

Part I
Ethics

Consequentialism and Deontology in the *Philosophy of Right*

Dean Moyer

1

Hegel's philosophy resists our familiar ways of categorizing theories. This resistance presents a challenge for viewing Hegel through a contemporary lens, but it hardly prevents us from asking where his views fit within contemporary debates. Since conceptual distinctions are the way in which we understand the meaning of a position, a theory in which no distinctions could get a grip would be uninteresting and perhaps even unintelligible. Hegel himself appreciates this point very well, and he is among the tradition's most strident critics of the kind of philosophy of identity in which distinctions and oppositions are completely washed out. Though his conceptions of the Absolute Idea and Absolute Spirit do incorporate and thus *in some sense* overcome fundamental oppositions, Hegel has a place for many of our familiar philosophical distinctions within (and indeed as constitutive of the boundary between) the conceptual levels that characterize each part of his overall system.

In the *Philosophy of Right* two levels, "Abstract Right" and "Morality," can be roughly aligned with deontological and consequentialist types of ethical theory. These types line up with central concepts of Hegel's two levels, namely the rights of the person and the idea of the Good. Though in his ultimate view of Ethical Life Hegel does think that the two sides can be integrated, that integration is fully intelligible only once we have appreciated the distinctions that have been drawn earlier in the conceptual development.

Besides illuminating some of the architectonic issues in the *Philosophy of Right*, this essay has three main goals. First, I develop an account of Hegel's conception of ethical value and its realization. Such an account is needed because, although he occasionally uses the term "value" (*Wert*) and its cognates, it is quite hard to see how to match up his discussions with the types of "value theory" discussed today. Second, I propose a way to understand Hegel's transitions in the *Philosophy of Right* in more accessible terms than we get simply by relying on his appeals to his logic and on the (often very sketchy) discussions of practical phenomena. Third, I build toward an account of individual and institutional action that sheds light on Hegel's motivations for structuring Ethical Life in the way that he does. His split between these two types of action preserves a contrast between the deontological and consequentialist approaches, even while highlighting their interdependence and showing why neither approach is adequate on its own.

In its most familiar form, the consequentialist/deontological distinction is a distinction between two ways of assessing actions. On the consequentialist model, actions are assessed in terms of the overall value that is achieved through the action. Typically the criterion is one of *maximizing* value. The value to be maximized can be conceived as a single metric, such as pleasure, or in pluralistic terms to include many different values. In either case an account of value, or a conception of the Good, is defined first, and the question of which action is right (permissible or impermissible) is answered based on which action maximizes that Good. By contrast, deontological theories aim first and foremost to specify normative principles of permissibility or impermissibility, and do not take achieving value, or bringing about certain states of affairs, as their central concern. Perhaps the most familiar deontological model is a test of the universalization of one's action (or maxim of action) to determine its rightness or wrongness. Another model is a contractualist account of principles that reasonable individuals would agree to, or not reject, in a suitably ideal contractual situation. Such theories can include an account of the Good, and can even require that individuals adopt certain ends, but typically there will be some conception of the right that serves as a constraint on action apart from the calculation of consequences.¹

Kant's moral theory is often taken to be the main representative of deontology in the history of ethics.² Given how deeply Hegel's ethics is informed by his engagement with Kant, it is not surprising that Hegel should have something to say on the nature of the deontology/consequentialism split. The *prima facie* argument for taking Hegel to be a

consequentialist is his constant emphasis on *Verwirklichung*, actualization. Some of his best-known claims in ethics are directed against conceptions of ethics that are focused on upholding a pure abstract standard of what is right against the messy realization of the Good. The pervasive role of teleology in Hegel's accounts of practical rationality would itself seem to make the case that he is a consequentialist. Yet even a cursory look at the structure of the *Philosophy of Right* suggests otherwise. The strict universality of Abstract Right comes first, while the Good comes later, and there is little to no mention of calculating or maximizing value. Given that deontologists can also require that one act to realize valuable purposes, and so can share a concern for "actualization," there is a plausible way to interpret Hegel's ethical thought as fundamentally deontological.

A few words on the common criticisms of the two types of theory will help bring out what is distinctive in the positions, and help clarify the stakes in locating Hegel's thought in reference to these positions. Consequentialists are often accused of not respecting the distinctness of persons. This leads, so the accusation goes, to the willingness of consequentialism to justify unacceptable "means" by invoking the end of maximizing overall value. Consequentialism has a hard time ruling out harming individuals for the sake of the many because it forces us to think of individual rights and moral claims as items that can be traded off against other value considerations. A similar intuition guides the famous attack by Bernard Williams that has come to be known as the "integrity objection" to utilitarianism. Williams stresses the first-personal character of agency, ridiculing the idea that our actions are somehow supposed to channel a system of value that would automatically trump the projects with which we identify in living our individual lives. The objection is that it would be deeply alienating to be forced to obey "when the sums come in from the utility network," for "we are not agents of the universal satisfaction system, we are not primarily janitors of any system of values" (Smart and Williams 1973: 116, 118). The charges are that in ignoring the separateness of persons, the consequentialist adopts an implausible moral psychology and risks real harm to our sense of agency.

For the consequentialist, one trouble with deontology is that it has to presuppose an account of value in order to secure any real *determinacy* in its demands. Far from being able to specify rightness independently of value, deontologists must bring in value considerations if their tests of universalization or reasonableness are to produce actual results.³ They cannot simply *avoid* questions of value, and this leads into a second objection. To

distinguish itself from consequentialism, deontology seems to require actions that *decrease the overall amount of good in the world*. Some distinctive deontological actions make the world a worse place compared to other alternatives, and a requirement to make the world worse seems at least very odd, if not downright irrational. The deontologist has to say that following some rules of right action is simply right, regardless of the consequences, and this does produce some intuitively unwelcome results. A related worry is that such theories can be *too* agent-oriented, and thus not concerned enough about the world of value beyond the issues that involve the agent's own integrity. The consequentialist will say that too much focus on integrity can lead to moral narcissism, allowing the individual to care about himself, to keep his hands clean, at the expense of other agents. The agent is in effect maximizing consequences for himself alone, for he has put undue weight on his own moral cleanliness.

To better fix the distinction, I will wrap up this section by formulating the differences between the types of theory through their views on two main issues and through their contrasting pairs of intuitions. For the first main issue, I will assume that deontological theories can be expressed in terms of value (even though the Good is not given *priority* over the Right on such accounts). What then distinguishes the two is that while the deontologist thinks of the agent as *honoring* or *instantiating* the value, the consequentialist thinks of the agent as *promoting* the value.⁴ This contrast comes out most clearly when we think of a short-term violation of a value in order to promote its long-term flourishing. The deontologist might say that we should always honor the right to free speech, whereas the consequentialist might say that it is good to deny the right in the case of neo-Nazis or other groups whose program is to eliminate the right altogether. Sometimes a consequentialist is willing to "dishonor" the value in the short term in order to promote the value in the long term. The consequentialist will be focused on *promoting* value, while the deontologist on the contrary will stress *honoring* value and will not be willing to break moral rules, violate moral rights, in order to promote value. Essential to the deontological view is what I call the *sufficiency of honoring value* thesis, which says that it is always enough for an individual to honor values, and almost never permissible to dishonor the value (or violate the norm) in order to promote that value in the long run. Endorsed by the deontologist, this *sufficiency of honoring value* thesis is rejected by the consequentialist.

The second issue is trickier, and turns on how we think of value and its optimization as determining what we ought to do. The deontologist (consonant with an integrity theorist like Williams) will find repugnant

all talk of objective value determining the status of actions, or of a “value network” (changing only slightly Williams’s “utility network”) generating obligation. Taking the first-person stance as central and irreducible, they hold that statements of obligations must be addressed to individual agents and conceived in terms of the free will of individual agents. I call this the *agential self-sufficiency* claim. Of course it does allow for universal demands to be placed on the individual will, but typically there is a voluntary dimension to taking up or endorsing or legislating those demands such that they are not imposed “from the outside.” Note that *on this issue* I am not assuming that the deontologist endorses a substantive value theory, for when deontologists stress agential self-sufficiency they often bracket or exclude questions of value. In one way or another consequentialists must reject agential self-sufficiency, and hold that a system or network of value does indeed determine obligation. Some consequentialists prefer to distinguish their position by stressing the agent-neutral quality of the value to be promoted, but given the complexities of the agent-neutral/agent-relative distinction,⁵ and given that it is entirely possible to be a consequentialist while endorsing agent-relative value, I find that (even despite its vagueness) the agential self-sufficiency formulation is superior.

