

Hegel's Treatment of the Free Will Problem: a Conceptual Oversight and Its Implications for Legal Theory

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Abstract: G.W.F. Hegel offers a thorough, complex, and unique theory of free will in the *Philosophy of Right*. In what follows, I argue that Hegel's conceptualization of free will makes the mistake of collapsing the possibility of organic freedom (the ability to act freely of causal determination) into the potential for moral freedom (the capacity to act in accordance with Reason). This article engages in three distinct tasks in making this argument. First, I provide a critical overview of Hegel's conception of free will – namely, how he envisages the movement from the abstract, incomplete, and undeveloped will, to that of a concrete, complete, and developed one through the unfolding of Reason. Second, I introduce the contemporary debate regarding nomological determinism between libertarians and skeptics, of both the in compatibilist and compatibilist variety. I suggest that, in the context of the modern free will debate, Hegel is best categorized as a compatibilist as he both accepts causal determinism but remains committed to the notion that certain persons can act in concert with their own volition. Third, I argue that Hegel's compatibilist understanding of free will has important and problematic consequences for legal theory, particularly normative jurisprudence. Compatibilism, generally, and Hegel's particular version, substantiates the idea of basic moral desert which poses a serious threat to the possibility of moral progress from a retributive justice system to a consequentialist one.

Keywords: Hegel, Free will, compatibilism, incompatibilism, retributivism, consequentialist justice, retributive justice.

I. Introduction

This paper argues that G.W.F. Hegel's theory of free will, particularly as conceived of in the *Philosophy of Right*, is critically limited because it collapses the question of organic freedom into an exploration of moral freedom. A number of modern philosophers – Hobbes, Spinoza, and Kant, etc. – have questioned the possibility that we are indeed free autonomous beings. They point to the fact that we live in a physical world that operates in accordance with natural laws, most notably, causation. The question of nomological determinism, therefore, can be put in the following terms: if humans, like all other things in reality, are situated within this physical world, are we not determined by the natural laws that govern physical processes? If so, this would ultimately imply that our actions must simply be effects of prior causes. This problem – which I am labeling *organic freedom* – casts doubt on our manifest image of 'free will' (Zawidzki 2014). That is, our

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conventional understanding of the self – that we are the ultimate source of our decisions and possess libertarian freedom – is directly threatened by a scientific worldview.

In what follows, is an attempt to show that Hegel not only fails to adequately address the question of organic freedom, but his attempt to re-conceptualize (or redefine) free will overlooks this debate entirely. While Hegel acknowledges that the human condition is composed of a natural and spiritual dimension, his theory of freedom – which I am labeling moral freedom – functions similarly to theories of moral (political) freedom championed by thinkers like John Stuart Mill (virtue of individuality) and Amartya Sen (capabilities approach) (Mill 2013; Sen 2009). That is, Hegel’s theory of freedom deals almost exclusively with the spiritual side of [wo]man, and ultimately strives to document the conditions that allow for individuals “to pursue the high aim of preserving an absolutely rational society” – to fully express their highest duty and self (Dyde 1894, 661). In the process of outlining this model, Hegel’s construction of the three-part will prematurely dismisses the concerns surrounding the problem of organic freedom.

The collapsing of the problem of organic freedom into the problem of moral freedom has serious political and social consequences. For instance, our dominant understanding about free will, and whether we humans possess it, is fundamental to the construction of judicial philosophies. Insofar as the traditional notion of organic freedom is believed to exist, retributivist philosophies of justice will continue to shape our legal system and civil society in general (Caruso 2019). Such political consequences suggest, rather demand, that we must treat the problem of organic freedom as independently and as exclusively significant. In other words, any attempt, conscious or unconscious, to dissolve the problem of organic freedom into that of moral freedom should be carefully considered, and if necessary, challenged. Weighing in the balance is the perpetuation of morally erroneous justice orientations, and a host of logical consequences like the post-incarceration stigma.

In what follows is a sequential order of arguments that expose the potential threat Hegel’s conception of freedom presents to moral progress in contemporary justice systems. First, I will review Hegel’s theory of freedom as articulated in the *Philosophy of Right*, and his broader system in general; how individuals, as abstract being, come to their full stature in the world and exist in alignment with the Absolute Idea. For Hegel, this process is composed of three parts from the abstract individual to the free man living in harmony with Reason. Second, I outline the contemporary debates surrounding the problem of organic freedom. This problem is centrally defined by whether humans are determined, and if so, can they still be free? The current literature is predominantly comprised of competing philosophical camps, namely, the incompatibilists and compatibilists. This section will allow for a proper understanding of how Hegel’s moral freedom compares, contrasts with, and overlooks the issue of organic freedom. It will become evident that Hegel’s account of free will fails to prove the veracity of the

libertarian ideal, which states that to be free and individual must be (1) the ultimate source of their actions, and (2) have been able to do otherwise.

Third, I will explore the relationship between freedom of the will and judicial philosophy. As the arguments of hard determinists' continue to grow stronger, visually speaking, with the aid of advancements in neuroscience, some thinkers have given profound consideration to the effects of societal-wide subscription to determinism on the criminal justice system. The key function of this section will be to show how our conventional understanding of freedom, the freedom we associate with basic moral desert, is under threat by scientific discovery. Finally, I will use the first three sections as a means of showing that Hegel's theory of freedom is flawed. His lack of consideration on the problem of organic freedom can lead to the development of a morally objectionable justice system, which in turns, prohibits the possibility of Absolute Reason becoming fully realized.

