i.e. as contained within its intention and purpose. And, by claiming the right to find satisfaction in its actions, and by pursuing only those activities which it finds satisfying, the will pursues its right to welfare. It is in *this* respect that the ethical will exercises its subjective freedom in civil society; it decides, for itself, which actions will best secure its happiness. This is an essential part of subjective freedom, but it is not the whole story. Whilst civil society preserves an

essential part of what it is to be subjectively free – deciding how to best fulfil one’s own, particular welfare – it does not extend to the final stage of subjective freedom: the good and conscience. Because of this, we cannot claim that civil society preserves *all* the aspects of morality. As Ludwig Siep remarks, “The manner in which morality is superseded in the realm of civil society is incomplete” (1983:149). I wish to argue that the final stage of morality, the good and conscience, are only superseded once we reach the third stage of ethical life: the public sphere of the state.

In order to develop this idea, let us examine section 264 of the *Philosophy of Right*. Hegel writes:

Individuals ... embody a dual moment, namely the extreme of *individuality* which knows and wills *for itself*, and the extreme of universality which knows and wills the *substantial*. They can therefore obtain their right in both of these respects only in so far as they have actuality both as private and as substantial persons. In the spheres in question [i.e. family and civil society], they attain their right in the first respect directly; and in the second respect, they attain it by discovering their essential self-consciousness in [social] institutions (1991:287).

This passage clearly states that, in the sphere of civil society, the ethical will obtains its right to make decisions *for itself*. It pursues its own, particular welfare and has actuality as a private person. This is one side of the “dual moment”, which Hegel describes above: the right to will *for itself*. However, the other side of this dual moment is that the ethical will has actuality as a *substantial* person; that it recognises its identity

as essentially part of the objective, social institutions around it. In recognising this and by affirming the social structure it inhabits, the ethical will wills what is good *in itself*. This is the right which is fulfilled in the state.³⁹ So, in civil society, the ethical will achieves its status as a private person, and, in the state, the ethical will achieves its status as a substantial person. These two moments make up what it is to be a free, ethical will. However, if we assume, for the moment, that the true conscience has its home within civil society, then we limit the true conscience to deciding what is good *for itself*. This, of course, is an essential part of conscience – the ability to make its own decisions – but it does not capture the full extent of true conscience, defined in section 137 as, “the disposition to will what is good *in and for itself*” (1991:164). As well as willing the good *for itself*, the true conscience also wills what is good *in itself*. This means that, as well as the ability to make its own decisions, true conscience also makes decisions which are objectively correct (we shall return to this idea shortly). This requirement cannot be fulfilled in the sphere of civil society, in which the ethical will pursues its own, particular welfare and, in doing so, has the potential to place its own desires above the universal (it is for this reason that we need the administration of justice, and the police and corporations). In civil society, the ethical will is not guaranteed to will what is good *in itself*; it is simply guided by its *own* needs and desires. For this reason, I argue that true conscience is not part of civil society and does not play a role in guiding the ethical will’s pursuit of its own welfare.

Perhaps it could be argued that, instead of assisting the ethical will in the pursuit of its *own* welfare, true conscience plays a role in promoting the welfare of *others*. In

³⁹ In the corporation, the ethical will *begins* to exist as substantiality, since it identifies its end with the universal end of the corporation. However, as we discussed in Chapter Four, the corporation is only a *particular* universal and, as such, the ethical will only reaches true substantiality in the state.

other words, it could be suggested that true conscience finds its home in the act of charity. In section 242, Hegel describes the role that charity can play in alleviating poverty within the state. Because poverty, for Hegel, is an undesirable yet *inevitable* part of the modern, free market economy, he acknowledges charity as an integral part of society.⁴⁰ Unfortunately, there shall always be those in need of charitable assistance. He writes that, “poverty, and in general ... every kind of want to which all individuals are exposed ... also requires *subjective* help” (1991:265). He then continues to claim that charity is a “situation in which, notwithstanding all the universal arrangements, *morality* finds plenty to do” (1991:265). So, even in the presence of rational, political institutions, charity plays an essential role. Given this, perhaps we could locate true conscience within the charitable sector. Is this where true conscience finds its proper function?

I do not believe it is, because, even in the act of charity, the ethical will does not will what is good *in and for itself*. Charity, rather than an example of true conscience, is an example of morality, as preserved within civil society (recall Hegel’s quotation above that, in charity, “*morality* finds plenty to do”). This is because, in charity, the will acts as a *particular* will. It makes its own, personal choices about the particular charitable work it undertakes. Charity is, therefore, part of civil society; the only difference being that, instead of pursuing its *own* welfare, the will pursues the welfare of *others*. So, although charity is an honourable activity, it remains the activity of a particular will. Hegel writes that charity displays a “*particularity* of emotions” and a “contingency of its own disposition” (1991:265R). In charity, the will decides *for itself* how to promote the welfare of others and is, therefore, not guaranteed to make

⁴⁰ Hegel [1991:265-267]

objectively correct decisions. For this reason, Hegel believes the state should do everything it can to reduce the need for charity. In his opinion, the less reliant the state is on particular acts of charity, the more rational the state. He writes, “public conditions should be regarded as all the more perfect the less there is left for the individual to do by himself [*für sich*] in the light of his own particular opinion” (1991:266R). This quotation confirms the fact that, within the *Philosophy of Right*, charitable actions stem from the will’s *particular* preferences. It is for this reason that I argue that charity is a part of civil society and that, when acting charitably, the will only wills what is good *for itself*. True conscience, on the other hand, wills what is good *in and for itself*. It is only once we move to the third stage of ethical life, the state, that the will can achieve this; for, in the state, the ethical will understands itself as both a particular will *and* as part of a greater substantiality. It recognises that its identity is fundamentally connected to the rational, social structures around it, and, by affirming these structures, it also wills what is good *in itself*.

I would therefore like to argue that the true conscience, which wills what is good both *in and for itself*, has its proper function in the public sphere of the state, in which the ethical will fulfils its status as both a private *and* a substantial individual. I view this as a necessary consequence of the logical development of freedom within ethical life. As well as following the logical structure of the text, I believe my thesis will also reassure those commentators who fear that Hegel limits the role of ethical conscience to the private life of the individual. The idea that matters of conscience are restricted to the particular realm – which vocation to choose, which interests to pursue, etc. – is somewhat unsatisfying, for this entails that conscience has no role to play in public matters, such as the development of law, or the refining of the constitution. This is not

to de-value the particular life of the individual; it is simply to express the importance of conscience being present when public decisions are made (decisions, which will, no doubt, impact on the private realm, too). In order to preserve conscience in a meaningful way within ethics, Hegel must allow it a voice in public policy. In his book, *Hegel and the Philosophy of Right*, Dudley Knowles also insists that the ethical conscience should fulfil a public role. He writes that, “Hegel must find some genuine space for subjectivity and conscientious affirmation in his account of the ... state. It is not good enough ... to distinguish decisions on matters of public policy and decisions on matters of conscience” (2002:214). Although Knowles eventually claims that the role of conscience is limited in Hegel’s account of the state (as assertion that I will dispute), his requirement that Hegel *should* allow conscience a public function is significant. If we are to take Hegel’s claims about subjective freedom seriously, it is essential that conscience – the fruition of subjective freedom⁴¹ – has a role within the state. Unlike Knowles, I believe that there *is* a meaningful, public function for true conscience within the *Philosophy of Right*.

Having established that true conscience has a public function in the state, let us now examine this function in more detail.

It is sometimes suggested that the role of the true conscience can be reduced to the “political disposition”, which Hegel describes in section 268 (1991:288). Ludwig Siep, for example, writes that “political sentiment ... should be seen as the ethical form of conscience, as the ‘true conscience’” (1983:149). As we discussed in the previous chapter, the political disposition (which Hegel also refers to as *patriotism*) describes the citizen’s immediate identification with the state; the citizen’s underlying faith that the

⁴¹ See Chapter Three for a discussion of conscience as the culmination of subjective freedom.

state secures its own freedom. This, of course, relies on the state actually being rational and the citizen recognising this rationality (and, as such, cannot be reduced to misplaced obedience), but, even so, I believe it is a mistake to equate the true conscience with the political disposition. In my opinion, this immediate identification doesn't capture the essence of conscience, which is the process of subjective reflection; the ability to consider, *for oneself*, what is in the interests of the society in which one lives. Patriotism certainly forms part of true conscience's function – it is essential the conscience *trusts* the institutions of the state – but it is not the whole story. If it were, then conscience would lose its ability to give *itself* content; an aspect of formal conscience which I argue is retained in the *Aufhebung* into ethical life. Therefore, I believe it is a mistake to say the true conscience is simply the process of trusting the objective institutions of one's society (even if this trust is based on an understanding of the institutions' rationality). True conscience must be able to produce its own convictions.

But, in a society in which the objective institutions of the state are already rational, why does conscience need to produce its own convictions? We have already established that, in an ethical community, 'being ethical' simply consists in following the rational practices of one's society. So, why does the conscience need to give itself a content and, moreover, how can we reconcile this fact with the demand that conscience affirms the objective structures of the state?

I believe there will always be a need for true conscience to give itself content, because, even though Hegel's state is rational, it inhabits a world of contingency. In section 258, we are told that, "The state is not a work of art; it exists in the world, and hence in a sphere of arbitrariness, contingency, and error..." (1991:279A). The state, as inhabited by the citizen, is not an abstract concept; it is the concept of freedom which

exists in the *real* world. And, for Hegel, the real world will always involve an element of contingency and arbitrariness, because it is a human world. It is the world of the *finite* will. As Wood writes, “All things human are marred by contingency, particularly the contingency of the finite will” (1990:149). Therefore, even though the state is *fundamentally* rational, it exists in a sphere in which contingency and arbitrariness are necessarily present; in other words, it exists in a temporal, spatial and, ultimately, human world. If we invoke Hegel’s metaphor from the Introduction to the *Philosophy of Right*, we could say that the state is related to freedom as the body is related to the soul, i.e. the state is the embodiment of freedom. It is the process of ‘embodiment’ that brings with it the contingencies of life. However, as Hegel remarks, “A soul without a body would not be a living thing” (1991:25A). The state cannot remain as pure concept. It *requires* an existence in a real, albeit imperfect, world.