For each side there are two main intuitions driving the adoption of the position. On the consequentialist side, there is (1) the intuition that ethical action must serve *greater overall value*, where “overall” does extend to some degree into the future, and (2) *value* has objective standing and the world of value can be ordered so that in any case of action there will be some option that is determined as better, objectively, as a function of value. On the deontologist’s side, there is (1) the intuition that objective value is too theoretical, too metaphysical even, to guide an agent’s willing, and (2) that consequences cannot make an intrinsically wrong action right.

These intuitions can be fit into a single picture by distinguishing between levels, and indeed I will argue that Hegel does so. It is thus worthwhile to sketch here a more familiar attempt to get the intuitions into a single picture, namely *rule consequentialism*. This theory asserts that individuals should act primarily according to moral rules rather than in order to maximize value, but it also holds that the rules themselves are validated because they maximize consequences. The rule consequentialist can affirm that wrong actions are wrong because of rules, and that an individual’s actions are not determined by calculating consequences but by endorsing moral rules. On the other side, the intuitions of the consequentialist are borne out in that the rules are justified by objective value and in that at the overall level consequences have the final say. I will return

to rule consequentialism in my closing assessment, and will only note here that there is a strong internal tension in this theory. Agents are supposed to act for rule-based reasons, but those reasons (rules) are supported by other considerations that are not supposed to enter into the agent's deliberation. There are strong intuitions behind the thesis that an ethical agent performs an action for the reason that (ultimately) makes the action right, but this thesis is denied by rule consequentialism. This tension is closely related to a tension in the status of the rules themselves. It seems that a rule must change in response to particular cases in which consequentialist considerations count against the rule in its current form. If so, the split between the two levels will collapse because simply following a rule in its current form will not suffice, and the individual will also take overall consequences into account in her deliberations. If not, rule consequentialism can become a kind of "rule-worship"⁶ because obeying a rule is given undue value. So either rule consequentialism collapses into act consequentialism, or we are left with individuals acting on rules for a different set of reasons than the reasons that make the rules right. I will return to these worries in my closing assessment of Hegel's own position.

2

In this section I set out a way to understand the *Philosophy of Right* as expounding a value theory of a sort that at least *could* be consequentialist. The first task of such a reading is to interpret Hegel's claims about the free, rational will as claims about value. It is relatively uncontroversial that *freedom* is the master value in Hegel's ethics, but beyond that general claim it has proven quite hard to give a theory of value that applies to all the different levels of the *Philosophy of Right*.⁷ Part of the trouble here is that Hegel is so focused on freedom as an *activity*. Because of this orientation of his basic conceptual apparatus, it is difficult to think of freedom along consequentialist lines as a property or as a quantifiable measure. Hegel begins in the Introduction by describing the activity of the free will in the abstract terms of the Concept. The account of the free will then becomes an account of the practical norms, and ultimately the institutions, that individuals inhabit in living free lives. At many points in this account it is unclear whether the agent is required either to honor or to promote a single value called freedom. When the *value* of freedom does come into sight directly, as in the account of the Good as "realized freedom" (*PR* §128),⁸ it quickly falls out once again as

a direct purpose of action (I discuss this in section 5), making it hard to decipher just how the agent relates to the overall value in different states of affairs. But Hegel's account of the rationality and freedom of the will that develops in the different stages of right *can* be identified with a certain structure of valuing. Or so I shall argue in this section.

The second problem, which I take up in subsequent sections, concerns the relationship between the teleological development of the different stages of right, on the one hand, and the teleology of individual actions that is the typical focus of contemporary ethical debates, on the other. Is the model of activity that drives the dialectic the same as the activity of the ethical individual? I will argue that their underlying conceptual structures are the same. The *development* occurs at points of normative instability involved in conceptual shifts, whereas the action of the individual rational will assumes a relatively stable normative landscape. While my account will emphasize the consequentialist element in the conceptual development and in individual action, there is also in every phase of the development a deontological element as well. Carefully unpacked, the contrast between the consequentialist and deontological dimensions in both individual action and the dialectical development opens a new window into understanding the dialectic of right.

The first step in establishing a value reading is to consult the end of the *Encyclopedia* account of Subjective Spirit in order to understand that Hegel is beginning from a claim about the value of the individual human being. At the close of his account of the individual capacities of mind that he labels "Psychology," Hegel introduces "the free spirit." He states (in a claim I explore below) that the free spirit takes the will itself as its "object and purpose" (1971: §481), and he also links the free Spirit to the basic concepts of Christianity. According to Hegel's interpretation of Christianity, its leading ethical idea is that "the individual *as such* has an *infinite* value" (1971: §482). Appreciating this value claim allows us to see that for Hegel the value of free individuality is the core value that is realized in the realm of Objective Spirit, and indeed that the latter just is the system of the realization of that value.

While this claim opens up a value reading, it also presents an immediate problem with executing such a reading. The problem is how to understand the conception of "infinite value" in a way that lends itself to *determinate expressions* of value. It could be seen as a devastating objection to a consequentialist reading of Hegel that he values individuals in a way that does not allow them (or their claims) to be traded off against each other,

calculated or weighed. Yet Hegel does *not* of course shy away from endorsing claims that subordinate individuals to social processes, and that even allow for diverse forms of inequality between persons. How then are we to understand the relation of the individual's infinite value to the finite conditions of Objective Spirit?

The three-moment structure of the Concept is the key to just about everything in Hegel, and it is his discussion of the Concept and the will in *Philosophy of Right* §§5–7 that must serve as our starting point for thinking about value. The first moment – the abstract universality of the I – looks very much like the core of the deontological standpoint. The canonical example is the abstract universality of the principle underlying the French Revolution: roughly, “everyone is equal and should be treated equally.” It seems that there is no weighing of consequences that could count against this principle, for as a pure standard of justice it cannot be overridden.

The insufficiency of abstract or formal universality can be clarified through Robert Brandom's recent discussion of material inferences. Brandom develops a point about inference and meaning from Wilfrid Sellars. The point concerns how to think of *good* inferences. For an inference to be good, must it have at least implicitly the full logical form of a valid inference? The familiar example is “It is raining, therefore the streets will be wet.” Where is the major premise that would allow it to become a *logically* valid inference? Sellars and Brandom claim that we do not need to insert an implicit premise, “Every time it rains the streets get wet,” before we can say that the basic inference is valid. As Brandom puts the point, “Why should all goodness of inference be seen as logical goodness, even at the cost of postulating ‘implicit’ premises involving logical concepts?” (1994: 101). One of the problems here is that if inferential goodness has its source solely in logical form, that goodness will be separate from the particular content of the specific inference that is being made. In their contrasting account, Sellars and Brandom hold that the meaning of concepts consists in their use as premises and conclusions in successful material inferences. A language that had only logical inferences would be one devoid of any meaning beyond that given in the (relatively empty) logical rules themselves.

The relevance of this account of inference to Hegel's account of the will and value begins to come out when we align value with meaning.⁹ Taking value as the practical counterpart to meaning, we can ask how we should think of formal versus material *practical* inferences in relation to ethical value. There are practical inferences characteristic of the abstract universality of the first moment of the will, and our first move is to identify these

with the abstract deductive forms of inference. Hegel's criticism of abstract universality then lines up with the criticism of formal inference sketched above. The universal practical inference that aligns with standard logically valid inference would be something like the following:

Every person must be treated according to our equal capacity for valuing.
Here is a person X.
I will to treat person X equally, according to our equal capacity for valuing.