II. Hegel and Free Will: Human Nature and Spirit

The conceptual theory of freedom articulated by Hegel begins with understanding how he sees the human being, or, how he defines human nature. According to Hegel, what makes the human species unique from other organic entities within the biosphere is that it embodies both a natural and spiritual dimension. The Hegelian ontology of mankind is that he or she is at the same time a being of nature (animalistic) and a being of spirit (rational). As Hegel continually does throughout his work, he argues for an ontological unity between categories that have historically been separated by previous thinkers. In Hegel's words, "Man is, on the one side, a natural being. As such, he conducts himself according to arbitrariness and chance; as a restless subjective being. He does not distinguish between the essential, and the unessential. On the side, he is a spiritual, rational being. From this side he is not from nature[...] Man must bring his two sides in agreement; that is, to make his singularity adequate to his rational side, or to make this one, the dominant one" (Hegel 1986, 258).

As we will see in subsequent sections, this definition of man is a foundation that implies a compatibilist position with respect to the problem of free will. Man is the unity, the convergence of these constituents; they are like two sides of the same sheet of paper, and any attempt to separate them into distinct and exclusive categories is misguided and categorically flawed. Put more adequately by Ramón (2015), "it is not that the natural and the spiritual consist of different ontological realms, rather, the natural consists of a mode of being/thought of the spiritual, in such a way, that the *natural mode* of being, can be transformed or converted into the *spiritual mode* of being and vice versa" (312). This understanding of human nature implies a monist position, but one that is different than historically prior monistic conceptions, such as the materialism of Hobbes or the pantheism of Spinoza.

Hegel's idealism also plays a significant role in his conceptual development of the human being. Hegel's subscription to Absolute Idealism implies that, "only thought or that which is the product of thought is, strictly speaking *real*, or even is in a strong or higher sense" (313). This ontological position entails that, within Hegel's system, the spiritual side of man is of a greater or higher status, and ultimately the source of his freedom (in similar fashion to Mill's interest in the cultivation of individuality). In the *Phenomenology of Spirit*, Hegel contemplates the notion that Spirit is separate in quality from nature, definitionally speaking. That is, these dimensions have and exhibit different properties in how they cognize the world and are given to consciousness. Specifically, phenomenological inspection tells us that nature and spirit are given to consciousness in disparate ways.

The natural world, everyday objects like tables, chairs, and bodies are found in the immediacy of consciousness; they exist for-another or in-itself. Unlike mental activity they are not a product of our own cognition but are already there in the world. While Hegel's argument that even objects given to consciousness are in some way determined by the historical conditions in which we cognize it, the point of its status in consciousness – as simply given and immediate – still stands. Another element to consider is that we understand objects of nature to lack the connection to Spirit that man possesses. These entities do not engage in the cognizing role of Spirit, even though they are immanent to Spirit. Hegel (1983a) explains that "The formation of plants, of animals, consists only in maintaining their natural being, or in that this is modified only a little" (228). This definition of the natural dimension will be informative in the process of critique. It shows that Hegel accepts the underlying truth of natural law and the determinacy of the material universe. Any attempt to defend organic freedom – including by compatibilists – inevitably involves some form of intellectual acrobatics to extricate man's freedom from nature, and show that his condition is transcendent to, or not beholden to natural law and determinacy.

Conversely, the nature of Spirit is such that it is not immediately given to consciousness but is a product of it. Spirit arises from thought and the thinking of the subject(s). Again, to quote Ramón (2015), "Spirit is its own concept presented in and through thought, spirit is self-thinking thought, thought as subject and object as well, is spirit" (314). The fundamental aspect of spirit is that it unfolds as process, in a somewhat different way than the processes found within nature. Spirit is constantly being recreated in the act of self-cognizing; thus as an entity, it constitutes a process of 'spirit-in-action'. The perennial tradition, which has a great deal in common with Hegel's work as they both advance theories of Absolute Idealism, argues that the most fundamental constituent of reality and being is *creativity*. The movement from abstract, undefined potentiality to a concrete, particular, content is pure creativity, it is 'Spirit-in-action' (Wilber 2003). The derived content from the process of Spirit unfolding through cognition is constructed by self-consciousness, it is not discovered 'out there' – outside of the

subject. Since all of reality is the unfolding of Spirit through the innate impulse of Reason, with the goal of attempting to know itself in Absolute Reality, Spirit is, "not an abstract thing, it is, essentially, a system which differentiates within itself" (Hegel 1983b, 64).

Before we move on to Hegel's broader conception of freedom, it is worth pointing out the philosophical importance of the nature/Spirit distinction as outlined above. Hegel sees the natural dimension as being determined because its nature is purely given as such; whereas, Spirit is self-determining, it is continually reproducing itself from moment to moment. Thus, entities that are defined as nature, such as animals and plants, are considered to be for-another, in-itself and ultimately, 'unfree' in their experience of being. They do not participate in the production of spirit. Entities that are defined as embodying Spirit, in other words human consciousness, are for-itself and are 'free' in their experience of being. Whenever the agency of an individual subject is thought to be of nature or spirit, whatever is decided will influence our intuition about the possibility of freedom for that agent. In the subsequent section, I intend to explore how the incompatibilist argues against, not this distinction *per se*, but that freedom is found in this distinction. Conversely, the compatibilist, like Hegel, sees all entities as belonging to nature, but some have the dimension of spirit which is the foundation for the possibility of a free will.

