

Hegel and Human Rights: The Dialectic of Freedom

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By

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## ABSTRACT

In the present work, I argue that there is a crisis in the realm of human rights theory. Namely, how can we achieve a rationally justified account of human rights without abstracting away from all the important, particular features that constitute our various identities as human beings? It is my argument that current theoretical approaches to human rights contribute to the problem of alienation in rights-based societies, and fall short of practicability in other societies due to an insufficient understanding of human subjectivity and freedom. One solution to this difficulty, I argue, can be found in philosophical perspective of G.W.F. Hegel. Hegel's unique dialectical understanding of human subjectivity and freedom allows us to focus on the "human side" of human rights, ultimately developing an account which incorporates the strongest points of current human rights theories while avoiding their problematic consequences. Through this Hegelian analysis, we will see that while human rights are grounded in freedom, this freedom requires a social community in which it can be realized. In other words, we must acknowledge that society and the individual are mutually constitutive and for human rights to be more than just empty formalisms, there needs to be certain societal and institutional structures which are conducive to their actualization.

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## Introduction

The primary purpose of this work is to answer two questions: first of all, are human rights justifiable philosophically? And if so, what provides their philosophical foundation? The second question this work seeks to answer is of a somewhat more practical and political nature; namely, what do we mean by “human rights,” and what exactly is practically entailed by the concept? This second inquiry revolves around the perennial criticism of the disparity between theory and practice. In other words, while all of the philosophical discussion in the first section is interesting in an abstract way, how does any of that theoretical discussion play out in the “real world”? In addition to these two questions this work has been deeply motivated by the problems of atomism and alienation prevalent in rights-oriented societies. What I mean by this is that even where human rights have been successfully argued for and implemented, they often sacrifice integral aspects of a fully developed human life insofar as these “human rights” emphasize the abstract over the concrete, the legalistic over the moral, and the individual over the community. However, it is my argument here that such alienation and atomism need not be necessarily entailed by the adoption of a system of human rights<sup>1</sup>. Rather, alienation and isolation result from a particular conceptualization of the human subjectivity which fails to comprehend the essentially intersubjective nature of human consciousness. Thus, I argue, by shifting our philosophical conceptualization of human

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<sup>1</sup> I am greatly indebted to the work of Charles Taylor for my much of my diagnosis of the problem of atomism in contemporary, liberal societies, as well as my understanding that Hegel’s philosophy provides a possible counterpoint to such alienation and atomism. Specifically, I have been influenced by Taylor’s *Hegel* (New York, NY: Cambridge University Press, 1975); *Hegel and Modern Society* (New York, NY: Cambridge University Press, 1979); and *The Malaise of Modernity* (Toronto, ON: House of Anansi Press Limited, 1991).

rights to one that is based upon a more fully-developed account of human subjectivity we can have human rights that allow for a less alienated, more integrated society.

As one has presumably inferred from the title of this work, my argument is that the philosophical perspective of G.W.F. Hegel provides us with a rational and sound philosophical justification for human rights. Also implied by the title is my argument that this justification depends upon Hegel's unique dialectical understanding of human freedom. It is my aim to demonstrate, through an analysis of Hegel's concept of human subjectivity and freedom, that human rights can indeed be rationally justified, and additionally, to show precisely what such a Hegelian understanding of human rights would look like upon practical implementation. Given the pre-eminence of Hegel's social and political thought, it is very surprising that little study has been devoted to his philosophy vis-à-vis human rights. The philosopher Steven B. Smith has written an excellent book on Hegel's criticisms of liberalism<sup>2</sup> in which he also discusses some of Hegel's views on rights. A recently released work on the philosophy of human rights by Clark Butler -- a Hegel scholar -- makes some interesting points on the issue from a Hegelian perspective<sup>3</sup>. Furthermore, there have been several scholarly articles pertaining to issues of relevance to formulating a Hegelian view of rights<sup>4</sup>. However, these useful contributions are few and far between amongst the plethora of Hegel literature available and by no means comprise what could be called a definitive account of Hegel's standpoint on human rights. While it is not my intention to give a definitive account of

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<sup>2</sup> Steven B. Smith, *Hegel's Critique of Liberalism* (Chicago, IL: The University of Chicago Press, 1989).

<sup>3</sup> Clark Butler, *Human Rights Ethics: A Rational Approach* (West Lafayette, IN: Purdue University Press, 2008).

<sup>4</sup> Notably Donald J. Maletz, "Hegel on Right as Actualized Will," *Political Theory*, Vol. 17, No.1 (1989); Steven B. Smith, "What is "Right" in Hegel's *Philosophy of Right*?" *The American Political Science Review*, Vol. 83, No.1 (1989); Peter G. Stillman, "Hegel's Civil Society: a Locus of Freedom," *Polity*, Vol. 12, No.4 (1980).

Hegel's theory of human rights here, I nonetheless will argue that a case could be made that Hegel indeed supports the concept of human rights. My intention here, rather, is to use Hegel's philosophical perspective to reconceptualize what we mean by human rights in the hope of rationally justifying the concept while simultaneously shifting it to more adequately represent the richness of human experience.

Much as in Hegel's introduction to his *Philosophy of History* where he demarcates the boundaries between political history and philosophical history, here too we must make clear what is meant by a *philosophy* of human rights and how this particular endeavor differs from historical or legal analysis. What then is a philosophy of human rights exactly? As David Boersema argues in the introduction to his *Philosophy of Human Rights*, philosophical investigation into human rights goes beyond the facts and what is the case. It deals with more than just description; it involves prescription or a normative discussion about what *should* be the case<sup>5</sup>.

As hinted at above, the success of this project -- and of the amelioration of what I have called the alienating effects of current human rights regimes -- is hinged ultimately upon the validity of the notion that philosophical analyses can impact existing social and political reality. It is therefore important to recognize that philosophical investigation into the concept of human rights is not a "merely speculative" activity with little, if any, practical value; on the contrary, human rights are philosophical notions and by thinking critically about their foundations (i.e., which claims can be justified, what duties are entailed by certain rights, and so forth) we can effect real change in the world. For example, every time we vote, support a charity, volunteer, or engage in any other

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<sup>5</sup> David Boersema, *Philosophy of Human Rights* (Boulder, CO: Westview Press, 2011), 4.



politically effective action, we are acting upon certain beliefs and assumptions about what moral and legal rights exist, what duties we have to others, and why it is that we have these duties. Thus, by beginning to examine these underlying motivating beliefs and assumptions, we gain not only self-knowledge and conceptual clarity, but hopefully rational insight into prominent foundational political and moral issues as well; all of which ultimately inform us and allow us to make more just decisions as moral agents in the real world.

In short, I argue that by utilizing concepts and perspectives from Hegel's philosophy we can philosophically ground a theory of rational and realistic human rights without falling victim to the atomistic propensity of rights-based cultures. Through the recognition of both the rational necessity of individual human freedom and, simultaneously, the inextricably social nature of human subjectivity, Hegel's philosophical outlook allows us to develop a theory of human rights that places a distinct emphasis on the "human" aspect, insofar as humans are embodied, social beings living in communities, not abstract, disembodied rational entities. While this argument draws significantly on the philosophy of Hegel, it is by no means an attempt to definitely lay out what Hegel really said about human rights. Rather, it is an attempt to employ Hegel's unique dialectical understanding of human subjectivity and freedom in order to formulate a useful and interesting theory of human rights. Furthermore, while I argue at several points that Hegel has been unfairly categorized as a totalitarian enemy of freedom, the validity of my argument is in no way predicated upon the reader's acceptance of my

defense of Hegel in this respect<sup>6</sup>. Lastly, there are several important departures from Hegel's philosophical perspective which contribute to the result of this being a "Hegelian" account rather than Hegel's account. Notably, I interpret Hegel's notion of substantial freedom in terms of Martha Nussbaum's idea of human capabilities. I argue that a Hegelian understanding of human rights rooted in freedom, where freedom is understood in a more positive way, would entail greater democratic participation resulting in control of the framing conditions which ultimately shape the lived experiences and daily choices of individual citizens. While it is questionable, perhaps even dubious, that Hegel himself would endorse such a "capabilities" approach to understanding rights, it is nevertheless an argument which I find compelling and compatible with Hegel's understanding of freedom as well as the dialectical nature of history.

The structure of our investigation is the following. Chapter 1 begins our analysis with an investigation into the concept of human rights. If we are to have a properly philosophical discussion about the foundations and practical components of human rights, it is essential that there is as little conceptual ambiguity as possible regarding the meaning of the term. Elements to be analyzed will include: the nature of human rights; the unique position of human rights; and whether or not human rights can be justified. In terms of whether or not human rights can be justified philosophically, we will give an overview of several main theories that have been offered up as a possible theoretical basis

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<sup>6</sup> This is the case because, while I indeed draw upon aspects of Hegel's philosophy -- particularly his ideas regarding the nature of human subjectivity -- I am employing these ideas in an effort to more fully comprehend a rational system of human rights rather than making the argument that Hegel's system of philosophy itself is alone sufficient to ground a theory of human rights.

for human rights and argue that, ultimately, none of these theories in themselves succeed in adequately providing a rational justification for the concept of human rights.

Following this, it will be argued that there is a crisis in human rights theory. Namely, this crisis is comprised of two main problems: first, while human rights are commonly held to be important political goals in the public sphere, their philosophical foundations are by no means secure; secondly, there is the problem of how exactly a theory of universal human rights could realistically be implemented in various cultural settings. However, while there is indeed a crisis in human rights theory today, we will argue that this crisis does not warrant abandoning the project of formulating a legitimate justificatory theory for human rights, but rather demands a fresh philosophical perspective from which to approach this apparent *aporia*, a perspective found in the writings of G.W.F. Hegel<sup>7</sup>.

Chapter 2 begins with an argument for the importance of Hegel's thought for human rights theory, based primarily on his dialectical method of analysis, and how his perspective allows us to shift our focus to the "human" side of human rights. In an attempt to seek the foundations of human rights in the essence of human subjectivity, the chapter then turns to an analysis of Hegel's investigation into the nature of the self as articulated in his *Phenomenology of Spirit*. We conclude with the postulation -- drawing on our analysis of Hegel's *Phenomenology* -- that the very nature of human subjectivity is freedom and that the dawning of freedom -- and therefore, humanity -- is a necessarily intersubjective phenomenon. In conclusion then, chapter 2 argues that by utilizing a

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<sup>7</sup> It is important to note here that my presentation of a Hegelian solution to problems of human rights theoretical foundations and implementation by no means excludes the possibility of alternative theoretical solutions.

Hegelian framework, we can successfully argue for a rational foundation for human rights based upon the intersubjective nature of humans. However, a Hegelian perspective by no means allow us to justify an extensive list of particular human rights, but rather only the key human right of freedom.

Although we discover that human beings must necessarily be free and that this freedom requires the recognition of other subjectivities, this leaves us with the question of what is meant by the somewhat nebulous concept of “freedom” in Hegel<sup>8</sup>. Thus, chapter 3 endeavors to uncover the meaning of freedom for Hegel and how his concept of freedom differs from various other philosophical interpretations of the notion. It is argued that Hegel’s “dialectical”<sup>9</sup> understanding of freedom -- which emphasizes the social basis of autonomy, living within a community with rational institutions -- allows us to go beyond the atomistic visions of people in society put forward by some alternative “negative” conceptions of liberty.

Finally, chapter 4 explores the practical implications of a Hegelian theory of human rights. I will argue that the preceding arguments warrant a reconceptualization of how we understand human rights; a move away from contractarian theories that emphasize legalistic individualism, to a more concrete perspective focusing on the moral,

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<sup>8</sup> We will see that Hegel’s understanding of freedom was already implicit in his *Phenomenology* insofar as freedom, for Hegel, ends up being a type of autonomy rooted in social relations. This point is essentially the main argument made in the first chapters of the *Phenomenology* dealing with human subjectivity.

<sup>9</sup> Perhaps it would be useful to include here a brief overview of what makes Hegel’s view of freedom “dialectical”. Dialectic can be understood as a philosophical perspective that challenges traditional conceptions of knowledge that assume reality to be static. Dialectical reason encourages us to look beyond the mere appearance of facts towards the contextual framework of antagonistic relations which gives the present appearance of identity its perceived meaning. In the realm of freedom, dialectical reason demonstrates that freedom is not *just* absence of constraint nor is it *just* acting in accordance with laws; rather, both of these types of freedom will ultimately be part of the true concept of freedom which incorporates both perspectives while avoiding the contradictions entailed by adopting either view exclusively.

relational aspect of human rights. This alternative conceptualization will draw on the work of Aristotle, Martha Nussbaum, and Thomas Pogge, arguing that human rights could more usefully be implemented in various cultural contexts in order to create just societies if emphasis was put on concrete “capabilities” provided by social and political institutions that would allow human beings to be free -- in the Hegelian sense -- to achieve their particular idea of the good life. We will close the chapter with a brief look at some of the criticisms that have been directed towards human rights generally. These worries, primarily regarding the imposition of hegemonic ideologies and grand narratives to the detriment of other cultures or particular individuals, will be shown to be unfounded once we have reconceptualized human rights according to the Hegelian principles outlined above.

## Chapter 1: The Concept of Human Rights

### 1.1 Introduction

As stated in the introduction, what makes an inquiry into human rights philosophical is the normative, rather than purely descriptive, nature of the inquiry. Rather than just looking at the historical development of rights documents or the particular statutes that exist in the constitutions and bills of rights of various nations – although, we will see that to a certain extent, analysis of these factors can be philosophically fruitful – we ask more conceptual questions. Can human rights be justified? From where do they derive their justification? Who are the subjects of human rights? In fact, I argue that what makes an analysis of human rights philosophical is its *negative* character. By “negative” I mean -- in the Hegelian sense -- that the goal is to go beyond current understandings, to “negate” present static concepts by questioning their underlying presuppositions about the way the world is, who we are as humans and how we relate to each other. The point is to “negate” or to go beyond that which is immediately before us, in order to conceive of the world in a more rational way.

If any philosophical investigation is to be fruitful, conceptual clarity is of the utmost importance. In this first chapter, I want to look at what is generally meant by “human rights.” By gaining insight into the nature of the concept, it will be easier for us to develop a more rigorous philosophical account in the following chapters.

## 1.2 What are “Rights”?

There is a certain “everydayness” about the idea of rights which makes them particularly difficult to define. The idea of “having rights” seems to be something that we take for granted; talk of rights, whether in political or legal contexts, is commonplace on the internet, television, radio, and within social conversations at work and other places. And yet, despite the ubiquitous usage and ostensible familiarity with the concept of “rights,” it is by no means easy to provide a clear articulation of what precisely rights are.

Let us endeavor to make explicit as possible what we mean when we refer to “rights.” Perhaps the most obvious point, and thus a fruitful point of departure for this analysis, is the fact that rights are something we -- as individuals or possibly groups -- *have*. That is to say, there is always a *subject* of rights. Related to this notion, is the fact that there is always an *object* of rights; one cannot just have a right, rights are always rights *to something*. However, what exactly is the function of this “right” that we have? For example, if I have a right to a particular item of property, what does this really mean? A useful way to answer this question is to think about how rights function within legal systems. When someone infringes upon my right by, for example, stealing some of my property, I make a claim in court and the court would presumably punish the perpetrator. Implicit in this is yet another essential aspect of rights: they are always claims made *against* someone, be it a person or an institution. In other words, my right to property entails correlative duties of others, for instance, to not interfere with my property. My right, then, is essentially a claim that can be, or could be, enforced. This claim, however,

must derive justification from somewhere. What gives my claim to ownership of the – allegedly – stolen property any force? When it comes to property rights and the like, the legal justification for the claim derives from the existence of legal statutes and legally sanctioned, binding contracts. In summary then, rights are a claim, possessed by someone, to something, with correlative duties -- that is, rights are essentially *relational* -- that primarily derive their legal justification from existing statutes and contracts which hold weight within particular courts of law.

However, if rights derive their justification solely from existing legal statutes and contracts, then how can we argue for the existence of rights which presently are not codified in existing law? In other words, how do human rights fit in with this legal conception of rights? This problem can be resolved if we understand that human rights are not only legal claims, they are moral claims as well. That is to say, the existence of human rights is not contingent upon their actual legal codification -- in the way that particular traffic laws are -- but rather, their existence is also predicated upon a “higher” moral justification. This dual nature of human rights, their legal as well as moral nature, is part of what makes them a special case.

### **1.3 What is Special about “Human Rights”?**

When someone claims that a human rights violation has taken place, it is not always the case that a particular existing law of the country in which the alleged violation took place has been broken. Rather, the person making the claim is declaring that someone’s *moral* right has been violated. While some human rights are indeed



constitutionally entrenched or otherwise legally guaranteed and, therefore, legal rights in certain countries, many countries do not have such legal rights; and yet, we still talk of human rights violations occurring in these countries. The reason for this is that human rights occupy a unique position when it comes to rights: human rights should not only be legal claims, but moral claims as well. When someone claims that a person's human rights are being violated in a country where no such explicit law exists guaranteeing such a right, this person is making a moral claim; he/she is claiming that a moral law is being violated.

In addition to being both moral and, potentially, legal claims, human rights are also unique in that they apply to everyone; they are universal. While we saw that legal rights are something people have by virtue of a particular law or contract ensuring them of that right, people have human rights just by the fact that they are human. These two features, in conjunction with the previous description of rights more generally, combine to give us a fairly good working definition of human rights: human rights are universal moral and, ideally, legal claims which necessarily entail some correlative duty on the part of some agent, human or institutional<sup>1</sup>.

However, both of these aspects of human rights make the philosophical status of human rights rather interesting for two reasons. First, if human rights go beyond the actual existing laws of a state, then in what sense do they exist at all? Second, rights have to be justified, and if human rights apply to everyone regardless of whether or not certain contracts, constitutional guarantees, or other legal provisions exist, then from where do

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<sup>1</sup> For much of this section I am indebted to Brian Orend's *Human Rights: Concept and Context* (Orchard Park, NY: Broadview Press Ltd., 2002).

human rights derive their justification? I argue that human rights exist precisely in the sense that they are rationally justified. We will see that ultimately, even where human rights do not “legally” exist, they exist rationally insofar as the very concept of human consciousness implies a right to the recognition of humanity’s freedom. In the next section of this chapter, we will see that while various philosophical attempts have been made to justify human rights, their foundations are by no mean inscrutably secure.

Overall then, human rights are moral -- and potentially legal -- claims, possessed by humans, requiring rational justification for their existence. To these components, one more should be added. Human rights, because they are *human* rights and not *American* rights or *white men’s* rights, are *universal*. That is to say, human rights are rights which every human being possesses just by the fact that he or she is a human being. Now that we have seen what makes human rights special, let us move on to a brief exposition and analysis of several significant philosophical theories which attempt to justify the existence of human rights.

#### **1.4 Can Human Rights Be Justified?**

One of the most serious questions surrounding the idea of human rights has to do with whether or not they can be justified and if so, from where they derive their justification. In this section, I would like to look at several important theories which attempt to justify human rights, how their arguments generally operate, and problems or inconsistencies present within the theories. It should be noted that this overview is not intended as a thorough, definitive investigation into these well-

established theories, but rather a general overview of the basic theoretical positions on human rights foundations and some problems entailed by their adoption.