There is an act of willing in the conclusion, and the question is how to conceive of the value of that willing. In Hegel's treatment, the value comes from the ability of the subject to abstract from all merely given determinations and to act from pure subjectivity. That is a capacity, common to all individuals, which renders our actions free and is thereby a source of value. By valuing that same capacity in others, I realize in action the value of my own capacity for action.

On the other hand, it is not at all clear what value is expressed in this formal inference, for we do not actually know what specific action is willed. There is a commitment to equal treatment and thus to infinite value, but that leaves out the value of the actual action with its specific purpose. For this reason, Hegel thinks that what really comes to the fore in this moment of the will is the following inference:

Every person must be treated according to our equal capacity for valuing.
Here is a person X who is not being treated equally.
I will to eliminate the conditions responsible for X not being treated equally.

Call this Robespierre's Inference, for it encapsulates the "fury of destruction" that Hegel associates with making abstract universality the sole basis of practical inferences.

Turning now to the moment of particularity, the second moment of the Concept, we can see Hegel as stressing the *material* side of the material practical inference. Hegel writes that this moment represents the specific, limited purpose of willing. We can think of the distinctive practical inference of this moment along the lines of "It is raining, therefore the streets will be wet." In the practical case the statement of fact is replaced by a description of a situation calling for action on ethical value. For example:

My friend needs someone to watch her child for an hour while she goes to a meeting, therefore I will watch her child for an hour. I do it without explicitly intending to realize the value of friendship, without thinking “Being a friend requires that I help a friend when she is in need.” In the material practical inference there is no need to bring in the major premise. An inference from seeing a value to be realized and acting to realize the value is perfectly intelligible, and in this case we know the value of the willing by knowing the specific value realized in the action. We do not take the extra step of adding the major premise – it does not enter into our reasoning.

There is obviously something missing with the simple practical material inference. It contains no mention of freedom, no mention of the abstract capacity for valuing. Without such an element, though we might say that *first-order* value is realized, the form of responsibility for one’s action is left open. This is why Hegel writes, “This content may further be given by nature, or generated by the concept of spirit” (*PR* §6). If people act under compulsion or for lack of the ability to imagine any alternative they may very well realize value, but we would in many cases say the action is less than fully free and that the full value of the action is compromised.

Though Hegel’s presentation in the *Philosophy of Right*, with universality preceding determinacy, makes the point hard to see, determinacy and abstract universality roughly correspond to first-order and second-order value/valuing. Determinacy or material inference represents first-order value, whereas universality is the moment of *second-order value*, the reflexive valuing of the capacity for valuing in oneself and in others. It makes sense to think of *adding* first-order value, but we should think of second-order value primarily as a *multiplier*.¹⁰ If there is no realization of first-order value then there is no value at all (because one is multiplying by a zero). But first-order valuing itself is often quite limited without the multiplying effect of the capacity for freedom that is expressed (if not usually explicitly thematized) in the action.

Hegel brings out this integrated valuing within the full structure of the Concept contained in *individuality*. This is still a model of material inference, but one that also involves the regulating powers of self-consciousness and the second-order valuing of universality.¹¹ I thus call the full model one of *free material inference*. Abstract universality taken by itself could recognize violations of freedom but could not account for determinate realizations of value. With particularity, determinate value comes into view but the subject’s relation to the content could simply be given. By

contrast with the one-sided moments, we can state the inference of individuality in the following way:

In action X I would realize a determinate value through exercising my universal capacities.

I will action X as an expression of my universal capacities.

In this individuality, which Hegel calls “being with oneself in otherness,” I am committed to something limited, but I am not so immersed in that content that I have lost my capacity to be a subject in the universal sense. Hegel’s oft-discussed example of this structure is in fact friendship. In friendship I have bound myself to another particular person, and I do often directly infer from “My friend needs me to X” to “I will do X.” But it is essential to genuine friendship that my higher-order capacities are engaged, even though I do not reason from the major premise “I should always exercise universal capacities to realize determinate value.” My capacity for universality is important in regulating my actions as a friend so as to limit, for instance, my willingness to transgress other duties in order to help that friend. That friendship presupposes this capacity on the part of each also expresses the independence of friends.¹² Friendships are more valuable in that each agent acts with such a set of universal capacities and in that this set itself is valued by each as a kind of background condition of the friendship. I value being a friend as an expression of my freedom and my friend’s freedom, rather than simply as a matter of sheer attachment.

Reading the free will as a structure of free material inferences enables us to shed some light on his definition of *right* and how right can be linked to value. Hegel gives a very brief definition, “*Right* is any existence [*Dasein*] in general which is the *existence* of the *free will*” (PR §29). It must be said that this definition is not by itself very informative. He follows up only by an attack on Kant’s definition of right, and on all individualistic definitions of right, that negatively indicate a limiting factor on the arbitrary will, and that positively rely on an abstract formal identity of universality. He ends the remark with an allusion once more to the French Revolution and to the “terrifying nature” of the deeds produced by this abstract universality. The only elaboration of his own definition is a hint at an “immanent rationality” that is ruled out by the formalism of Kantian right. This is clearly the same terrain covered in his discussion of the three moments of the free will in §§5–7, and it can seem that his sole intent in giving the definition is to rule out the formal inference as the exclusive model of right. But the opposition

to formality suggests that we read the definition of right itself in terms of the free material inference of individuality. If the free will is the activity of drawing material practical inferences with implicit universality, we can say that right, as the *Dasein* of the free will, represents the *generalized success conditions* of such free material practical inferences in the public sphere of human interaction. What I mean here with generalized success conditions is that right provides a stable set of value structures within which individuals can draw practical inferences that other individuals will recognize as valid (and that thus will be successful). The normative framework does not float free from the interactions, but rather the framework is just an authoritative expression of the conditions under which practical inferences are successful. The overall rationality of this success is found in the whole system of Objective Spirit, with its complex of interrelated practical inferences.

How does this help us with the question of value and the relative importance of the consequentialist and deontological strands in the *Philosophy of Right*? The first thing we can say is that in every stage of right, even in Abstract Right, some first-order value is realized. Without the first-order value, the inference would not be a material inference of individuality. Hegel stresses the *Dasein* of the free will in his definition to bring out the determinacy of right as the willing of a first-order value. A concept of right is valuable insofar as it enables successful free material inference.

Every stage of right also involves certain universal capacities, and these do introduce deontological “side constraints” into the picture. The first stage of right, the right of the person, seems to put a strict constraint on treating persons in ways that are incompatible with their status as free. None of these side constraints is absolute, however, for each is limited in its incorporation into concrete practice. There is a question of whether we should think of these deontological norms as *side* constraints on first-order valuing at all. As we have seen, the trouble with the purely universal capacities and norms is that they seem to take no definite object. But Hegel does in fact conceptualize the abstract norms themselves as objects of the will, and he does so precisely in the service of making a transition to a more determinate sphere (a dynamic that I spell out in section 4).

Once we read right as a category implicated in what we think of as value, Hegel’s claims about the development of Right through the Concept, and the possible collisions between the levels, become more tractable. In a key section of the Introduction to the *Philosophy of Right*, Hegel writes, “Right is something *utterly sacred*, for the simple reason that it is the existence [*Dasein*] of the absolute concept, of self-conscious freedom” (*PR* §30). To

some critics, this claim rings hollow given Hegel's willingness to place the right of the state higher than the personal right of individuals. Hegel goes on to distinguish Abstract Right from later stages, presumably meaning the level of Ethical Life, which "possesses a higher right, for it is the *more concrete* sphere, richer within itself and more truly universal" (*PR* §30). The stages of the account go from the abstract to the richer, and the worry has frequently been raised that Hegel seems with his reference to a "higher right" to countenance the violation of abstract rights in the name of the state. If Abstract Right is taken as a set of strict side constraints, this talk of higher or richer levels seems to simply contradict or violate the claims of Abstract Right. But if we read right in terms of material inferences in which value is realized, references to higher right and richer content are relatively unproblematic. We can think of the earlier stages as working with abstract descriptions of first-order value (property, welfare) in order to develop a basic framework for practical inference, and later stages as taking the framework for granted while setting out a more determinate structure of first-order value. So while there is no supremely overriding appeal to sheer formality, to the abstract framework floating free of the determinate practice, the richer forms of right build upon the abstract framework. There are collisions between the various possible premises of the inferences, but only insofar as those premises are in play as valuable components of a social order. The question of Hegel's consequentialism, then, is whether or not the outcomes of those collisions are decided by an appeal to the overall value of the consequences.