II.i. Hegel and Free Will: The Three Parts of the Will

Hegel's theory of freedom, as outlined in the *Philosophy of Right*, is the story of the movement from abstract, incomplete, and undeveloped will to that of a concrete, complete, and developed will. In the grandest sense, the beginning is the complete undifferentiated *emptiness* of pure abstractness, to the fully cognized self-consciousness in the form of the Absolute Ideal. Again, I borrow terminology from the perennial tradition to help elucidate Hegel's project. Emptiness is the Buddhist concept for the ground of being, or, that which is metaphysically prior to all manifestation (Rinpoche 2009). The term emptiness implies a truth about the purely abstract, namely, that it has no content, it has no form. Pure potentiality contains within it all possibility, and totality is simply another term for nothing, for to be *every thing* is to be *no thing* (Watts 2011). As Hegel shows, it is only through the differentiating process can self-consciousness come to cognize its own being. In discussing the purely abstract, insofar as one wishes to be precise, only the use of apophatic language is appropriate – that is, you can only say what it is not (Columbus and Rice 2012, 46). In the process of philosophizing about it, as this paper is attempting to do, one can use kataphatic language, that is, to say what the purely abstract *is like*.

The movement of self-consciousness from the first point to the omega point, follows the logic of dialectic. Philosophers of religion, especially those of the Whiteheadian tradition, use the term 'omega point' to represent the point when God comes to fully know itself, which would be something like Hegel's self-

consciousness embodying the Absolute Ideal (Polanowski and Sherburne 2004, 56). The movement between these points begins with the purely abstract of negative freedom which is eventually negated by its own incompleteness. The abstract as mentioned above is pure emptiness, it has no content, and thus no *actual* will. Thus, in order to cognize its own being, self-consciousness must differentiate itself from within moving outward. As Hegel (1986) puts it, “The will, as the interior determinant concept, is essentially activity and action; It translates its interior determinations into an exterior existence, in order to present itself as Idea” (57). The production of Ideas is what produces the world that is to be cognized by self-consciousness. It is in this first stage of the will that Hegel’s theory of freedom begins to skip over the from the problem of organic freedom. As will be clearer at a later point, the contemporary debates surrounding organic freedom are concerned with is the very ‘activity and action’ of the will. More precisely, the contemporary problem asks exactly how self-consciousness “translates its interior determinations into an exterior existence, in order to present itself as Idea.” For contemporary theorists, this question is of paramount significance, but for Hegel it is of less concern due to the necessity of moving from the abstract to the concrete.

Recall that humans are the embodiment of both the natural and spiritual dimension. This means that, for spirit-in-action to occur – that is, for spirit to “translate its interior determinations into an exterior existence” – certain material conditions must be present: “In simple terms, aside from the fact that human beings conceive ends and execute them or reject them, there is, and must be, a sphere of normativity which establishes what a valid/invalid action is” (Ramón 2015, 318). This ‘sphere of normativity’ begins with need for *individual rights*. The will of undifferentiated self-consciousness is able to move from the purely abstract to differentiated content insofar as the individual has rights that will allow self-consciousness to externalize itself in the world. Before further exploring the function of rights, I want to point to other themes in Hegel’s system that will help us better understand the value of rights in the emancipation of the will.

This first stage of the will, as conceptualized by Hegel, is more intelligible when keeping in mind two central concepts in Hegel’s system. First, is how *materialist* Hegel’s idealism actually is. Hegel is fiercely consistent to his view of human nature, that man is the synthesis of nature and spirit. That is, Hegel sees [wo]man as needing and constituted of both domains, and further, that these dimensions of [wo]man reproduce each other. This is why, at times, it is hard to think of Hegel as purely idealist. Second, Hegel’s master-slave dialectic outlines, in part, how he understands this first stage of the will. The master-slave dialectic demonstrates the contingent element of sociality for self-consciousness in Hegel’s system. That is, self-consciousness is not fully realized without a social element; it must be mediated by another entity, or put another way, it must be *recognized* by another to affirm its own existence. However, the meeting of two self-

consciousness is not a simple matter. Individual self-consciousness is pure subjectivity, but the introduction of another consciousness changes that fact. Upon the 'meeting of the minds' self-consciousness is given to itself as an object through the Other: "But the other is also a self-consciousness; an individual makes its appearance in antithesis to an individual. Appearing thus in their immediacy, they are for each other in the manner of ordinary objects" (Hegel 1967, § 186).

As neither self-consciousness likes being objectified, a battle for who defines the situation commences, which Hegel labeled a battle to the death. He writes,

In so far as it is the other's action, each aims at the destruction and death of the other[...] The relation of both self-consciousnesses is in this way so constituted that they prove themselves and each other through a life-and-death struggle. They must enter into this struggle, for they must bring their certainty of themselves, the certainty of being for themselves, to the level of objective truth, and make this a fact both in the case of the other and in their own case as well" (§ 187).

The alternative to death is the voluntary submission of one consciousness to the other, and the result is a master-slave relationship. Hegel concludes the lordship and bondage section by showing us how this dynamic is, upon closer inspection, not what we might imagine it to be. He argues that the master never obtains what he actually desires, which is recognition from an *equal* consciousness. Through complete domination of the slave, the master is merely recognizing himself through the other consciousness; the Master's consciousness is "existing on its own account which is mediated with itself through an other consciousness" (§ 190).