Before we begin, it would be wise to set out some basic criteria stipulating what makes a justification of human rights a good one. We must first recognize that in the realm of political theory and ethics, we cannot have absolute certainty as there is in mathematics. This is not to say that any explanation is just as good as any other, or that rational argumentation is superfluous or irrelevant, but rather that truth and justification in ethics and politics will ultimately depend on rational consistency, persuasiveness, or explanatory value rather than certainty and infallibility. Thus, our criteria for a good justification of human rights will be whether or not the account is rationally compelling, consistent, and resonant with our deepest intuitions and experiences as human beings.

When one is asked the question of how the existence of human rights can be justified, a common response might be something like, “there are just some things that you cannot do to other human beings, there are certain principles which should not be violated.” While it may indeed be the case that there are certain things one should not do to other human beings, certain principles which should not be violated as it were, a reason must nevertheless be given for *why* such principles should be respected and how they are justified.

The first theoretical attempt to justify human rights we will be looking at tries, in a sense, to provide a philosophical justification for the response we saw above. Natural rights theories generally make the claim that human rights are justified insofar as there is some inherent essence or capacity of human beings which necessitates some set of basic

rights. Some prominent historical accounts of natural rights arguing from religious perspectives are beyond our realm of consideration insofar as the concepts they rely upon for validity -- i.e., specific deities or sacred texts -- are even more controversial in their justifiability than human rights themselves. However, even accounts such as those of Hugo Grotius or John Locke, which at first appear more secular, ultimately rely upon some sort of controversial theological or metaphysical assumptions that are bound to be problematic in terms of universal justifiability<sup>2</sup>.

One approach that also attempts to argue for the legitimacy of human rights from the fact of some inherent human capacity, is that of Kantianism. Immanuel Kant argued that we must never use another human being as a mere means, but rather, always as an end in themselves<sup>3</sup>. This is the case because, as rational beings ourselves, we must acknowledge that the underlying principle of such an action could not be universalized. That is to say, by treating the other as a mere means, I am tacitly endorsing the maxim that it is appropriate to treat rational beings as though they are non-autonomous objects. Such an endorsement, if universalized, contradicts the very freedom my actions presuppose and thus, a contradiction results. How does this apply to human rights? According to Kant, acting in accordance with the “categorical imperative” is necessary for rational beings because there is no synthetic, or externally determined content which would make it only a hypothetical, or contingent imperative<sup>4</sup>. Rather, the categorical imperative -- to act only according to universalizable maxims – contains “nothing but the

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<sup>2</sup> That is to say, invoking the authority of a sacred text or deity in order to justify the existence of human rights leads us not only to problems of *whose* deity -- particularly problematic in modern multicultural societies -- but also problems stemming back to Plato's *Euthrypho* as to how said deity's moral authority is justified.

<sup>3</sup> Immanuel Kant, *Groundwork for the Metaphysics of Morals* tr. Thomas K. Abbott (Orchard Park, NY: Broadview Press, 2005), 87.

<sup>4</sup> *Ibid.*, 81.

general statement that the maxim of the action should conform to universal law, and it is this conformity alone that the imperative properly represents as necessary.”<sup>5</sup> Thus, the principle itself is not dependent upon any empirical content, it is entirely self-contained, and thus can be said to be a universal and *a priori*, unconditional. According to Kant, freedom is what makes us human<sup>6</sup>, and the only way to be free is to act in accordance with an unconditional moral law “which is completely independent of and not to be outweighed by any sensuous condition.”<sup>7</sup> Therefore, as necessarily rational, free beings, we must act in accordance with the categorical imperative which essentially dictates the universal human right to not be treated merely as a means to an end. While the Kantian argument -- it should be noted, Kant does not explicitly argue for human rights -- is compelling rationally, the Kantian account of human beings implicit in the argument is less convincing. Are human beings truly only abstract, rational decision makers? Human rights, while ideal principles, should nevertheless be applicable to actual, embodied human beings. Kant’s eminently rationalistic argument ignores, even demeans, the body and argues that we can only be human insofar as we transcend much of what makes us human: our particularity.

A third argument for human rights is the consequentialist argument.

Consequentialists argue that actions and states of affairs are justified insofar as their result or end-product is beneficial. Thus, a consequentialist might argue that the idea of human rights is justified insofar as the adoption of such principles results in a society where everyone is generally happier and better off than if such principles were not

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<sup>5</sup> Ibid.

<sup>6</sup> Immanuel Kant, *Critique of Practical Reason* tr. Lewis White Beck (New York, NY: Macmillan Publishing Company, 1993), 29.

<sup>7</sup> Ibid.

acknowledged. One serious problem with this line of justification, however, is that its endorsement of human rights is entirely contingent upon the assumed result that human rights will make people happier. What happens if the circumstances arise that the implementation of human rights, say to protect the rights of a small minority, would result in the overall unhappiness of the majority? Should we then abandon human rights? According to a strictly consequentialist logic, we must. Furthermore, can a justification based solely upon the resultant happiness of the majority really ground a theory of human rights? Would not, for example, giving everyone daily doses of opium be more effective? In other words, human rights are about ultimate values, about moral claims, equality, and justice, not just pleasure and happiness. A sufficient account of human rights should emphasize more than just results, and concern itself with a multiplicity of human values, not just happiness.

The final theoretical justification for human rights I would like to look at here is that of contractarianism. In *A Theory of Justice*, the political philosopher John Rawls provides perhaps the paradigmatic expression of a contractarian argument for human rights. While again, like Kant, Rawls does not explicitly use the term “human rights,” his theory nevertheless implies a rational justification for the concept. Rawls invites his readers to imagine a group of people trying to decide upon the system of laws and regulations they would like to govern the society they are going to live in. This deliberative situation is what Rawls refers to as “the original position.”<sup>8</sup> Moreover, the participants in this deliberation are under a “veil of ignorance”<sup>9</sup> which hides from them many features of their particular identities, such as their income, gender, religion, and so

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<sup>8</sup> John Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971), 17.

<sup>9</sup> *Ibid.*, 12.

forth. Rawls argues that, given the veil of ignorance, rational agents could not but choose two basic principles of justice to govern the society they are going to live in. These principles stipulate that the society will allow the maximum amount of liberty for individuals that is consistent with the equal liberty of others, and secondly, that all inequalities are arranged so that they benefit the worst off in society<sup>10</sup>. The second principle, also known as the “difference principle,”<sup>11</sup> is what is important to us here. The idea is that, if no rational agents knew what their social and economic position in society would be, they could not help but argue for a society where those who were most disadvantaged by the natural lottery would have at least their basic needs met through some form of distributive justice. Thus, through an argument revolving around the ideas of fairness as well as prudential interest, Rawls provides us with a rational account of how we might justify some minimal set of human rights which must be guaranteed by a just society. Similar to our criticism of Kant, Rawls’ proposed method of justifying certain basic features of a just society, or what I would argue could be termed “human rights”, abstracts from the concrete particularity of human beings to such an extent that the result could not realistically be referred to as human rights. That is, the problem with Rawls’ account – and contractarian arguments for human rights generally – is that they unrealistically portray human beings as pure rational decision-makers, disembodied, abstract, and existing prior to any social engagements or commitments. Again, to realistically articulate a theory of human rights, an account should be applicable to real human beings in all of their particular determinations.

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<sup>10</sup> Ibid., 60.

<sup>11</sup> Ibid., 75.

Before we proceed, perhaps some conceptual clarification would be beneficial. In what follows, I will contrast the Hegelian account of human rights I will be developing with an alternative conception which I often refer to as the “liberal” perspective. Some readers may find this confusing insofar as the theoretical perspectives we have just discussed are by no means identical and do not easily fall under the heading of “liberal.” While I acknowledge the undeniably distinct nature of all of these positions, I group these various perspectives under the heading of “liberal” insofar as I understand them sharing a particular understanding of human subjectivity. That is to say, while these perspectives undoubtedly offer unique theories which differ in many significant ways, it is my argument that a presupposition of a static human nature in which humans are seen as individual, abstract, freely choosing conscious beings is a featured broadly shared and one which is most problematic vis-à-vis human rights theory. The problem of atomism and alienation in modern liberal societies I identified in the introduction, I argue, is primarily a necessary consequence of the adoption of such an abstract and individualistic account of human subjectivity, a perspective shared by these otherwise distinct theories. Furthermore, while I introduce the work of the libertarian Robert Nozick later in this work, his perspective is not to be conflated with that of what I have been referring to as the “liberal” perspective.

In addition, another issue which some readers may find problematic is my rather brief treatment of Rawls. The political philosophy of John Rawls -- notably the vision put forward in his *A Theory of Justice* -- is arguably one of the most influential theoretical perspectives of the late 20<sup>th</sup> Century. In light of this observation, how is it that I have spent such little time on such a vastly important political thinker? My reasons for not



grappling more extensively with Rawls are the following. First of all, to adequately address such an extensive philosophical perspective as Rawls' would go far beyond the scope of this present work. Second, and on a related note, my utilization of Rawls' famous "original position" was intended more so as a representation of a contractarian approach to human rights justification rather than a specific analysis of Rawls' philosophy as a whole. There is an abundance of scholarly literature devoted entirely to critical analysis of various features of Rawls' system and I would direct the reader to such literature -- in addition to Rawls' own works -- in order to obtain a more fully developed account of his thought.

In conclusion, what we have seen in this brief overview of several philosophical attempts to argue for a justification of human rights is that the theoretical foundations of human rights are by no means secure. Furthermore, these accounts are not without their potential problems. The problems with these various perspectives all basically share several problematic features. Namely, these accounts either assume or emphasize the individualistic or atomistic nature of humans, abstract views of human subjectivity, and an abstract, legalistic conception of rights. Thus, it is my goal to argue in the following pages for an account of human rights which is both rationally compelling and provides a more concrete, humanistic, and moral conception of human rights than those offered by contemporary approaches.

## **1.5 Conclusion**

The political theorist Joseph Raz has referred to rights simply as expressions of "significant interests" which impose a duty upon some agent: "Rights are the grounds of

duties in others.”<sup>12</sup> Further, Raz argues that rights can usefully be thought of as “intermediate conclusions,” or intermediary claims between duties and ultimate values. In other words, rights are a way of articulating what duties are implicated by the existence of certain ultimate values. This analysis gives us some clue as to where human rights derive their justification; human rights are a formal articulation of some set of ultimate values which are argued to either be held by a majority of people, or rationally necessary in some way.

However, the problem then is to determine what these ultimate values are and from where *they* derive their justification. This is no easy task; indeed, many contemporary scholars have argued that the very “idea that rights could be attached to individuals by virtue solely of their common humanity is particularly subject to penetrating criticism.”<sup>13</sup> The late Richard Rorty has argued that any hope for some kind of universal consensus on human rights is foolish; we should abandon the quest for a rational, philosophical justification for universal human rights because they cannot be justified rationally<sup>14</sup>. Instead, Rorty suggests, we can only hope to influence others to adopt “our” ultimate values (human rights) through appeals to sentimentality.<sup>15</sup>

Should we abandon the project of philosophically grounded human rights? I would argue that such skeptical observations are somewhat warranted, but nevertheless unacceptable. As Brian Orend argues, appeals to “pity” can be set aside much easier than

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<sup>12</sup> Joseph Raz, “On the Nature of Rights,” in *Philosophy of Human Rights*, ed. David Boersema (Boulder, CO: Westview Press, 2011), 21.

<sup>13</sup> Chris Brown, “Universal Human Rights: A Critique,” *The International Journal of Human Rights*, Vol. 1, No. 2, 41-65.

<sup>14</sup> Richard Rorty, “Human Rights, Rationality, and Sentimentality,” in *On Human Rights*, eds. Steven Shute & Susan Hurley (New York, NY: BasicBooks, 1993), 116.

<sup>15</sup> *Ibid.*, 122.

appeals to “consistency, clarity, and reasonableness.”<sup>16</sup> Indeed, we should take the skepticism of Rorty and others not as a death blow to rationally founding human rights, but rather as a call to philosophical arms. As Orend points out, “What justified the existence of human rights is not force, nor sentimentality, but rather a compelling set of reasons to treat human beings in a minimally decent fashion.”<sup>17</sup> We cannot give up on the quest for a rational justification for human rights; the idea is too important. It is a goal which I see as more than achievable. The problems underlying the theories we saw in the previous section were all predicated upon assumptions of individualism, legalism, and abstraction. It is my argument here that by turning to Hegel’s philosophy of human subjectivity and freedom, we can gain insight into how a rational account of human rights can be given without abstracting entirely from the concrete realities of subjectivity that makes us human, nor the important social features of our existence. In brief, the Hegelian account I will be developing here takes shape in five main steps. First, mutual recognition of freedom is a precondition for self-conscious human experience and social interaction. Second, this mutual recognition of freedom is the root from which the idea of universal humanity and the necessary right of human freedom springs forth. Third, human freedom should properly be understood as making decisions in accordance with actually existing principles of a community which create as well as reflect the identity and values of the individual. Lastly, the right to freedom -- in this Hegelian sense -- manifests itself practically in a manner consistent with Martha Nussbaum’s concept of “human capabilities.” This is the case insofar as a community which ensures the right to freedom

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<sup>16</sup> Orend, 72.

<sup>17</sup> Ibid., 73.

would allow more than formal free choice; it would allow real participation in creating possible capabilities or capacities for humans to live the lives they choose.

## **Chapter 2: The “Human Side” of Human Rights: Subjectivity in Hegel’s *Phenomenology of Spirit***

### **2.1 Introduction**

In the preceding chapter, it was shown that the theoretical foundations of human rights may by no means be secure. By outlining several detrimental problems present within existing theories of human rights, as well as looking at criticisms of the concept of human rights generally, it was apparent that a serious philosophical analysis of the topic is warranted. The problem we are faced with now is whether or not the concept of human rights can be philosophically justified, how this might be done, and how such an account can be practicable. In order for such an account to succeed, two main points must be demonstrated: first, it must be shown that this account of human rights can meet the criteria for an adequate theory of human rights stipulated in the previous chapter -- namely, a rational account of universal moral principles entailing correlative duties. Secondly, it will have to be made clear that the theory can either avoid or counter the problems and criticisms with existing human rights theories also discussed in chapter 1 -- namely, problems of foundations, abstraction, and criticisms of the project of human rights as a whole. Lastly, as stated in the introduction and chapter 1, one of the

fundamental problems with existing human rights theories -- such as Rawls' contractarian approach -- is their propensity to atomize human beings. This is because abstract methods such as Rawls' and Kant's fail to account for the very particularities that make us true human beings. Whether it is our embodied experience or our nature as socially embedded beings, human rights -- to be truly *human* -- must take account of more than just our isolated, rational decision-making abilities. In this chapter, we will see how Hegel's theory of the human subjectivity in his *Phenomenology of Spirit* provides us with a means of shifting the conceptualization of human rights to one that focuses on the "human" side, rather than the legal, atomistic approach of contractarianism.

In this chapter, there are two main sections: the first section sets out the argument that the philosophical perspective of G.W.F. Hegel gives us a refreshingly unique and valuable basis from which to formulate a theory of human rights. The second section directly follows the preceding one and begins the main project of developing a Hegelian account of human rights.

Thus, we begin this chapter with a section introducing Hegel and explaining precisely why his insight is so valuable in the context of human rights and how his perspective allows us to avoid the substantial problems of human rights theory identified in the previous chapter. This section will focus primarily on an elaboration of Hegel's phenomenological method of inquiry and how this method -- by shifting the focus to the "human side" of human rights -- allows us a distinct advantage over previous theoretical approaches to human rights. In other words, while we argued that previous human rights theories -- whether contractarian, Kantian, consequentialist, or natural law based -- tended to emphasize the abstract, individualistic, and legal components of human rights, the

Hegelian model will emphasize the concrete, embodied, socially situated nature of the subjects of human rights.

Following this section, I will begin developing the argument for a Hegelian account of human rights proper. This chapter ultimately aims to show how Hegel's perspective on human subjectivity allows us to find a solid, rational basis for human rights; namely, through the inextricable connection between human subjectivity and freedom. The argument I make can be outlined as follows. Hegel's account of human subjectivity in his *Phenomenology of Spirit* entails three main points which are significant in the context of human rights theory: first, to be truly human is to be free; second, to be free requires the mutual recognition of self and others; thirdly, recognition -- and hence, human freedom -- can only take place within a context of shared meaning; in other words, particular freedoms can only exist insofar as they are mediated by recognized, universal concepts. Thus, I will show that this account already allows us to satisfy three of the main requirements identified for an adequate theory of human rights. This theory is *rationally* based in the idea that the definition of human as a necessarily free being; this freedom extends *universally* to all humans just by the fact that they are human; and, the account is *moral* insofar as free action requires mutual recognition of the Self and Other as free and a shared evaluative framework, thus presupposing the legitimacy of the Self and Other's existence.

Once we have established in this chapter that human rights are ultimately grounded in the concept of freedom for Hegel, chapter 3 will move to a more in-depth analysis of Hegel's unique understanding of freedom focusing on how, more precisely, it plays a part in explaining and justifying human rights on a social level.

## 2.2 Why Hegel?

It is likely that some readers may find the very title of this project slightly paradoxical. Is not Hegel precisely the same philosopher who argued that the state is the manifestation of freedom on earth, and that the collective must always take precedence over the individual? Was not Marx, an avowed opponent of the concept of human rights, inspired by the very same Hegel? Bertrand Russell once said of Hegel:

It follows from his metaphysics that true liberty consists in obedience to an arbitrary authority, that free speech is an evil, that absolute monarchy is good, that the Prussian state was the best existing at the time when he wrote, that war is good, and that an international organization for the peaceful settlement of disputes would be a misfortune... What he admired were... order, system, regulation and intensity of governmental control.<sup>1</sup>

This passage serves to show that in no way is Hegel universally accepted to be a champion of human rights and individual freedoms. Bertrand Russell, while not necessarily representative of the opinions of philosophers on Hegel generally, goes so far as to paint Hegel as a proponent of totalitarianism of the worst kind which is an enemy of individual liberty. While Russell's view here may be extreme, many philosophers consider Hegel to be more "conservative", a philosopher who argued in favour of the state over individual freedoms. Indeed, much in Hegel's writings lends itself to this interpretation of his thought as somewhat state-centric if not down-right totalitarian. For example, when one reads such passages as paragraph 260 in *The Philosophy of Right* -- where it appears as though Hegel is essentially saying that the individual must always subsume his or her volitions to the need of the State<sup>2</sup> -- it is easy to see how one might construe Hegel as an anti-individualist. However, I argue that to frame Hegel as a

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<sup>1</sup> Bertrand Russell, *Unpopular Essays* (New York, NY: Routledge, [1950] 2009), 22.