3

Some readers will object at this point that it is a mistake to read Hegel as a value theorist in the way just proposed because his fundamental conception of *mutual recognition* adumbrates a thoroughly deontological approach to normativity. Originating in Fichte's *Doctrine of Right*, mutual recognition was a central concept for Hegel in his Jena period, and many recent commentators have stressed the continued importance of the theme in the *Encyclopedia* and *Philosophy of Right*.¹³ On this view the key to Hegel's ethics is *treating each other as free*, or according each other a certain "deontic status."¹⁴ At best it would be misleading to take realizing value as Hegel's central concern in developing the account of right or in characterizing ethical action. At worst, reading Hegel as a value theorist clouds in obscurity

the intersubjective character of Hegel's ethics and its grounding in free human activity. As the example of friendship shows, the individuality of the free will can itself be explicated in terms of intersubjective relations rather than in terms of value.

The case for mutual recognition in the sense opposed to value is strongest when focusing on Abstract Right and its account of the person and personality. Hegel calls personality "the capacity for right" and gives as the "commandment of right" the formula "*be a person and respect others as persons*" (PR §36). The decisive claim comes in the transition from property to contract, where Hegel writes:

But as the existence [*Dasein*] of the *will*, property is for another only as *for the will* of another person. This relation of will to will is the true distinctive ground in which freedom has its *existence* [*Dasein*]. . . . since it is a relationship of objective spirit, the moment of recognition is already contained and presupposed within it. (PR §71; translation altered)

The fundamental claim about right as the existence of the free will is explicated here as an intersubjective relationship. This suggests that right itself is an intersubjective category, a way of treating each other. Yet the claim that intersubjectivity is "the true distinctive ground" is compatible with right being a value term. We could say that right is a structure of value exists insofar as through it individuals recognize each other as free. One thing that certainly is clear from this passage is that recognition is a fundamental concept for the *Philosophy of Right*, and must be integrated into any full account of his ethics. Hegel explains the relative lack of discussion of intersubjectivity in the *Philosophy of Right* by reference to the overall framework of Objective Spirit, which has the moment of recognition built into it, so that recognition does not need to be thematized.

There is a *prima facie* plausible argument that deontic recognition only characterizes Abstract Right, and that it is the deontic status aspect of recognition that is overcome in the subsequent spheres of right. Yet Hegel seems to deny just this claim in a comment on his discussion of recognition in the *Encyclopedia*, where he writes:

Each is thus universal self-consciousness and objective; each has real universality in the shape of reciprocity [*Gegenseitigkeit*], in so far as each knows itself recognized in the other free self, and is aware of this in so far as it recognizes the other and knows him to be free.

This . . . is the form of consciousness of the *substance* of each essential spirituality – of the family, fatherland, state, and of all the virtues, love, friendship, valor, honor, fame. (1971: §436)

The agent's freedom is objective "in the shape of reciprocity" because he is recognized by another whom he recognizes as free. Hegel emphatically connects this mutual recognition to the main institutions of Ethical Life and to the virtues, thus ruling out a restriction of the recognition relationship to Abstract Right. This is a way of treating each other, and seems to place Hegel firmly in the deontologist's camp.

But before we think that recognition rules out a consequentialist-leaning value reading of Hegel's ethics, we need to consider a distinction between direct and indirect recognition.¹⁵ Recognition is direct in that individuals take other individuals as their explicit objects of concern when they are formulating their intentions to act. But we can also think of recognition as indirect, where the mediating element that makes it indirect is action on objective value. In that *action* is valuable to others, those others indirectly recognize me when I act on value (i.e., on what others will recognize as valuable), and are indirectly recognized by me in my respect for what Hegel calls the right of objectivity. This point finds support in what Hegel actually says in the passage above, namely that this reciprocity is "the form of consciousness of the *substance*" of the ethical determinations.¹⁶ If we substitute "value" for "substance" here,¹⁷ we can read Hegel as saying that when we reflect explicitly on "each essential spirituality" and consider why it is valuable, then we understand that it is valuable because within it our freedom is objective in the shape of reciprocity. But when we act within the family or within the state, we are not explicitly seeking that recognition by others (except in a limited class of cases). Rather, we act on purposes that are objectively valuable and our action is recognized because it expresses or achieves that value.

The contrast between direct and indirect recognition parallels the contrast between the formal and material practical inference. The formal/universal inference, as in the example from the French Revolution, typically takes another agent's *status* as the object (i.e., the goal) of action. All there really is in the world of abstract universality is other abstract persons or subjects, for even property counts as valuable only as a direct extension of the abstract person with property rights. The trouble is just that there is no determinate way to engage abstract persons or radically equal subjects and citizens because determinate engagement would mean differential recognition,

which is ruled out by strict direct mutuality.¹⁸ In the successful free material practical inference there is indirect recognition because the action realizes first-order value, and the practical inference is successful in that the action is *recognized* as valuable by others. The generalized success conditions of the free material inference are conditions of mutual recognition, but the moment of universality characteristic of abstract recognition typically remains in the background. If we do not put indirect recognition at the forefront, we will end up back in the problems that Hegel analyzed with formal inference.

4

In Hegel's general descriptions of Objective Spirit the foremost idea is that freedom takes the shape of a "world." This means enriching the possibilities of mutual recognition by giving an account of the social practices in which freedom finds determinate expression. In the terms that I have been developing, this process involves giving further texture and definition to the success conditions of material inference, to the contexts in which agents actualize their capacities for freedom. Because successful practical inference depends on mutual recognition, the same developmental process simultaneously sets out forms of recognition and possibilities of material inference. The norms laid out in the *Philosophy of Right* have an "immanent rationality" because of the transitions that lead from one to another in a chain of dialectical necessity, a chain that eventuates in a systematic whole.

It might seem that the dialectical transitions raise a different set of issues than those of action assessment involved in the consequentialism debate. Yet it is hard to see how there could be a sharp difference here. The guiding dynamics of the Concept apply to both dimensions, and this means that both dimensions have an inferential structure. Because the justification of the account is holistic, understanding the transitions is key to understanding the status of the rights in subsequent stages of right. In this section I argue that there is a sense in which the higher stages are designed to *promote* the value of freedom, and that the activity of the dialectic through which the content of right develops can thus be understood in consequentialist terms.

Philip Pettit's characterization of the contrast between *honoring* and *promoting* value connects usefully with the issues of recognition and material inference. Pettit claims that in an ideal world, honoring and promoting a value would be the same thing. As he puts it, "To instantiate

a value is to behave in the way that would promote the value in a world, roughly, where others were equally compliant. . . . to behave in a way that would promote it in a suitably compliant context, even if it does not promote it in the actual, imperfect world” (Baron et al. 1997: 127). He also writes of honoring/instantiating that “with an appropriate value it means acting in the way that would promote the value in a suitably compliant world, even if that mode of action does not promote it in the actual world” (Baron et al. 1997: 261). One part of this idea is that the distinction between promoting and honoring/instantiating disappears under conditions of suitable compliance, in a “world” in which there are no threats to the value that could seriously undermine it. The other part is the claim that given that we live in “the actual, imperfect world,” it makes more sense to subscribe to a view (consequentialism) that requires promotion of the value than to one that simply seeks to honor value. As in the case of free speech and the speech of illiberal groups, we need to act in ways that preserve our values against the non-compliant rather than in ways that just instantiate the values for ourselves.