Meanwhile, for the slave "Through work and labour, however, this consciousness of the bondsman comes to itself" (§ 195). This is a crucial idea in Hegel's understanding of the self and freedom. Self-consciousness is free insofar as it has the ability to represent itself through some process of externalization, both materially and ideally. The material externalization is the process wherein self-consciousness "translate[s] its interior determinations into an exterior existence." In Hegel's own words,

The negative relation to the object passes into the form of the object, into something that is permanent and remains; because it is just for the labourer that the object has independence. This negative mediating agency, this activity giving shape and form, is at the same time the individual existence, the pure self-existence of that consciousness, which now in the work it does is externalized and passes into the condition of permanence. The consciousness that toils and serves accordingly attains by this means the direct apprehension of that independent being as its self[...] shaping or forming the object has not only the positive significance that the bondsman (§ 195-196)

Thus, with a more developed understanding of how self-consciousness relates to the material or natural dimension we return to the 'sphere of normativity' that allows for self-consciousness to be free. In light of Hegel's

exposition on Lordship and Bondage, we now see with greater clarity the role of *individual rights*. A truly emancipated will must have rights in order for self-consciousness to produce itself in the world, somewhat like how the slave is able to. (This is not to suggest that the slave is free, as the slave is still beholden to the *fear* of the Master). In other words, rights are a social force that grants the individual access to the material means from which the externalization and differentiation process can emerge. According to Dyde (1984), "The idea most significant in the first part [of the stages of the will] is that of property, which Hegel regards not as so much external matter, separable from the owner of it, but as the owner's outer self. Each thing a man owns is a piece of him; and he who owns something is more complete than he who owns nothing" (658). Property is necessary for the will to become fully realized; it is foundational to the development of Spirit. The social aspect of man demands that he live in communion with others, but this must be balanced with agency. Individual rights function as the balancing tool, by ensuring the possibility of both communion and agency. Dyde (1984) continues, "With regard to freedom, the point is that in full ownership my liberty becomes something higher and better, because in it are found all the relations to others commonly associated with the term 'rights,' and the individual in making a thing his own is willing the maintenance of these relations" (658). Karl Marx took this idea very seriously, and argued that the problem of capitalism is that, in its recourse to private property rights, it fails to provide property as an individual right. The means and modes of production are controlled exclusively by the capitalist, stripping away most individuals' access to the property.

Recall that the progress of the will is one that transcends and includes what has come before. This movement of *transcend and include* signifies that next stage of will does not forsake the prior stage, but rather, enfolds each stage in its transcendence to the higher stage (Wilber 2001). This is the secret impulse of Reason: enfold and unfold. The prior stage is contained within the higher stage, but the higher stage goes beyond the sum of the parts making that comprise the prior one. Molecules transcend atoms but also include atoms; cells transcend molecules but include molecules; organisms transcend cells but include cells, and so on (Wilber 2016, 47). The higher stage *needs* the previous stage, they are linked by mutual necessity. If you destroyed all cells, there would be no organisms; if you destroyed all molecules there would be no cells; if you destroyed all atoms, there would be no molecules, and so on. The stages of the will function in the same way. In the words of Dyde (1984), "The absolutely emancipated will must have rights, but he will see them in connection with higher relations" (658). To be sure, the movement of the will does not stop with the obtaining of rights. Indeed, the secret impulse of will transcends to higher callings beyond rights, as rights are necessary but not sufficient to produce a completely and totally emancipated will. Rights often operate as a form of negative freedom, in that they say what the individual cannot do in relation to others (Jones 1994). Rights, usually, are not positive in

nature, but are almost exclusively negative imperatives in application; you cannot do (x) because it violates Y's rights – Y has a moral claim against Z doing (x). While one can 'exercise' their right, the movement to exercise such rights is not demanded from within the content of the right itself.

Thus, morality enters as the second stage of the normative sphere of the will, and the medium of positive duty. Rights create the possibility for the balance of communion and agency, but morality provides the normative direction for Spirit. According to Dyde (1984), "The characteristic feature of this second step in the logical journey towards the absolute, is the private conscience with its unquenchable desire to realize the general well-being" (659). Hegel builds a notion of morality that defines duty in a way that considers the interests of the general public and we notice this in how the element of morality plays a crucial mediating role in the first and third stages of the will. For instance, morality transcends the domain of rights (the first stage), but it shapes the very nature of rights, in that it ensures the actual existence of rights. In other words, what reason would I have to adhere to a notion of 'rights' if it is ever in my interest to disregard such a social construct? Rights cannot be built upon a logic of selfishness alone; their fulfilment depends upon moral reason(ers) (this is why Randianism and egoism ultimately fail). Again, to quote, Dyde (1984), "The antagonism of individual to individual is not found in duty and the good conscience, as it is in rights. The enemy, from the standpoint of duty, is not a fellow-mortal, but the prevalence of evil, of which other persons or institutions may of course be the champions" (659). (This idea of the moral part of the will being responsible for counteracting the presence of evil will serve to be a major point of concern later on in this paper.) Moreover, the third stage of State institutions, is also only functional if its members can observe their moral duty in the face of state abuses of authority. Let us now turn to that third stage and the role of the state.

Finally, the third stage in the normative sphere of the will, is the institution of the state. For Hegel, the secret impulse of Spirit is to arrive at the creation of the nation-state; it is the final link in the chain of progress, the final stage in the unfolding of self-consciousness. The function of the state is to produce the conditions that allow for the final and total expression of self-consciousness through its embodiment of Reason. Hegel sees the state, not only as a product of Reason, but as a vehicle for the submersion of Reason at the level of self-consciousness. Thus, insofar as the state is the vehicle of Reason, "we discern that spirit or reason is at home in the institutions of the state. The rational individual thus finds his own realization in carrying out the reason implied in these institutions" (659).