The fact that the state inhabits a world of contingency does not mean that the state is not fundamentally rational. Hegel believes that, even in the presence of contingent deficiencies, it is possible to recognise the rational structures the state embodies. In a (somewhat politically-incorrect) passage in section 258, Hegel remarks that, “the ugliest man, the criminal, the invalid ... is still a living human being; the affirmative aspect ... survives in spite of such deficiencies” (1991:279A). In other words, even if the rational principles of the state are somehow obscured in their existing form, they are still present, and they are still rational. All it means is that these principles are not comprehended as they should be in the existing world. To put it into Hegelian terms: the state, as it *exists*, is not *actual*. This is an important distinction. The *actual* state is the state in which the rational principles of freedom have been fully comprehended and manifested in their pure form. This is the rational standard to which

freedom aspires: to be *actualised* in the world. In an actual state, the objective institutions are the perfect embodiment of freedom. However, as we saw above, Hegel accepts that the rational principles of freedom are always embodied in a *contingent* world, and, thus, will never achieve actuality⁴². In his book, *Hegel's Ethical Theory*, Wood writes, "Hegel insists that every existing state, standing as it does in the sphere of transitoriness and contingency, is disfigured in some way ... and fails ... to be wholly actual" (1990:8). The state, in its *existing* form, is not *actual*. This is the fundamental difference between existence and actuality in Hegel's account of objective freedom. Actuality refers to the state in so far as it is what it *should* be, i.e. to an objective state in which the rational principles of freedom have been fully comprehended and manifested; whereas existence refers to the state as it *is*, i.e. to an objective state in which the rational principles of freedom are inherent, but somehow obscured by contingency. So, in any fundamentally rational state, there will always be a disparity between the *actual* and the *existing*.

I would like to argue that true conscience finds its place in this disparity between the actual and the existing. It is precisely because the state, as it exists, has the possibility to diverge from the actual, that true conscience has an integral part to play in ethical life. We have already established that, in an existing, rational state, the fundamental principles of freedom are inherent, but somehow obscured by contingency. I believe it is the function of true conscience to recognise these inherent, rational principles and to transform the existing world to accord with them. In other words, the true conscience attempts to keep the existing in line with the actual. And it is precisely for this reason that the true conscience retains the ability to give itself content: having

⁴² See Paragraph 258

identified the rational principles of society, conscience has to decide, *for itself*, how to implement these principles in the contingent world. In doing so, the true conscience gradually transforms the existing world so that it corresponds to the rational principles on which it is based. Thus, it is the true conscience which fulfils the command of Hegel's Preface: "to recognise reason as the rose on the cross of the present" (1991:22). True conscience recognises the rationality inherent within the state and reforms the existing, objective structures so that they conform to these principles.

By transforming the existing world so that it adheres to the rational principles inherent within it, the true conscience performs an immanent critique of the social structures it inhabits. It does not attempt to overhaul these structures. On the contrary, it recognises their essential rationality and it is precisely this rationality which it adopts as its ethical standard. In other words, the true conscience transforms the structures of society so that they conform more faithfully to their own, rational essence; so that their *existence* corresponds to their *actuality* (which we could describe as a "purified version of existing reality" (Neuhouser 1998:44)). As such, true conscience operates with an internal, and not an external, ethical standard. It locates the rational principles of freedom *within* the state itself. It does not attempt to transcend the temporal state in which it lives in order to construct abstract conceptions of how the state 'ought to be'. In Hegel's system, this type of abstract construction represents an unsatisfying and ultimately instable way to think about a fundamentally rational society. Instead of opposing society with abstract conceptions of an 'ideal' state, one should seek rationality in the state of one's own time. In the Preface to the *Philosophy of Right*, Hegel writes:

As far as the individual is concerned, each individual is in any case a *child of his time*; thus, philosophy, too, is *its own time comprehended in thoughts*. It is just as foolish to imagine that any philosophy can transcend its contemporary world as that an individual can overleap his own time or overleap Rhodes. If his theory does indeed transcend his own time, if it builds itself a world as it *ought to be*, then it certainly has an existence, but only within his opinions – a pliant medium in which the imagination can construct anything it pleases.

Hegel's claim is that, instead of imposing abstract, normative principles on the state – declaring, from an external perspective, how the state 'ought to be' – one should recognise the rationality which is *already* present in one's own society. This is the process of "reconciliation with actuality", which Hegel describes in his Preface (1991:22). Being ethical, for Hegel, consists in reconciling oneself to the objective structures of one's society (as we discussed in the previous chapter). This notion of reconciliation has received harsh criticism over the years, by those who worry that it endorses the 'status quo' of any given society. It is feared that reconciliation prevents social criticism or change; because, instead of improving deficient aspects of society, one simply has to resign oneself to the fact that they exist. It is suggested that such reconciliation results in a state in which nothing is challenged and, thus, in which nothing is improved or progressed. The most notorious of these critics is Tugendhat, who writes that, "The possibility of an independent and critical relation to the community or state is not admitted by Hegel" (1986:315). Whilst such criticism is understandable – a misreading of Hegel's terminology could easily suggest that Hegel *is*

making such claims – it is ultimately misguided, for Hegel at no point advocates a state in which we resign ourselves to what exists. What this criticism fails to notice is that the *object* of reconciliation is the *actual*, and not the *existing*. Hegel wants us to recognise and affirm the rational principles of the state “as they aspire to be” or as they “in principle are” (Neuhouser 2000:259). In other words, he wants us to reconcile ourselves with the *actual* state. This involves fully comprehending the rational principles of freedom and how they can manifest themselves in the objective world. And, far from excluding social criticism, reconciling ourselves with the actual indeed *necessitates* criticism; for, in recognising the principles of freedom in their pure form, the true conscience is obliged to transform the *existing* institutions accordingly. True conscience reconciles itself with the actual, and not the existing state.

I therefore argue that the ethical disposition (or reconciliation), in which the true conscience recognises and affirms the rational principles inherent in the state, does not exclude social criticism. In fact, it necessitates it. Both Frederick Neuhouser and Allen Wood identify the proper object of reconciliation as the actual and not the existing, and recognise that this opens up a space for social criticism within Hegel’s account of the state. Allen Wood writes that, “The *Philosophy of Right* clearly leaves room for rational criticism of what exists, and also for practical efforts to improve the existing state by actualising it, bringing it more into harmony with its own rational essence or concept” (1990:8-9). And Neuhouser writes that, “Criticism and reform are consistent with Hegel’s theory, insofar as they aim at transforming institutions so as to make them conform more faithfully to the rational principles already implicit in them” (1998:44). So, clearly, the objection that Hegel endorses a state in which critical reflection is excluded, is, by-and-large, refuted in current Hegel scholarship. However, what both

Wood and Neuhouser fail to suggest is that such social criticism is the function of the true conscience. If we define true conscience's function in this way (which I think is entirely consistent with both the logical structure of the text and the concrete institutions described within it), then we further disarm the charge that Hegel presents a state which excludes social criticism.

Of course, because true conscience performs an *immanent* critique on the state, this rules out the possibility of true conscience engaging in radical criticism of the social order. By 'radical criticism', I mean that true conscience either, 1. rejects the rational principles on which the state is based, or, 2. recognises these rational principles but insists that the existing institutions are incapable of realising them⁴³. Both of these scenarios imply that the true conscience is alienated from the state in some way; either from the rational principles on which the state is based, or from existing institutions, which are supposed to embody these principles (we shall return to this very shortly). But this type of radical critique is incompatible with the type of critique in which true conscience engages; an immanent critique requires recognition of the state as rational, and recognition that the existing institutions go some way to realising these principles. In other words, true conscience seeks its ethical standard – the rational principles of freedom – from *within* the state itself, and modifies existing, social structures so that they conform more faithfully to these principles. It does not aim to give the state *new* rational principles, nor to completely overhaul existing, social structures. Instead, it transforms the existing world to reflect the rational principles that are *already* present. As such, I would like to argue that Hegel's state can accommodate gradual reform, but not radical criticism. This thesis is supported by Neuhouser, who writes that,

“reconciliation is not incompatible with a type of social criticism that is directed at the *reform*, as opposed to the radical overhaul, of existing institutions” (1998:44). A precondition of true conscience reforming the existing world is that it recognise the fundamentally rational principles inherent within existing institutions. This is incompatible with the type of radical criticism that attempts to build a state from scratch, and, in doing so, negates the rationality inherent within the existing state.

It is at this point that the difference between the formal conscience of morality and the true conscience of ethical life becomes increasingly clear. As we discussed in the previous chapter, the formal conscience has exactly this ability to negate the existing, social institutions of its community, for it seeks the good from within its own subjectivity, and not from within the state itself. By sticking unreservedly to its own, subjective convictions, formal conscience imposes an *external*, moral standard on the state. It attempts to overrule the existing, rational structures of society with its view on how the state ‘ought to be’. To invoke the passage we quoted above, formal conscience attempts to “transcend his own time” (Hegel 1991:22). True conscience, on the other hand, locates its ethical standards within the state itself. These are the “fixed principles”, which Hegel attributes to the true conscience in section 137 (1991:164). It recognises the fundamentally rational nature of the community in which it lives, and attempts to reform society accordingly. It is in *this* sense that the true conscience wills what it good *in itself*, i.e. it correctly recognises the good as already present in the objective structures of society (albeit in an imperfect form) and it attempts to reform the existing world according to this standard. This is the essential difference between the formal and the true conscience: the formal conscience locates the good within its own,

⁴³ I take this two-fold definition of radical criticism from Neuhaus [1998:45]

subjective convictions, whilst the true conscience locates the good within the state itself. True conscience, unlike the formal conscience, therefore, wills what is good *in itself*.

So, on my reading of the dialectic of conscience, radical criticism cannot be accommodated within a fundamentally rational state. This is not a limitation in Hegel's account of ethical life. It is imply a consequence of, 1. the state being fundamentally rational, 2. the true conscience recognising the rational principles inherent in the state and, 3. the true conscience using these rational principles to guide its reform of the existing world. I argue that, in a fundamentally rational state, radical overhaul of the existing institutions is both unnecessary and, moreover, damaging. This furthers the argument I presented in the previous chapter, in which I denied formal conscience a public role in the ethical state. The formal conscience, because of its contingent nature, can fail to recognise the rationality inherent within the state and, what is worse, can insist on the infallibility its own, subjective principles. As such, it has the potential to posit itself in opposition to the state, and to offer its subjective conviction as an alternative to actuality. This type of moral heroism alienates the individual from a society which is, in fact, rational. It also has the potential to result in disastrous political consequences, if these convictions are adopted, by the other members of the state, as a substitute for actuality. In Hegel's opinion, such widespread, misplaced opposition to actuality can result in catastrophic, political events, such as the Reign of Terror of the French Revolution.⁴⁴ So, whilst Hegel attributes a fundamental role to conscience within ethics, he cannot accommodate the type of conscience which opposes the existing structures of its society. This thesis is supported by Alan Patten when he writes

⁴⁴ See *Philosophy of Right*, Paragraph 5 and *Phenomenology of Spirit*, Paragraphs 599-610

that, “so long as they recognise an objective reality in ethics, [conscience and deliberation] remain indispensable components of freedom” (1999:60 my emphasis).