<sup>2</sup> G.W.F. Hegel, *The Philosophy of Right*, tr. Alan White (Newburyport, MA: Focus Publishing, 2002), 194. All references to *The Philosophy of Right* will henceforth be indicated by the abbreviation *PhR*.

proponent of political authoritarianism is to misunderstand the complexity of his position regarding freedom. There is abundant evidence that contradicts such claims. Consider, for example, the following statement made by Hegel from a series of lectures on his political philosophy:

That human beings are now viewed as having rights because they are human, so that humanity is higher than social standing, should be honoured as something magnificent. Among the Israelites only Jews had rights, among the Greeks only free Greeks, among the Romans only Romans, and they had them as Jews, Greeks, or Romans, not simply as human beings. Now, however, universal principles are established as sources of right, and therewith has begun a new epoch in the world.<sup>3</sup>

As we will see with the development of this work, much of the misperception of Hegel as a proponent of statist totalitarianism is rooted in a fundamental confusion regarding his dialectical understanding of freedom and subjectivity. Once we have thoroughly analyzed these concepts, it will become apparent that the quotation above, where Hegel explicitly endorses the idea of universal human rights, is not as inconsistent with his overall philosophical system as one might at first think.

Hence, there are essentially two main goals which I hope to achieve in this chapter. The first goal is, by way of analysis and interpretation of Hegel's unique phenomenological account of human ontology -- which is the subject of this chapter -- and his dialectical understanding of freedom -- the subject of chapter 3 -- we are provided with an original and compelling foundational basis for a theory of human rights. The second goal is to contribute to the rehabilitation of Hegelian thought vis-à-vis political theory. In other words, this second goal is an aspiration to rectify -- what I will argue to

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<sup>3</sup> G.W.F. Hegel, *Vorlesungen über Rechtsphilosophie*, Ed. K. H. Ilting, tr. Alan White, (Stuttgart: Frommann Verlag, 1974, Volume 3, *Philosophie des Rechts nach der Vorlesungsnachschrift von H. G. Hotho*) p. 98.



be -- the misperception of Hegel as an enemy of freedom as put forward by interpretations such as Russell's.

In order to establish a firm philosophical foundation for human rights, it is necessary to first overcome the problems identified in the previous chapter. In brief, these problems are as follows: first of all, traditional liberal thinkers such as Locke and Rousseau essentially postulated that humans just “have rights<sup>4</sup>,” it was part of the “natural law,” which grants us, by extension, “natural rights.” This natural rights approach is problematic insofar as a bald assertion holds relatively little philosophical weight. As K. R. Minogue has argued, while the natural law tradition was firmly established philosophically in the writings of Aquinas and others, the extension to “natural rights” was more often than not, “parasitic upon its better established and more respectable relation...; virtually all the exponents of natural rights tended to be publicists and polemicists with little knowledge of the natural law tradition.”<sup>5</sup> Furthermore, natural law approaches that appeal to particular deities or sacred texts only make the matter more complicated insofar as the justification for the validity of said deities and texts is often even more controversial and problematic than the argument for human rights. Therefore, the first problem we must overcome is that of how to establish a rational justification of human rights.

The second problem, and perhaps the more contemporary one, is in direct relation to Kantian and contractarian accounts of rights. These accounts are more rationally based, but have little to say in terms of concrete application, content, and contextual variation.

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<sup>4</sup> K. R. Minogue goes so far as to refer to Locke's famous *Second Treatise* as “a political polemic couched in philosophical language...” ( “Natural Rights, Ideology and the Game of Life,” in *Human Rights* ed. Eugene Kamenka & Alice Erh-Soon Tay (London: Edward Arnold Publishers, 1978), 16.)

<sup>5</sup> *Ibid.*, 15-16.

That is, contractarian and Kantian approaches to human rights often see the subject of rights as a disembodied rational cogito, devoid of particular identity, body, and social context due either to the veil of ignorance or the process of pure rational deliberation. The problem with such abstraction is that it leaves out precisely those things that make an account of human rights *human*: embodiment, culture, social relations, and so on. Thus, the second problem is how to flesh out an account of rights so that it allows us to not only account for abstract principles, but also particular contexts as well. Lastly, we will address various concerns raised by critics of both the libertarian and the postmodern perspective, showing how our Hegelian approach either avoids or satisfactorily addresses the concerns raised by these positions<sup>6</sup>.

One of the primary ways that a Hegelian approach to human rights allows us to avoid these problems is through a rational and rigorous “dialectical” methodology which Hegel developed. In the preface of Hegel's *Philosophy of Right*, he chastises political theorists of the time for asserting political ideals by appealing to sentiment, arguing that, “By means of the simple folk remedy of ascribing to feeling what is the millennia-long labor of reason and of its understanding, all are spared the bother of rational insight and knowledge.”<sup>7</sup> While it is tempting to be drawn into the “feel-good” approach of asserting the rightness of something based merely on fiery rhetoric and incensed passions, surely this type of argumentation can, and has, just as easily served to build the foundations of despotism and genocide. In order to move forward, we need a firm, philosophical investigation into the concept of human rights. I argue that a human rights approach

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<sup>6</sup> Libertarian concerns about the potentially “totalitarian” nature of a Hegelian theory of rights as well as the postmodern skepticism regarding the project of universal human rights generally will be addressed in the closing section of chapter 4.

<sup>7</sup> *PhR*, 5.

informed by the philosophy of Hegel provides us with just such a rational insight into the concept and ultimately a solution to the problem of how to establish a non-atomistic human rights theory that is both unique and satisfying.

In order to avoid a lax approach to philosophical inquiry, Hegel adopts an approach that presumes nothing. Rather, he attempts to start with only what is immediate in experience. As Hegel states in the preface to his *Phenomenology*, the way of knowledge is the way of despair<sup>8</sup>. What he means is that to truly question existence -- and what's more, receive an answer -- is to embark upon the path of despair. Why "despair"? How can we not despair when the very structures which give us a sense of self, our lives a meaning, our actions a moral justification, are held up to philosophical scrutiny? Yet, how are we to attain knowledge without engaging in just such a process? Hegel is saying that in order to attain true knowledge, we must rigorously analyze our epistemological foundations, the presupposition of which allow us to have a stable understanding of the world around us and our place within it. It is upon this path of despair which we must embark unflinchingly -- tearing down our comforting edifices of "common-sense" -- if we are to discover whether or not the concept of human rights holds any philosophical validity, and if so, from where this legitimacy derives.

This is precisely why a Hegelian analysis of human rights is philosophically fruitful. In a method reminiscent of the methodological skepticism of Descartes' *Meditations*, Hegel encourages a certain putting aside -- or, in Husserlian terms, "bracketing" -- of our presuppositions about every facet of our experience of ourselves

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<sup>8</sup> G.W.F. Hegel, *The Phenomenology of Spirit*, tr. A.V. Miller (Oxford, UK: Oxford University Press, 1977), 49. All references to this work will henceforth be abbreviated as *PhS*.

and the world around us as human beings. Only when we can separate the arbitrary, the socially constructed contingencies of our worldview, from the necessary structures of experience will we be in such a place as to be able to understand where the foundations of true knowledge lies.

In the same way, by engaging in such a phenomenological deconstruction of our preconceived notions regarding human rights, we will discover that, as Wittgenstein put it, we have simply toppled a house of cards<sup>9</sup>. We will be left with nothing but the necessary conditions of human experience, the phenomenological blank slate from which to build up anew a theory of human rights firm in its validity and foundations.

It is by engaging in such a task, I argue, that Hegel ultimately shows us that the idea of human rights is not a contingent feature of liberalism or a dubious assertion of optimistic natural law theorists, but rather a necessary corollary of the very idea of humanity. That is to say, a Hegelian perspective in effect revolutionizes the process of theorizing about the foundations of human rights insofar as it shifts the discussion from abstract, legalistic rights debates to one about concrete human experience: Hegel provides us with an account of the "human side" of human rights.

In order to understand this uniquely Hegelian conception of human rights, we must understand what Hegel has to say about being human. In order to accomplish this, we

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<sup>9</sup> "Where does our investigation get its importance from, since it seems only to destroy everything interesting, that is, all that is great and important? (As it were all the buildings, leaving behind only bits of stone and rubble.) What we are destroying is nothing but houses of cards and we are clearing up the ground of language on which they stand." *Philosophical Investigations*, tr. G. E. M. Anscombe (Malden, MA: Blackwell Publishing Ltd., [1953] 2001), 41. It should be noted, however, that Wittgenstein's intention with this remark is greatly different from Hegel's dialectical approach to philosophy. While Wittgenstein ultimately found much of the history of philosophy to be asking questions that could not be answered, Hegel sees much value in the history of thought, arguing that mistaken positions are often incorporated into theories which more accurately comprehend reality.

will begin this section with an exposition of Hegel's project in his *Phenomenology of Spirit*. Following this exposition, we will turn to the text itself in order to not only deconstruct current notions of the ontology of the self, but also to begin to see how the phenomenological perspective which Hegel adopts allows us to see the basis of human experience in new light. Additionally, we provide several phenomenological examples in order to further draw out and demonstrate Hegel's point: to be human is essentially to be free. Moreover, by exploring this "human side" of human rights, we will see how the moral acknowledgement of the essential freedom of other humans is an inextricable component of the human experience.

### **2.3 The Human Subjectivity: Hegel's *Phenomenology***

What exactly is Hegel's *Phenomenology of Spirit*? Many interpreters understand it to be an epistemological treatise. While this is in some sense true, it is nevertheless an inadequate representation of the work, belying the richness of Hegel's thoughts developed in it. The book is precisely what the title describes it to be: a phenomenology of Spirit. In it, Hegel explores the idea of what it means to be human -- in the broadest sense -- from a phenomenological perspective. Etymologically, "phenomenology" derives from the Greek noun "*phainomenon*" which means "as it is seen, or appears." Thus, phenomenology is the study of how something appears or the study of "phenomena." How exactly does phenomenology pertain to the subject of Spirit? A phenomenology of Spirit is an attempt to study and understand the being of consciousness *as it appears to consciousness*. Hegel is attempting to begin with what is immediate, formulating an

epistemology based solely on what is given to experience. Hegel believes that certain necessary structures of experience and truths about subjectivity and reality thereby disclose themselves. As we proceed, we will see how this mode of investigating consciousness as it appears to consciousness opens up an exciting new way of thinking about the subject of human rights

In this section, we will briefly paraphrase the first few sections of Hegel's *Phenomenology* in an attempt to not only understand what human subjectivity is for Hegel, but also to gain more insight into how Hegel's dialectical approach to philosophical investigation operates in terms of moving from one standpoint of knowledge to the next, incorporating each previous stage as we move forward to a more accurate understanding of reality. In the end, we will see that Hegel's inquiry into the nature of human subjectivity yields the interesting result that what it means to be a human being is to be free and that being free requires mutual recognition within a context of other free beings. This is ultimately what it means to be human for Hegel and this is precisely the point upon which we will draw our rational justification for human rights.

What does it mean to be a self? Who are we as human beings? This paradigmatically philosophical question is key in our journey towards an understanding of who exactly the subject that possesses human rights must be. The *Phenomenology* begins with this very same inquisitive spirit, a spirit that asks, "Who am I?" Or more precisely, what are the ontological prerequisites of experience?<sup>10</sup> Hegel attempts to

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<sup>10</sup> In Hegel's *Phenomenology*, there is an interesting dual perspective where on the one hand, we have the naïve participant, the "consciousness" engaged in each stage of the *Phenomenology*. On the other hand, we have the philosopher, the enlightened narrator, as it were, who invites the reader along with him/her to analyze the experiences of the naïve consciousness from the removed position of philosophical analysis. Many of the philosophical questions investigated are taken up from the perspective of the philosopher

answer this question in the form of a phenomenological investigation of our experience of ourselves.

The *Phenomenology of Spirit* begins with perhaps the most primary experience: sense perception. There are moments when I am lost in my perceptions, in the immediacy of physical sensation, the warmth of this tea against my lips, the metallic rigidity of these keys in my hand, the mesmerizing whiteness of the wall upon which my eyes are transfixed. However, the intensity -- or perhaps, utter banality -- of these moments, their absolutely overwhelming nature, speaks precisely to the truth that “I” am not here in these moments. In a sense, I *am* this warmth or these keys. This appearance, this disclosure of being is not *to me*, but rather, *is me*. I am never here in these moments, for the “I” is precisely that which drags consciousness away from such absolute engagement; the “I” steps in to filter this *immediacy* through a dark lens which dulls that all-consuming immersion. Of course, the stage of pure sensation cannot properly be described insofar as such linguistic filters reveal a certain conceptual interpretation which contradicts the fundamental immediacy of sense experience. The point being made here is how difficult it is for us to even imagine such an experience. Just when we are fully immersed in a sensation, like a flavour, the warmth of a fire, the firmness of a table beneath our arms, we begin interpreting, analyzing, describing. Even the conceptual identification of it being a “table” that is firm, that is “exerting a force” upon my arms is to go beyond sensation. In order for us to even begin to grasp such a way of being, we must abstract from all we understand ourselves to be. We must silence “ourselves,” or,

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rather than the actual subject of the phenomenological process. That is to say, we, the readers, are using the hypothetical position of a “naïve” consciousness engaged in various stages of epistemological understanding in an attempt to solve philosophical problems, problems which we are able to articulate precisely only because we have gone past these stages of consciousness.

think of a baby and its way of engaging the world not with mind, but with fingers, nose, and mouth. It seems clear then that sensation is not constitutive of ourselves, it is not the truth of our experience as human beings.

I am not here in these moments of sense perception because, according to Hegel, these moments defy my attempts to pin them down. I cannot be here in this moment because "now" is already past. "Night" becomes "day," "here" becomes "there"<sup>11</sup>, my immediate sense perceptions of place and time belie the truth that the origins of these perceptions are other than me. Each time I say "now," the moment is past; time passes, unperturbed by my attempts to confine it, to define it. "Now" it is day, "now" it is night, and all that remains is the universal "now," of which there are different immediate forms. In fact then, sense-certainty itself is not immediate knowledge, but rather the grasping of various immediate phenomena through universal concepts. Thus, sense-certainty carries within itself a contradiction, the immediate is the universal. "'Here' is a Here of other Heres, or is in its own self a 'simple togetherness of many Heres'; i.e. it is a universal."<sup>12</sup> And so, by adopting the stance of sense-certainty and immediacy, we discover that knowledge is not immediacy but perception: "I take it up then as it is in truth, and instead of knowing something immediate I take the truth of it, or *perceive* it."<sup>13</sup>

What we are looking for is a sense of self, or -- what for Hegel is the same thing -- "Negativity"<sup>14</sup>. This negativity is the aspect of our experience that allows us to surpass

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<sup>11</sup> *PhS*, 60-61.

<sup>12</sup> *Ibid.*, 66.

<sup>13</sup> *Ibid.*

<sup>14</sup> For Hegel, human consciousness, or "Being-for-itself," is "Negative" insofar as an intrinsic part of its Being is its ability to "negate" existing reality as it is presented to consciousness. Consciousness negates reality by determining it, by imputing a meaning to it. Furthermore, this negating function of consciousness



the "is." It is what makes us different from the rest of nature. This "negativity" is the essence of humanity or what Sartre would later refer to as "transcendence"<sup>15</sup>. "This transcendence that is so characteristic of the human experience is not to be found in the realm of sense perception where our very experience is constantly being surpassed by the inexorable flux of these impressions of time and place.

Hegel then takes us through the stages of "Perception"<sup>16</sup> and "Force and Understanding"<sup>17</sup> both which ultimately fail to provide us with any real answer to the question of who we are as humans. The first real key in this puzzle appears in the section on desire<sup>18</sup>. Our desire allows us to negate the world. Not only do we consume the object of our desire, we also determine it vis-à-vis our need; therefore, we negate the object in the sense of Spinoza's "every determination is a negation." However, once again this thesis bears the seed of its own destruction within itself. For the persistence of the object beyond the fulfillment of our desire as well as the persistence of our own desires speaks of not only the object's real independence from us -- and thus our inability to truly determine, or negate it -- but also of the contingent and animal-like nature of our being from this standpoint. Thus, determination and action according to desire is not representative of the human experience and is not who we are.

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allows us to surpass the immediate toward the possible, the Rational Truth, and thereby partake in the dialectical transformation of reality.

<sup>15</sup> In his magnum opus, *Being and Nothingness*, tr. Hazel E. Barnes (New York, NY: Routledge, [1957] 2003), Sartre utilizes Hegelian language to great effect in espousing his "phenomenological ontology" of human experience. Again, human beings are "Being-for-Itself" as contrasted to "Being-In-Itself." For Sartre, Being-for-Itself is defined not by what it is, but, paradoxically, by *what it is not*. That is to say, our ability to "transcend" our "facticity" -- or, become more than our physical nature, respond in unique ways to situations presented to us, etc. -- is what makes us human. There are obvious parallels here with the argument I am developing insofar as both accounts assert that human beings are fundamentally their free action.

<sup>16</sup> *PhS*, 67.

<sup>17</sup> *Ibid.*, 79.

<sup>18</sup> *Ibid.*, 109.

Where then does this leave us? What are we as humans if not are senses, our perception, our understanding, our desire? Perhaps the most ingenious aspect of the *Phenomenology* is precisely how the answer is already present within the question. This is a paradigmatically dialectical approach -- and we will talk more of the dialectic and its relevance to our investigation further on. At the outset, we asked, "Who am I? What does it mean to be human?" What we failed to acknowledge was that the answer was hidden in plain view all along. As Martin Heidegger has pointed out, human beings are just those types of beings whose "Being" is an issue for themselves<sup>19</sup>. In other words, to be human is to engage in the very questioning of ourselves and our nature. Thus, to be human is to be the type of being who can say "I," who can step outside of immediate experience and be aware of *having* that experience, who is *self-conscious*.

## 2.4 To Be Human is to Be Free

Consequently, to be human is to be capable of experiencing one's self as a conscious being or to be capable of transcending one's immediate consciousness; in other words, to be human is to be free. Once we recognize this point, the preceding sections of the *Phenomenology* fall into place. It becomes clear that by trying to answer the question, "Who am I?" the subject of the phenomenological inquiry was becoming a self, or becoming free.

In Hegelian terms, humans are "Being-for-itself," in contrast to "Being-in-itself." What this means is that unlike plants, animals, and other elements of nature, our essential

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<sup>19</sup> Martin Heidegger, *Being and Time* tr. John Macquarrie and Edward Robinson (New York, NY: Harper and Row, Publishers, Incorporated, 1962), 231.

"being" is not self-contained. We are not our desires and perceptions and immediate inclinations. Rather, our "essence" is our ability to be aware of these propensities and transcend them. Our "being" is our capacity to determine ourselves through free action.

We said at the outset that human rights are universal, something which we have simply by virtue of being human. That is, they do not require one to be wealthy or of a specific race, religion, or gender in order to qualify. Therefore, the line of thought we have been discussing here -- that being human is one and the same as being free or self-determining -- lines up with this qualification of human rights<sup>20</sup>. If the very concept of "human" is inextricably intertwined with free action, it is contradictory to deny the liberty of what one has acknowledged to be a human.