This contrast between honoring and promoting has a clear connection to the issues of recognition and actualization, and it is for that reason a useful tool for thinking through Hegel’s transitions from one stage of right to another. Pettit’s “suitably compliant context” is just a world in which agents mutually recognize one another’s claims and do not threaten to undermine one another’s values. In the conceptual moves that for Hegel lead to a dialectical transition, the practical inferences that instantiate a given value become unstable. In the process of the breakdown of a given stage of right there arises a context of non-compliance, a failure of mutual recognition. The breakdown of each stage is a move toward a transitional, non-compliant context in which it becomes necessary to *promote* the relevant values rather than simply to honor the current norms. Such promotion looks at first like a violation of right, but the subsequent stage of right promotes the earlier values in a way that does not require the violation of the previous right. The new stage of right establishes new conditions that integrate the element(s) that caused the disruption in the previous stage. The new stage restores the compliance condition and thus a condition in which the normal activity of honoring/instantiating the values is sufficient. In the transition the subsequent shape of right integrates the shortcomings of the previous shape to reach a condition of mutual recognition that is more comprehensive and more stable.

This account can be said to have consequentialist underpinnings because the turn in the dialectic toward promotion, namely the need to violate the

right in the service of the value behind the right, has the same structure as the consequentialist claim. The tricky part in Hegel is that the *legitimate* promoting activity full emerges only in the new stage of right. Only once we have moved to a new shape does the value configuration that disrupted the first shape get promoted, and by that point the earlier claim has become almost unrecognizable. In moving to the subsequent shape, the new element behind the claim for recognition is converted into a new right and a new shape of value that can be honored in normal action-recognition contexts. The goal of this dialectic is a comprehensive context in which every essential value claim is recognized. The endpoint or completion of the account comes when the maximally complete set of success conditions for individual valuing have been realized. At the level of the whole system, honoring will be enough for the individual.

The transition from Abstract Right to Morality illustrates well the dynamics I have just sketched. The transition begins with the excess abstractness of property and contract claims. This deficiency goes back to Hegel's claim early in Abstract Right that the "*particularity* of the will . . . is not yet contained in the abstract personality as such" (*PR* §37). Particularity gets into the picture through the phenomena of crime and avenging justice that conclude "Abstract Right." Crime appears as a reflection of the inadequacy of abstractly universal norms to meet the demands of concrete individuals in the actual world. The act of the criminal is in a sense a recoil from the overly abstract recognition at the level of merely formal right.¹⁹ Hegel thinks of crime as a failure of recognition, and though he is not sympathetic to the criminal, he clearly thinks that crime arises as a necessary moment in the development of right. The practice of honoring the value of the sheer person has proven inadequate. What ensues upon this no longer "suitably compliant" context?

The first result is that the concept of punishment arises. Hegel insists both that my universal capacity for freedom is *respected* in punishment (it is acknowledged that in committing a crime my rational capacities were engaged), and that determinate harm must be done to me commensurate with the determinate harm that I have done to another. The need to arrive at what is commensurate or equivalent to a crime brings about the first long discussion of the *value* of an action (in *PR* §101). Value must be placed on the action itself in order for the retributive character of punishment to be fulfilled – in order to get beyond a strict (eye for an eye) equivalence of reaction to the action of the criminal. The determinacy or particularity of the crime has to be transformed into a *general measure* of value so that

retribution can function (as it typically does) through fines and imprisonment. Value is “the *inner quality* of things” (PR §101), the universality of the particular acts that allows two particulars (the crime and the punishment) to be equated.

The next stage of the transition is the first reaction to the crime, namely *revenge* (PR §102). This is itself another infringement of right, an “*avenging justice*” (PR §103) that is the exercise of a particular will that wills a particular vengeance. We can see what is wrong with this avenging justice by asking whether the avenger promotes the right kind of value. In one sense, he can be seen as claiming to *violate right in order to promote that very same right*. This seems to be the classic distinguishing mark of the consequentialist, who is willing to dishonor value in the short term in order to promote value in the long term. But on the other hand, the avenging act cannot really do the work of promoting the value of freedom. If the right to be promoted is universal, it very much matters that the promoting activity aim at the universal and not simply at a particular act of vengeance. The criminal’s capacity for freedom is not respected if the punishment is exercised simply as a particular harm. The right/value of personhood would not be genuinely promoted. Rather, as Hegel emphasizes, the wrong “becomes part of an infinite progression and is inherited indefinitely from generation to generation” (PR §102), which is the exact contrary of the consequentialist claim for long-term benefit.

The true shape of punishment is *punitive* rather than *avenging*, where that means that the aim or purpose of the will is the particularized universal (or the universalizing particular). The general description of the new concept is that it is a particular will that wills the universal. When Hegel says that now personality becomes the object (meaning the goal) of the will (PR §104), he is saying that we have shifted to a context of value promotion. In the development of the moral sphere the universal must be *promoted* because there is a real *difference* between the individual qua universal and qua particular (whereas these moments were in an immediate, abstract unity in abstract right). Morality will demand the promotion of universal value because each agent *starts from* an accepted claim for his own intrinsic value as a particular agent. In “Morality” the value of the individual’s particularity, his subjective point of view, is recognized. Universality is promoted in a quasi-consequentialist sense because now, taking the particularity of the subjective will as an essential moment, the universality of personality is an aim or goal (the “object” of the will) for a subjective will attempting to determine itself to universality. As long as the moral sphere is one of suitable compliance, this new promotion takes the form of honoring the relevant

values and moral individuals can recognize each other. But at two crucial moments within Morality, that recognition is disrupted and a new structure of value is introduced.

5

“Morality” arises from the need to bring particularity into the normative picture, to put our admittedly contingent particularity in the service of the value of freedom. The alternative is simply to remain in the abstract personality’s opposition of formal right and the contingent particularity of individual human beings. I will argue that morality is in the end quite amenable to a consequentialist interpretation. Yet Hegel is very insistent on endorsing a claim that the agent’s perspective is essential to moral action, which is a standard claim of deontology. The content of action is essentially tied to the agent’s identification with the content, which Hegel calls “the *right of the subjective will*” (PR §107). The claim contained in this right is that “the will can *recognize* something or *be* something only in so far as that thing is *its own*, in so far as the will is present to itself in it as subjectivity” (PR §107; translation altered). This claim seems to affirm directly the *agential self-sufficiency* claim that I have identified with deontology’s resistance to consequentialism. Yet this strong agent-centered claim stands in tension with the moment of universality that is also essential to “Morality.” Hegel indicates that “Morality” is the realm of the “difference” (PR §108) between subjectivity and objectivity, and between the particular will and the universal concept of the will. Because of this difference, Morality is the domain of requirement and obligation, the domain of a contingent subjectivity that aims to realize necessary universality. We will see that this universality, as the demand to conceive of value in objective terms, ultimately leads in “Morality” to the *Aufhebung* of the *agential self-sufficiency* claim. In Ethical Life, then, the claim will remain in force within circumscribed contexts, but the contexts themselves will limit the reach of the claim.

The conceptions within “Morality” are especially unstable owing to the difference of the particular and universal, of the subjective and objective. The guiding value is at first subjective welfare, but quickly the objective Good comes to the fore; the agent-centered claim for the subjective right of satisfaction quickly becomes a form of self-denial in the service of objective duty. This instability is reflected in the instability of mutual recognition between moral agents (who are essential because of the development of

subjectivity involves the will's relationship to the "will of others" (PR §112)). The trouble with recognition here is that there are no determinate external standards of compliance at this stage, but only general demands and particular purposes. In this situation, "suitable compliance" is not a workable criterion, and thus there is often no clear boundary between honoring and promoting value. Either one stipulates honoring through one's subjective perspective, or one claims to promote value in opposition to the hypocrisy of the particular will that only claims to be moral. Nonetheless, the agent does come to respect others not only in the sense that the individual can be held to standards of responsibility that others recognize, but also in the sense that individuals actually consider the well-being of others as a value that they should realize in their actions.

In the second stage of "Morality," "Intention and Welfare," Hegel thematizes the value of action for an individual. He writes in §122, "This particular aspect gives the action its subjective *value* and *interest* for me. In contrast with this end – i.e. *the intention from the point of view of its content* – the immediate character of the action in its further content is reduced to a means." There is nothing about this subjective value that excludes the action also having an objective value. Hegel emphasizes the subjective character of the content because that moment of particularity distinguishes this moment of (quasi inner) intention from the universal moment emphasized in Abstract Right. It is surely no coincidence that this subjective value and right of satisfaction look like the utilitarian's preference satisfaction. For Hegel this satisfaction is only a moment, but it is an indispensable one that gives a consequentialist turn to the theory of individual agency.