In his article, *Hegel’s Critique of morality*, Allen Wood argues that Hegel’s state *can* accommodate radical criticism. In response to charges that Hegel’s state prevents reflection, Wood claims that, “a closer look shows that Hegel does *not* reject radical moral criticism of an ethical order” (2005:155). Wood then continues to cite from Section 138 in order to defend his thesis: “in epochs when what is recognised as right and good in actuality and custom [*Sitte*] is unable to satisfy the better will, this will no longer finds itself in the duties recognised in this world and must seek to recover in ideal inwardness alone that harmony which it has lost in actuality” (1991:166A). I believe that, in his attempt to defend Hegel, Wood is mistaken to claim that Hegel’s state can accommodate radical criticism. It is evident from Section 138 that Hegel believes there are times in which conscience should turn against actuality; when conscience should present its own conviction as an alternative to the existing social order. However, this is only in times when “what is recognised ... is unable to satisfy the better will”. In other words, this demand only occurs when the rational state has ceased to be rational. And, in such times, we are no longer in an “ethical order” (Wood 2005:155). If the ethical will no longer recognises that its freedom is secured by the state, then it is perfectly legitimate to oppose the objective institutions of society. Hegel does not deny the possibility of the state deteriorating in such a way; in fact, it is a necessary consequence of the state inhabiting a world of contingency that the existing state has the possibility to drift from the actual (Socrates appeared at a time when the Athenian state had “fallen into ruin”). However, in a state in which the objective institutions are fundamentally rational, it is damaging to set one’s conscience in

opposition to existing social structures. Perhaps it is more illuminating to look at another passage from Section 138, in which Hegel claims that, “*Only* in ages when the actual world is a hollow, spiritless, and unsettles existence [*Existenz*] may the individual be permitted to flee from actuality and retreat into his inner life” (1991:166-7A my emphasis). It is only in a fundamentally non-rational society that the conscience has a right to oppose the state with its own, subjective convictions.

At this point, I would like to reiterate that there *are* certain situations in which it is legitimate to engage in radical social criticism. It would be absurd to claim that, in a repressive society, conscience had no right to oppose deficient, existing structures. Hegel acknowledges that such deficient societies can arise – societies in which “actuality and custom is unable to satisfy the better will” – and, in such scenarios, he urges the individual to consult his own conscience (1991:138A). However, in such circumstances, positing one’s convictions in opposition to the state is unlikely to make the state any worse, because the state is no longer fundamentally rational. As such, the individual is already alienated from the social structures it inhabits; it no longer identifies with the state nor trusts the state to secure its own freedom. In such a fundamentally non-rational society, radical criticism is justified. In his article, *Hegel on Justified Disobedience*, Mark Tunick writes that, “Obligations truly dissolve ... when the state ... no longer is our home. On Hegel’s view, noncompliance or resistance is justified if the state is not rational” (1998:529-530). However, in a state in which the existing institutions *are* fundamentally rational, radical criticism is unjustified. As well as being unjustified, it should also be *undesirable* to oppose society in such circumstances. In a truly ethical society, in which the ethical will feels at home, social critique takes the shape of reform, in which conscience transforms the exiting

institutions so that they comply more accurately to the rational principles they embody. Of course, a precondition for such an immanent critique is that, even if the existing institutions are deficient in some contingent respect, they are rational *enough* that the true conscience can recognise the rational principles inherent within them. This distinguishes a fundamentally rational society from a fundamentally non-rational society. Neuhaus writes that, “what *is* required ... is that existing institutions come close enough to realising their own ideals so as to be recognised as genuine, albeit imperfect, embodiments of the actual (rational) social order or as on their way to becoming such” (1998:45).

Let us recap briefly. We have established that, because the state inhabits a world of contingency, the existing state has the potential to drift from the actual state. I have located true conscience’s function in this disparity between the existing and the actual. I have argued that, by recognising the rational principles of the state and by transforming existing institutions so that they conform more faithfully to their own, rational essence, true conscience performs an immanent critique on the society it inhabits. I have also argued that this type of immanent critique is incompatible with radical social criticism (although I maintain that in a fundamentally non-rational society, radical criticism is justified). Because true conscience affirms the rational principles of ethical life, true conscience wills what is good *in itself*. And, because true conscience makes its *own* decisions about how it should best reform the existing social institutions, true conscience also wills what is good *for itself*. This reading, I believe, fully encapsulates Hegel’s definition of true conscience in Section 137: “the disposition to will what is good *in and for itself*” (1991:164).

I would now like to look more closely at the idea that conscience wills what is good *for itself*. As we discussed in chapter three, the right to will what is good *for itself* – which we could also describe as the right to produce its own convictions, or to give itself content – is what marks conscience as the fruition of subjective freedom; it is, therefore, a feature which I argue should be preserved in the *Aufhebung* from morality into ethical life. Of course, in morality, formal conscience was defined entirely by its right to decide *for itself* what is good (which eventually led to its own downfall). However, within ethics, conscience’s right to will what is good *for itself* is preserved in a sublated and non-destructive form, for it is accompanied by the right to will what is good *in itself*. True conscience still refers decisions to its own subjectivity, but it *also* recognises that the good is already present in the objective institutions of its own society. Therefore, deciding what is good *for itself* does not amount to a “perennial obligation” to determine the good purely subjectively (as it did in morality). Instead, it amounts to deciding *for itself* how best to reform the existing institutions so that they remain faithful to the good which is already inherent within them. In this respect, true conscience wills what is good *in and for itself*: it affirms the good which is embodied in existing institutions, but it also makes its own decisions about how to actualise this good in society.

It is especially important that true conscience retains this right to produce its own convictions, because, in the existing state, conscience will always be faced with unprecedented situations, in which it needs to think *for itself* how best to actualise the good. Society, in its existing form, is continually developing. Even though the rational state is built on “unmoved”, universal principles, it exists in an empirical world, in which discoveries are made and technology improves (1991:275). Such contingent

developments need not effect the rational essence of the state – as Hegel remarks: the “large and ancient tree” of reason still “puts out more branches without thereby becoming a new tree” – but they do confront the conscience with new situations and dilemmas (1991:249A). In such circumstances, conscience has no objective precedent. It must decide, *for itself*, whether such empirical developments conflict with the rational principles already present in the state; or, it must decide, *for itself*, how to best integrate empirical developments into society, whilst ensuring the that rational basis of the state is not threatened. In his article, “*Die Verwirklichung meiner Autorität*”, Dean Moyar argues that, because conscience will always be confronted with new situations, it remains “experimental”.⁴⁵ In other words, conscience must be able to consider a diverse range of empirical situations, and to reconcile new developments with the rational principles inherent within the state. It is, therefore, essential that true conscience retain the ability to produce its own convictions; for there will always be circumstances in which the true conscience must think, *for itself*, what is the best way to actualise the good.

Of course, because true conscience retains the right to produce its *own* convictions, it is possible that true conscience can be mistaken about the best way to actualise the good, i.e. it is possible that true conscience gives itself an incorrect content. It could be argued, therefore, that true conscience has the potential to fall into exactly the same trap as formal conscience: that it could adhere unreservedly to an objectively wrong belief and threaten the rational nature of the state. However, this

⁴⁵Moyar [2004:235], “Natürlich denkt Hegel, dass es immer neue Situationen geben wird und keine moderne Gesellschaft so festgelegt sein kann, dass wir im Vorhinein wissen, wie jede Person in jeder Situation handeln sollte. Deshalb wird das Gewissen immer experimentell bleiben” Translation: Of course, Hegel believes that there will always be new situations, and that no society can be so fixed that we know in advance what every person should do in every situation. Therefore, conscience will always

danger does not apply to the true conscience, because the true conscience also wills what is good *in itself*. This is not to say that true conscience will never be wrong. But, what it does mean, is that true conscience will never put its convictions beyond criticism. This is because true conscience recognises the state it inhabits as fundamentally rational; and it is precisely this rationality which true conscience affirms in its attempt to actualise the good. True conscience, therefore, will not posit its own convictions in opposition to the state. It would be inconsistent to do so. If true conscience has the conviction that society needs to change in some way, it implements these changes *through* the existing institutions of the state; institutions which it acknowledges as manifestations of reason (albeit imperfect manifestations). In concrete terms, this could mean referring its convictions to public organisations, or allowing its convictions to be discussed in the public assembly (we shall return to this in the next chapter). In other words, true conscience trusts the current, existing institutions to incorporate and develop its own convictions. Unlike the formal conscience, true conscience does not elevate its own convictions above the state (for it recognises that the state is rational). Instead, it allows its convictions to be evaluated by the objective institutions in society. If its convictions are rejected, then true conscience stands corrected. At no point does true conscience insist on the infallibility of its own, subjective beliefs.

We have arrived at the fundamental difference between the formal conscience of morality and the true conscience of ethical life. Whilst both types of conscience have the ability to consult their subjectivity and produce their own convictions, formal conscience can further insist that its convictions are beyond reproach. True conscience,

remain experimental”

on the other hand – because it affirms the good which is already present in the state –, cannot insist on the infallibility of its convictions. Instead, true conscience refers its own, subjective findings back to the state and allows them to be discussed by public organisations. It reforms existing institutions *through* the institutions themselves. In a fundamentally rational society, the inability to cling to one’s subjective convictions does not represent a loss of freedom; on the contrary, it reflects the higher freedom of trusting a state, whose structures are rational and secure the freedom of its citizens. It is only in a fundamentally non-rational society that one is entitled to elevate one’s convictions above the state. In ethical life, the right to subjective freedom is preserved, but in a way that respects the rational principles already present in the state. In other words, true conscience has the right to produce its own convictions and to have these convictions publicly evaluated. It does not, however, have the right to put these convictions beyond criticism.

In the next chapter, I shall apply this reading to the concrete institutions of the state’s rational constitution. I shall argue that true conscience’s function is located in the legislative power.

Chapter Six

True Conscience within the Legislative Power

In the previous chapter, I argued that true conscience's function was to actualise the existing institutions of a fundamentally rational state. I would now like to look more closely at how true conscience performs this function within the concrete institutions which form the state's rational constitution (namely, the sovereign, the executive and the legislative powers). I will argue that, because freedom is given an objective existence in the positive laws of the state, true conscience's function is located in the legislative procedure. I believe that, by developing new laws and reforming the legal code, true conscience helps to shape the existing state so that it conforms more accurately to the rational principles within it. The legal code is in constant need of improvement. As the existing, particular world develops, so the universal principles of law need to be comprehended and applied to new situations. It is through this immanent process of understanding and refining laws that true conscience brings the existing world closer to the rational principles on which it is based. Of course, the legislature cannot operate without the sovereign, executive and the estates; however, I shall argue that, at every stage of the law-making process, true conscience is present (if not directly, then through representation). I will begin this chapter by describing the relationship between positive law and the principles of freedom. I shall then continue to discuss the way in which the legal code can be reformed, and function of the sovereign, executive

and estates within this process. I shall conclude by evaluating the system of representation within the legislative procedure. Let us first turn to the relationship between freedom and the law.