In other words, the state creates the grounds for economic, political, and social interaction that can lead to the possibility of living in accordance with pure Reason. In simpler terms, honoring a legal code, contributing to a welfare state, producing for others' consumption, voting in a democratic political order, and systems of commerce, all features of social life made possible by a central

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government authority, are the channels of Reason upon which we can travel as members of a nation-state. Therefore, living in harmony with the Reason of the state is ultimately man's source of freedom: "Therefore, if freedom is to be harmonized with obedience, the object to be obeyed must be shown to be not the will of any man or class of men, but the necessary embodiment of reason" (659). In *The History of Philosophy*, Hegel suggests, with rather poor and fallacious arguments, that humans who do not live in the nation-state are not living in accordance with Reason and are therefore not fully 'human'.

We now find our answer to the question of what Hegel defines as having free will. For Hegel, to be free, is to live in accordance with the State, which is to say, for those whose interests intersect with the public interest are free. He who acts to construct and preserve a society predicated on absolute rationality is living in accordance with Spirit, and ultimately fulfilling "the occupation of a true and complete man" (661). Dyde (1984) helpfully analogizes this to a religious image. In religion, it is argued, a complete and *good* life is one in which the individual devotes herself to honoring the glory of God. This can be done through honoring the theology of a religion, trying to make the world according to God's will, and living in accordance with God's will. Since Hegel sees the state as "the path of God in the world", the complete and *good* life is one in which the individual devotes herself to honoring the glory of the State. Again, this can be done through honoring the State (or Reason), trying to make the world according to the State's will, and living in accordance with State's will.

To quote Dyde (1984), "Who, then, is free? The question now almost answers itself. From the standpoint of religion, and the highest social morality, he is free who finds his interest in the public interest. As the public interests are the visible framework of the reason of the universe, to spend one's self for them is not to negate one's true being, but to enter into it. He who becomes one with a reasonable society in all its ramifications, becomes, also, one with the divine; and such a man is free" (661). As we can see, Hegel's definition of freedom is in direct conflict with traditional notions of freedom as espoused by other modern thinkers like Hobbes and Rousseau. These other philosophers take the position that man is actually shackled by the state and find its system of laws and norms to be a threat to individual liberty. Hegel is practically 'flipping this on its head' by suggesting that without the nation-state man is not free; for to be free is to live in accordance with Reason, and Reason can only be fully embodied in the context of the nation-state. Without systems of Right and Law, properties of the state, self-consciousness can not fully express itself and align itself with Reason. The realization of the Spirit takes place in and through the State; and to participate in Spirit – the greatest end of self-consciousness – one must acknowledge that the freedom needed to achieve such ends comes through obedience to the will of the state.

I want to briefly summarize what has been said so far before moving on to the next section. *The Philosophy of Right* outlines how self-consciousness moves

“from the conception of an abstract, incomplete, and undeveloped will to that of a concrete, complete, and developed will” (656). The will is ‘free’ to move from its initial state of the abstract to the end of the concrete developed will insofar as it goes through three stages that transcend and include, unfold and enfold each other. First is the notion of rights which allows for the externalization of self-consciousness by granting it the property to do so. Next, the second stage, is the function of morality which mediates and ensures the possibility of rights. Third, is the manifestation of complete Reason in the nation-state, in which self-consciousness is completely free.

III. The Contemporary Problem of Free Will: Doctrine

Free will has been a philosophical quandary for hundreds of years now. It has seen a recent revival in philosophical discourse due to recent advancement in neuroscience, which we will turn to shortly. The standard account of free will (or at least the conventional notion) is captured by some combination of these facts: one is free if and only if they (1) have the ability to do otherwise, and (2) they are the ultimate source of their actions (Harris 2012). Within the literature, however, there has grown a number of different conceptions about what constitutes freedom of the will. Some argue that free will is choosing to act in accordance with one’s own desires (the minimalist account); acting in accordance with rightly constructed values and appetites; the alignment of first and second order desires; the presence of complete control; to be the ultimate originator; and others (O’Connor and Franklin 2020). How one defines free will is fundamental to whether they are concerned with organic or moral freedom, and the ontological status of these freedoms. Different definitions imply different possibilities, and this is a huge source of both debate and confusion.

The core of the contemporary free will debate involves addressing the possibility of subjects possessing free will in what appears to be a causally determined world. Historically, philosophers have commented on how this seems impossible, pointing to the fact that we live in a physical world of cause and effect, and our actions must simply be effects of prior causes. A famous example sometime cited by John Searle is the collapsing bridge. If a bridge collapses, it is quite obvious that it had to collapse at the given moment it did. The reason for its collapse would be some prior cause such as old materials, wind, too much weight crossing at one time etc. Engineers could very well inspect the bridge afterwards and discover the cause of the collapse. Our action, so it is argued, is much like the collapsing of the bridge; *it had to happen*.

If humans, like bridges, are part of the physical world, and thus are part of a chain of physical causes and effects, then how are our actions not determined by previous causes as well? Just like how prior causes determined that the bridge had to collapse, prior causes determined your action at any given moment. On a side note, there is a common objection to this line of thinking, specifically that some events in the world are not causally determined but are the product of

randomness, hence quantum mechanics and the Heisenberg uncertainty principle. However, this really does not restore any sense of individual freedom, as it suggests that our actions would be the product of chance and randomness. The traditional problem of nomological determinism, “is the thesis that the course of the future is entirely determined by the conjunction of the past and the laws of nature” (Timpe 2016, n.d.).