Hegel stresses that subjective and objective ends (content, value) are not mutually exclusive. We should not play them off against each other but rather seek to find the proper way to think through their intersection. After criticizing those who would impugn actions because the individual has some particular interest in it, Hegel writes:

What the subject *is*, is *the series of its actions*. If these are a series of worthless [*wertloser*, "valueless"] productions, then the subjectivity of volition is likewise worthless [*wertlose*]; and conversely, if the series of the individual's deeds are of a substantial nature, then so also is his inner will. (PR §124)²⁰

Hegel is primarily making the point here that value cannot be split between inner intention and outer realization. If it could be split, a will with valuable intentions could be valuable even if those intentions were never realized.

There is also a strong consequentialist thrust in this statement, given that it is the achieved value, the “productions,” that determine the value of the volition. Hegel’s focus in the long elaboration of §124 is on the valuing of particularity that is characteristic of modernity. Modernity has come to recognize the value of particularity, so that a successful romantic marriage and the successful pursuit of a private career are now valued alongside selfless universal ends. Because the ordinary particular actions are substantial, we have no excuse not to realize value in the series of our actions. While this discussion does not raise an honoring/promoting contrast, it does imply that the overall value of our willing is a function of a system of value that can be assessed by others.

The consequentialist structure that I have identified as the heart of the practical dialectic is evident in the transition from “welfare” (the individual’s particular interests taken as a whole) to what he calls “the Good.” The transition begins with a claim that seems to go directly against the consequentialist: “an intention to promote my welfare and that of others – and in the latter case in particular it is called a *moral intention* – cannot justify an *action which is wrong*” (PR §126).²¹ Hegel seems to have in mind stealing to help the poor, and he is especially critical of the glorification of the robber’s supposedly just motives against the injustice of society. Despite these reservations, Hegel does support the “right of necessity,” the right to steal when one’s own life is threatened. In that case there is a real collision between Abstract Right and Welfare, with the higher value of life/welfare taking precedence. In this case the value of life, all of one’s freedom, takes precedence over the relative value of a property right. There is a failure of recognition in the standoff between the starving poor claiming the right to welfare and the rich demanding absolute property rights. This is also a right that *should not need to be exercised*, and the integration of the success conditions of Abstract Right and Welfare is the next move, designed to find a stable way to promote the previous rights.

The lesson that Hegel draws from the right of necessity is that we need to overcome “the finitude and hence the contingency of both right and welfare” (PR §128). If we think of right and welfare as corresponding to the key categories of deontology and the utilitarian version of consequentialism, respectively, the lesson in this transition is that both categories are insufficient as criteria for evaluating individual actions. Without some set of objective conditions in the world to secure the “suitable compliance,” we are left with a right of necessity that is a violation of Abstract Right in the service

of “personal existence as *life*” (PR §127). The consequentialist character of this comes out in that both rights are expressions of the value of freedom, so the right of necessity is a violation of freedom in the service of freedom. There is “an injury only to an individual and limited existence of freedom” (PR §127) in the service of preserving the very life of the particular free individual.

Hegel’s conception of “the Good” sets a goal for the objective conditions of compliance. It is in effect a consequentialization of the previous moments of right, including them all in a kind of super-purpose that structures the ethical world. Hegel writes:

The *Good* is the *Idea*, as the unity of the *Concept* of the will and the *particular* will, in which Abstract Right, welfare, the subjectivity of knowing, and the contingency of external existence, as *self-sufficient for themselves*, are superseded; but they are at the same time *essentially contained* and *preserved* within it. – [The Good is] *realized freedom, the absolute and ultimate end of the world.* (PR §129)

The moments of universality and particularity are integrated here as the complete or final purpose of the world. Initially this purpose is just an abstract demand for integration of the previous moments so that they do not stand in a contingent relation to each other, so that each is not promoted at the expense of the other. Hegel emphasizes the need to overcome the previous tension in writing, “welfare is not a good without *right*. Similarly, right is not the good without welfare (*fiat iustitia* should not have *pererat mundus* as its consequence)” (PR §130). The wording here – “right is not the good” – shows that Hegel holds that all rights, including those in Abstract Right, can be reformulated in terms of value.

We should ask at this point, does the Good as the final purpose of the world institute a criterion that says that an action is right if and only if it promotes the Good as much as or more than any other available option? The answer to this question is yes, but given the expansive and abstract account of the Good, it is not clear that the Good is a meaningful criterion for action that would let us claim that Hegel is a bona fide consequentialist. Some consequentialists, such as Pettit, believe that a theory is consequentialist only if it determines rightness as the promotion of *neutral* value. But it is hard to see Hegel, at least at this point, distinguishing sharply between neutral and relative value, given that he includes within the Good the moment of “the contingency of external existence” (PR §129). More

generally, this conception of the Good does not give us a genuinely action-guiding criterion for determining which options are right in cases where values conflict. Hegel simply says that they do not conflict, or they should not conflict, but there is no clear weighting available for actually evaluating options. There is only the Good as a general purpose to stand as the major premise in the practical syllogism. Just which action falls in the minor premise as *the* good action is not something we can learn from the abstract formulation of the solution. Hegel is aware of these problems, and thus turns to the concept of conscience to examine the function of practical judgment in actualizing the Good.

6

The Good arises within Morality, and thus at the level of the subjective will. The will remains in the standpoint of “difference,” so that the individual will is not necessarily identical with the Good, but *relates* to the Good through duty or ought. Hegel presents the abstractness of the Good as leaving the individual with simply two universal duties: “all that is available so far is this: to do *right*, and to promote *welfare*, one’s own welfare and welfare in its universal determination, the welfare of others” (PR §134). In one sense this is just a repetition at a higher level of the split between deontological abstract right and utilitarian welfare. Hegel has now raised these categories to a universal and objective determination, so that they hold reciprocally between all agents and so that each individual must incorporate the right and welfare of all into her projects. But the main questions about how to reconcile the two types of claims, and how to specify them, appear to be left unanswered. Immediately following the statement of “all that is available” comes Hegel’s rejection of the Kantian formula of universality as a possible criterion. He then introduces conscience as the moment of particularity, “the determining and decisive factor” (PR §136). Conscience and integrity are usually associated with deontology, but here Hegel seems to be turning away from Kantian deontology to give to conscience the role of assessing a particular action as the realization of the Good. Does *that* assessment or judgment determine an action as right through the expected consequences?

The *Philosophy of Right* does a very poor job of expressing Hegel’s full view of conscience. The condensed presentation of the individual’s deliberative activity and the misleading contrast of formal and true conscience (in PR §137) conceal the import and complexity of conscience’s role. For a fuller

view we need to look at the *Phenomenology* discussion of conscience.²² In the presentation of the “Concept” of conscience in the *Phenomenology*, the shape of spirit defined by the community of conscientious individuals, Hegel stresses the *actuality* of this agency by contrast to the *emptiness* of the previous deontological shapes. He writes: “First as conscience does it [the self] have in its *self-certainty the content* for the previously empty duty, as also for the empty right and the empty universal will; and because this self-certainty is at the same time the *immediate*, it is the definite existence itself” (PS ¶633).²³

The deontological “selves” that Hegel presented earlier in the “Spirit” chapter find the key condition of their realization in the individual of conscience. The agency of conscience integrates the particular and universal moments, so conscience does not sacrifice difference, or definite existence (*Dasein*), in determining what is right. By insisting on a standard of universality, or intrinsic rightness, at the expense of particularity or first-order value, the previous shapes had self-destructed. The agent of conscience achieves value by acting on a specific purpose with which he identifies in a distinctive first-person way. That identification itself has value as the formal expression of freedom (as a second-order value). Crucially, this expression is now compatible with particularity, or with determinate ethical purposes.