The whole of the *Philosophy of Right* describes the will's attempt to understand its own freedom and to transform the existing world accordingly. By the time we reach ethical life, the will understands that, in order to secure its own subjective and objective freedom, it needs to establish a system of positive law. Far from limiting the will's freedom, these laws enable the will to live in a society in which both its particular and universal status is respected. Law, therefore, is a necessary part of freedom. Hegel writes that law is "right *in itself*", which has been "posited in its objective existence" (1991:241). In other words, law is the objective manifestation of the concept of freedom. Once the will has understood properly what freedom entails, it creates a legal system in order to implement this in the existing world. Laws are not repressive or alien structures. They are, on the contrary, objective manifestations of the will's essence as a free being. Of course, in order to create a legal system that properly secures its freedom, it is imperative the will understands its freedom properly. Hegel is keen to point out that freedom should be "determined by thought for consciousness and *known [bekannt]* as what is right and valid" (1991:241). Without this understanding, the will could implement a legal system that is fundamentally non-rational (as is the case in pre- or non-ethical states). However, once the principles of freedom are comprehended properly and understood as universally valid, they are given a determinate existence and posited as law.

Given that law is the objective manifestation of freedom, it is not surprising that Hegel believes that every civilised nation is entitled to develop a legal code. In Section

211, he claims that, “to deny a civilised nation, or the legal profession within it, the ability to draw up a legal code would be among the greatest insults one could offer to either” (1991:242R). The term “civilised” is important here. As we discussed above, the development of a non-alienating legal system relies on the will achieving a sufficient understanding of its own freedom. Hegel is claiming that, in every civilised nation, this understanding will have been reached. His assertion is simply that, *once* the will has recognised what is right *in itself* – as is the case in a civilised nation – it should not subsequently be prevented from providing freedom with a determinate existence as law.

In order to draw up a legal code, the ethical will examines how freedom is already manifest in the rational, customary principles of its society. There is no obligation to produce laws subjectively, since, in an ethical (or “civilised”) society, freedom is already inherent in the customary structures of the community. Transforming these practices into law simply involves *recognising* them as rational and declaring them as universally valid. Hegel writes that this procedure, “does not require that a system of laws with a *new content* should be created, but only that the present content of the [customary] laws should be recognised in its determinate universality – i.e. grasped by means of thought – and subsequently applied to particular cases” (1991:242-3R). So, producing a legal code is not about *creating* laws, but *recognising* the laws that are already implicit within society. This clearly relates to our discussion in chapter four, in which we established that the ethical will no longer assumes the moral obligation to produce normative principles purely subjectively. The ethical will understands that the fundamental principles of freedom are already present in the customary practices of its community. Therefore, instead of creating *new* laws, the ethical will simply grants universal validity to the rational, customary laws that already exist. It is only once these

laws are “apprehended in terms of thought” that they become a legal code in the “proper sense” (1991:242R).

Thus far we have established that positive law is the objective manifestation of what is right *in itself* (i.e. of freedom), and that every ethical society has the right to develop a legal code. We have also established that, in order to produce this legal code, the ethical will does not have to create new laws; instead, it has to recognise and comprehend the rational practices which are already inherent in its own society.

I would now like to discuss Hegel’s claim that what is right *in itself* may not always correspond precisely to its existing manifestation as law. In an important passage in Section 212, Hegel remarks that, “Since being posited constitutes the aspect of existence [*Dasein*] in which the contingency of self-will and of other factors may also intervene, what is law may differ in content from what is right *in itself*” (1991:243). In other words, once freedom is comprehended and posited in the *existing* world (as law), it becomes susceptible to contingency; for example, the particular will of the legislator or possible corruption (although these factors will be minimised in a well-functioning, rational society). This means that, although the legal code is *fundamentally* rational (since it emerges from an enlightened comprehension of the basic principles of freedom), it may differ in some external respects from the rational principles on which it is based. Law is right in its *existing* form; and there is a potential disparity between right *as it exists*, i.e. as law, and what is right *in itself*.⁴⁶ An implication of this, is that the legal code is always capable of improvement. Here we have, in concrete form, the disparity between the actual and the existing that we identified in the previous chapter. Because law is freedom in its *existing* form, it has the potential to differ from freedom

⁴⁶ In order to highlight this difference, Hegel distinguishes between what is *legal* [*gesetzmäßig*] and what

in its *actual* form. In the previous chapter, I located true conscience's function in the gap between the actual and the existing. I argued that, in bringing the existing state in line with the actual state, true conscience reformed the state so that it conformed more faithfully to the rational principles it embodies. It is now possible to see how this function manifests itself within the concrete structures of the state: I wish to argue that true conscience reforms the laws of the state so that they resemble more accurately what is right *in itself* (i.e. the concept of freedom, of which they are an objective manifestation). In doing so, true conscience keeps the legal code in line with the fundamental principles of freedom.

In my opinion, it is essential for true conscience to play a role in reforming the law, because, only by doing so, can freedom in its *existing* form be transformed into freedom in its *actual* form. It is through the construction and refinement of a legal code that the ethical will understands what it is to be free and how it should determine this freedom in the existing world. This is what Hegel means when he claims that, "what is *legal* is therefore the source of cognition of what is *right* [*Recht*], or more precisely, of what is *lawful* [*Rechtens*]" (1991:244R). Even though our legal code, as an *existing* structure, can differ from what is right *in itself*, it is still fundamentally rational (since it embodies the fundamental principles of freedom) and it is still the means by which we relate to our own freedom; the legal code, albeit imperfect, is our connection to what is right *in itself*. The more we refine the legal code so that it corresponds to the concept of freedom, the better we understand what it is to be free. In his book, *Hegel's Political Philosophy*, Thom Brooks identifies that, within the *Philosophy of Right*, the legal code is a measure of the ethical will's understanding of right *in itself*. He writes, "part of

is *lawful* [*Rechtens*]. [1991:244]

[Hegel's] criteria for how well developed different states have become relates to each state's ability to transform their laws simply from statements of legality to embody justice. Those states that have laws more commensurable with justice are held in higher regard by Hegel than those that have fared less well." (2009:86). By "justice", Brooks is referring to what is *lawful*, or what is right *in itself*. His claim is that, within Hegel's system, the more accurately a state's laws correspond to the standard of what is right *in itself*, the more developed the state. If true conscience is able to continually monitor and, where necessary, refine and improve the legal code so that it remains faithful to what is right *in itself*, it can play a vital role in this development; in other words, it can play a vital role in actualising freedom within the state.

Given that the legal code is the objective form of freedom and that, by refining it, true conscience actualises freedom in the state, it is absolutely essential that the laws of the state are accessible to all and publicly understood. Hegel insists that the legal system should not be limited to the elite. He writes that it would be a mistake to "hang the laws at such a height that no citizen could read them" or to "bury them in an extensive apparatus of learned books .. so that knowledge [*Kenntnis*] of the laws currently in force is accessible to only those who have made them an object of scholarly study" (1991:246-7R). Hegel criticises the common law in England for precisely this reason, claiming that the "unwritten laws" in court verdicts force judges to "act as legislators" and render the legal system esoteric (1991:242R). Law is based on freedom and, if properly monitored and reformed, secures the freedom of its citizens. It is, therefore, essential that all citizens understand the law and what the law demands of them (we shall return to this later in the chapter). In section 247, we are told that,

“Right⁴⁷ is concerned with freedom, the worthiest and most sacred profession of man, and man *must know about* it if it is to have a binding force for him” (1991:247A my emphasis). Instead of restricting the knowledge of law to a few, learned professionals, Hegel claims that laws should be “made universally known” (1991:246).

In order to achieve this, the law should be codified in such a way that makes it intelligible to all citizens. Hegel writes that the legal code should form a “*complete* and self contained whole”, and that it should consist of “*simple* and universal determinations” (1991:247). A clear and comprehensible legal code keeps the law accessible to everybody. Another way to ensure that the law is universally known is to insist on the publicity of the administration of justice. This is achieved in two ways. Firstly, court proceedings themselves should be open to the public. By dispensing justice publicly, all citizens are able to observe how the legal code is applied to particular situations, which helps to maintain public trust and confidence in the legal system. Whilst the particularities of the case may not be of interest to all, Hegel claims that the universal content within it “is of interest to everyone” (1991:254). Secondly, Hegel insists on trial by jury. Jury trials entrust the public with the power of judgement and ensure that legal proceedings are kept in the hands of the citizen. Instead of submitting the defendant to the verdict of an alien authority, jury trials ensure that the defendant is judged by members of his own community. As such, the defendant is less likely to reject or feel alienated from his punishment. Jury trials also necessitate that the language of law remain accessible. If this were not the case, the legal process could become the property of an elite class, which has the potential to “make itself exclusive even by the terminology it uses, inasmuch as this terminology is a foreign language for

⁴⁷ In this context, *right* is used to denote *the law* (as opposed to what is right *in itself*, i.e. *freedom*).

those whose rights are at stake” (1991:258R). Law is applicable to all and should, therefore, remain intelligible to all. In other words, it should remain “universally known”.

Although we could question the sense in which law can be ‘known’ universally⁴⁸, it is worth noting at this point that Hegel’s demand for the transparency and publicity of law is something to be praised. Hegel is adamant that law, as the existing form of freedom, should be the intellectual property of *everybody*, not just the elite. This is an admirable claim, especially considering that neither the publicity of court proceedings nor trial by jury was a feature of the legal system in early nineteenth-century Prussia. Hegel appreciates the necessity of a legal system that is accessible to all. In his book, *Hegel’s Philosophy of Right*, Dudley Knowles also applauds Hegel for his views on legal transparency. He writes, “it is worth emphasising, no doubt for the umpteenth time, the merit of [Hegel’s] contribution which lies in his insistence that, at all points ... the legal system must be transparent and intellectually accessible to all citizens” (2002:282). This is an important point to bear in mind as we progress throughout this chapter.

We have now established that, because law is freedom which is posited in an existing, contingent world, the legal code may differ from what is right *in itself*. However, we have also established that, despite its imperfections, the legal code is fundamentally rational and an essential part of freedom. For this reason, it is important that the legal code is intellectually accessible to all citizens and does not become the property of an elite class. I would now like to discuss how true conscience can reform

⁴⁸ Knowles claims that Hegel continually shifts between two different conceptions of knowledge: that of being *familiar* with a law and its demands, and that of understanding the rationality behind the law. The latter, he argues, is a philosophical type of knowledge, of which not all citizens are capable [1991:275-7].

the legal code so that this discrepancy between right *as it exists*, i.e. law, and right *in itself* is minimised. In other words, I would like to describe how true conscience can reform the legal code so that it actualises freedom within the state. In order to do this, we first need to examine the idea that the legal code is a structure capable of reform. For this, we need to turn our attention to section 216.