From this thesis has arisen – broadly speaking – two general views about nomological determinism: incompatibilism and compatibilism. This categorical distinction comes from two different answers to the central question of causal determinism: Could we have free will even if determinism is true? According to the incompatibilists, “the existence of free will is incompatible with the truth of determinism. If a given possible world is deterministic, then no agent in that world has free will for that very reason.” While incompatibilists generally share the belief that free will and determinism cannot mutually exist, there are a number of different arguments supporting their position. One such argument is that of the Originator Argument as annotated by (Timpe 2016):

1. An agent acts with free will only if she is the originator (or ultimate source) of her actions.
2. If determinism is true, then everything any agent does is ultimately caused by events and circumstances outside her control.
3. If everything an agent does is ultimately caused by events and circumstances beyond her control, then the agent is not the originator (or ultimate source) of her actions.
4. Therefore, if determinism is true, then no agent is the originator (or ultimate source) of her actions.
5. Therefore, if determinism is true, no agent has free will.

Compatibilists, on the other hand, argue that the problem of nomological determinism is not a threat to the possibility of free will. They argue that free will and determinism can coexist, that they are ontologically compatible. Now, the originator argument of the incompatibilists is logically valid, which means that the compatibilist must argue that it is not sound, that one of its premises are flawed. Given the highly defensible, almost manifestly obvious nature of premises (2) - (5), an argument for compatibilism almost always involves a challenge to (1). In other words, compatibilism generally involves some kind of definitional acrobatics to clarify or amend our definition of freedom, so that it is salvageable amidst the truth of our causally determined universe; or, more fairly, compatibilists attempt to show that a certain type of freedom is (a) most important (Daniel Dennett’s degrees of freedom), (b) the grounds for moral evaluation (Frankfurt’s ordered desires), (c) what we actually mean when we talk about free will.

III.ii. The Contemporary Problem of Free Will: Where Does Hegel Belong?

Now that a general overview of the contemporary problem of free will has been given, we can explore how Hegel's theory of freedom relates. On my reading, there are three key points to consider: (1) Hegel accepts the premises (2)-(5) of the Originator argument, (2) Hegel is a compatibilist, and (3) Hegel's compatibilist position mirrors type (a) – he argues that the presence a certain type of freedom is the most important issue. In regard to the first point, we can say that Hegel accepts all of the premises in the Originator argument, except for (1), based on his theory of human nature. Recall that, for Hegel, [wo]man is comprised of two dimensions: the natural and the spiritual. He argues that these qualities of man cannot be separated, that there 'paradoxical unity' is a fundamental aspect of human nature. Additionally, we explored how materialist his idealist theory actually is. His arguments about the slave's possibility of finding recognition through his work, and, his value of private property rights in the first stage of the will show the value he places on the material in effecting self-consciousness.

Hegel's theory of freedom, however, in no way suggests that he thinks our material nature strips us of the possibility to be free. Thus, if he accepts the truth of natural law – and with it theories of causation – but leaves intact the possibility of human freedom, then he must be endorsing a theory of compatibilism. Like most other compatibilists, then, Hegel's theory of freedom re-conceptualizes or redefines the first premise of the originator argument, which states, "An agent acts with free will only if she is the originator (or ultimate source) of her actions." It is in this philosophical move that I think Hegel's theory of freedom is mistaken, in that it overlooks the the natural component of man and focuses too much on the spiritual component. As the Originator argument suggests, an agent is only free insofar as they are the ultimate source of their action. Furthermore, as beings of nature, our biological condition plays a central role in thinking about the possibility of an individual human being the source of their action. The problem of nomological freedom suggests that we are physical beings in a physical universe that operates according to the natural law of causation. In other words, effects of prior causes *had to happen* and those effects couldn't have happened any other way. This was made evident with the bridge example. Humans exist in this context, and our own way of being is an effect of prior causes, and those effects become causes for future effects of which we have no control. Hegel's theory of freedom completely ignores this phenomenon – which I have called, at earlier times, the problem of *organic freedom*. In sum, as organic creatures, how are we free to overcome our organic host of being which is controlled by the laws of nature?

I see Hegel's theory of freedom overlooking the problem of organic freedom primarily because he thinks that the movement of self-consciousness does not depend on *how action commences*, but more importantly, that action *moves in a certain way*. To once again quote Dyde (1984),

Before giving Hegel's conception of freedom I may perhaps be allowed to make use of a distinction between psychological and moral freedom. Free will is, as we

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are told, the identification of ourselves with a conceived end[...] When we set aside the moral character of the end, we consider merely the agent's capacity to follow out his purpose, and this capacity is freedom, regarded, as we may venture to say, psychologically. On the other hand, we may rightly speak of a person as at least not yet free, but in bonds, if he harbors a low ideal. He is not hopelessly in bondage, unless he is incapable of realizing what he believes to be good. Still he is not morally free, unless he throws himself on the side of this good. Indeed, complete moral freedom implies that within the reach of his volition must be not only a general good, but the ultimate good, however that may be defined. Close him away from the possibility of realizing this highest good, and you at the same time close him away from the highest liberty, the liberty involved in his being God's freeman. Neither Schwegler nor v. Hartmann accuses Hegel of setting up a theory, which would reduce free action to a play of merely physical tendencies. Hence the contest between Hegel and his opponents must be fought out on the field of ethics. The real question is, What does Hegel conceive to be the purpose of the world? Can man realize it, or must he content himself with something short of it? Is he free in reality, or free only in appearance? (655-656) (italics are my own for emphasis)

As Dyde says, Hegel is not giving much consideration to 'the agent's capacity to follow his purpose', i.e. the problem of organic freedom, but rather the nature of the end he is pursuing and whether that end will be achieved. Thus, in Hegel's system, freedom is not 'reduced to a play of physical tendencies' which is the thrust of the concern for nomological determinism and the problem of organic freedom. In short, for Hegel, *freedom exists when self-consciousness is motivated by Reason towards the Absolute Ideal; and, when conditions are sufficient for self-consciousness to execute the necessary movement.* In Dyde (1984)'s words, "Free will is, as we are told, the identification of ourselves with a conceived end" (655).