However, having established that human beings are necessarily free, we are still left with two problems. First of all, rights are fundamentally *moral claims* or *normative propositions*. How, then, do we get from the descriptive contention that humans are fundamentally free to the moral claim that they *should* be, or have a right to be free? Secondly, how does one go from the understanding that I, myself, am necessarily free insofar as I am a human, to the idea that this "right" also belongs to others?

Both of these problems will be untangled in the next section when we see that sociality -- and by extension, morality -- are intrinsic components of human freedom. In

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<sup>20</sup> This is not to say that other theories of human rights do make the same point, namely that all human beings are in some sense essentially free and that they therefore possess the right to not have their freedom violated. Rather, the Hegelian perspective is that freedom is a necessary structure of human subjectivity and can therefore provide us with one possible way of grounding a rational theory of human rights. It remains for us to see what exactly Hegel means by freedom, what other rights -- beyond protection of freedom -- are entailed, and also, how an account based in Hegelian theory avoids the problems identified with other theories.

other words, it will be shown that these problems are resolved once we acquire a fuller understanding of how human freedom *develops* according to Hegel's philosophy.

The extension of the recognition of the necessity of freedom to others, as well as the moral nature of such recognition, is made much in the same way as the previous shifts between standpoints of knowledge in the *Phenomenology* have been made: dialectically. That is to say, when we attempt to understand phenomenologically how one moves from the false standpoint of Desire to that of "free self-consciousness" -- or what can properly be understood as "being human" -- it becomes clear that recognizing the moral nature of freedom and its necessary extension to others is interdependent with becoming human.

## **2.5 To Be Free is to Be With Others**

The most famous and, arguably, influential section of Hegel's entire corpus of writings is the section entitled "Lordship and Bondage," or the "Master/Slave Dialectic" in his *Phenomenology of Spirit*. It is here that many movements within the fields of psychology -- and perhaps, one could argue, the entire discipline of sociology -- have to give thanks for their origins. Similarly, for our investigation into the nature of human beings and the connection between our nature and the idea of human rights, it is from this section which we will embark.

Hegel begins the section with this enigmatic statement: "Self-consciousness exists in and for itself when, and by the fact that, it so exists for another; that is, it exists only in

being acknowledged.<sup>21</sup>" As we have already seen, the fundamental nature of human beings is our self-conscious nature, our ability to determine the meaning of reality, and in that sense, our freedom. According to Hegel, we are "Being-For-Itself," which is to say that our essential being, rather than being self-contained, is always a type of "ekstasis" as Heidegger would put it, a going beyond one's self<sup>22</sup>. As Sartre argues, we, as "Being-For-Itself" are what we are not and not what we are; the essence of humanity is transcendence, freedom, self-determination.<sup>23</sup> What Hegel means by "Being-For-Itself" is going beyond sense-certainty and perception (i.e. we become more than this desire for an object, this perception of a tree) to a point where we are aware of having this desire, having this perception. Implicit in this awareness of awareness is the capacity for determination of meaning; as the important interpreter of Hegel, John Russon, has put it, Being-For-Itself is freedom in the sense that we become the locus point of meaning for the world<sup>24</sup>. In other words, the world, in a sense, is determined according to our faculties of perception, need, understanding, and judgment. It is always only through us that the existing world *has* a meaning.

However, from where does this capacity for self-consciousness arise? How do we move from being a "this" or a consciousness of "this" into an "I" or a consciousness of our consciousness of "this"? This is precisely what the Master/Slave Dialectic purports to explain. In short, self-consciousness can only ever exist for another self-consciousness. In other words, according to Hegel, human beings can only ever exist as self-conscious beings in a social context. We can already begin to see what a radical departure this is

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<sup>21</sup> *PhS*, 111.

<sup>22</sup> Heidegger, 377.

<sup>23</sup> "[W]e are free choice, and for us, to be is to choose ourselves." Sartre, 352.

<sup>24</sup> *Reading Hegel's Phenomenology* (Bloomington, IN: Indiana State University Press, 2004), 158.

from the traditional social contract theories espoused by Hobbes and Rousseau among others. Even such influential contemporary thinkers as Rawls and Nozick give us a political philosophy that presumes the ontological priority of the individual to the collective. Instead of assuming that a social collective would be preceded by rational human beings coming together to weigh their interests and establish a contract for a just, or minimally secure, state, Hegel argues that the type of beings who could even enter into such discussion would already be socially situated, because self-consciousness can only ever arise in a community of others.

While the perspective presented here by Hegel may seem *prima facie* antithetical to human rights insofar as it disputes the traditional emphasis on the originary supremacy of the individual often presumed to be necessary for a human rights theory, such an impetuous interpretation severely misrepresents Hegel's position. Hegel is not arguing that we throw out the concept of individual rights, but rather, that the prioritization of the individual to the collective is ontologically problematic and to ground a theory of rights upon such shaky philosophical foundations is unacceptable. To say "I" is always to say "we."<sup>25</sup> Thus, there can be no conceptualization of "I," no freedom, and no human self outside of the developmental context of social community.

Therefore, while there is a conversation to be had about the nature of human rights, it cannot be founded upon the mere assertion that isolated individuals just have them, but rather, that they are something which arise out of a process and this process is inextricably intertwined with social context. We will see more on this idea in following chapters.

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<sup>25</sup> Russon, 159.

Let us return to the counterintuitive suggestion that Hegel makes according to which self-consciousness can only exist in and for itself for another self-consciousness. How exactly does this argument play out? As we saw earlier, Hegel's answer to the question of "Who am I?" is already present within the question: we are self-questioning -- and therefore free, self-conscious -- beings. Hegel argues that we become such free-self-conscious beings only with others. The idea is that the whole project of the *Phenomenology* is discovering who we are. In other words, the perspective we take from the work is of a being trying to become a human, trying to be *free*.

The first pre-requisite of this freedom is to transcend our immediate animal nature, our being consciousness of perceptions and desires, and to be aware of having these desires. For, unless we do this, our ostensible mastery over nature through labeling, consumption, and other forms of negation is a mere façade, obscuring the reality of our essential slavery to be the independent existence of the world and our natural needs. That is, until we recognize and eventually gain control over our desires, we will always remain dependent upon the objects required to sate these desires, even if we seem to dominate them through consumption. We break out of this consciousness only when we can begin to view the world as something which we can "surpass," and when we understand ourselves as independent, as free beings who determine ourselves and reality. This is the essential "negating" aspect, which is so characteristic of our human experience. Yet, how do we arrive at such a perspective? As argued above, this type of "negativity" or freedom manifests itself in our ability to see ourselves in the world, and to recognize that we are the locus point of meaning for the world. As the influential French philosopher Alexandre Kojève argued, for Hegel, this type of "seeing ourselves in the world" and the "humanity"

thereby achieved is only possible through free action.<sup>26</sup> However, is this not obviously paradoxical? How can we become human, which we have already stated is the same as becoming free, through free action?

In the section on the Master-Slave dialectic Hegel brilliantly addresses this very point. As discussed earlier, desire is the fundamental driving force of the entire phenomenological project, desire to become a self, to realize our "negative" or free nature by determining the world and thereby ourselves. However, desire also undermined this project. While at first it appeared that our desire for food and so forth gave us power to dominate the world, to negate that which we consumed as well as define it according to our need, this perspective ultimately contained the contradiction of our independence within itself. To need the very thing we thought we had determined and negated, for our desire to persist beyond the negation, showed the truth of our dependency. Moreover, the very object which we required for our self-validation had been not only contingently determined by our desire, but eliminated in the very act of recognition. In order to get beyond this stance, Hegel argues, consciousness must find an object which we can force to negate itself. We need to surpass not only the object, but our own desires, and this object which allows us such recognition of our negativity must be one which can persist in its self-negation. Thus, only another self-conscious entity can satiate this desire for recognition.

How do we receive recognition from this other being? We do not receive recognition by killing him/her, for this would eliminate the source of recognition. Nor by

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<sup>26</sup> *Introduction to Reading Hegel* ed. Allan Bloom, tr. James H. Nichols, Jr. (Ithaca, NY: Cornell University Press, 1980), 221.



enslaving him/her, because this reduces him/her to the level of a thing which cannot grant us the recognition we require. The answer comes in the form of the slave's labour upon the world. By changing the world in such a way as has meaning for us and seeing ourselves in the product of our labour, we are surpassing not only the object laboured upon, but ourselves as well. We become dialectical in the sense that we change the world which in turn changes us. A useful analogy here is of interior decorating. As a teenager, one hangs posters in one's room, pictures of friends, trophies and awards to remind one's self that, "yes, I am a musician, with these types of friends, I love going to this country, and so on." The process of arrangement is one of creative self-expression which also has the function of re-affirming our identity once the action is complete. However, in order for these cultural artifacts to be meaningful, they must be recognized as such by a community of others who share that framework of meaning. Thus, in order to be free, we must engage in creative activities within a community of others who we must necessarily acknowledge as free.

To make sense of this idea and how it ultimately answers the question we posed here of "who are we, as humans?", consider for a moment your own experience and your own sense of self. The British empiricist David Hume famously stated that when he gazed inward, he saw no self but rather, a mere bundle of perceptions "in perpetual flux and movement."<sup>27</sup> I think that when we gaze inward we see much more than this. While it is true that we do see an -- often inconsistent -- array of experiences, beliefs, and so on, yet when we look at the totality of our experience, a picture starts to reveal itself. Much as a movie can only be understood fully, if at all, once the ending credits have begun to

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<sup>27</sup> David Hume, *A Treatise of Human Nature*, Edited by L. A. Selby-Bigge (Oxford: Oxford University Press, [1739] 1888), 252.

roll, or a particular section of a melody is imbued with a certain meaning based on its harmonic context within a passage, so too are our selves deeply enmeshed in contextual elements. When one steps back to look at one's self, the picture revealed is one of certain patterns and themes, certain commitments and ways of being in the world which speak of an identity, or an "I." I am a student, a lover, and a musician; however, each of these identities, propensities, and actions which define me are predicated upon the existence of a meaningful framework which can only exist in the context of a society. Precisely these types of implications were drawn when the sociologist George Herbert Mead elucidated this Hegelian insight through his line of thought that came to be known as "Symbolic Interactionism."<sup>28</sup>

Briefly, our "being a self" is the same as being free insofar as free, purposeful action is required to create and sustain self-consciousness. However, free purposeful action can only take place within a contextual framework necessarily shared by other beings whom we must acknowledge as likewise being free beings capable of "negating" the given world and thus constituting a meaningful world in which we can participate and have our actions recognized as free and meaningful. The self can only exist in a relationship with others, mediated by social institutions. As John Russon has argued, "a self can be fully self-conscious only if it recognizes itself in and as a transcendental ego, which means precisely the institutional structures of a social relationship..."<sup>29</sup>

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<sup>28</sup> The significance of Mead's "Symbolic Interactionism" will become apparent in the next chapter vis-à-vis the discussion of the essentially social nature of free choices. For more on this influential theory, see Joel M. Charon, *Symbolic Interactionism: An Introduction, An Interpretation, An Integration* (Upper Saddle River, NJ: Prentice-Hall, Inc., [1979] 2001).

<sup>29</sup> Russon, 160.

It was shown in this section how Hegel's insight that to be human is to be free provides us with a foothold from which we can ground the idea of human rights, specifically in their aspect of universality. If we are, by very definition, free beings, the moral right to freedom is an essential, interminable aspect of humanity. However, this led us to the question of how this recognition of our essentially free nature could be extended to others. In this section, I argued that Hegel's section on the "Master-Slave Dialectic" in his *Phenomenology* allows us to answer this question by demonstrating that any action, for it to be considered free and, thus, constitutive of our humanity, must necessarily take place within a framework of shared significance. Only through mutual recognition of one's own freedom from the Other, can one attain self-certainty. The necessity of mutual recognition for the existence of human consciousness shows, first of all, that the human right to freedom extends to others, insofar as the recognition of the freedom of the other is required for our own recognition, and secondly, that the moral nature of such claims arises interdependently with our experience of freedom: the very criteria upon which our decisions are based and our identities are constituted is predicated upon a shared frame of discourse, a "taking into account" of the free judgment of others.

## **2.6 Recognition and Rights**

Thus, the type of beings we are, namely, self-conscious and free beings, necessarily requires a tacit recognition of the essential freedom of the Other. Every decision we make is full of the socially implicit acknowledgement of the essential freedom of the Other insofar as these decisions take for granted a shared, social context

that is made meaningful by the freedom of the Other<sup>30</sup>. We can only be human by being free, which requires recognition of another free being; as John Russon has put it, "to say "I", is always to say "we."" However, at this point it has been shown that only the human right to freedom can be justified.

Therefore, human rights – according to this Hegelian account - arise necessarily and interdependently with the development of self-determining (free), socially situated beings. In other words, the being of self-consciousness requires a recognition of one's self as free which requires the acknowledgement of another (recognized as free) self-conscious being. This itself is the kernel of human rights, which in order to be fully realized, must take place in a higher level of transcendental universality in which both beings can recognize themselves: that is, rights must be realized at the level of the law within a state. In the rest of this study, notably the conclusion, I will explore the notion that there are different levels in which human rights can "exist."

## 2.7 Conclusion

I began this chapter with the bold statement that Hegel's philosophy allows us to overcome many of the problems we saw in the previous chapter concerning the theoretical foundations of human rights. I argued that the *aporia* of the theoretical foundation of human rights could be overcome by shifting the problem from one of legal

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<sup>30</sup> It should be noted that just because human freedom can only exist in a particular social context does not entail that human rights be relative to particular societies. The argument that human subjectivity is necessarily free and requires the recognition of others as free is a universal argument. That is to say, while particular manifestations of culture will vary from society to society, the universal human "right" to freedom is not relative, it is a necessary feature of self-conscious existence.

rights claims to an investigation into the nature of what it means to be "human." By turning to Hegel's phenomenological investigations of the human experience and the origins of self-consciousness, we see that human beings are by definition free. While this resonates with much of our experience as humans, it diverges in important ways from other accounts of the meaning of freedom. Freedom, for Hegel, is free action which requires the creation of objects recognized as meaningful within a community of other free beings. Thus, not only is freedom an essential component of being human, so too is the moral experience of sharing a framework of meaning with others in which one's choices and identity are necessarily bound up with recognition from others.

The human right to freedom, in this account, is not rhapsodically asserted, nor argued from dubious legal or theological principles, but rather, naturally springs forth from the very concept of humanity. The most primary forms of human right, the rights to life and liberty, are not here argued for upon utilitarian grounds, but rather are ones which necessarily follow from the idea of humanity. For Hegel, to be human, to even be the type of being which can possess rights, is to be free. Furthermore, we will see how a Hegelian understanding of the concept of freedom allows us to extend the argument for the universal human right to freedom to other more specifically social and economic rights, in the following chapters.

In chapter 1, I stated that human rights could be defined as enforceable universal moral, and potentially legal, claims with correlative duties. We saw in this chapter that the very idea of being human -- and thus, being a free moral agent -- requires the recognition of other self-conscious beings as necessarily free. However, it remains yet to see what exactly is meant by this idea of freedom, how this concept is understood by

Hegel specifically, how it is reconciled with his idea of community, and furthermore, what the practical application of these ideas turns out to be in the broader context of human rights.

In the next chapter, I will engage in an analysis of freedom in order to more fully elucidate how a theory of human rights can be grounded on the idea of freedom. We will begin by way of introducing the concept of freedom as espoused by various political philosophers and their respective attempts to justify human rights according to this human capacity. We will then see how such projects of grounding human rights in freedom ultimately fail due to an insufficient account of freedom argued for by these philosophers. Following this analysis and criticism of these freedom centred accounts of human rights, we will be adequately prepared to investigate Hegel's own freedom-centric theory of human rights, how it is related to his account of human experience, and how it avoids the pitfalls of other accounts.

## **Chapter 3: Hegel's Dialectical Concept of Freedom**

### **3.1 Introduction**

Through an analysis of Hegel's account of subjectivity in his *Phenomenology of Spirit*, we have seen that for Hegel, human subjectivity and freedom are inseparable. From this perspective, I argued, we can see an account of the foundations of human rights

take shape. To deprive a human of freedom is to deprive him/her of his/her humanity; lack of freedom is conceptually inconsistent with this understanding of what it means to be human. Thus, human rights, for Hegel, are ultimately grounded in the very concept of being human and are universal insofar as being human is the only necessary requirement for one to be a possessor of these rights.

In this chapter, I would like to address the unanswered questions posed in the previous chapter, thereby developing the argument for basing a theory of human rights on the concept of freedom. The questions we will address are primarily concerned with how other human rights theories have used the concept of freedom for justification, why these accounts have failed, and how Hegel's concept of freedom allows us to avoid similar problems. This chapter begins with a brief exposition of the two main branches of rights theories based on freedom: Kantian and liberal. While what I call the liberal concept of freedom – drawn from Hobbes, Locke, and Berlin – understands freedom as essentially a lack of interference, a negative liberty, Kantian freedom is understood as autonomy, or the ability to act according to rational laws one has chosen for one's self. I will critique these concepts of freedom– negative freedom and autonomy, respectively - and see why these particular definitions of freedom are problematic. Finally, I will investigate Hegel's alternative conceptualization of freedom, which I have here referred to as “dialectical<sup>1</sup>.” In short, a dialectical perspective emphasizes the essentially *dynamic* nature of thought and reality. Dialectical thought encourages us to seek out the inherent contradictions in

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<sup>1</sup> While the Hegel scholar Clark Butler has recently developed a “dialectical justification” for human rights in his *Human Rights Ethics: A Rational Approach* (West Lafayette, IN: Purdue University Press, 2008), his argument takes a more Habermasian approach, emphasizing the “dialogical” character of human interaction, which Butler argues is dialectical in nature and conducive to agreement – or “consensus” – on human rights norms. See pages 115-125 of Butler's book for his account.

various theoretical positions in order to move to a more fully rational understanding of a concept. We are to “negate” that which is immediately before us; as Marcuse puts it,

Hegel repeats over and over that dialectics has this 'negative' character. . . . In all these uses 'negative' has a twofold reference: it indicates, first, the negation of the fixed and static categories of common sense and, second, the negative and therefore untrue character of the world designated by these categories.<sup>2</sup>

In what follows, it will be made evident that Hegel’s idea of dialectical freedom effectively overcomes many of our problematic assumptions regarding freedom, while preserving what is most intuitively plausible about our experience of freedom.

In brief, my main argument is that human freedom is the central point around which the entirety of Hegel’s philosophical system revolves. I provide an elucidation of Hegel’s concept of freedom and show how it more accurately represents what we – as a society – intend when we use the term “freedom”. I conclude with an explanation of how Hegel’s dialectical concept of freedom and his concept of *Sittlichkeit* ultimately allows for us to avoid the obstacles encountered by liberal and Kantian human rights justifications.