In paragraph 216, Hegel acknowledges that, because the law has to remain applicable to a continually developing and contingent world, the legal code will always be in need of improvement. Although the legal code aims to form a “*complete* and self-contained whole”, the nature of the contingent world, with its changing environment and technological discoveries (what Hegel refers to as the “finite material”), entails that an infinite array of unprecedented situations may emerge; and these situations require legal regulation.⁴⁹ He writes that, “the nature of *the finite material* in question leads to endless determinations ... there is a constant need for new legal determinations” (1991:247). In other words, there is always a need for new laws. It is, therefore, naïve to think that the law can be codified exhaustively and remain immune to change (an attitude which Hegel describes as a “predominately *German* affliction” (1991:248R)). The legal code shall never reach full completion, because it exists in a world in which new situations continue to arise. As such, it is “mistaken to demand that a legal code should be comprehensible in the sense of absolutely complete and incapable of any further determinations” (1991:248R). The legal code is always in need of reform. However, this does not imply that, at any given time, the legal code should not be respected. Hegel believes it is misguided to assume that, because the legal code has not reached full completion, we should “wait for the missing part to be added” and ignore

the current laws (1991:248A). What we perceive as a ‘perfect’, future legal code will only ever be a “*perennial approximation to perfection*”, because it is in the very nature of a legal code that it can *always* benefit from future improvement (1991:248R). As such, we should always respect the current legal code we have as an objective manifestation of freedom, whilst acknowledging that, as the particular world changes, the legal code will adapt accordingly. In other words, “it is possible to imagine what is most glorious, exalted, and beautiful as being more glorious, exalted, and beautiful still” (1991:249A).

So, Hegel is emphatic that the legal code is not a fixed structure and that, because we can always add new laws to it, the legal code is always capable of improvement. But in what manner do we add new laws to the legal code? When we are confronted with a new, particular situation, for which there is no current legislation, what are the criteria for implementing a new law? I wish to argue that, in order to produce new laws, the true conscience examines the rational principles which are *already* present in the legal code and adapts these principles to new situations. In other words, I wish to argue that true conscience improves the legal code from *within* the legal code itself. Let us explore this idea further.

In paragraph 216, Hegel claims that the production of new laws is the result of a process of “*specialisation* of universal principles which themselves remain unchanged” (1991:247). This is an important insight into the process of codification. Unsurprisingly, Hegel does not advocate the implementation of arbitrarily-selected laws; it is not the case that, when faced with the need for new legislation, we pick laws ‘out of the air’, or look to our formal conscience, whose content is entirely contingent (see chapter four).

⁴⁹ Providing that they fall into the category that which can be legislated. Hegel does not extend

There has to be a rational basis for the production of new legislation. And, in section 216, Hegel clearly identifies that, in order to produce new laws, we look to the existing legal code *itself*. This is because the legal code within a truly ethical society is already fundamentally rational. And the universal principles inherent within it are the objectification of freedom in the existing world. It is by recognising such principles and ‘specialising’ them, so that they apply to new situations, that the true conscience can implement new laws. Through this immanent critique, whereby true conscience recognises the rational basis of law and extends the legal code according to this *internal* standard, the existing legal code is changed to more accurately resemble the rational principles inherent within it.

At this point, I think it is worth recognising the recent contribution that Thom Brooks has made to the discussion on legal codification within the *Philosophy of Right*. In his book, *Hegel’s Political Philosophy*, Brooks describes Hegel’s account of law as an “internalist natural law theory” (2009:87). Although the ‘natural law’ part of this definition is compatible with the reading I present in this thesis⁵⁰, it is the ‘internalist’ aspect of Brooks’ description that is most relevant to our current discussion. When Brooks refers to Hegel’s account of law as ‘internalist’, he means that “the normative standard we use to evaluate law is internal, not external, to law” (Brooks 2009:87). In other words, the legal code contains within it its own rational principles by which we evaluate it. When we seek to extend the legal code and produce new laws, we look to *these* principles as our normative standard, and not an external authority. As such, we

legislation to the “realm of inwardness”, i.e. matters of morality, as narrowly construed (1991:245).

⁵⁰ Brooks’ definition of natural law is based on the following three assumptions: 1. that Hegel distinguishes between “law [*Gesetz*]“ and “true law [*Rechtsgesetz*]” (what I refer to as *existing law* and *right in itself*), 2. that the more accurately the law coheres with what is right *in itself*, the more rational the law, and 3. that this standard holds universally for all communities [2009:87].

develop our legal code *through* an understanding of the existing law and the normative principles within it. This is also what Hegel means when he says that “what is *legal* is therefore the source of cognition of what is *right* [*Recht*], or more precisely, of what is *lawful* [*Rechens*]” (1991:244R). The legal code contains its own normative standards. By recognising these standards, and by ensuring that all laws aspire to meet them, we refine the legal code so that it conforms more accurately to its own, rational basis. In other words, we perform an immanent critique on the legal code.

Thom Brooks’ perceptive suggestion that the legal code contains its own, internal normative principles supports my reading that, by comprehending the rational principles within the legal code, we can reform the legal code to correspond more faithfully to its own, rational essence. In an ethical society, we do not have to look outside the existing law in order to locate a normative standard for the production of new laws; the normativity is already inherent within the legal code itself. What Brooks refers to as “internal normative standards”, I equate to the “universal principles”, which Hegel describes in section 216. These universal principles are already inherent in the legal code. They have to be recognised and comprehended, but, once comprehended, can be specialised to apply to new and developing particular situations. The universal principles (or, to put it another way, the *rational* principles) within the legal code remain constant; but they give rise to new, particular legal determinations, which, as we have learned, are an essential feature of any legal code. Therefore, when we talk of ‘new’ legal determinations, we are not describing laws with a new rationality, or a new normativity; we are simply describing new, particular determinations of universal principles that, up until now, had not been rendered explicit. As Thom Brooks remarks, “what is new in any determination of law’s normative content is only the implicit aspect

of this content that had not been recognised previously” (2009:89). The legal code is reformed so that the implicit, rational, universal principles within it are exposed. This, of course, is part of the immanent development of freedom within the *Philosophy of Right*, and reflects Hegel’s methodology whereby freedom “develops out of itself and is merely an immanent progression and production of its own determinations” (1991:59).

In order to further his depiction of the immanent progression of the legal code within the *Philosophy of Right*, Brooks describes the law as a “seamless web” (2009:89). As we comprehend the universal principles inherent within the existing legal code and apply these to new laws, we ‘fill in the gaps’ in this web and embark on the task of codification. By creating new legal determinations and rendering explicit the implicit, rational principles of law, we help to bring our legal code closer to what is right *in itself* and resolve any internal contradictions that may be present within it. We help to make our legal code a more comprehensive, rational structure and play a part in the law’s “*perennial approximation* to perfection” (as we discussed previously) (1991:248R). As we have already established, Hegel is adamant that, because of the nature of the existing world, there will always be a need for new, legal determinations. To invoke Brooks’ metaphor, there will always be a need to “fill in the gaps of the legal web” (2009:89). An example that Brooks appeals to is the arrival of the internet. He writes that, “the internet as a new medium of global trade and interaction brought with it a corresponding recognition of additional legal gaps” (2009:89). There was no legislation in place to regulate the use of this technological development. However, in the absence of such legislation, it is misguided to look outside the existing legal code for normative principles; instead, we look towards the universal principles which are already inherent within existing law. As an example, Brooks writes that “in online trade

disputes, we might seek to validate certain laws and precedents in a manner similar to more conventional trade disputes” (2009:89). And if there is more than one rational principle which seems relevant, we could “appeal to one that brings out what we believe to be a superior understanding of justice immanent to our law that brings better coherence to our legal system as a whole” (2009:89). We will return to this quotation shortly, but, for now, it is important to establish that we locate our normative standards *within* the legal code itself. In this way, we develop the legal code so that it more accurately reflects the rational principles inherent within it. Once again, we can put this into the context of Hegel’s overall methodology: “to consider something rationally means not to bring in reason from outside in order to work upon it, for the object is rational in itself; it is the spirit of freedom ... which here gives itself actuality and engenders itself in the existing world” (1991:60R).

Let us recap briefly. We have established that, because the particular world is continually developing, the legal code will always be in need of new legal determinations. I have argued that, when implementing new laws, we do not look towards an external authority for normative principles; instead, we look to the universal principles which are already present within the existing legal code. Once we recognise and understand these universal principles, we can apply them to new, particular situations (this is what Hegel refers to as “specialisation” in section 216). In this way, we enrich our understanding of law and reform the legal code so that it conforms more faithfully to the rational principles within it; in other words, we perform an immanent critique on the legal code. I compared my thesis with Thom Brooks’ *internalist* reading of Hegel’s account of law. I argued that the “internal, normative standards”, which Brooks describes as part of the “seamless web” of law, are equivalent to the “universal

principles” which Hegel describes in section 216. When we are faced with unprecedented, particular situations which require legislation (the arrival of the internet, for example), we identify the relevant, universal principles and apply them accordingly. By doing so, we render explicit the rationality which is already implicitly contained within our legal system. We transform the legal code so that it conforms more accurately to what is right *in itself*.

Of course, having established that new laws are simply a specialisation of universal principles which are already present within the legal code, the question of *which* universal principles we apply to new situations still remains. Let us take euthanasia as a relevant, if somewhat controversial, example. Advances in medical technology have made euthanasia possible, but there is a distinct lack of legislation to regulate its use. New legal determinations are required. However, the difficulty is deciding *which* universal principle to apply to this particular situation. For example, do we extend the principle that it is wrong to murder? Or do we extend the principle that every adult has the right to choose what happens to his/her body? It is not the case that we can apply both principles, for, in this particular instance, they are contradictory. Thom Brooks writes that, when selecting an appropriate, universal principle, we should, “appeal to one that brings out what we believe to be a superior understanding of justice immanent to our law that brings better coherence to our legal system as a whole” (2009:89). But, in my opinion, it is precisely *this* decision that poses a difficulty. In the euthanasia example, which universal principle *is* it that “brings out what we believe to be a superior understanding of justice”? In order to establish this, we first need to decide if, in fact, we believe that euthanasia *is* murder. Only then can we decide under which principle we subsume new laws. But this decision is not a mechanical one; on the

contrary, it reflects our *subjective* belief about life and when to end it. Codification is not a mechanical process. The decision of *which* universal principle we extend to new legislation is not prescribed; it is subjective. There is, therefore, an essential role for subjectivity within the creation of new laws; for, when implementing new legislation, we have to decide which universal principle best extends to an unprecedented situation. And it is precisely this, subjective decision which I attribute to the true conscience. True conscience has to think *for itself* which principle to select. I have always argued that the ability to make decisions *for itself* is an aspect of conscience which remains in ethical life, and here we can see this moment in its concrete context. I believe that, within ethical life, true conscience plays an essential role in the creation of new legislation. In deciding which principle to extend to new laws, true conscience exercises the moment of conscience that Hegel describes as “an exalted point of view” and “a sanctuary which it would be *sacrilege* to violate” (1991:164R). It consults its subjectivity and decides, for itself, how best to actualise the good.

A necessary consequence of this is that true conscience may get things wrong. It is possible that, in deciding *for itself* how to best codify the law, true conscience gives itself an incorrect content. In other words, true conscience could make a mistake about which universal principle best applies to a new situation. But, in my opinion, this is not a reason to deny subjectivity a role in the codification process. Hegel is well-aware that codification is not an exact science, but is, on the contrary, “the work of centuries” (1991:313A). And, as Thom Brooks remarks, it is perfectly possible that “mistaken choices may be made along the way” (2009:89). What is important is that these mistaken choices are *themselves* reformed through further immanent critique, so that the legal code continues to resemble more accurately what is right *in itself*. In his book,

Hegel's Philosophy of Right, Dudley Knowles describes codification as a process of “trial and error” (2002:279). Very perceptively, he writes that “we should not believe that the sort of immanent criticism which takes us along the path of reason from reality to actuality is an exact science” (2002:279). Codification is an immanent yet essentially fallible process.