V. The Strengths and Limitation of Hegel's Theory of Freedom

We can see from this definition produced above – '*freedom exists when self-consciousness is motivated by Reason towards the Absolute Ideal, and, when conditions are sufficient for self-consciousness to execute the necessary movement*' – that Hegel's theory of freedom is composed of two parts. (As an aside, this is an interesting definition of freedom, as many people have noted, because it implies that almost all humans throughout history, and most humans alive during Hegel's time are and were unfree. In fact, it is argued from Hegel's conception of freedom, that only the people of western advanced nations are 'free'.) First, that the end pursued by self-consciousness is of a certain kind. The nature of end for self-consciousness is an important thing to consider when asking whether an individual is acting of their own accord. For instance, if someone were to say "I want to be rich" it would be reasonable to suspect that maybe the person doesn't actually want to be rich, but that they have been brainwashed into desiring such a thing by dominant social attitudes. In other words, being free requires that one's ends are their own ends, and that these ends are Right. According to Hegel, it is the job of Reason to ensure that the ends of self-consciousness are such.

The second part of the definition, that conditions allow for the pursuit to be successful, is also of critical importance when thinking about human agency. The material conditions of one's life have significant consequences on their potential freedom. A simple thought experiment will suffice. Consider the opportunities available to a child of Donald Trump, and, the opportunities available to the child of a minimum wage worker. In almost all possible goals that these children could have, the child of Trump would be much freer in their ability to pursue such goals, whether it be higher educational attainment, becoming a politician, working at a specific firm, traveling abroad, etc. To contextualize this in Hegel's own system, the importance of the nation-state is its ability to provide conditions for the development of self-consciousness. The economic, political, and social consequences of a state produce opportunity for self-consciousness to externalize itself as it so chooses.

As Dyde notes, this model of freedom – the existence of specific ends and that conditions are sufficient for their realization – explicitly outlines a type of *moral freedom*. Specifically, it alludes to the moral goals and conditions that bring about the possibility of human freedom. In this respect, it is not much different than the theories of political philosophers like John Stuart Mill and Amartya Sen, as mentioned earlier. John Stuart Mill was also concerned about the individual ends in society and whether society will develop the sufficient conditions for the achievement of the Right ends. For instance, he worried about the despotism of custom as illegitimately shaping people's intentions, opinions, and ultimately their ends. Furthermore, Mill argued that a certain type of liberal government, predicated on maximizing individual liberty is necessary for bringing about the possibility for individuals to pursue their own ambitions. Without protections for free speech, expression, congregation, individuals would not have the freedom needed to fully self-actualize. Sen defines freedom as capability development: that is, one is only free insofar as there are capable of developing their potential. He too believes that certain state regimes are needed to ensure this outcome.

Hegel's theory of *moral freedom* is extremely elaborate, insightful, and useful in thinking about what society should value, and how it can be achieved. However, as I am arguing in this paper, by ignoring the issue of organic freedom, it admits to dangerous possibilities, and severe limitations. In its failure to consider the nature of individual human behavior, and the causes behind such action, 'the play of merely physical tendencies' it lacks an answer to important questions of justice and moral evaluation, most pressingly, whether an individual can be ascribed basic moral desert. This is evident in the resurgence of the free will debate propelled by advancements in neuroscience. I will now explore how the problem of organic free will is beginning to emerge in the judicial system and courts, and how Hegel's theory of freedom has very little, if not nothing, to say on the matter.

First, it is important to note that a significant consequence of the free will debate, generally speaking, is the effect it has on how we morally evaluate others.

As with all philosophical problems, there are a number of theories about the nature of moral responsibility. However, there does however appear to be some sort of general consensus that moral responsibility demands agents be free and autonomous. In Timpe (2016)'s words, "according to the dominant view of the relationship between free will and moral responsibility, if an agent does not have free will, then that agent is not morally responsible for her actions" (n.d.). It was put even more succinctly by Kant's proclamation that "ought implies can." It is this moral intuition, about the link between freedom and moral responsibility, that explains why, generally, we don't hold non-human agents to the same moral standards as fellow humans. If your computer were to shut down prior to you being able to save a twenty-five page paper on Hegel's theory of freedom, for instance, you would not hold the same attitudes, nor be consumed by the same reaction, as if someone went on to your computer and deleted it. In both cases, you would be very upset, but the instance of the later would involve something extra: holding the *person* morally responsible for their action. Why this distinction in attitudes? Because we recognize that a computer is not a moral agent in that it does not have the freedom to decide and will its actions – it simply acts in accordance with physical causes and effects.