### **3.2 Freedom as a Justification for Human Rights**

Hegel is not the first philosopher to suggest that freedom is the defining characteristic of humanity. Indeed, this observation had been postulated and elaborated upon by several philosophers before Hegel. Furthermore, some thinkers have even made the very claim we are attempting to make here; that is, that human rights are based upon

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<sup>2</sup> Herbert Marcuse, *Reason and Revolution* (London: Routledge & Kegan Paul Ltd., 1969 [1941]), 123.



the intrinsic freedom of human beings. There are two main perspectives that utilize this argument, liberal and Kantian. I use these terms somewhat loosely in order to convey what I perceive to be as two dominant ways of thinking about freedom as a possible basis for human rights, rather than a direct representation of a particular view set out by Kant or any other one theorist. In order to understand why these theories are inadequate – a topic which has been partially discussed in the first chapter of this work – and how Hegel’s seemingly parallel approach avoids these caveats, we will engage in a brief analysis of these two main branches of thought before we proceed.

Freedom, according to these two lines of thought I have identified, is an essential component of human beings, a necessary part of what it means to be human; as Locke states, “This *Freedom*...is so necessary to, and closely joined with a Man’s Preservation, that he cannot part with it, but by what forfeits his Preservation and Life together.”<sup>3</sup>This quote encapsulates the liberal view that freedom is absolutely essential to humanity. Kantian thinkers likewise prioritize human freedom, yet in a slightly different manner. For Kantians, freedom means acting in accordance with a rational law. Regardless, taking either of these perspectives, one could argue that human rights are a necessary way to ensure the freedom of each and every human no matter their economic status, race, or gender. To put this in another way, rights are a way of stating – and ensuring – the minimum set of conditions necessary for human beings to live any kind of life they should choose. The key term in this context is “choose.” That is to say, freedom is a necessary condition for there to even be a more substantial concept of “human rights;” this is precisely why freedom is the overarching value protected by human rights: no

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<sup>3</sup> John Locke, “The Second Treatise of Government” in *Locke: Two Treatises of Government*, Ed. Peter Laslett (New York, NY: Cambridge University Press, [1698] 1988), 284.

matter what concept one has of “the good life,” freedom is a necessary condition for the fulfillment of this plan<sup>4</sup>. Human rights, therefore, exist and are justified primarily insofar as they allow us to be human, to make the choices that define who we are and make our lives possible. In many ways, this line of argument shares many parallels with the interpretation of Hegel’s theory of subjectivity we developed in the previous chapter. In fact, we saw that freedom was the rationally justified foundation upon which any more extensive theory of human rights must be built. There is, however, one vital difference between these accounts and Hegel’s.

The problem with this type of justification for human rights emerges when one tries to define precisely what is meant by human freedom. In the section that follows, we will look at what Isaiah Berlin has famously called as the “negative” concept of freedom<sup>5</sup>. We will see that while this particular way of thinking about freedom is often tacitly presupposed by much of Western political thought, it is nevertheless a rather superficial representation of the concept of freedom. Since this negative conception of freedom underlies liberal rights theories, we will focus on their formulation of this idea. Then I will provide an exposition and critique of negative liberty as part of a discussion and analysis of Kant’s concept of freedom that, while it is closer to Hegel’s conception, nevertheless fails to adequately represent human freedom. I will begin this investigation using the French Revolution as a paradigm case for the idea of negative freedom and close with a critique of certain flaws inherent to this theory.

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<sup>4</sup> See, for example, John Stuart Mill’s *On Liberty*, (Lanham, MD: Rowman and Littlefield Publishers, Inc., [1859] 2005); Locke’s *Second Treatise*; and Michael Ignatieff, *The Rights Revolution*, (Toronto, ON: House of Anansi Press, 2000) for just a few examples.

<sup>5</sup> For more on the distinction between “negative” and “positive” liberty, see Isaiah Berlin’s immensely influential *Four Essays on Liberty* (New York, NY: Oxford University Press, 1969).

### 3.3 Freedom as Negative<sup>6</sup>

In 1789, an event occurred which would irrevocably change the way the world thought about the idea of human rights. The principles espoused by the French revolutionaries, and embodied in *The Declaration of the Rights of Man and of the Citizen* represent one of the most paradigmatic instances of human beings asserting their right to freedom from arbitrary authority and to live in a society governed by right and reason, rather than caprice and privilege. The French Revolution was a world-historical event: it profoundly shifted the way human beings think about themselves, their relation to others, and the world around them.

Philosophers of the time were not impervious to the awe-inspiring events of 1789. In fact, Herbert Marcuse begins his *Reason and Revolution* by arguing that the entire movement of German Idealism can be understood as a philosophy of the French Revolution<sup>7</sup>. What Marcuse means by this is that these philosophers were so deeply shaken by the events of the Revolution that their systems of thought can ultimately be seen as, in a sense, responses to the new understanding of the human subject as free and self-determining.

The concept of freedom envisaged by the revolutionaries was defined negatively. That is to say, freedom, for them, was the elimination of the aristocracy, the tearing down

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<sup>6</sup> While I do utilize terminology from Berlin's work in this section, I would like to make clear that my particular employment of the term "negative liberty" in no way represents what I take to be a definitive account of Berlin's understanding of the term. For a more full understanding of Berlin's usage of the terminology I would direct the reader to Berlin's *Four Essays on Liberty* cited above.

<sup>7</sup> Marcuse, 3-4.

of hierarchy, the removal of societal constraints. This concept of freedom had already been succinctly articulated much earlier:

By liberty, is understood, according to the proper signification of the word, the absence of external impediments: which impediments, may oft take away part of a man's power to do what he would; but cannot hinder him from using the power left him, according as his judgment, and reason shall dictate to him.<sup>8</sup>

Thomas Hobbes provides here a fairly representative definition of what has become known as the “negative” conception of liberty.<sup>9</sup> In many ways, the idea that freedom is nothing but the absence of constraints seems to correspond to our initial understanding of the value of freedom, namely that it be the minimum condition of allowing individuals to choose to live whichever type of life they prefer.

However, upon further reflection this line of reasoning turns out to be very problematic. For if freedom is a defining characteristic of humanity, can freedom really be understood merely as the absence of external constraint? Would we not then be required to acknowledge the snow that falls from the sky to be as free as ourselves? Is a plethora of choices in the supermarket indicative of true, existing freedom? No, I argue. It is a mistake to think that freedom of choice is expressed through consumption patterns or particular circumstantial decisions. To paraphrase -- and significantly alter -- a quotation from Rawls<sup>10</sup>, freedom is not so much manifested through our particular choices made within a given framework of options, but rather through the principles and environmental conditions we would choose to govern the framework within which we make our everyday decisions. For example, take the issue of nutrition options in the West. It would appear that the widespread popularity of fast food and other unhealthy

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<sup>8</sup> Thomas Hobbes, *Leviathan* (New York, NY: Simon & Shuster Inc., [1651] 1962), 97.

<sup>9</sup> Berlin, 122.

<sup>10</sup> Rawls, 560.

nutritional products and services would indicate that people generally endorse such nutritional options. This analysis, however, is a case of what Hegel would call “formulaic thinking”<sup>11</sup>. In the US, a country facing an obesity epidemic<sup>12</sup>, where polls show overwhelming concern for the health of children and often lay the blame on the prominence of fast food in their diets,<sup>13 14</sup> how can such contradictory consumption patterns exist? The truth is that most people eat fast food not because they rationally endorse the idea of mass-produced, hormonally altered, nutritionally deficient food products, nor because they find it particularly pleasing to the palate, but primarily because it is cheap, fast, and readily available<sup>15</sup>. While most people would presumably prefer to eat healthier meals, the environment in which they live makes that, financially and geographically, a very difficult principle to live by.

Is our freedom really expressed in the particular consumption choices we make in conditions which systematically discourage us from acting in accordance with rational principles we explicitly endorse? To put this another way, in these types of circumstances our “freedom” essentially amounts to picking from among a group of limited and alienating “alternatives,” rather than choosing framing conditions for these decisions which represent what is best and most rational in us, laws and principles that

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<sup>11</sup> *PhR*, 54.

<sup>12</sup> ‘Centres for Disease Control and Prevention: National Obesity Trends’, 2011.  
<http://www.cdc.gov/obesity/data/trends.html> (accessed August 12th, 2011).

<sup>13</sup> “Poll: Most Americans Blame Fast Food for Epidemic”. May 26, 2009.  
<http://www.stopcorporateabuse.org/poll-most-americans-blame-fast-food-epidemic> (accessed August 12th, 2011).

<sup>14</sup> Bootie Cosgrove-Mather, “Americans Fret Over Fat Kids”. April 20, 2010.  
<http://www.cbsnews.com/stories/2003/05/12/opinion/polls/main553484.shtml> (accessed August 12th, 2011).

<sup>15</sup> Richard Morin, “Why Fast Food?” *Washington Post*, June 27, 1990.

we can see ourselves in<sup>16</sup>. If we as a society would like to eat healthy, real freedom would allow us to structure our society in such a way as to facilitate our ability to live according to the principles we rationally acknowledge, rather than systematically encouraging and pressuring us to act in ways contrary to our principles. In the case I have just been discussing, this would amount to our governments representing our right as people to have a say in the type of food products and services we, as citizens, subsidize and make readily available in our communities for consumption.

Evidently, there is a point where the mere “absence of impediment” does not qualify a choice as “free.” I argue that it is the case that what makes freedom valuable is the availability of what Charles Taylor has called “horizons.”<sup>17</sup> In other words, where my experience of a decision being significant or momentous derives its significance or momentousness from is essentially a shared “horizon” or framework of significance, intersubjectively perceived by members of a community of which I am a part. What makes my decision of whether to marry or not more significant than whether to put fruit on my cereal or not is precisely because there is a horizon of significance which imbues the former decision with a sense of meaning, which makes freedom in that context something of value.

This type of “positive” freedom, or contextual freedom, is precisely what Hegel is proposing as a more adequate understanding of the term. As Paul Franco argues:

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<sup>16</sup> We will see later on how Hegel’s concept of a *Sittlichkeit* attempts to rectify this issue of alienation evident in modern consumer society.

<sup>17</sup> Charles Taylor, *The Malaise of Modernity* (Toronto, ON: House of Anansi Press Limited, 1991), 39.

Our deepest intuitions about freedom suggest that it does not involve simply doing what we please but, rather, self-control, self-coherence, cultivation of capacities, and fulfillment of significant purposes.<sup>18</sup>

For Hegel, there is an important difference between what he calls “willfulness”<sup>19</sup> and substantial freedom. These two terms do much work in explaining why the strictly negative understanding of freedom -- and consequently the assumption of universal human rights in the abstract, universal sense -- fails in its justification and its legitimate representation of human beings. That is, freedom understood as willfulness, which Hegel defines as “contingency manifesting itself as will”<sup>20</sup>, ultimately has an infantilizing effect. True freedom, and the kind that should be ensured by human rights, is the type of freedom which allows one to choose the governing principles of the framework which determines the possible choices one can make. I would argue that a system of human rights which accepted this concept of freedom would ensure more democratic control over environmental regulations, consumer protection, subsidization of healthy foods, and so on. A system which accepts the negative conception of freedom often results in a society where such important, substantial decisions are mostly out of reach, allowing freedom merely in the realm of consumption choices.

Hegel argues that the idea of freedom being the mere absence of impediments -- what he refers to as “willfulness”<sup>21</sup> -- and the right to pursue whatever contingent desire one might happen to have is absurd, going so far as to claim that “if willfulness is supposed to be freedom, then freedom may indeed be called an illusion.”<sup>22</sup> This type of freedom is arbitrary, unlike a more substantial conception of freedom we will discuss

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<sup>18</sup> Paul Franco, *Hegel's Philosophy of Freedom* (London: Yale University Press, 1999), 186-187.

<sup>19</sup> *PhR*, 27.

<sup>20</sup> *Ibid.*

<sup>21</sup> *Ibid.*

<sup>22</sup> *Ibid.*, 28.

later. This “willfulness” encapsulates the very triviality we found problematic in the idea that freedom could somehow be encapsulated by arbitrarily choosing between limited, exogenously determined options in a constrained environment. In a devastating critique, Hegel summarizes the ineluctable problems with the position of arbitrary negative freedom and the inevitability of its self-defeat. Despite being written nearly 200 years ago, the vacuous society Hegel describes, concerned only with “the process of gratification,” sounds all too familiar to those of us living in 21<sup>st</sup> Century capitalist societies:

Particularity as itself, allowed to move in every direction to satisfy its needs, its contingent willfulness, and its subjective whims, destroys itself and its substantial concept in this process of gratification. At the same time, the satisfaction of needs, necessary and contingent alike, is contingent because it arouses new desires without end, is in thoroughgoing dependence on external contingency and willfulness, and is restricted by the power of universality. With these oppositions and their entanglement, civil society provides a spectacle of excess and misery as well as of the physical and ethical degeneration common to both.<sup>23</sup>

Thus, we see that the traditional liberal approach to freedom as something strictly negative which takes for granted the ontological priority of the individual is self-defeating and cannot provide a legitimate foundation for human rights. However, there is an alternative conception of freedom which at first glance appears to avoid many of the traps or *aporias* of negative freedom: the theory of Immanuel Kant.

In many ways, Kant’s idea of freedom contrasts with what we have been calling “negative” freedom. Kant argued that freedom is not so much the ability to follow our desires unimpeded by obstacles, but rather, the ability we have to act according to rationally chosen principles. In other words, freedom is more properly understood,

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<sup>23</sup> *PhR*, 148.



according to Kant, as *autonomy* or the ability of acting according to laws one has chosen for one's self. Importantly, these laws must be "universalizable" in order to be rational and truly free, otherwise they are determined from particular desire or need which is animalistic rather than rational. Hegel's major problem with this conception of freedom is that it unrealistically depicts human beings as abstract beings without determinate drives, interests, and so on<sup>24</sup>. Hegel argues that every action "requires a particular content and a determinate aim"<sup>25</sup> and that Kant's conception of freedom gives us no content, and therefore, no criteria according to which we could possibly make meaningful decisions as actually existing, particular humans. This criticism is a serious one, and along the lines of similar problems we identified with Rawls' contractarian account of human rights in chapter 1. Namely, Kant's belief that the self is noumenal, other-worldly in its transcendence, is an unrealistic representation of lived human experience. We are embodied, living, phenomenal beings whose desires and identities and very cognitive structures for determining meaning are influenced deeply by our specific communities, social class, race, and other particular factors. While Kant's ideas regarding autonomy are indeed an improvement upon the "willfulness" endorsed by purely negative, liberal accounts of freedom, its abstractness nevertheless makes it an inadequate portrayal of true human freedom.

If, as Hegel argues, negative freedom is a self-destructive concept and Kantian "autonomy" is empty and formalistic, then how can we establish a basis for human rights? Were the revolutionaries wrong to fight for freedom? Do we need arbitrary power and hierarchical structures to keep the mob in line as Plato would suggest? Paradoxically,

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<sup>24</sup> *PhR*, 107.

<sup>25</sup> *Ibid.*, 106.

despite his devastating critique of the French Revolution and the ideal of negative freedom that inspired it, Hegel argues that freedom is indeed the ultimate goal for political action and we will show how this translates into a system of human rights. Not only is freedom what makes us human beings, as we saw was the argument in his *Phenomenology of Spirit*, Hegel argues further that freedom is the purpose of human existence, it is the end goal of history and of social and political organization. Hegel states in his *Philosophy of History* that, “The History of the world is none other than the progress of the consciousness of freedom.”<sup>26</sup> However, what Hegel has in mind by “freedom” is something we will investigate further presently and it will become clear that is precisely through this unique understanding of the concept that we find the solid foundation for human rights.

### 3.4 Freedom as Dialectical

While the preceding analysis may seem to abrogate any possibility of grounding a theory of human rights based on the idea of freedom, this is not the case. For, despite all of his criticisms of Kant and Locke, Hegel’s own philosophy is one built around just this concept: human freedom. It is on this concept, which we will ultimately ground our theory of human rights.

In the previous chapter, we saw in outline the Hegelian argument that human rights are grounded in the idea of freedom. Now I will more fully flesh out what differentiates a Hegelian conception of freedom from the conceptions of freedom we just

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<sup>26</sup>G.W.F. Hegel, *The Philosophy of History*, tr. J. Sibree (New York, NY: Dover Publications, 1956), 19. All references to this work will henceforth be indicated by the abbreviation *PhH*.

criticized. To begin, I want to briefly return to the section on the dialectic of the master and slave from Hegel's *Phenomenology of Spirit*. As we saw earlier, Hegel argues in that section that when we come to understand precisely what the necessary structures of the experience of being a human -- being a "being-for-itself" -- are, we cannot but simultaneously assert the necessity of recognizing the intrinsic human rights of other such self-conscious beings. This necessary mutual recognition is precisely the famous Hegelian point: to be a self-conscious entity -- a human being -- is necessarily to be recognized by another self-conscious being, and this recognition is mutual. That is to say, to be human is to be the type of being which determines herself which is only possible insofar as we acknowledge the same right for self-determination in others. The recognition must be mutual because, as Hegel argues, if one attempts to force the other to recognize one's self, one has succeeded only in eliciting the compliance of an unfree object. Only by recognizing the Other as another self-determining being and receiving mutual recognition of one's own freedom from the Other, can one attain self-certainty.

This process of recognition is really what Hegel's entire system is about: we, as human beings, are seeking to *become ourselves*, and what we are is freedom. Freedom, and the recognition of the freedom of the other, is a necessary condition for any type of genuine social interaction and for identity formation to take place. Thus, freedom is a human right insofar as it is a requirement of being human and interacting with other human beings. However, this *autonomous* freedom is quite different from Lockean and Hobbsean freedom insofar as it necessarily requires a social element. Hegel's concept of freedom goes beyond the immediate, contingent "freedoms" of pursuing our particular

desires, and yet it simultaneously avoids the trap of overly abstract, formalistic freedom which, Hegel argues, plagues Kant's concept of autonomy.

That said, while the previous chapter argued that Hegel's ontology was firmly rooted in the idea of human freedom, I want to show here that this idea of freedom drives not only Hegel's theory of human subjectivity, but his entire philosophical project. By looking to Hegel's works on politics and history, one can see that the argument for human freedom developed in the *Phenomenology of Spirit* was not anomalous; rather, freedom is the driving force of Hegel's system.

Hegel explicitly states in his *Philosophy of History* that "[t]he History of the world is none other than the progress of the consciousness of Freedom,"<sup>27</sup> and further, that "it is the *freedom* of Spirit which constitutes its essence."<sup>28</sup> For Hegel, to be human is to be free; it is our essence. In his *Phenomenology*, Hegel argues that what it means to be human is to be *For-itself* to be free activity. Furthermore, in a series of lectures, Hegel stated that viewing humans as possessors of rights due solely to their humanity, "so that humanity is higher than social standing, should be viewed as something magnificent."<sup>29</sup> It is clear then that Hegel is indeed a philosopher who cares deeply about human freedom. Once again, the French Revolution provides a convenient illustration with which to elucidate the seemingly contradictory viewpoints of Hegel on freedom. We will see that much of Hegel's reticence in fully embracing the negative freedom championed by his fellow enlightenment thinkers was caused not so much by totalitarian tendencies, but

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<sup>27</sup> *PH*, 19.

<sup>28</sup> *Ibid.*, 18.