In the *Phenomenology* Hegel also writes that conscience, in contrast to the Kantian moral worldview, contains the moment of mutual recognition. This surprising assumption, along with the dialectic that ensues, casts a good deal of light on the transition from conscience to ethical life in the *Philosophy of Right*. The abstract recognition of the deontological selves can be aligned with a roughly deontological picture of intrinsic rightness as a mode of treating each other. But that is a picture of *direct* mutual recognition, while conscience involves a picture of *indirect* recognition that sees the value of one’s actions as the medium through which recognition takes place. Hegel writes:

The action is recognized and thereby made actual because the definitely existent [*daseiende*] actuality is immediately linked with the belief or with the knowledge; or, in other words, the knowing of one’s purpose is immediately the element of definite existence, universal recognition. Because the essence of the action, the duty, consists in the *belief* of conscience that it is such; this belief is just the *in-itself* itself; it is the *in-itself universal self-consciousness*, or the *being recognized*, and hence actuality. (PS ¶640)²⁴

The purpose is recognized because it expresses value that others will recognize, and in conscience I know that the action with which I identify is also the one that others will understand as best realizing the Good. I have internalized their perspective, so that my own belief in the rightness of my action will reflect the fact that objective value has been optimized.

Conscience, as the individual honoring value in determinate situations, functions well when we presuppose that there is agreement on what purposes are valuable. But when the terms of recognition or compliance become unstable (i.e., when we remove the presupposition) a normative burden is placed on the individual agent that he does not have the resources to bear. The problems that Hegel analyzes with conscience count against both deontological and consequentialist readings of the individual's authority, though the biggest target turns out to be the agential self-sufficiency claim.

In the passage that most directly calls to mind consequentialist considerations, Hegel writes that conscience cannot in fact claim to be acting on knowledge of a universal, for the reality known in action "is a plurality of circumstances which breaks up and spreads out endlessly in all directions, backwards into their conditions, sideways into their connections, forwards in their consequences" (PS ¶642). In order to act, the agent of conscience cuts off consideration of the consequences and *honors* value in the way it best sees fit. But to others the agent seems to be *promoting what he values* at the expense of honoring other values. Hegel thus writes of an example in which the individual increases his property out of a sense of duty, "what others call violence and wrongdoing, is the fulfillment of the individual's duty to maintain his independence in the face of others" (PS ¶644). The individual refers to his belief in the rightness of his deed, where this has to be seen as a strongly deontological claim of honoring value and claiming agential self-sufficiency. In one sense the individual's reliance on his belief is a necessary aspect of living a moral life, and given modern moral complexity an individual will often have to make what we refer to as "judgment calls." Yet without any reliable terms of compliance, other agents will not see that the right value is being honored, and they can make a good *prima facie* case that the individual should have acted differently. They may try to one-sidedly assert the universal common good *against* the individual's claim of conscience. In response, Hegel claims that the one-sided assertion of the universal *unproductively* dishonors the value of conscience itself.

In the full breakdown of compliance, of unanimity on what counts as honoring value, the agent of conscience comes to take his own particularity as the value to be promoted in action. This is the source of Hegel's

complaints about the subjectivism of modern practical reason. These complaints count more against deontology than against consequentialism, given the classic deontologist's emphasis on the agent relative (rather than on the neutral value realized in action). But they also count against a conception of consequentialism that would put the responsibility for determining what is right entirely on the individual deliberator. Not only is calculating *all* the consequences too complex even if we agreed on the weighting given to different values, but that weighting itself is also a matter of reasonable disagreement. It is an illusion to think that an individual can establish a uniquely correct ordering of value in every situation.

The transition to Ethical Life reenacts the basic move from individual welfare to the Good. Ethical Life is "the living Good" in which the individual's conscience is incorporated into an objective structure of value. This move does not eliminate the need for individuals to deliberate for themselves, but it does transfer the burden of justification and value promotion from the moral individual to the ethical contexts of action. The dialectic of conscience essentially places a demand on ethical contexts such that the individual can honor what she takes to be right. The individual is not (normally) forced to choose between honoring accepted norms and promoting the value of freedom (through thematizing her own subjectivity) because there is a new kind of agency, institutional agency, that is given the consequentialist task of promoting value.

7

In this concluding treatment of "Ethical Life" I will sketch Hegel's conception of normal ethical agency and the role that institutions play in the realization of value. Ethical Life is a system of value with institutional and individual sides. The individual side of this system is in one sense "ruled" by the institutional side. This is a feature of Ethical Life that runs counter to the *agential self-sufficiency* requirement and that thus runs counter to a deontological reading of Hegel's ethics. This relation is captured in Hegel's claim about "the *ethical powers* which govern the lives of individuals" (PR §145). These powers are values (or value spheres) that were represented in the ancient world "as gods who have being in and for themselves" (PR §145A). In operationalizing the values, institutions are responsible for promoting value, and thus they have a largely consequentialist character. This is not to say that all the actions of institutions are evaluated through a calculation of

expected consequences, let alone utility, but there is a marked focus on the overall achievement of the Good. Even in the justice system, where we might expect Hegel to be the most unyielding in an insistence on the strict right being carried out, he shows a surprising willingness to make the system of punishments flexible depending on the consequences for social order.²⁵

Ethical *individuals* are in the position of honoring their gods, which means honoring/instantiating the relevant institutional values. Ethical Life assumes full compliance from individuals, so normally there is no need for individuals to promote value instead of honoring it. In these contexts, to honor or instantiate the value *is* to promote it, for other individuals recognize my actions and I recognize theirs as instantiating the institution's values. For an agent in a normal ethical action, there is no responsibility to go above and beyond doing what is right according to that normal context. The *sufficiency of honoring value* claim holds for individuals. This deontological characterization might seem to run counter to Hegel's claim that Ethical Life gives us an account of "necessary relations" rather than moral duties. But in that same passage he also writes that he is leaving behind an account of duties that "adduce[s] the further consequences which this duty may have with reference to other ethical relations and to welfare and opinion" (*PR* §148). This restriction of the case of action to the normal context rules out a strong promoting element to guide *individual* actions in Ethical Life. Individual agency is also deontological because there is a (limited) sense of *agential self-sufficiency* that is preserved at this level. The family and civil society, in particular, are structured by the modern conception of freedom so as to give a central place to individual self-directedness/independence. The institutions that "rule" the individuals also enable them to direct their own lives and thus to have a sphere of freedom *from* direct institutional control.

Since the institutions of Ethical Life are contexts of suitable compliance, it might seem that we should also conceive of the actions of institutions themselves as honoring rather than promoting value. Part of the problem here is that an institution as a whole is not defined by a single value or action. Insofar as it has the task of *maintaining* the whole structure of value within the institution, it could be seen *to that extent* as honoring the values. But along with maintaining the structure, the institutions are also responsive to changes in self-understandings that disrupt the structure. At the institutional level agency must therefore be seen as promoting the underlying values of the institutions when it comes to new developments. To take the somewhat non-standard case of family and marriage (where unlike in civil society or the state the institution itself has no official representative), if the underlying values

are those of love, intimate household community, independent well-functioning children, etc., these values would be promoted rather than simply honored in the case where existing law is changed to allow for new family configurations. Though the impetus for such change is sometimes seen as coming from deontological questions of justice, the Hegelian view would be that such changes are right insofar as the purposes or values characteristic of the institution are promoted thereby. That is, we evaluate those changes as justified based on the overall consequences (in terms of the relevant values) that result from the changes. At the moment of their inception these changes may appear to some as dishonoring the values because the promotion does perturb existing practice (think of those who object to gay marriage).

The payoff of the two-level dynamics in Ethical Life can be seen in the way in which this picture satisfies the intuitions behind consequentialism and deontology that I outlined in section 1. On the consequentialist side, the intuitions are that ethical action serves the greater overall value and that there is a system of value that determines what actions are best. In the two-level approach, the greatest overall value is realized in the actions on first-order values that are close to home (especially those of the family and professional life) in part because individuals are motivated to energetically pursue goals, to realize value, when that value is their *own* family, honor, and economic well-being. Ethical action is thus guided by a system of value, but one which puts a premium on individual satisfaction, or on the particularity so essential to modern institutions. By what Hegel calls the cunning of reason, and by the self-conscious direction of the institutional authorities, individual actions that seem to be oriented by the particular good of individual agents and families also conduce to the greatest overall good.