Having outlined my reading of true conscience’s function in the codification of law, I would now like to reiterate briefly the ways in which the true conscience of ethical life is different from the formal conscience of morality. Throughout my thesis, I have argued that the formal conscience does not have a public role to play within ethical life. I based this claim on the fact that, because of its contingent nature, formal conscience can give itself any content and, moreover, it can insist that this content is infallible. Even though formal conscience contains the necessary moment of deciding *for itself* what is good, it does not combine this with the recognition of objective, ethical standards, which is a necessary part of the sphere of ethics. Instead, formal conscience simply insists on the supremacy of its own, subjective convictions. True conscience, on the other hand, recognises that the good is already present within existing, ethical institutions. Even though it decides *for itself* how to best actualise the good, it does not conceive of the good purely subjectively; instead, it acknowledges the good that is already present in the objective structures around it. Let us put this into concrete terms. I have argued that true conscience plays a part in the codification of law. This entails that true conscience think *for itself* about which universal principles to extend to new legislation. However, it also entails that true conscience recognise these universal principles as present *within* the existing legal code. True conscience regards the existing legal code as fundamentally rational, and it uses this rationality in order to develop new

laws. In other words, it performs an immanent critique on the law. This critique involves an essential moment of subjectivity – deciding which universal principles are relevant to new legislation – but it also requires the awareness that the good is already present in the existing legal code (albeit in an imperfect form). As such, true conscience locates its normative standard (what is right *in itself*) within the existing law itself. Codification therefore becomes a process by which the true conscience reforms the legal code so that it more accurately resembles its own, essential rationality; as opposed to changing the legal code to conform to an arbitrarily-selected, external ideal. This is what Hegel means when he says that true conscience wills what is good *in itself*.

It is now possible to see why the formal conscience is unable to fulfil this function. Formal conscience could think *for itself* about new legislation, but there is no guarantee it would recognise the good as already present within the legal code. Unlike the true conscience, formal conscience does not will what is good *in itself*. This means that it does not endorse the objective structures of ethical life (which includes the legal code) as fundamentally rational. As such, there is no guarantee that the formal conscience would recognise the essential rationality already inherent within existing law. Formal conscience could implement *any* law, according to its own, purely-subjective standards and, moreover, it could insist that this law is beyond criticism (perhaps with good intentions, as in the case of ‘intention’ and ‘conviction’, or with sinister motivation, as in the case of ‘irony’). As we have often remarked, this type of radical subjectivity ignores the rational which is already present within existing, ethical institutions and contradicts the value of ethics, which is the “*comprehension of the present and the actual, not the setting up of a world beyond which exists God knows where*” (Hegel’s Preface 1991:20). Of course, it is perfectly legitimate to oppose the

existing legal system in a society which is *not* fundamentally rational; but, within true ethical life, this is both unnecessary and undesirable.

Let us now return to the true conscience. Having presented my reading of true conscience within the legislative process, I would now like to examine its function within the concrete structures of the constitution of the state. In order to do this, it is first necessary to provide a brief outline of the state's constitution.

The constitution of the state (or the "political constitution", as Hegel sometimes refers to it) contains three main powers: the sovereign, the executive and the legislative. These three powers are not arbitrary structures; instead, they represent "developed and actualised rationality" and follow necessarily from the concept of freedom itself (1991:287). The political constitution is rational, and it remains rational so long as it "*differentiates and determines its activity within itself in accordance with the nature of the concept*" (1991:305). In other words, the constitution remains rational so long as it embodies all of the necessary components of freedom. With this in mind, each part of the constitution has its own, logical significance. The sovereign is the moment of individuality, the executive is the moment of particularity (which, as we will see, mediates with the universal) and the legislative is the moment of universality. Whilst it is necessary that each power is differentiated and has its own, specific function, Hegel is adamant that no one power is self-sufficient. The three powers are distinguished simply as different moments of the *same* concept. They share an identity as components of freedom and they strive together for the same, universal end. It is in this context that Hegel refers to the state as an "organism"; each moment, with its own particular function, works with a united purpose as part of an interconnected whole (1991:290).

Therefore, it is a mistake for any one power to attempt to exist independently of the others.

Interestingly, for the purposes of discussion, Hegel reverses the logical order of the constitutional powers and begins with an account of the sovereign. Hegel is an advocate of constitutional monarchy, which he describes as “the achievement of the modern world” (1991:308). The sovereign within the *Philosophy of Right* is a constitutional monarch, who provides the state with individuality. For Hegel, it is a necessary part of the concept of freedom that the state is represented by a single human being, without which the people would be a “formless mass” (1991:319). The monarch, who contains the moments of subjectivity and particularity, unites the state in one person.

The sovereign has a role to play within the legislative process. However, the extent of the sovereign’s power in the law-making procedure appears to vary, depending on whether one reads the main text and Hegel’s remarks in the *Philosophy of Right*, or the accompanying lecture notes.⁵¹ Knowles claims that, “the texts and the lecture notes together sustain two very different readings” (2002:329). What Knowles refers to as the “hard reading” in the main text describes the sovereign as having ultimate power in the legislative process. In section 279, Hegel refers to the sovereign as a power whose “simple self supersedes all particularities, cuts shorts the weighing of arguments [*Gründe*] and counter-arguments ... and resolves them with its ‘I will’, thereby initiating all activity and actuality” (1991:317R). And, in section 300, Hegel refers to the sovereign as “the power of ultimate decision” (1991:339). On this reading, the

⁵¹The lecture notes (marked as *Additions*) in the Cambridge text (1991) are taken from an edition of the *Philosophy of Right* compiled by Eduard Gans and first published in 1833. The lecture notes themselves were compiled by H. G. Hotho, who attended Hegel’s lectures of 1822-1823, and K. G. von Griesheim,

sovereign exercises complete control over the implementation of new law; he can decide, perhaps against advice, to either support or dismiss new legislation. However, if one reads the lecture notes, what Knowles refers to as a “soft reading” is presented. On this reading, the sovereign performs more of a symbolic function. In the addition to section 279, we are told that the sovereign has “nothing more to do than to sign his name”, and, in section 280, we are informed that “all that is required in a monarch is somebody to say ‘yes’ and to dot the ‘i’” (1991:321A/323A). Here the sovereign is presented as a figurehead, whose presence is more-or-less a formality (Knowles compares such a sovereign to the current Queen Elizabeth II of Great Britain). But, even though this reading presents the sovereign in a more symbolic role, Hegel is keen to emphasise the *necessity* of this symbol. Having claimed that the sovereign has “nothing more to do than to sign his name”, Hegel continues to claim that “this *name* is important” because it “constitutes the difference between the ancient and modern worlds” (1991:321A). Therefore, even on the ‘softer reading’, Hegel is not undermining or dismissing the need for monarchy.

There is, clearly, a disparity between the readings presented in the main text and the lecture notes, but I don’t think this amounts to a debilitating ambiguity in Hegel’s account of the sovereign. I think the difference is one of emphasis, as opposed to a qualitative inconsistency. What Hegel describes in the ‘hard reading’ is the power available to the sovereign *if required*. The sovereign, as the head of state, has the potential to dismiss legislation if he so wishes (and, it has to be noted, with good reason and good conscience)⁵². However, as we learn in the ‘softer reading’, this display of constitutional power is seldom necessary in a society whose legislative and executive

who attended Hegel’s lectures of 1824-1825.

powers are operating properly. In the addition to section 280, we are told that, “*in a fully organised state*, it is only a question of the highest instance of formal decision” (1991:323A my emphasis). And, in the same paragraph, it is also claimed that, “*In a well-ordered monarchy*, the objective aspect is solely the concern of the law, to which the monarch simply has to add his subjective ‘I will’” (1991:323A my emphasis). In other words, within a well-functioning, rational state, the sovereign will usually adopt a symbolic role, as is the case is many Western-European monarchies today. But, as we mentioned above, the symbolic role of the monarchy is still an essential feature of individuality in any modern state. I therefore maintain that the hard reading and the soft reading are compatible, but that the soft reading describes more accurately the function that the sovereign performs in a well-functioning, rational society.

The second power in the political constitution is the executive, which includes the administration of justice, the police and the government authority (civil servants and ministers). The function of the executive is to mediate between the sovereign and the citizens. Hegel writes that this involves the “execution and application of the sovereign’s decisions” and the “continued implementation and upholding of earlier decisions, existing laws, institutions, and arrangements to promote common ends” (1991:328). In other words, the executive acts as an intermediary between the universal and the particular: it applies the universal law to particular cases, and it also helps the people understand how their particular lives relate to the universal. It does this in a number of ways; for example, the provision of education and public services, necessary regulation in the market economy, enforcement of law, etc. Members of the executive are appointed by the sovereign, but, importantly, admission into the executive is not

⁵² See paragraph 285 [1991:327]

based on birth or financial status. Hegel is adamant that gaining a position in the executive relies on “knowledge and proof of ability” and that individuals are “not destined by birth or personal nature to hold a particular office” (1991:332). This ensures competence, but, more importantly, “guarantees every citizen the possibility of joining the universal estate” (1991:332). So, theoretically, within Hegel’s political constitution, every citizen is capable of attaining a place in the executive, provided that he can demonstrate the required skill and competence⁵³.

The third power in the political constitution is the legislative. I have argued that true conscience plays a fundamental role in the legislative power, so Hegel’s account of this structure is of particular relevance to my thesis. Hegel writes that the legislative power “has to do with laws as such, in so far as they are in need of new and further determination” (1991:336). As we discussed above, the legal code is *always* in need of further determination, and the legislative power is responsible for implementing new laws and reforming existing laws where necessary. As such, it helps to maintain a body of law that is both rational and relevant to the modern world. It is also responsible for determining which services the state can demand from the citizen.⁵⁴ In order to function properly, the legislative power presupposes the constitution, of which it is a part. So, in this respect, the constitution “lies outside” the legislative power (1991:336). However, Hegel is also clear to point out that the constitution can itself be reformed through the legislative process (i.e. by constitutional means), by the “further evolution of the laws

⁵³ Bearing in mind, of course, that Hegel’s definition of ‘citizen’, in the strict political sense, does not include women, and, debatably, does not extend to the non-educated members of the immediate, agricultural estate (see Knowles 2002:333-5).

⁵⁴ The right of subjectivity dictates that the state cannot demand *particular* services from the citizen (the citizen has the right to select his *own* vocation). Therefore, in a modern society, the only resource claimed by the state is money (the “universal aspect” of various professions) and, when necessary, military service [1991:338].

and the progressive character of the universal concerns of government” (1991:336). So, although the constitution is a precondition for the legislative power, the legislative power has the ability to amend the constitution. This is an immanent change, which occurs “over a long period of time” in a “peaceful and imperceptible manner” (1991:337A).