As one can imagine, the battle between the theories of compatibilism and incompatibilism may end up playing a significant role in determining how our justice system processes offenders of the law. It is clear that "the American legal system has shown a preference for free will as the basis for its underlying philosophy" (Jones 2002, 1031). The Supreme Court acknowledged this, saying that "a belief in freedom of the human will and a consequent ability and duty of the normal individual to choose between good and evil [is a belief that is] universal and persistent in mature systems of law" (Rosenzweig 2013, 2). In sum, it is fundamental to our criminal justice system, and the dominant beliefs in our polity, that we possess freedom of the will. Furthermore, according to Greene and Cohen (2004), "the current legal doctrine [in the United States], although officially compatibilist, is ultimately grounded in intuitions that are and, more specifically, libertarian" (1776). Libertarian in this case is different than the political denotation, in the free will debate the term signifies the view that we have complete freedom over our actions as the ultimate source of our decisions.

Not until the past couple decades has this issue of free will been seriously considered by the criminal justice system. The rise of neuroscience and neuropsychology is starting to weigh in on the debate between compatibilism and incompatibilism, as such 'empirical and scientific' evidence is admissible in court. The research emerging from the neuroscience community is providing a new image for which to think about free will and moral responsibility. To be fair, the neuroscience image isn't introducing new facts beyond the imagination of philosophers who have historically debated the problem of nomological determinism. It is however, providing a 'mainstream' argument against free will that is more accepted as evidence in the courts.

Professors Joshua Greene and Jonathan Cohen co-authored a bold paper titled *For the Law, Neuroscience Changes Nothing and Everything* (2004) in which they say, "however, we argue that the law's intuitive support is ultimately grounded in a metaphysically overambitious, libertarian notion of free will that is threatened by determinism and, more pointedly, by forthcoming cognitive neuroscience" (1776). Greene and Cohen explore how the justice system will be impacted by the continually forthcoming research that challenges the notion of free will. Their analysis starts with considering the effect it will have on our alignment with specific judicial philosophies. They begin by drawing a distinction between consequentialist and retributive forms of justice. They correctly label consequentialist theories of justice as primarily concerned with prevention and the containment of dangerous people (public safety); whereas, a retributive theory is more concerned with making sure one receives what they are due (i.e. inflicting negative deserts). Greene and Cohen suggest that our justice system will possibly move away from its retributive stance to a more consequentialist one, as the neuroscientific research challenging the idea of free will begins to pile up. Of course, there will inevitably be heavy resistance to this transition, as many find it intuitively problematic to deny the existence of free will, and also relinquish the practice retribution.

Yet this resistant position will continue to lose its footing as neuroscience can more vividly articulate the illusion of libertarian freedom. In other words, how could we have any sense of justice that incorporates evil and retribution if no one is truly responsible for his or her actions? There is ample and growing evidence to suggest that this outcome is a very real possibility. For instance, it is quite interesting to note that our legal system is already starting to make convictions within a consequentialist framework based upon the latest neuro-research. Our justice system and personal moral intuitions suggest that a retributive punishment is not always appropriate. There appear to be very obvious cases in which one's neural-chemistry reduces their culpability. Carey (2007) reported that,

damage to an area of the brain behind the forehead, inches behind the eyes, transforms the way people make moral judgments in life-or-death situations, scientists are reporting today... The finding could have implications for legal cases. Jurors have reduced sentences based on brain-imaging results, and experts say that any evidence of damage to this ventromedial area could sway judgments of moral competency in some cases. (n.d.)

Information regarding the status of a legal offenders neural-chemistry can immediately shift our moral intuition with regards to a proper sentencing. If someone is prosecuted for the murder of another absent the information that a brain tumor had damaged his or her ventromedial area, then a retributive punishment seems plausible. Greene and Cohen suggest that eventually we will view all offenders like the offender with a brain tumor, as being caused by some concoction of biology and environment that produces behavior beyond the

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control of the actor. We will understand that every action and behavior is caused by prior physical events that one has no control over. As Green and Cohen (2004) put it, “at this time, the law deals firmly but mercifully with individuals whose behavior is obviously the product of forces that are ultimately beyond their control. Some day, the law may treat all convicted criminals this way” (1784).

VI. Conclusion and Discussion

As we can see, the nature of justice systems is largely influenced by the problem of organic freedom, in addition to moral freedom. If a person's biology and environment is constituted in such a way as to show that their unlawful behavior is attributable to forces beyond their control, our moral evaluation of their action is radically altered. Indeed, the moral intuition shift upon understanding the truth of ‘tumors all the way down’ is extremely socially significant. If we fail to understand the truth about organic determinism, then the United States justice system will continue to be built upon a flawed metaphysics that enshrines concepts like evil and undetermined human volition. The enshrining of such flawed metaphysical concepts results in a host of problems: inappropriate sentencing, improper moral evaluation, post-incarceration stigmas, and abuse of prisoners. The United States criminal justice system is committed to a worldview that is mildly compatibilist, but believes firmly in the notion that humans possess organic freedom. This foundational belief is the central to the way we punish; it justifies a retributivist orientation that endeavors to inflict negative deserts on those who infringe upon the law.

Considering that the nature of punishment, and the philosophical orientation of justice systems – whether retributivist or consequentialist – depend on getting the question of organic freedom correctly, is it important that it not be collapsed into the problem of moral freedom. As we saw in previous sections, Hegel is guilty of this by defining freedom as the specific content of one's ends, and whether conditions are sufficient to realize such ends. This is not to say, however, that the work produced by Hegel on the question of moral/political freedom isn't of great value, or even that it is incorrect. My argument is simply that we must be critical of attempts to collapse one problem into another, as doing so has real tangible consequences, and in this specific case, potentially harmful ones. It would be worthwhile in future projects to consider how Hegel's theory of freedom could be reinterpreted or reconstructed so as to properly address this problem of definitional collapsing in the free will debate.

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