<sup>29</sup> Hegel, 1974, p. 98.

rather an increased political perspicacity which allowed Hegel to penetrate deeper into the superficial liberalism won by the revolutionaries.

It is evident that the French Revolution had an immense influence on Hegel's thought, and it does much to explain his preoccupation with the idea of freedom. Like many youth of his day, Hegel was inspired to see the masses in France revolt against oppression in the name of freedom, equality, and brotherhood. However, the tyranny of Robespierre and the Jacobins that followed the initial revolutionary fervor did much to dissuade many of the admirers of the guiding principles of the Revolution from embracing the consequences. In his *Phenomenology of Spirit*, Hegel refers to the "universal freedom" attained by the revolution as something which can "produce neither a positive work or deed; there is left for it only *negative* action; it is merely the *fury* of destruction."<sup>30</sup> The type of self-consciousness which emerges in the society of "Universal freedom" is one that "exists now just for itself, this is its sole object, an object that no longer has any content, possession, existence, or outer extension, but is merely this knowledge of itself as an absolutely pure and free individual self."<sup>31</sup>

However, while Hegel argues that the French Revolution and the ideal of "pure negative freedom" which it represented was wrong-headed, it nevertheless signaled an undeniably monumental shift in the consciousness of humanity which can be seen when he speaks of it in *The Philosophy of History*:

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<sup>30</sup> *PhS*, 359.

<sup>31</sup> *Ibid.*, pp. 359-360.

but not until now had man advanced to the recognition of the principle that Thought ought to govern spiritual reality. This was accordingly a glorious mental dawn.<sup>32</sup>

It is only through the aforementioned “fury of destruction” that we can come to know ourselves as free individuals, that we can remove “the antithesis between the universal and the individual will.”<sup>33</sup> That is to say, to fully understand the importance of Hegel’s point about the French Revolution, one must not only focus on the strong indictment of purely negative freedom, but also consider the argument within the context of Hegel’s view of truth as dialectical and historical. In other words, Hegel sees the French Revolution as a *necessary* development of the truth of freedom.

The significance of the French Revolution for Hegel was two-fold. First of all, it was the apprehension by consciousness of the notion of freedom – the purpose and essence of humanity – albeit in an imperfectly actualized form. Secondly, and most importantly, it was the realization by consciousness that, as Hegel stated in the preface to *The Philosophy of Right*: “What is rational is actual.”<sup>34</sup> In other words, the revolutionaries were attempting to actualize the Rational, they were attempting to order reality according to the principles of Reason. Thus, the revolution seized what Hegel calls the “Notion” of freedom, but only in one of its aspects. For freedom to truly be actualized, the dialectic must progress and, mediated by the experience of pure negativity, realize the idea of freedom.

What is meant by “the idea of freedom” needs a little bit of unpacking.

Essentially, Hegel’s philosophical system is based around the idea that all of reality is

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<sup>32</sup> *PhH*, p. 447.

<sup>33</sup> *PhS*, p. 363.

<sup>34</sup> *PhR*, p. 8.

dialectical, or in motion. In conjunction with this concept is the argument that what is “Real” is “Rational”, or to put this another way, that what is true is the “idea” which essentially means, truth is existence in accordance with its concept or its *telos*<sup>35</sup>. Thus, Hegel’s philosophy is thoroughly *teleological*. Already in his early *The Difference Between Fichte’s and Schelling’s System of Philosophy*, Hegel argues that, “we must not let go of the teleological perspective.<sup>36</sup>” Reality then, is in motion and there is a purpose -- or *telos* -- which must be reached. According to Hegel, just as gravity is the essence of matter, *freedom is the essence of humanity*<sup>37</sup>. Freedom, therefore, is the Rational truth, or “notion,” which is precisely what we, as humans, must strive to make actual. The “idea” of freedom becomes actualized through the dialectical progression of history, which incorporates all of the previous stages of the consciousness of freedom while simultaneously transcending them into a higher and more refined stage of truth:

The *dialectical* nature of the Idea in general, viz. that it is self-determined – that it assumes successive forms which it successively transcends; and by this very process of transcending its earlier stages, gains an affirmative, and, in fact, a richer and more concrete shape<sup>38</sup>.

It is important to recognize here that Hegel is arguing that further stages of the dialectical realization of freedom incorporate previous stages. Thus, a move to a more organic society would not throw out the individual liberties fought for during the French and other revolutions, but rather incorporate them into a “richer and more concrete shape.”

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<sup>35</sup> Or as Hegel puts it, “the unity of the Notion and objectivity.” From *The Science of Logic*, tr. A. V. Miller (Amherst, NY: Humanity books, 1969), 756.

<sup>36</sup> G.W.F. Hegel, *The Difference Between Fichte’s and Schelling’s System of Philosophy*, tr. H. S. Harris & Walter Cerf (Abany, NY: State University of New York Press, 1977), 83.

<sup>37</sup> *PhH*, 17.

<sup>38</sup> *Ibid.*, 63.

A good way to understand Hegel's idea of dialectical reality and how the notion grounds and mediates actuality is to return to his distinction between willfulness and substantial freedom made in *The Philosophy of Right*. Hegel tells us in the introduction that the will "contains an element of pure indeterminacy,"<sup>39</sup> which is universal and unrestricted. However, precisely because it is indeterminate, pure universal will is not actualized and, thus, not truly free. On the other hand, immediate, particularized will -- while actualized -- is unfree insofar as its particularization has negated its universality, as well as the fact that particular will is determined by drives, desires, and external factors and thus, not autonomous<sup>40</sup>. It is only through the unity of these two moments, mediated by the concept or notion of "individuality" or "self-determination" that the will is truly free. This individuality is,

particularity that is reflected into itself and thereby led back to universality... It posits itself as the negative of itself, i.e., as determinate, restricted, but at the same time it remains at home with itself, i.e., within its identity with itself and universality. Within the determining, it only binds itself together with itself. The I determines itself insofar as it is the relating of negativity to itself. As this self-relation, it is indifferent to this determinacy; it knows the determinacy as its own and as ideal, as a mere possibility by which it is not bound and within which it is at all only because it has posited itself therein. – This is the freedom of the will that constitutes its concept or substantiality, its gravity, so to speak, just as gravity constitutes the substantiality of the body.<sup>41</sup>

What Hegel is arguing here is that the idea of individuality allows us to overcome the contradiction of the universal and particular elements of the will. Only through particular actions can I become a unique individual, and only by being an individual, by being a collection of multiple, particular actions, can I be universal. Individuality is therefore the

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<sup>39</sup> *PhR*, 20.

<sup>40</sup> *Ibid.*, 25.

<sup>41</sup> *Ibid.*, 22-23.



particularization of the universal, acknowledging the difference of the components of the will while harmonizing them and overcoming the opposition.

To further elucidate the dialectical nature of freedom using a more practical example, let us examine the following passage:

The asserted justification of slavery ... depends on regarding human beings in general as natural entities. Regarding human beings as worldly beings of this sort (to whom willfulness also belongs) is incommensurate with their concept.

The assertion of the absolute wrongfulness of slavery, on the other hand, adheres to the concept of man as spirit, as something in itself free. This view is one-sided in regarding man as free by nature; in other words, what it takes to be true is the concept as such, in its immediacy, rather than the idea.<sup>42</sup>

It seems that there is a contradiction here. For how can the idea of enslaving humans be wrong, and yet the absolute assertion of the wrongness of slavery be misguided as well? This passage is a particularly relevant instantiation of Hegel's dialectical understanding of reality. To elucidate the thought of this passage, and derive the value which it holds for our understanding of human rights specifically, we must investigate what makes Hegel's understanding of freedom so unique and how this understanding in fact allows us to overcome the apparent contradiction in the above passage and, in fact, the apparent dilemma we have identified in human rights theory.

Hegel states that it is "one-sided" to view humans as in themselves free. This view takes to be true "the concept as such, in its immediacy, rather than the idea." The key here is the term "idea." In his *Science of Logic*, Hegel states that the Idea "is that which is objectively true...; *something possesses truth only in so far as it is Idea.*"<sup>43</sup> Further,

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<sup>42</sup> Ibid., 54.

<sup>43</sup> Hegel, *The Science of Logic*, 755.

Hegel, says that the Idea is “the unity of *subjective Notion* and *objectivity*.”<sup>44</sup> For Hegel, then, the Idea is what is absolutely true; it is when the objectivity of reality corresponds to rationality. Accordingly, the position which states that human beings are free in themselves is only a partial truth, since it assumes that human beings are purely *natural* entities. To take up either of these positions is to engage in “formulaic thinking.” Human rights are not essential properties within human beings. They cannot be *ahistorically* true. Rather, the idea of human rights is based on the idea of a truly free human individual which, although the real essence of the individual, can only take shape within a socio-historical context in which recognition by another self-consciousness is possible. Once this stage passes, however, -- i.e., once the conceptual framework of consciousness expands to include the idea of individuality and rights -- the concept of slavery becomes conceptually inconsistent.

True freedom is only achieved by “negating the negation.” Accordingly, by incorporating the truth of negative freedom while overcoming its deficiencies, a more substantial form of freedom is realized. As mentioned above, for Hegel, true freedom is individuality, self-determination and autonomy. It is important to recognize that individuality is not meant as immediate separate entities as we often think of the concept, but rather “individuality in accordance with its concept.”<sup>45</sup> This account of freedom clearly bears strong resemblance to the idea of Kantian autonomy but goes one step further by reconciling what Hegel sees as the empty, formalistic, universal freedom of Kant with determinate reality. Again, we see here Hegel’s important criticism of purely

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<sup>44</sup> *Ibid.*, 758.

<sup>45</sup> *PhR*, 23.

“negative” freedom and we also see how his solution to the problem in no way ignores the importance of the universal aspect, but rather incorporates it.

Broadly speaking, Hegel endorses a type of freedom which is defined not so much by an absence of constraints and an ability to pursue whatever desire or inclination might immediately present itself to our will, as it is by a rational ability to accept the principles which govern one’s actions and gives them significance. In other words, Hegel believes that freedom is only achieved when one’s decisions are made *autonomously* rather than *heteronomously*.

Yet, how does this idea of autonomy differ from Kant’s “formalistic” conception? Again, to return to Hegel’s theory of subjectivity, we see that he argues that free, self-conscious beings can only exist for other self-conscious beings; therefore, the very type of beings that could be autonomous are necessarily bound up in particular, pre-existing cultural frameworks: the form is bound up with the content. For Hegel, we are not abstract, rational “choosers,” but rather rational beings whose decisions are necessarily shaped and given content by the circumstances in which we exist. Another way to put this is that “Right”-- or human freedom -- can only become actualized insofar as “Spirit” becomes objective which requires that the concept become manifest in a particular individual which is mediated by the universal. What this means is that in order that human freedom exist in more than an ideal, conceptual sense, it must necessarily be instantiated in a real particular human being. The “Universal” will always be a “Concrete Universal” which means that human freedom will always be a function of the particular historical and social context within which it is concretized.

In order to fully grasp what Hegel has in mind when he speaks of “substantial freedom” and precisely how this concept differs from liberal and Kantian accounts, one must understand the important Hegelian concept of *Sittlichkeit*, or “ethicality.” *Sittlichkeit* contrasts with *Moralität* or “morality.” Ethicality is used by Hegel to imply the embedded nature of human existence and true ethical action. While “morality” denotes absolute judgments applying to abstract, isolated individuals, in contrast, “ethicality” implies that moral judgements are situated in culture and history. All our decisions are made within contextual frameworks of significance which emerge in particular times and places. At the outset of the section on “ethicality” in his *Philosophy of Right*, Hegel tells us:

The right of individual humans to be subjectively determined as free is fulfilled when they belong to an ethical actuality, because their certainty that they are free has its truth in such an objectivity; within the ethical they actually possess their own essence, their inner universality.<sup>46</sup>

Hegel attempts to reconcile the idea of particular individuality and universal principles; it is only as individuals that universal freedom can become concrete. However, these individuals can only ever be truly free when they understand that only through the universal that they can achieve their essence of freedom and individuality. For Hegel, this means that while we must not return to the organic simplicity of Ancient times where the community was an undifferentiated organism -- the individualism of the French Revolution was an objectively positive moment -- we must nevertheless recognize that it is only through the laws of a community that we can achieve true freedom as individuals rather than mere particulars.

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<sup>46</sup> Ibid., 130.

It is important to note here that for Hegel, these,

laws and powers of ethical substance are not something alien to the subject. Instead, the subject bears witness to them as to its own essence, within which it has its feeling of being a self, within which it lives as in its own element, an element it does not distinguish from itself.<sup>47</sup>

This is, I argue, a very apt description of meaningful community. Our identities, our sense of self and purpose, are all shaped and guided by the context of a community. When you live in a fragmented society of isolated individuals, rights exist in terms of abstract, isolated individuals, and freedom amounts to narrow choices regarding consumer goods. It is only in a community where you see meaning in the principles which guide that community, where you find your essence and see yourself in that “ethical substance” that true freedom is experienced:

The human individual actualizes itself only by entering into existence in general, into determinate particularity, thus restricting itself exclusively to one of the particular spheres of need...; Thus does one come to be recognized both in one’s own eyes and in the eyes of others.<sup>48</sup>

To bring back the useful contrast Hegel draws between “willfulness” and substantial freedom, in a society where the laws merely exist to facilitate the choice between arbitrarily desired goods, one cannot but feel alienated from such laws. Such a society creates relations between consumers, not citizens; shopping malls, not communities, become the defining unit of such a society. Conversely, a *Sittlichkeit* emphasizes our interdependence: we are not isolated billiard balls constantly bumping into each other, in need of regulation merely for protection from one another, but rather interconnected pieces of a quilt, sharing in an overarching tapestry with a certain ultimate form made all the more rich by our own independent, unique patterns and colours. Unless

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<sup>47</sup> Ibid., 127.

<sup>48</sup> Ibid., 161.

we have a society with laws that reflect not only our differences, but also our interdependence and communal natures, our pattern will never make sense, never fit into the broader context which gives its colours and patterns significance.

Nevertheless, talk of “finding freedom in the laws of the state” and the absolute supremacy of the community is sure to bring up a plethora of concerns for some readers. It is here that we are reminded why people like Bertrand Russell are so critical of Hegel as a political thinker; surely “finding freedom in subsuming your will to the laws of the state” is the kind of authoritarian doublespeak that Soviet oppression thrived upon. However, I would argue that such a reading of Hegel is a misunderstanding of the concept of *Sittlichkeit*. Hegel explicitly condemns Plato’s form of totalitarianism, arguing that his proposed system “damaged most deeply ethicality’s deeper drive, i.e., free, infinite personhood.”<sup>49</sup> Furthermore, Hegel later claims that Plato’s attempt to oppose individual freedom in favour of incorporating all particulars into the universal of the state is a “defect” of his system.<sup>50</sup> While not definitive evidence of Hegel being a champion of individual freedom, I would argue that it is relatively clear that what Hegel means by an ethical community and how the individual finds freedom in such a community is in no way an argument for fascist state domination and individual oppression. However, as previously stated, while I find it hard to believe that Hegel was a proponent of fascism, one need not embrace all of Hegel’s philosophical system in order to see the utility of his dialectical concept of freedom and the role it plays in reconceptualizing human rights. That being said, we will delve further into these questions among others in the following

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<sup>49</sup> Ibid., 8.

<sup>50</sup> Ibid., 149.

chapter in an attempt to demonstrate how the social aspects of Hegelian human rights need not degenerate into totalitarianism.

### **3.5 Conclusion**

We saw in chapter 2 that for Hegel, we are necessarily free insofar as we are human. Thus, I argued, Hegelian human rights are necessary outgrowths of his idea of subjectivity; to deprive a human of freedom is to contradict the very concept of humanity. Further, I argued mutual recognition of self-determination is a necessary precondition for all social interaction and human experience. However, we were left with several questions as to what such an idea of freedom would mean and how such an account differed from other rights theories based on freedom. In this chapter, we ultimately saw that Hegel's unique concept of "dialectical" freedom allowed us to avoid many of the pitfalls of both liberal and Kantian accounts of rights based on freedom.

It was shown that negative concepts of freedom fail to fully account for human freedom and ultimately are self-defeating insofar as they do not distinguish between mere capricious desires and what we understand to be meaningful human choices which define our experience of freedom. Kant's concept of autonomy was insufficient due to its overly abstract and formalistic nature; devoid of content, such an account of freedom is an inaccurate representation of really existing humans insofar as every act requires a particular determined aim; that is, what are the structures, institutions, and cultural factors which give these rational choices meaning?

The human right to freedom, the primary right for Hegel, is not so much about the capacity to arbitrarily act upon any desire we might have; rather, it is about purposeful action. The theory of human rights I have been arguing for here would ensure that we are provided with the capacities to make meaningful decisions, that we are part of a functional community where the choices offered to us are ones which we can recognize as legitimate choices, which we can recognize ourselves in. This concept of freedom is dialectical insofar as it takes the truth of the liberal and Kantian conceptions of freedom and overcomes their contradictions in a higher, more developed form of freedom. Thus, we need not throw out the particular needs and desires of individuals, nor the idea that individual liberty from the community is of key importance, in order to overcome the nihilistic and empty forms of rights these conceptions provide; we can simply move forward, preserving the idea of individual rights within a rational social context where these rights have more than formalistic meaning.

In summary then, human rights exist “objectively” in the sense that the privation of freedom is incommensurate with the concept of humanity as necessarily self-determining agents. Human rights are justified insofar as they ensure the freedom of humanity, the truth of humanity achieving its *telos*. However, as Marcuse has argued, “potentialities are limited by the determinate conditions in which they exist.”<sup>51</sup> Therefore, in order to “negate the negation,” to attain human rights, we must struggle; our freedom, according to Hegel, “must be sought out and won.”<sup>52</sup> The dialectical apprehension by consciousness of more fully-realized forms of freedom is indeed conceptually valid, and in a sense, *irreversible*, but for it to be “more than an ought” as

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<sup>51</sup> Marcuse, 64.

<sup>52</sup> *PhH*, 41.



Hegel puts it, there needs to be a state with laws ensuring the development of these potentialities:

The dialectic of the concept and consciousness of freedom...effects the struggle for recognition...; Objective spirit – the content of right – should not again be apprehended in its subjective concept alone, and consequently human beings in and as themselves should not be determined as slaves; but not again to apprehended merely as an ought, it must be known that the idea of freedom is actual only as the state.<sup>53</sup>

This brings us to yet another series of questions. While we may have established a fairly strong theory of how human rights might be rationally justified, how does this translate into a political and social reality? Furthermore, how do these rights apply to those who do not live in a state, or not a “rational” state? Can this theory of Hegelian human rights apply to our modern “atomistic” societies? And, perhaps most problematic of all, how does this idea of “contextual freedom” and Hegelian human rights to these freedoms avoid similar claims made by draconian regimes such as those under Stalin and Mao among others?