The function of the legislative power is to produce new laws. Earlier in this chapter, I argued that the production of new laws was a process of specialisation, whereby the legislator recognised the universal, rational principles already present in the existing legal code and extended these to new legislation. I also argued that, in deciding *which* universal principles to select, the legislator exercised the right to subjectivity and referred the decision to his true conscience. For this reason, I claimed there was an essential and irreducible role for true conscience within the production of new laws. Having presented my reading that true conscience has a necessary function within the legislative process, the central question now becomes: who can partake in the law-making procedure? How widely is this moment of true conscience extended? Is it the case that *every* citizen can contribute to the implementation of new legislation, or is this a prerogative that Hegel restricts to a select few? In order to answer these questions, I will now explore the legislative structure in its concrete detail. I wish to argue that, whilst Hegel, understandably, does not include *every* citizen in the legislative procedure, he makes every attempt to ensure that the subjective convictions of all are accounted for in the representative structure of the estates and, thus, the public assemblies.

There are three parts to the legislative process: the sovereign, the executive and the estates. The sovereign has the power of “ultimate decision” on whether a new law

should be passed; however, as we discussed above, this power is most likely to assume a symbolic function in a modern, well-functioning society (1991:339). The executive, with its “concrete knowledge and oversight” of the particular world, advises the sovereign on new legislation and ensures that universal matters of law are applied correctly in particular cases (1991:339). The third part of the legislative power is the estates, and it is through the estates that participation in the legislative process is extended to the ethical community as a whole (the specifics of which we shall discuss shortly). The first two estates form the parliamentary body of the legislative process. They comprise the two houses of the public assembly, in which proposed legislation is discussed and voted upon. Hegel writes that the function of the estates is to “bring the universal interest into existence not only *in itself* but also *for itself*, i.e. to bring into existence the moment of subjective freedom ... the views and the thoughts of the many” (1991:339). This is an important quotation, for it highlights the objective *and* subjective responsibilities of the estates within the legislative procedure. Let us discuss this further.

When Hegel claims that the estates “bring the universal interest into existence *in itself*”, he means that, through public discussion and voting, the estates play their role in reforming the legal code so that it more accurately resembles what is right *in itself*. In other words, the estates help to implement laws that provide freedom with an objective reality and, in doing so, they actualise freedom within the existing world (as we discussed at the beginning of this chapter). However, Hegel also claims that the role of the estates is to “bring the universal into existence ... *for itself*, i.e. to bring into existence the moment of subjective freedom ... the views and the thoughts of the many”. By this, he means that, as well as implementing objectively valid laws, the

estates also give expression to the subjective freedom of the citizens, i.e. that, when discussing new legislation, the estates consider the subjective views of wider ethical community. This is significant, for, although Hegel often emphasises the right of subjectivity as a necessary component of freedom, in this quotation, he presents it as an irreducible moment of the law-making procedure (which is precisely what I argue in this chapter). Hegel specifically remarks that the estates take into consideration the wider, subjective consciousness when voting on new law. This is important, because, in order to remain faithful to the *right of the subjective will*⁵⁵, which permeates the entire sphere of morality, it is not enough that the law simply exists; the citizen has to recognise the law *as* good and as part of his own essence as a free being. Without this, the law exists as an alien, authoritative structure. Recognising the law *as* good involves understanding the law and its rationality, but, crucially, it also involves being subjectively present when new legislation is implemented. This ensures that the law remains rational, and that the citizen continues to claim it as his own. Moreover, it implies that, over time, the legal code can be reformed so that it becomes more rational, i.e. so that it more accurately resembles the rational principles inherent within it. In the above quotation, in which we are told that the estates give expression to the “views and thoughts of the many”, Hegel makes direct reference to subjectivity as an essential moment of the legislative process. It is precisely this moment that I have described as true conscience’s role within the legislative body. When discussing and voting on new legislation, the estates take into consideration the subjective considerations of their citizens. In other words, it is in the public operations of the estates that the true conscience of the citizen is given expression.

⁵⁵ [1991:158]: “The right of the subjective will is that whatever it [the will] is to recognise as valid should

But, how is the moment of true conscience incorporated into the estates? Hegel insists that the subjective views of “the many” are given expression in the estates, but, is it the case that every citizen has a *direct* say in the implementation of new law? Can every citizen voice his opinion in the assembly? Well, unsurprisingly, the legislative process does not allow every citizen a *direct* voice in the law-making procedure; but, it does ensure that the subjective views of the wider ethical community are conveyed via a structure of representation. It is through the representatives of the estates that the citizen expresses his “views and thoughts” (1991:339). The idea of representation, in itself, is an accepted part of modern, political societies. But, of course, the extent to which the subjective considerations of the ethical community are present in the legislative will depend on *how* Hegel constructs this system of representation. Is the system of representation adequate? Does it provide every citizen with a channel (albeit an indirect one) to express his subjective opinion in the assemblies? It would be disingenuous to claim that Hegel’s representative system is without flaws, but, I wish to argue that, taken in its entirety, the representative system that Hegel describes allows a meaningful place for true conscience within the law-making procedure.

In order to pursue my argument, I would now like to examine the structure of the estates and the representative system in more detail.

Hegel divides civil society into three estates: the land-owners and agricultural workers, the tradesmen, manufacturers and businessmen, and the civil servants and public officials. However, it is only the first and second estates which make up the two houses of the public assembly, since the third estate – the civil servants and public officials – is part of the executive. The estates do not represent different social classes

be perceived by it *as good*.”

as such, but they group together similar professions, all of which share a distinctive approach to work. Knowles recommends that we think of estates as “cultures”, since they denote “vertical sections of civil society, gathering together all those who earn their living on the land, or by way of trade, or as civil servants” (2002:271). Hegel claims that the three estates correspond to the moments of immediacy, reflectiveness and universality. The first estate, the land-owners and agricultural workers, is immediate, since this estate adopts a non-reflective and generally accepting attitude to what is given by nature. The members of this estate do not consider how they can transform nature, instead, they concern themselves with subsistence. The second estate, the tradesmen, manufacturers and businessmen, is reflective, since it views nature as a raw material to be transformed for monetary gain. Depending on their particular, chosen profession (small-scale baker, factory owner, etc.), the members of this estate reflect on how they can best use natural resources in order to maximise their financial return. Their relationship with nature is no longer immediate; instead, it is mediated by their own, particular will. The third estate, the civil servants and public officials, is universal, since its members concern themselves with the universal matters of government. Members of this estate are paid by the state.

It is the first two estates that form the two houses of the public assembly. Hegel argues that separating the estates into two houses “provides an increased guarantee of mature decisions and eliminates the contingent quality which the mood of the moment possesses” (1991:351). The idea being that two estates with two distinctive mentalities will facilitate diverse deliberation and, eventually, arrive at a law suitable for all. But how does the system of representation function in the two houses? Hegel writes that the first estate can, “on the whole”, be divided into “the educated section and the estate of

farmers” (1991:345A). Unsurprisingly, the representatives of this estate are part of the “educated section”; male heads of important, wealthy, land-owning families. These representatives are not elected, but inherit the position via the institution of primogeniture. As such, parliamentary positions are retained within select families, and passed down through the generations. Admittedly, we could question whether the appointment of representatives through non-elected means has a place within a modern, ethical society. It is, without question, anti-democratic to qualify *by birth* for a parliamentary position. Hegel is aware of this, and, overall, does not support the idea that power can be inherited (recall his discussion of the executive: “Individuals are not destined by birth or personal nature to hold a particular office ... The objective moment in their vocation is knowledge and proof of ability” 1991:332). His argument, in this case, is simply that hereditary representation secures the stable operation of parliament, and, therefore, best serves the interests of the members of the agricultural estate. He is keen to point out that primogeniture is “desirable only in a political sense”, and that this desirability is based on the fact that people of independent means, who are “not limited by external circumstances”, can devote themselves entirely to the matters of state (1991:346). The justification does not rest on “possession of resources” as such, but simply the idea that wealthy, heads of families can dedicate themselves more effectively to the service of parliament.

Of course, given the unreflective nature of the agricultural estate, it is not surprising that Hegel advocates hereditary representation. If we take Hegel’s claim seriously, that the non-educated section of the first estate inhabits an “immediate ethical life” in which “reflection and the will of the individual play a lesser role”, it is inconsistent to expect elected representation (which *relies* on reflection). As it stands,

the “educated” and wealthy members of the estate – who understand the demands of the agricultural sphere – look after the interests of those who cannot reflect for themselves. So, perhaps it is not hereditary representation *per se* that we should be questioning, but Hegel’s claim that all agricultural work is immediate; in other words, perhaps we should question the logical categories of the estates themselves. This, of course, is a complex issue which falls outside the scope of my thesis, but, for now, it is worth considering that the problem with the first estate runs deeper than the method by which parliamentary power is transferred. The claim that all agricultural work is non-reflective is, itself, open for discussion. But, *given* that Hegel makes this claim and *given* that the (non-educated) members of the first estate are incapable of reflecting on elections or standing for parliament themselves, we have to take seriously Hegel’s claim that the agricultural estate is best served by hereditary representation; that the members of the assembly look out for and secure the interests of those who cannot speak for themselves.

The method of representation is different in the second, reflective estate. Within this estate, members are granted the reflective capability to elect representatives (or *deputies*, as Hegel refers to them) who have the necessary “disposition, skill, and knowledge” to hold a parliamentary position (1991:349R). These representatives, who have proved themselves in the sphere of trade and industry, look out for the interests of the members of the second estate. However, unlike most current-day elections, representatives are not elected through geographical constituencies. Instead, they are elected by the members of the corporation, of which they are a member. It is, therefore, *as a member of a corporation* that the representatives of the second estate appear in the public assembly. Hegel is adamant that voting should take place via the corporation,

because, only in this way, does society “act *as what it is*” (1991:346). As we discussed in chapter four, it is only as a member of a corporation that the citizen attains an awareness of his universal identity⁵⁶, and it is, therefore, only *as a member of a corporation* that the citizen should elect a representative. For example, when I vote in an election, I vote *as* a shopkeeper, or *as* a factory owner. Hegel claims that, in doing so, we embrace an electoral and parliamentary system that accurately reflects the rational structures of society. The alternative is to vote *not* as members of a corporation, but as “individual atomic units” (1991:346). But, for Hegel, this is an artificial method, which reflects only our generic status as persons, ignores the rational structure of the corporation and undermines the concept of ethical identity.