On the deontological side there is the intuition that objective value is too theoretical a consideration to guide an agent's willing, and the intuition that good overall consequences cannot make an inherently wrong action right. On the first intuition about objective value, it is important to understand that value, mutual recognition, and first-person belief all go together in a single package for Hegel. A society's values are shaped and reshaped through processes of recognition, direct and indirect, and through the practice of modern conscience as the right to act on one's conviction. Determinate first-order values are hardly the philosopher's invention, though perhaps it is true that individuals have a much more inchoate sense of their realization of value than we represent when we theorize ethical action. The second-order valuing that deontologists prize can also be considered part of the

objectively good without a mystifying metaphysical conception of the nature of such value.

On the second deontological intuition, we have seen that Hegel too thinks that right is right, apart from individual calculation of the consequences. But it is on this question of the finality of the deontological right that the trickiest issues arise for whether all these intuitions can be packed into a single theory. Hegel does not think that the law can command individuals how to think morally²⁶ and he admits that conscience may be the best guide when the external ethical world is morally bankrupt, so it would seem that consequentialist claims at the institutional level cannot override the individual's conviction about what is inherently right. On the other hand, Hegel puts the authority to override limited right in the hands of the state. Finally, Hegel is an amoralist in a certain sense when it comes to world history. It is a complex question, and one that cannot be treated here, whether Hegel takes this view of world history on consequentialist grounds, looking to the greater good that can be opened up by new world-historical figures who do not honor existing norms but rather promote emerging value.

The two-level structure that I have presented in this paper will no doubt remind some readers of the structure of rule consequentialism, and so a few words of comparison are in order here. In rule consequentialism the rules are assessed in terms of consequences, while individual action is assessed in terms of rules. In *Ethical Life* as I have presented it, the institutions are assessed in terms of consequences and individual action is assessed largely in terms of how well it fits the institutional norms. Despite this structural similarity, the comparison is in fact quite misleading. We can see this if we consider that rule consequentialism often goes with the thought that consequentialism is "self-effacing." This is the idea that although consequentialism may be true as a matter of philosophy, of theory, it would lead to worse outcomes if consciously pursued by agents themselves. Rule consequentialism builds this fact into the theory, having agents act on rules (full stop) while justifying the rules through the consequences. Turning to Hegel's individuals and institutions, we see that there is no such problem in the relations of individuals and institutions to value. There is no real tension here between following rules and maximizing consequences, for the individual acts or purposes that are nested within the overall purposes of the institutions. The same values justify both actions, so that there is not the same kind of disconnect between rules and consequences as there is on the rule-consequentialist picture. The trick to Hegel's two-level structure is that the individual can honor the values through particular objects of concern and

(relatively) fixed duties, while institutions can promote the values in a way that is responsive to consequentialist considerations. Because everything is done in terms of purposes, even though the agent's actions are (usually) at one remove from the aims of the institution, the two levels of justification are naturally interlocking.²⁷ Though it is not the norm, agents can even take as their primary reason for action the value-promotion structure of the institution itself. One can stay married, for instance, because one thinks of the institution of marriage as promoting certain values, and one wants to support the institution. We hope that this is not the main reason that one acts on in one's marriage, but there is no pressure to *exclude* it from deliberation. There is no pressure parallel to that on the agent of rule consequentialism who must exclude the consequentialist element from his deliberations.

Can we say, finally, that Hegel is a consequentialist *or* a deontologist? No, in the end we have to say that he is both. I have argued, however, that the consequentialist dimension does have a certain priority within the *Philosophy of Right*. The first step in that argument was to show how the rational will realizes first-order value in material practical inferences. The basic legal conditions for that realization of value are deontological, and are based in abstract universal recognition. But we have seen that starting with the discussion of value at the end of *Abstract Right*, the aspects of value promoting and value honoring both have prominent roles. The transitions between the stages of right are consequentialist in their use of limited negation in the service of greater, more comprehensive value. With the transition to the Good itself Hegel puts his teleological cards on the table, and the transition to Ethical Life is an attempt to incorporate our deontological intuitions about second-order value within an institutional structure oriented by consequences. It should be clear from what we have seen that freedom for Hegel is a very protean value, coming in first- and second-order versions and always eluding our grasp when we try to catch it directly. Freedom is constantly in development, and though we know that it is working through us toward realization, we should not be so sure that we know what that development will mean before it actually happens.

Notes

1. Without an independent definition of the Good prior to the right, we would be "unable to avoid labeling as consequentialist the deontological theorist who says that the right thing for an agent to do is bring about the best state of affairs

that he can, where the best state of affairs always consists in the agent's doing his duty, which in turn consists in his performing tokens of act types that are intrinsically right and refraining from performing tokens of act types that are intrinsically wrong" (Shaw 2006: 7).

2. Fairly categorizing Kant's own theory is no simple task. I am deeply sympathetic to the project among some Kantian ethicists of the past 30 years that have put Kant's account of value at the forefront. I have been especially influenced by Herman 1993.
3. Philip Pettit makes this point especially clearly (Baron et al. 1997: 136, 140).
4. The characterizations in this paragraph draw on Pettit's discussion in Baron et al. 1997. I engage more closely with Pettit's position in section 4.
5. I have addressed this in Moyar 2010.
6. See Smart's comments in Smart and Williams 1973: 10.
7. Value, and in particular the value of freedom, is often invoked in the literature on Hegel's ethics, but to my knowledge there is little to no agreement about how to work out the details of his theory of value.
8. Citations from Hegel's *Philosophy of Right* (*PR*) using § refer to the section numbers. I have used Hegel 1991 as the basis for the English translations.
9. Brandom explicitly links his inferentialism to Hegel's own doctrine of the inference, so in one sense there is no need to argue for the relevance of Brandom's theory to Hegel's project (the case of Sellars is more complicated).
10. It is not my aim here to develop this distinction in detail, but rather to give a general picture of how to think of value on Hegel's picture. There are admittedly problems with the addition and multiplication models, but they do give us a good first gloss on two one-sided moments of the concept.
11. Hegel states quite clearly in the 1819–1820 lectures on the philosophy of right that this three-part structure is the structure of the inference. "1. Allgemeinheit, 2. Besonderheit, 3. Einzelheit. Diese Totalität des Begriffs, Subjektivität, alles Vernunftige ist der Schluss" (Hegel 1983: 61).
12. This is the same point that Hegel makes in reference to marriage in *PR* §168.
13. See Siep 1979; Williams 1992, 1997; and Pippin 2000.
14. This phrase has come into currency in connection with Hegel through Brandom 1994.
15. I go into this distinction in much more detail in Moyar 2011: ch. 5.
16. The Wallace and Miller translation of the *Philosophy of Spirit* (Hegel 1971) inexplicably leaves out "of the *substance*," an omission that has contributed to the oversight of the crucial connection of recognition and substance for Hegel.
17. I am not saying that the category of substance in general should be read in terms of value, but that when substance is used in an ethical context Hegel is referring to objective value. There are many complicated issues here, and I will only say that substance and value as I read them here are *functional* concepts, and that they do not introduce any metaphysically "queer" entities into the world.

18. This is best illustrated by Hegel's depiction of the Roman world in the *Phenomenology*; see Moyar 2007a for a discussion.
19. See Honneth 1996: ch. 2 for an excellent discussion of this theme in Hegel's pre-*Phenomenology* writings.
20. In this opposition of valueless and substantial we have one important piece of evidence that value and substance are closely related in the ethical sphere.
21. I should note, lest it draw undue attention, that there is no word in the original German corresponding to "promote."
22. The *Science of Logic* also contains a crucial discussion; see Moyar 2007b.
23. All citations using ¶ refer to the paragraph numbers in Miller's translation of Hegel's *Phenomenology of Spirit* (Hegel 1977).
24. I analyze this passage in much more detail in Moyar 2011: ch. 1.
25. I have in mind the discussion at *PR* §218.
26. I am referring to the claim that Hegel makes in *PR* §213.
27. The institutions can adjust according to the changes in practice at the individual level without that forcing a collapse between the two levels (as in the argument against rule consequentialism).

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