In the following chapter, we will address these concerns, demonstrating how a Hegelian theory of human rights – while being substantially different from most prevalent conceptions of human rights – is completely incompatible with the type of oppression we saw in 20<sup>th</sup> Century communist dictatorships. While I will provide arguments as to how such a theory is practicable, it may be the case that this account of Hegelian human rights ultimately acts, as most important theories do, as a lens through which to criticize the existing state of affairs and offer opportunities by which we might improve our world as well as our understanding of it.

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<sup>53</sup> *PhR*, 54

## **Chapter 4: Human Flourishing and the Role of Institutions**

### **4.1 Introduction**

We began this project with the assertion that there was a crisis in human rights theory insofar as philosophical justifications for rights have been less than compelling, or have emphasized atomistic individualism and abstraction over community and concrete human existence. Throughout the body of this work, it has been argued that the philosophical perspective of Hegel allows us to deal with this crisis in such a way that we can come up with a theory of fundamental human rights which bears the scrutiny of philosophical analysis. Thus far, this has amounted to arguing that recognizing the freedom of others is a necessary condition of being human, that this is the origins of the idea of universal humanity, and that this idea actualizes itself through ethical communities which reflect rational universal principles accepted by the members of the community. However, an exceedingly important question remains unanswered: how does this Hegelian theory of human rights stand up in the real world? That is to say, can this account help us to deal with the practical instantiations of human rights grievances which are daily articulated around the globe?

In this final chapter, I want to draw attention to the unique nature of human rights in their position within moral and political theory generally. We will return, first of all, to

the problem of how legalistic conceptions of human rights are insufficient in dealing with "real world" problems for a variety of reasons and that a philosophical reconceptualization, specifically the Hegelian one I am offering here, is paradoxically the most "practical" way to proceed in terms of ameliorating many "real world" human rights issues.

This analysis will begin by looking, once again, at how the idea of human rights emerged out of the revolutionary movements in Europe inspired by the individualistic and rational principles of the Enlightenment. The philosophical articulation of the rights proclaimed by the French revolutionaries were individualistic and fall broadly within the philosophical tradition of what has come to be known as contractarianism. By dissecting two of the main exponents of contractarianism upon which modern human rights -- philosophically and legally -- are heavily based, we will see the insufficiency in such a legalistic, individualistic, contract-oriented approach when it comes to dealing with "real world" human rights issues.

To rectify the insufficiency of such legalistically contractarian based accounts of human rights, I will suggest that a reconceptualization of human rights is necessary if they are to be effective in the real world. In place of contractarian rights, I argue that the moral aspects of human rights must be accounted for and that a Hegelian/Aristotelian account of human rights as "human flourishing", in conjunction with the idea of "Capabilities" developed by Martha Nussbaum, allows us to avoid problems of overly abstract, individualistic contractarian theories of rights which insufficiently address problems of subjective need, actual quality of life, and cultural diversity. It is important to recognize that the Capabilities approach is here understood not to be a means of

justifying human rights, or replacing the Hegelian account I have been developing, but rather as a lens through which to more fruitfully view, interpret and implement the concept of human rights. In other words, the Capabilities approach is here utilized as a way of understanding what a theory of human rights, from a Hegelian perspective, might look like in the real world. Furthermore, it should be noted that while Nussbaum is by no means the sole purveyor of the Capabilities approach -- Amartya Sen being a notable proponent as well -- her perspective will be the primary account of Capabilities assumed here.

We will close by addressing a major concern which some readers might have regarding the possibility of such an account degenerating into Soviet-style totalitarianism where there is no place for individual rights and freedoms. Ultimately, we will see that while Hegel does occasionally make anti-individualistic comments, the acceptance of the views expressed in those passages is not necessary for the account developed here; and, secondly, that due to the relational nature of human rights, no account of purely individually oriented rights is realistic or desirable. Lastly, while Hegel's philosophical criticisms of liberal individualism might understandably be interpreted as arguments against contractarian theories of rights, when rights are understood instead as capabilities for human flourishing, Hegel can indeed be seen as a strong proponent of human rights.

#### **4.2 The Revolutionaries Have Only Changed The World, The Point is to Interpret It: Contractarianism and the Birth of Human Rights**

The reversal of Marx's famous indictment of the poverty of philosophy in the title of this section serves a dual function. First, it sets out the impetus of this section, which

can be formulated in the following question: how does any of this philosophical speculation on the nature of consciousness, freedom, and human rights have any bearing on the real human rights issues facing people of the world today? The second function -- and the reason for the reversal of Marx's original statement -- is the hint of the solution: while revolutions and other concrete political action make changes in real people's lives, these actions are often motivated by a particular conceptualization of politics, human relations, and morality. Thus, the first step in ameliorating human rights travesties in the "real world" is to look at the concepts which underlie the present political context within which such occurrences exist.

In this section, I argue that the current legalistic understanding of human rights -- which prioritizes the codification of specific legal rights and entitlements, usually focusing on individualistic issues -- is not the best way to deal with moral and political issues in a globalized world. Rather, we need to recognize that the unique nature of human rights -- that they are legal *and* moral claims; that they are ineluctably *relational*-- affords multiple understandings of them and that some understandings are more fecund than others in terms of providing real aid to people. Unsurprisingly, I will argue that a reconceptualization of human rights informed by the Hegelian perspective I have been developing here allows us a more useful way of understanding the relation of human rights to real people and societies and how the concept and language of human rights can best serve to make the world a better place.

To begin this analysis, however, we need to take a look at the origins of the present understanding of human rights. We will see that what I have been calling the legalistic, individual-oriented "contractarian" theory of human rights stems directly from

the philosophical works of John Locke and Immanuel Kant. These thinkers, I argue, were trying to interpret the politically tumultuous climate of Europe during the time of their writing. In an attempt to speak to the principles of rationalistic revolutionaries while maintaining and endorsing a certain level of legal structure, these thinkers developed politically ideal theories where citizens came together and formed societies based around contractual agreements on principles which they could all rationally agree to.

Appropriately, these political theories have come to be known as “contractarian.”

However, before we delve into a more detailed analysis which will help us to see exactly how these contractarian philosophers have influenced our current conception of human rights, let us turn to the aforementioned tumultuous political landscape of enlightenment Europe in order to elucidate the impetus which drove these thinkers to put forth their prominent theories.

As Eugene Kamenka argues, while many – if not all – human cultures and societies have contained some doctrine regarding human suffering, justice, obligation, and so on, the idea of human rights – that is, the idea of the supreme right of the individual, the idea that society exists for the individual and not vice versa – is a historical product of western enlightenment thinking<sup>1</sup>. Kamenka argues that the philosophical articulation of human rights by such thinkers as Hobbes, Locke, and Rousseau was taking the practical lists of rights being claimed by citizens against their leaders in various countries and making them more abstract<sup>2</sup>. The idea here is that the

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<sup>1</sup> *Human Rights*, eds. Eugene Kamenka & Alice Erh-Soon Tay (London: Edward Arnold Publishers, 1978), 6.

<sup>2</sup> *Ibid.*, 9.

individual, for the first time in history, was seen to be the *raison d'être* of society rather than the other way around.

Revolutions declaring the supremacy of this new idea of the prominence of individuality were followed by documents which enunciated various “rights,” rights which unambiguously encapsulated much of this new perspective on the relation of the individual to society. However, what is important here is that they were “claiming ‘liberty’ and not ‘liberties’, and beginning to assert general and not specific rights.”<sup>3</sup> In other words, there was a revolution of the very concepts and language of political relations; what Hegel saw in the French Revolution – the seizing of the idea that Reason should govern, not caprice and contingency – was indeed happening; it was the dawn of the age of political liberalism.

This age was characterized by the increasingly abstract and general principles of universal justice and rights. Primarily, this revolution of rights philosophically manifested itself in the form of what was to become known as contractarianism. The idea here was that “rights” existed insofar as there was some form of agreement or contract between individuals entering into society with one another. Famously, Hobbes argued that before society, there was absolute freedom but no security. By entering into a contract with others, individuals gained security -- thus, the right to safety and so on -- at the expense of their absolute liberty. No longer then was society seen as primary, an organism of which the individual was merely a part, but rather it was understood by the contractarians as a vehicle through which individuals could achieve security and happiness.

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<sup>3</sup> Ibid.

It is precisely out of this tradition of contractarian thought, I argue, that the idea of human rights emerged. The philosophies of John Locke and Immanuel Kant were deeply informed by enlightenment individualism -- where the individual was imbued with a new sense of importance -- when they set about articulating their own systems of philosophical conjecture regarding human relations, both political and ethical.

In his *Second Treatise of Government* John Locke argues that the legitimacy of a state derives from the consent of its people and that the people always have a right to overthrow a state when it is no longer serving their needs. This statement comes from his philosophical position that from a state of nature where human beings are -- while constrained by the laws of nature -- extremely free, we came together to form a type of contract, to enter into society where we would give up certain rights and liberties in order to enhance our lives in other respects<sup>4</sup>. Thus, the legitimacy of the principles of a state, its laws and justice, arise from this original contract between individuals.

While Kant did not explicitly discuss human rights -- and what he did discuss in relation to political rights was not entirely rooted in his more systematic philosophical oeuvre -- it is evident that much of contemporary human rights proponents draw heavily on Kant's works, particularly his ideas regarding moral contractualism. The idea behind Kant's moral contractualism can be summarily demonstrated by way of his famous "categorical imperative." The categorical imperative is an ethical injunction which requires any rational moral agent to ask whether or not the "maxim" or tacit principle being endorsed by a particular action could be "universalized" or accepted by all rational agents in all situations. The final arbiter of moral rightness is rationality in the form of the

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<sup>4</sup> Locke, 325.



unanimous approbation of ideal moral agents. Immediately, one sees how this particular way of conceptualizing morality can be understood as contractualistic; each action's moral legitimacy is determined by essentially consulting with one's fellow rational beings; there must be a consensus reached by all. In fact, another formulation of the categorical imperative states that one should consider whether the maxim of one's action could be made into a law in a "kingdom of ends," again emphasizing the contractual nature of his philosophy.

Taken together, Locke and Kant's contractarian articulations of human ethical and political relations provide the backbone to much of our current understanding and political proclamations of human rights. When we look at some of the most prominent human rights documents in history, the influence of both Kant's emphasis on universal, abstract principles and Locke's ideas regarding the supremacy of God-given, natural laws, the essentially "free" (in the negative sense) nature of humans, and the contract between individuals giving legitimacy to a society and its laws, is readily apparent. Famously, the *U.S. Declaration of Independence* of 1776 draws directly from Locke when its authors state,

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness.<sup>5</sup>

Tellingly, Locke's work, from which this famous line is drawn, reads "Property" in place of "Happiness." While such a platitudinous statement is problematic insofar as it baldly asserts the "God given" rights of humans without offering a philosophical justification,

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<sup>5</sup> "U. S. Declaration of Independence (1776)" in *Philosophy of Human Rights*, ed. David Boersema (Boulder, CO: Westview Press, 2011), 370.

perhaps it is efficacious in a practical sense. However, despite the inspiring inclusion of “the pursuit of Happiness” amongst the primary political priorities declared in the document, when one turns to the *U.S. Bill of Rights* of 1791, and subsequent amendments to the constitution, we are not met with any concrete declarations of precisely how this “pursuit of Happiness” is to be ensured. Rather, we get a list of negative rights, rights to not have one’s property seized for example, but no mention regarding people who have no property to be seized<sup>6</sup>.

In the famous *Declaration of the Rights of Man and of the Citizen*, which emerged from the French Revolution and ostensibly encapsulates its ideal principles, we find again a list of negative rights: the “sacred right” to private property among others, and interestingly, the statement that while all “Men are born and remain free,” this liberty “consists in the freedom to do everything which injures no one else.”<sup>7</sup> This explicit endorsement of a strictly negative concept of freedom -- and a negative concept of human rights -- presented in perhaps *the* most influential historical declaration of human rights provides a great deal of illumination as to how we have come to such a legalistic and individually oriented conception of human rights today.

Turning to the relatively recent *Universal Declaration of Human Rights* of 1948, we can again see the influence of Locke -- and more obviously, the influence of the previously cited Declarations.<sup>8</sup> While the *Universal Declaration* does include rights to

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<sup>6</sup> “U. S. Bill of Rights (1791) and Selected Later Amendments,” in *Philosophy of Human Rights*, ed. David Boersema (Boulder, CO: Westview Press, 2011), 373-376.

<sup>7</sup> “French Declaration of The Rights of Man and Citizen (1789),” in *Philosophy of Human Rights*, ed. David Boersema (Boulder, CO: Westview Press, 2011), 378.

<sup>8</sup> “Universal Declaration of Human Rights (1948),” in *Philosophy of Human Rights*, ed. David Boersema (Boulder, CO: Westview Press, 2011), 380-388.

food, shelter, freedom of religion and other “positive” rights<sup>9</sup>, the problem lies in exactly how these lofty declarations can be effectively implemented in a cross-cultural context. Here, we see the problem of a more Kantian variety: while there are legitimate, rational universal principles, the problem comes precisely from their universal nature; their rigidity resists practical implementation in particular social and cultural contexts. As Martha Nussbaum has noted<sup>10</sup>, in what sense can a woman be said to have the right to sex equality and political participation -- as she ostensibly would have in India, a nation that signed on to the *Universal Declaration* -- if she is systemically deprived of the possibility of equality and participation on a practical level? Nussbaum rightly argues that the woman does not have these rights because she does not have the “capability” to act upon these formal rights.

We see then, that the most significant problem with these contractarian theories is that when it comes to practical issues, they are too abstract. Human beings are more than disembodied rational agents and rights are something that originate in a relationship, they arise *within* society, or endogenously, not exogenously. As we argued earlier, consciousness becomes human and thus capable of rights only with other humans; there was no mythical "state of nature" where we entered into contractual negotiations with other rational individuals because there were no individuals. The preceding account of how the abstract, primarily negative and individualistic accounts of Lockean and Kantian rights have influenced our most famous of human rights documents -- and how the insufficiency of these documents has manifested itself in injustices in the real world --

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<sup>9</sup> Indeed, it should be noted that many of the more socially and economically oriented rights included later in the document are quite substantial.

<sup>10</sup> Martha Nussbaum, “Capabilities and Human Rights,” in *Philosophy of Human Rights: Readings in Context*, ed. Patrick Hayden (New York, NY: Paragon House, 2001), 229-230.

should suffice to justify a reevaluation of the concept of human rights as we presently understand it. I argue, drawing from the observations of Nussbaum and others, that such a conception should move away from traditional contractarian accounts, and towards a perspective which places emphasis on capabilities, human flourishing, and the essentially relational nature of human rights.

### **4.3 Reconceptualizing Human Rights: Capabilities, Human Flourishing, and Relationship**

When you combine the abstract nature of present human rights doctrine with a heavy focus on prioritizing the individual it results in policy that does not easily lend itself to efficacious implementation on a global scale. Why is this? One of the main criticisms of universal human rights and its proponents is the accusation that it is a Western imposition<sup>11</sup>; if human rights are understood as abstract, necessarily legal concepts which presume the ontological priority of the individual and the supremacy of an individualistic society, then they are indeed an imposition on many cultures.

However, this is not to concede to the postmodern skeptics that human rights are lost in the void of cultural relativism, rather it merely requires a reconceptualization of what we mean by human rights and how they apply to specific contexts. It is my suggestion that, drawing on the arguments of Martha Nussbaum and Thomas Pogge among others, we can legitimize the notion of universal human rights and make it practical on a global level if we shift the discourse from one of contractarian legal-individualism, to a moral discourse which emphasizes the relational aspect of rights,

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<sup>11</sup> Manwoo Lee, "North Korea and the Western Notion of Human Rights," in *Philosophy of Human Rights*, ed. David Boersema (Boulder, CO: Westview Press, 2011), 210-216.

focusing on the encouragement of human flourishing through a multiplicity of institutional means.

As we discussed in the first chapter, human rights are interestingly -- and problematically -- located precisely at the intersection of moral and political spheres. They are, in essence, a moral claim about how humans should be viewed and treated, rather than a descriptive claim about really existing laws. However, they are also political and legal claims insofar as they appeal to the social and political institutions in order to uphold rights, ensure or provide certain amenities and so forth. As Thomas Pogge has pointed out<sup>12</sup>, all too often articulations of human rights have taken a legalistic perspective, where specific rights are codified and constitutionalized by government or international law organizations. The perspective of Robert Nozick<sup>13</sup> and Libertarian-minded theorists generally is precisely the result of this legalistic understanding of rights claims. The problem with this is that there is a disconnect between the law and the reality. The problem is two-fold: first of all, it is not the case that individuals are ontologically prior to collectives, the two are mutually constitutive; and secondly, such legalistic understandings of rights -- however well-intentioned -- often have very little practical application to the culturally diverse contexts in which they must operate. Just as Hegel criticized Kant's ethical philosophy for being overly abstract, formalistic, and empty, so too can abstract legal proclamations of human rights be of little help when it comes to feeding a hungry population. This is why I argue for a reconceptualization of human rights.

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<sup>12</sup> Thomas Pogge, *World Poverty and Human Rights* (Malden, MA: Polity Press, 2002), 45-46.

<sup>13</sup> See quote from his *Anarchy, State, and Utopia* below.

As has been shown in previous chapters, Hegelian human rights are ultimately grounded in the necessity of human freedom. The right to freedom -- that is, one's capacity to determine one's self and the correlative duty to recognize this right in others - - is an inextricable part of the very concept of "human." However, what has been implicit here is that, for Hegel, the right to human freedom is more than a conceptual necessity: it is a *teleological* necessity.

Anyone familiar with Hegel's lectures on *The Philosophy of History* will be aware of the teleological element in his thought. As I pointed out in chapter 3, as early as his *The Difference Between Fichte's and Schelling's System of Philosophy*, Hegel declares his belief in the importance of the teleological perspective. The concept of teleology is one which Hegel derives from Aristotle's philosophy and this should not surprise us: our earlier discussion of Hegel's idea that self-consciousness can only exist by and for another self-consciousness is a clear extension of Aristotle's notion that *zoon politikon* can only exist as part of a *polis*, or that human beings properly can only exist as human beings in a society. That said, the Hegelian reconceptualization of human rights I am suggesting here draws heavily on not just Aristotle's concept of teleology, but his notion of *eudaimonia*, or "human flourishing" as well. However, it is important to note that while Hegel indeed draws on Aristotelian concepts, his particular way of understanding and utilizing these concepts diverges in important ways from Aristotle's original employment of them and these divergences allow a Hegelian to avoid several criticisms which might otherwise be directed towards neo-Aristotelian political theories.

Therefore, this reconceptualization of human rights is going to revolve around the argument that human rights are justified teleologically insofar as the teleology of human

beings is the attainment of freedom. As we saw in the previous chapter, for Hegel, human freedom is more than just the absence of constraints, it is a type of social autonomy, the ability to govern one's actions rationally in accordance with shared rational principles of a community; in short, it is a type of what Martha Nussbaum has referred to as "Capabilities,"<sup>14</sup> the capabilities to achieve what Aristotle called *eudaimonia*, or as Thomas Pogge puts it, "human flourishing."<sup>15</sup>

The idea here is that the claim to human rights is a claim to a certain capacity to live as a human being and these capacities are often better developed through programs and institutions rather than constitutions, laws, and empty statutes. Human rights then, would not be only a list of specific laws with obligations on governing bodies, but rather moral entitlements of citizens which emphasize the relationship between citizens and the community. This would ideally result in human rights which are more about the type of community one lives in, the forces and institutional practices which shapes one's everyday life and personal development, than about specific legal rights.