Since representatives of the second estate are elected on their ability and knowledge and the requirement that they have “proved their worth *in practice*”, it is the case that *every* member of the second estate has the potential to be elected for parliamentary office (1991:349). Family heritage plays no (direct) role; all that is required is that the citizen demonstrates sufficient proficiency in his chosen profession. So, in this respect, Hegel ensures an inclusive representational structure in the second estate. However, it is also worth noting that the citizen’s choice of profession is itself subjective. Hegel is adamant that every citizen has a right to particularity, and this involves deciding, for himself, which profession to pursue (as we discussed in chapter five). It is for the citizen himself, and not the state, to decide on a vocation. So, given that the citizen can decide *for himself* which profession to enter, it follows that the citizen can also decide *for himself* to which estate he belongs. For example, if I opt for a career in the banking industry, I assign myself to the second estate; however, if I opt for

⁵⁶ [1991:347]: “it is within the sphere of his corporation ... that the individual first attains his actual and

a life in agriculture, I assign myself to the first estate.⁵⁷ Theoretically, one's choice of estate is subjective. Of course, it would be naïve to pretend that circumstances do not play a role. Hegel is clear that a lot will depend on one's background, where one is born and natural talents. However, Hegel still maintains that the ultimate criterion for membership of an estate is one's own, subjective choice: "the question of which particular estate the individual will belong to is influenced by his natural disposition, birth and circumstances, although the ultimate and essential determinant is *subjective opinion* and the *particular, arbitrary will*, which are accorded their right, their merit, and their honour in this sphere" (1991:237). Since the membership of an estate rests on the subjective choice of profession, it is theoretically possible that the public assembly (at least the house of the second estate) is open to all.

Let us recap briefly. Earlier in this chapter, we established that not every member of the estates has a direct voice in the public assembly. This is a fairly uncontroversial claim, since facilitating this would amount to direct democracy (and this is seldom endorsed as a feasible or desirable system). Instead of direct democracy, Hegel presents a version of representational democracy; however, the structure of representation varies depending on the estate. In the agricultural estate, representatives are appointed via the institution of primogeniture, but, in the estate of trade and industry, representatives are elected through their corporations. Since deputies in the second estate are elected on ability, it is the case that every member of the estate has the potential to sit in the public assembly. Moreover, since the choice of estate is, itself, a

living determination as *universal*"

⁵⁷ However, it remains questionable whether one could 'reflect' on the advantages of joining the 'unreflective' estate, and then cease to reflect in one's vocation. It appears as though the first, unreflective estate (if, indeed, unreflective) is one into which people are born, and do not choose to enter. But this is open for discussion.

subjective decision, it is theoretically possible that *every* citizen can attain a seat in the parliament.

I would now like to relate Hegel's account of representation within the estates to the role of true conscience within the legislative procedure. As we establish above, it is the estates that incorporate the moment of subjectivity into the law-making process (they "bring into existence ... the view and thoughts of the many" 1991:339). In other words, the estates bring the moment of true conscience into the legislative procedure. But, since each member of the estate is unable to voice his subjective concerns personally in the assembly, it is the responsibility of the representative to present these convictions on his behalf. Whether elected or non-elected, we must take seriously Hegel's claim that the representatives of the estates convey to parliament the subjective considerations of their constituents. Hegel writes that, "[the estates] have a distinctive function of ensuring that, through their proper participation in [the government's] knowledge, deliberation, and decisions on matters of universal concern, the moment of formal freedom attains its right in relation to those members of civil society who have no share in government" (1991:351). The representatives speak for those who have no direct voice in the assembly. Because the members of the second estate are elected through the corporations and have demonstrated outstanding ability in their chosen profession, it is ensured that the representatives will understand the needs and requirements of the citizens they represent. It is also the case that, despite the fact that the representatives of the agricultural estate are non-elected, they nevertheless appreciate the needs of the those who work on the land. This enables the citizens to trust their representatives; and trust is the foundation of the representative process. It is essential that members of the estates have faith in their representative and trust he will

provide expression to their subjective concerns in parliament. It is via this process of representation, based on trust, that the true conscience of the citizen is manifest in the estate. Through representation, the convictions of the ethical community as a whole are presented and discussed in the houses of the public assembly. Hegel describes this moment of representation in section 309: “I can trust a person if I believe he has sufficient insight to treat my cause [*Sache*] as if it were his own, and to deal with it in light of his own best knowledge *and conscience*” (1991:348A my emphasis). Here we have further textual evidence that true conscience has a role within the estates and, thus, within this section the legislative procedure.

Let us return to the legislative procedure as a whole. Once parliament has voted on proposed legislation, it is the responsibility of the sovereign to either approve or dismiss the prospective law. He must “sign his name”, “say yes”, or “dot the ‘i’” before proposed legislation can become part of the legal code (1991:321,323,323A). Once the proposed legislation is approved by the monarch, it can become law. As such, it can become part of the objective manifestation of what is right *in itself*. Therefore, the sovereign has significant power (even if this power is more-or-less a formality in well-established and well-run societies). Within Hegel’s account of the legislative, the sovereign has the final decision on whether proposed legislation is accepted as law. In other words, the sovereign has the final decision on whether legislation becomes part of the legal code, which is valid “in and for itself” (1991:327). However, this isn’t a decision taken lightly or selfishly. There is textual evidence in the *Philosophy of Right* to indicate that the moment of true conscience is present even at this final level of the legislative process. Hegel writes that, “the universal in and for itself ... is present subjectively in the *conscience* of the monarch” (1991:327). The sovereign bases his

final decision on his true conscience. So, at this decisive level of legislative proceedings, the sovereign exercises the subjective right to consider, for himself, whether the proposed legislation conforms to what is right *in itself*. I have always argued that this right was not lost with the move into ethics. And here we can see that, not only does Hegel retain the right to conscience within ethical life, he awards it a place at the very top of the legislative process. The implementation of legislation relies on the true conscience of the sovereign.

In this chapter, I have argued that it is the function of true conscience to reform the legal code so that it more accurately reflects what is right *in itself*. Because true conscience is an ethical phenomenon and wills what is right *in itself*, it recognises that the objective institutions of ethical life are already fundamentally rational. As such, when it seeks to reform the legal code, it does not look outside the existing law for arbitrary, external normative standards; instead, it identifies the rational principles which are already inherent within the legal code itself. In order to produce new laws, true conscience identifies which existing rational principle can be extended to new legislation. As such, it develops its understanding of the legal code and reforms it so that it conforms more faithfully to its own, rational essence. I have argued that the process of identifying *which* universal principle to extend to new legislation is essentially subjective and, therefore, a necessary role for the true conscience. However, given the concrete structure of the legislative process Hegel describes, it is impossible that every citizen is present in the public assembly to convey his moment of true conscience personally. Instead, this moment of true conscience is given expression by the representatives of the estates. These representatives ensure that the subjective convictions of their constituents are expressed in the public assembly. After public

discussion and deliberation, the proposed legislation is presented to the sovereign, who, once again consults his true conscience before deciding whether to implement new law. True conscience, therefore, is present throughout the entire legislative procedure. It is for this reason that I claim that true conscience has a meaningful and irreducible function within the legislative power in the *Philosophy of Right*. Hegel does not ignore this fundamental right to subjectivity; instead, he awards it an essential role in reforming the legal code so that every citizen can live in a state that remains faithful to the fundamental principles of freedom.

Conclusion

In this thesis, I have presented a highly systematic reading of the dialectic of conscience within Hegel's *Philosophy of Right*, which concentrated primarily on the *Aufhebung* of moral conscience into the true conscience of ethical life. I have argued that, with the transition into ethics, conscience retains the right of subjective freedom; it retains the right to give *itself* content and produce its *own* convictions. It continues to will the good *for itself*. However, since true conscience is a part of the ethical realm and recognises the good as already present in rational, objective institutions, willing the good *for itself* does not amount to determining the good purely subjectively. True conscience recognises that its own convictions are not beyond criticism. Instead, true conscience identifies the good which is already present in fundamentally rational (albeit imperfect) institutions and transforms the existing world so that it accords more accurately its own, rational essence. In other words, true conscience decides, *for itself*, the best way to actualise the good which is already inherent in society. In doing so, true conscience reduces the disparity between the actual and the existing state and wills what is good both *in and for itself*.

I have argued that this function is best understood as part of the legislative procedure. By developing new and reforming existing laws, true conscience helps to maintain a comprehensive legal code, which accurately reflects the principles of freedom. Because the existing world is continually developing, there will always be a need for new laws. I have argued that, when confronted with the need for new legislation, true conscience identifies a universal, legal principle which *it* believes best extends to the new, particular situation. In doing so, true conscience performs an

immanent critique on the legal code. Although true conscience cannot be directly present in the legislative assemblies, I have argued that Hegel's system of political representation facilitates the expression of conscience within the deliberative process. I have also argued that true conscience is present in the sovereign and, thus, that it fulfils a function in the final and definitive stage of the legislative procedure.

I believe that, having presented true conscience as an irreducible part of the legislative process, I have refuted claims that Hegel allows insufficient room for conscience within the political realm. I have, therefore, further disarmed that charge that Hegel's state is based on authoritarian structures.

Having described the logical structure and role of true conscience within Hegel's state, we might like to reflect on whether this corresponds to the conception conscience in our current society. We certainly value the right to refer decisions to our conscience and to produce our own convictions; and never more so than when we wish to influence current or future legislation. There are various ways in which we convey our subjective convictions to our political representatives: we partake in peaceful protests, write to our MP, make use of the free press, etc. In all these cases, we exercise our right to determine *for ourselves* how best to actualise the good, whilst maintaining a respect for law. I also believe that, when we consider future legislation, we obtain our ethical standards from *within* the legal code itself. To this extent, we value our current legal code as a comprehensive and fundamentally rational structure. For example, when considering proposed legislation on issues such as identity cards or surveillance, we appeal to existing laws on privacy. And, when considering more controversial examples, such as euthanasia, we appeal to existing laws on personal autonomy or murder. Our convictions, to this extent, are guided by existing legislation; and this

demonstrates a fundamental awareness that our current legal system goes some way to securing the good. For this reason, I argue that true conscience, as described in the *Philosophy of Right*, is at work in our current society.

However, I believe there are also instances in which we exercise our conscience in such a way that threatens the relationship between the individual and the state. For example, when we partake in violent or politically-obstructive direct action, or when we indulge so far in political satire that we render the entire political system ridiculous. In the first case, we demonstrate an intentional disregard for law and, in the second, we purposely seek to undermine the political community. I am not claiming that these acts aren't justified; but perhaps they suggest that our ethical identity (and therefore our ethical system itself) is not as developed as that which Hegel describes in the *Philosophy of Right*. There are still occasions in which we actively seek to destroy the connection between the individual and the universal. In other words, there are still occasions when we consider it necessary to exercise our formal conscience and put our subjective opinions beyond objective criticism.

Having said this, I think that, generally, we recognise our society as fundamentally rational, and we view with caution those who seek to elevate their subjective convictions beyond reproach (unfortunately, at present times, we do not have to look far for examples of misguided, moral heroism). In this respect, we adopt an ethical (as opposed to a moral) standpoint, and claim that the right to conscience is more than the right to adhere unreservedly to our convictions. However, because society has the potential to both progress *and* regress to various stages of freedom, it is essential to recognise the different forms of conscience and the unique function they have in society. For this reason, I believe that the dialectic of conscience within Hegel's

Philosophy of Right can serve as an enlightening backdrop for our discussions on conscience in the twenty-first century.

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