As we saw earlier, Hegelian human rights are rooted in the idea that the very beings that can have rights are necessarily free and this freedom – the essence of humanity – is what legitimizes the idea of human rights. Secondly, this idea of freedom is a type of autonomy, or what I have here referred to as “human flourishing,” a capacity to determine one's existence and live according to principles one has rationally chosen. Thus, a Hegelian understanding of human rights would see a society which focuses less on abstract declarations of property rights and formal “freedoms” and rather endorses and

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<sup>14</sup> See Martha Nussbaum, “Capabilities and Human Rights,” in *Philosophy of Human Rights: Readings in Context*, ed. Patrick Hayden (St. Paul, MN: Paragon House, 2001), 212-240 for a full discussion on her unique account of the “capabilities” approach.

<sup>15</sup> Pogge, 31.

implements measures which are conducive to the development of human capabilities, which allow citizens to flourish, to be autonomous.

Practically, this culminates in what Thomas Pogge has referred to as an “institutional understanding”<sup>16</sup> of human rights. What this means is that human rights understood properly as a *moral* claim -- rather than a legal claim -- to a capacity of autonomy and human flourishing is a claim on social institutions and policies to provide the minimum necessary components to enable citizens to flourish. Rather than abstract legal statutes which may or may not be enforced, an institutional understanding of human rights allows a plurality of regimes to accommodate the moral demands of the claimants without pedantic legal codification. Rather, what matters here is results. For example, one might ask, do citizens have enough to eat? Are they able to pursue the type of life they want to pursue?

And so we arrive at the crux of a Hegelian account of human rights: the institutions and practices of a society which make rights claims -- and thus, rights themselves -- possible. When it comes down to it, rights only exist where they can be enforced. The claim of a right requires a party to whom an accordant duty applies, the concept of a right is essentially institutional. As Steven Smith argues, “An appeal to rights necessarily involves an appeal to the social and political institutions and practices that make the protection of rights possible.”<sup>17</sup> Practically, this means that a society rooted in this Hegelian conception of human rights would provide institutional means for its citizens to realize their capacities. The argument I made in chapter 3 regarding the merely

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<sup>16</sup> Pogge, 45.

<sup>17</sup> Smith, 99.



formal freedom in the United States in terms of nutrition capabilities applies here as well. That is, a society interpreting Hegelian human rights along the lines of the capabilities approach would not only have a law declaring that people could choose to eat whatever they want, including nutritional options, but would ensure that the institutions of that society provided citizens with real means of achieving these goals. These institutional measures might take shape in the form of greater consumer information, subsidization of healthier foods, tax benefits for buying locally, and so forth. The idea of institutions ensuring human capabilities is particularly pertinent to the case of poverty. Hegel argues that poverty results from contingent factors of birth and nature and,

leaves [the poor] more or less deprived of, among other things, all the advantages of society, the opportunity of acquiring skill or education of any kind, the administration of right, access to public health services, and often even the consolations of religion.<sup>18</sup>

In order to rectify the situation and provide the poor with the capabilities to determine the course of their lives, Hegel states that institutions, not personal charity, should fill this role because individual charity is largely subjective and willful, whereas institutional justice is more rational and universal:

[P]ublic social conditions are to be regarded as all the more complete the less (in comparison with what is arranged publicly) is left for individual humans to do as themselves in accordance with their particular beliefs.<sup>19</sup>

Thus, not only are institutions charged with providing the minimum conditions to allow for human beings to be autonomous and pursue their conception of a flourishing existence, a society is complete only insofar as its social institutions meet these conditions of human capabilities.

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<sup>18</sup> *PhR*, 180.

<sup>19</sup> *PhR*, 180.

This is the practical entailment of Hegelian human rights: they are moral claims which are grounded in the intrinsically free and intersubjective nature of human subjectivity and in order to be “more than an ought,” there must be some kind of social-institutional context which allows for the fulfillment and enforcement of these rights. The necessity of institutional justice is what Hegel was driving at with his criticism of the “fury of destruction”<sup>20</sup> that was the French Revolution; not that the individualist, enlightenment, liberal philosophical ideals that spearheaded the storming of the Bastille were completely misguided, but rather that the realization of the moral ideal requires some kind of (rational) institutional framework which a rights claim can be held against. Hegel succinctly expresses just this point in his *Philosophy of Right*:

In contrast with the truth thus concealed behind subjective feelings and notions, the genuine truth is the prodigious transfer of the inner to the outer, the incorporation of reason into reality; this has been the labor of all world history, and through this labor civilized humanity has won the actuality and consciousness of rational existence, of political institutions, and of laws.<sup>21</sup>

There is an important point of clarification which should be made about this institutional interpretation of Hegelian human rights that prioritizes human flourishing. It is important to recognize that, as Nussbaum explains, capability is distinct from function<sup>22</sup>. In other words, while the idea of “human flourishing” is, as we acknowledged, an Aristotelian, teleological concept, this does not necessarily entail the Aristotelian conclusion of political “perfectionism,” i.e., the idea that there is one best form of life and that all should strive to attain it. For Hegel, the human *telos*<sup>23</sup> is freedom, where freedom

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<sup>20</sup> *PhS*, 369.

<sup>21</sup> *PhR*, 201.

<sup>22</sup> Nussbaum, 220.

<sup>23</sup> Furthermore, it is important to recognize that a teleological justification of human rights is substantially different from a consequentialist justification insofar as teleological accounts do not believe that ends justify the means. Rather, the means themselves are an integral part of the process.

can be understood as a type of agency or self-determination. Due to the fact that human flourishing, in this account, will be a measure of the extent to which the *telos* of human freedom is realized in a society, there is no specific, monolithic vision of what the “right way to live” must be. In other words, the *telos* being argued for here is not a prescription for a particular type of existence that would deprive one of choice and personal liberty -- as Aristotle’s endorsement of the life of contemplation might understandably be seen to do -- but rather, it argues the precisely opposite point. A society has fulfilled the *telos* of humanity insofar as human beings have the capacity -- personal and institutional -- to determine the type of interests they want to pursue and have the means available to realize them. Thus, when Nussbaum states that capabilities are distinct from function, she means that the institutional provision of citizens with the means for certain capabilities does not necessitate these citizens acting on these capabilities.

#### **4.4 A Few Criticisms**

Before concluding, I would like to address two worries that are likely to arise in the minds of some readers. First, with all the emphasis on institutions and the social nature of consciousness, how is it that this account does not degenerate into a type of Soviet or Fascist totalitarianism? That is, much of what we understand to be important when we talk of rights is precisely what is being denied here: the supremacy of the individual, the protection of property rights against arbitrary appropriation and so on. How can a Hegelian account of human rights avoid this problem and can it truly accommodate what we understand to be fundamental individual rights such as those to

property as well as rights for minorities? Furthermore, if subjective freedom can only be actualized through the state, how does this not lead to nationalist extremism? Secondly, if human rights are to be understood as emerging historically and situated in particular social and cultural settings, how can they be said to be universal?

To begin, perhaps the paradigmatic expression of the libertarian concern regarding institutional justice and “substantial freedom” can be found in Robert Nozick's influential *Anarchy State and Utopia* where he argues that any appeal to the “general will” or the “interests of the people” to the detriment of the individual is ridiculous and immoral on the grounds that only individuals exist; there is no “collective entity,” only individuals:

But there is no *social entity* with a good that undergoes some sacrifice for its own good. There are only individual people, different individual people, with their own individual lives. Using one of these people for the benefit of others, uses him and benefits the others. Nothing more.<sup>24</sup>

It is understandable that one might be wary of arguments in favour of greater community control over the democratic process, institutional intervention into the lives of citizens, and the necessary economic redistribution that would be entailed by the account of human rights developed here. However, such worries are misplaced vis-à-vis this account for three reasons. First, to equate an argument against a society of formalistic freedom in favour of more community control over the guiding principles of society with totalitarianism is extreme. The argument that our societies could be better run, more fair, and more free than they are now is one which I take to be convincing. Perhaps some do not. One of the possible ways, I argued, that we could better Western societies is through

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<sup>24</sup> Robert Nozick, *Anarchy, State, and Utopia* (New York, NY: Basic Books, Inc., 1974), 32-33.

the institutional provision of necessary means to achieve certain human capabilities. While “institutional provision” might imply to some a draconian state appropriating all private property and telling people how they should or should not live their lives, such a result is not necessary. There must always be individual acquiescence to the state to some degree. Whether stopping for others at traffic lights, paying taxes for roads, or not bludgeoning your neighbor when she lets her dog defecate on your lawn, there are many cases where -- even in the most liberal of societies -- one must necessarily sacrifice one’s individual desires and freedoms for the sake of the state. As Hegel argues later,

If the state is confused with civil society, and its determination is posited as the securing and protecting of property and of personal freedom, then the interest of the individuals as such becomes the ultimate end for which they are united, and from that it would follow that membership in the state is optional. But the state’s relation to the individual human is quite different from this; because the state is objective spirit, the individual humans themselves have objectivity, truth, and ethicality only as members of it.<sup>25</sup>

Again, Hegel speaks to the fallacy of prioritizing the individual to the community. Rights are essentially *relational*; without relationships, social and political institutions and a shared cultural framework, there would be no rights. Further, without the shared horizons of meaning offered by a community, there would be no human self.

The criticism regarding how such a Hegelian account of human rights would deal with problems of minority rights and nationalism can be responded to in the following way. The emphasis of the social nature of humanity and human rights, where freedom can only be understood properly in the context of community, in no way entails state-worship or xenophobia. True, I have argued that substantial freedom can only be realized when mediated by the universal of system of laws or principles of a state, but the idea of

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<sup>25</sup> Ibid.

*humanity* precedes and transcends any particular cultural manifestation of values. That is, for substantial freedom to be achieved, not just any state is sufficient, only one which has recognized the inviolability of human freedom, particular or substantial. This means that autonomy must be protected above all else, including the autonomy of minorities. The dawn of freedom for all which Hegel saw in the motivating principles of the French revolutionaries was not a freedom limited to the French, but as Hegel himself says, “[T]he I comes to be apprehended as a universal person wherein all are identical. Human beings count as such because they are human beings, not because they are Jews, Catholics, Protestants, Germans, Italians, etc.”<sup>26</sup> And again in a footnote to paragraph 270:

[T]he fierce outcry raised against Jews... ignores the fact that they are, above all, human beings; and humanity, so far from being merely a superficial, abstract quality, is on the contrary itself the basis of the fact that what civil rights produce in their possessors is the feeling of themselves as counting in civil society as persons with rights. This feeling of selfhood, infinite and free from everything else, is the root from which the desired similarity in dispositions and ways of thinking arises.<sup>27</sup>

What we see here is Hegel endorsing a protection of minority rights because tolerance will -- right or wrong -- eventually be conducive to more social harmony. Furthermore, for citizens to deny the rights of minorities is contradictory in the sense that it is only through the concept of universal humanity that they feel they have the right to argue for the exclusion of others.

Secondly, how can an argument claiming that human rights emerge historically, rooted in concrete, social situations, can simultaneously claim that these human rights are

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<sup>26</sup> *PhR*, 162.

<sup>27</sup> *Ibid.*, 203.

universal? And further, how can it deal with the problems of implementing a universal moral code in culturally diverse contexts? This worry speaks directly to concerns about human rights being imperialistic, western impositions of individualism and so on. In many ways, when human rights are articulated in a legalistic manner heavily influenced by Western contract theorists, these criticisms are legitimate; as we saw, many foundational human rights documents speak about abstract, negative individual rights with little, if any, regard for community values, tradition, or social and economic issues.

The problem of multicultural application of a capabilities interpretation of Hegelian human rights becomes tractable when we consider the Hegelian concepts of dialectic and concrete universality. Briefly, the idea of concrete universality is that there is a universally valid truth -- here, the supremacy of human autonomy -- but how this universal will manifest itself is inextricably bound up with particular socially and historically contextual variables. Dialectic is fundamentally the idea that reality is in motion, or more precisely, in conversation with itself. One consequence of this for human rights is that -- while there is the kernel of necessary truth that human freedom and social autonomy are rational, absolute values -- how this truth ultimately manifests itself within a particular community will be in large part influenced by particular cultural and historical factors of each community. That is, the *concrete universal* is how the truth of the right to human freedom concretizes in particular settings. In other words, I would argue that the Hegelian claim that mutual recognition of the basic right to self-determination is a fundamentally necessary precondition of human experience and social interaction is broadly true of human experience of the world. However, for such a rational truth to make its way into reality, it needed a particular opportunity to present itself, the

right social, historical and economic conditions in order to take root and blossom as more than a “mere ought,” and into an existing, concrete social reality. Hegel would argue that this moment was the French Revolution. While the idea of human rights was not new, it had finally emerged as social reality in the actions of the revolutionaries. Once such an idea had emerged and become a historical possibility, it became a reality and the basic universal notion of human rights began to take on various forms in revolutions across the globe. One example of particular interest is the slave revolt against the French colonists in Haiti, just months following the French revolution<sup>28</sup>. The slaves took *the very principles and ideas espoused by their oppressors* -- ideas of freedom, equality, and brotherhood -- and used these ideas to make human rights a reality for themselves.

Furthermore, because reality -- and our understanding of it -- is a dialectical progression, cultures will constantly be in conversation with themselves vis-à-vis human rights and what the concept means given present conditions. Practically, this would allow for a multiplicity of unique approaches for communities to ensure human rights to their members without having to abide by exogenously imposed, formalistic principles which may in fact have detrimental consequences on the capabilities of members of the community.

## **Conclusion**

In this chapter, we set out to describe what a Hegelian account of human rights could offer in terms of practical application to human rights issues in the real world. I

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<sup>28</sup> For more on the Haitian revolution, see Thomas O. Ott’s *The Haitian Revolution: 1789-1804* (Knoxville, TN: Tennessee University Press, 1973).



argued that one of the primary practical problems in human rights issues today is the abstract, individualistic, and legalistic nature of human rights laws, bills, and policies; these lofty declarations often have little to say regarding the actual existing human capacities of citizens, and often are susceptible to criticisms of being overtly “Western” in their ideological leanings. By looking at several foundational human rights documents, we saw that many of these problems come from the very framing of the human rights discourse present in those documents. That is, the problem is that these documents are rooted in the contractual tradition of political philosophy, emphasizing Kantian abstract, formalistic principles, and Lockean “negative” liberties narrowly focusing around particular, individual interests. Furthermore, the contractual approach to human rights fails to take account of the essentially social nature of human beings, our fundamental embeddedness with others.

In order to rectify these issues -- and thus, increase practical efficacy in the realm of human rights policy -- I suggested that we frame the discussion of human rights in terms of increased human capabilities to achieve “human flourishing.” Practically, I argued that this reconceptualization would yield a human rights discourse which would not only emphasize institutional responsibilities to ensure what have often heretofore been merely *formal* rights, but one which would also allow for various cultural interpretations and implementations of the universal rights through the Hegelian process of *concrete universality*.

In the end, the libertarian concern that a Hegelian institutional human rights regime would trample the rights of individuals in the name of the collective, were shown to be over-stated and unwarranted. I argued that first of all, this criticism stems from the

fallacious assumption of the ontological priority of the individual to the community; for without social institutions and relationships, there would be no rights. Secondly, it was argued that even the most individualistic of societies necessarily requires some level of subsumption of the individual will to the needs of the collective. Furthermore, we saw that the institutional provision of Hegelian human rights is not an endorsement of totalitarianism, incompatible to the idea of human rights; rather, it is a more subtle argument which makes the point that while individual rights and particular interests are *necessary for the existence of freedom*, these individual interests and rights must be mediated by universal, rational institutions and laws. I am arguing, essentially, for a system of human rights which neither sacrifices the individual for the community, nor sacrifices the community for the sake of the individual. Rather, I am arguing for a society which allows us to more fairly set up the framework in which we make our particular decisions in such a way as to reflect our deepest values.

Lastly, we argued that the apparent contradiction between the universality of human rights and our argument that they emerge historically in particular social contexts can be resolved through the concept of *concrete universality*. Ultimately, this argument stated that despite the fact that certain ideas are manifested in multifarious ways in different historical and societal contexts, there nevertheless exists a valid universal truth which permeates all the various manifestations. In the end, the experience of the necessity of mutual recognition of freedom for human interaction is a universal phenomenon. How this recognition of the moral right to freedom manifests, however, will vary depending on historical and societal circumstances.

## Conclusion

We began this project with two questions: can human rights can be justified, and how? And second, what would such a conception of rights look like in the real world? It was my hope that I could provide a rational basis for a system of human rights which could withstand the criticisms of such human rights skeptics as Richard Rorty. Over the course of my argument, I showed that Hegel's analysis of human subjectivity and freedom allowed us a unique perspective on the concept of human rights, a perspective which provided not only a rational justification for human rights, but a complete reconceptualization which promises to address many of the practical issues plaguing current existing human rights paradigms.

I argued that many attempts to justify human rights philosophically were problematic insofar as they either presupposed or emphasized abstract, atomistic, and legalistic conceptions of human beings and their relations with one another. The Hegelian reconceptualization of human rights developed here proposed a type of human rights that emphasizes the "human" aspect. By acknowledging that mutual recognition of the basic human right to self-determination is an inextricable precondition for human experience and social interaction, we saw that a minimal moral fact emerged naturally in the very fabric of our relations with others. I argued that this right to freedom should be conceptualized in a Hegelian way which favours self-determination in a social context over abstract negative willfulness. Finally, I contended that such a Hegelian account of

human rights could best be understood in a practical context along the lines of Martha Nussbaum's capabilities approach. Such an approach, I argued, would emphasize the real possibilities available to persons in a society in terms of actualizing the rights they are declared to have. If there is a rationally based right to freedom of expression, for example, and such freedom is understood in a Hegelian sense, a capabilities style implementation would require institutions to ensure that individuals in society were provided with the necessary means to actualize such a right. Practically, this would mean more than just saying, "no one is stopping you from voicing your opinion" and instead would ensure that people were not illegally detained for their opinions, and that the poor, uneducated, disabled, and disenfranchised were provided the necessary means to act upon this right.

Hegelian human rights are ultimately about realizing the dialectical concept of freedom, the "incorporation of reason into reality,"<sup>1</sup> by negating the untruth of injustices around us. The call to reconceptualize human rights along Hegelian lines, is not reactionary, but rather revolutionary; it is a call to win "the actuality and consciousness of rational existence, of political institutions, and of laws."<sup>2</sup> I argued here for rights defined not only by what we must abstain from doing, but also by the capabilities that allow us to become more fully human, to live flourishing existences, and shape the communities we share into spaces of recognition, justice, and shared values we can see ourselves in.

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<sup>1</sup> *PhR*, 201.

<sup>2</sup> *Ibid.*

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