

THE INDIVIDUAL AND THE SOCIAL ORDER IN MILL AND HEGEL:

Seeking common Principles in Liberal
and Communitarian Ancestry

A thesis submitted in fulfilment of the
requirements for the degree of

MASTER OF ARTS

of

RHODES UNIVERSITY

by

JUSTIN ADAM KOSEFF

January 2003

Abstract

This thesis seeks to establish a significant commonality and compatibility between the principles underpinning the political and social philosophies of GWF Hegel and John Stuart Mill. The role of the individual and the social order in both their theories is discussed and assessed separately and in turn in reference to their respective seminal works on the proper structure, principles and function of modern political infrastructure. Through an interpretation of the fundamental tenets and goals of their theories of the social order I argue for a coherent modern reconstruction of their doctrines, within which I locate parallels and contrasts as they apply. Both theorists as ultimately put forward similar arguments for freedom as an intersubjectively-developed capacity, the ideal social order as rational framework for the management of ethical and political engagement, linked to a social holism that ties individual and social progress inextricably. A respect for individual particularity of perspective and practice is integral both of their social frameworks, but that such a space must be harmonised within a rational political community worthy of individual obligation. Finally their social and political theories can be understood as complementary, each providing insights which the other lacks. Mill suffers from an insufficient regard for the social basis of identity and interconnected nature of the modern institutional framework, while Hegel displays an insufficient regard for Mill's *caveats* concerning the repressive potential of institutional structures and the dangers of overly empowered bureaucracies. In conclusion key elements of the two theorists' projects stand as separate but

not in any way fundamentally opposed to each other. This points to the possibility of a *via media* between a politics of individualism and a politics of community, suggesting strong potential for reconciliation between liberal and communitarian perspectives.

Table of Contents

Primary Text Citation Codes	1
Introduction:	
Seeking common principles in a clashing ancestry	2
Chapter 1 - The individual in Mill	
1.1) Preliminary comments	9
1.2) Background Philosophical dynamics to Mill's Individualism	11
1.2.1) Mill's Rationality	12
i. Inductivism and Deductivism	12
ii. Inference and action	15
iii. Physical science as a model for social science	17
1.2.2) Mill and the Self	21
i. Phenomenalism and Naturalism	21
ii. Methodological individualist dynamics in Mill	24
iii. Compatibilism and rational autonomy in Mill	26
1.3) The Individual in <i>On Liberty</i>	31
1.3.1) The Worth of Individuality	32
i. A post social right to individual liberty	32
ii. The individual vs. custom: Fallibilism and Self-Development	34
iii. Genius and Collective Mediocrity	41
iv. Millian Individualism: a voluntarist liberal delusion?	44
1.3.2) The question of autonomy	52

i.	Autonomy as capacity and freedom in Mill	52
ii.	Autonomy as a categorical human end	54
1.3.3)	The Art of Life and the human being as a 'noble and beautiful object'	58
i.	The Art of Life	58
ii.	The role and implications of the aesthetic dimension	60
1.4)	The Millian Individual Revisited	62

Chapter 2 - The individual in Hegel

2.1)	Preliminaries	64
2.1.1)	The mismatched legacy of Hegelian thought	64
2.1.2)	The Hegelian project	65
2.2)	Key metaphysical conceptions underpinning Hegelian Social theory	69
2.2.1)	The Self and its Boundaries in Hegel	69
2.2.2)	The formation of Self-consciousness - the Individual's dialectic	70
i.	Of Masters and Slaves	70
ii.	Contradictions and implications in the Master-Slave dialectic	73
2.2.3)	The Hegelian Will	74
i.	Moments of the Will	75
ii.	True Individuality and True Intentionality	76
2.2.4)	<i>Bildung</i> and the developmental conception of the Self	79
i.	Background and aims of dialectical development	79
ii.	<i>Bildung</i> as an individually driven social process	81
iii.	Emergent principles and dynamics of the <i>Bildung</i> process	82
2.2.5)	Freedom as Rational Autonomy in Hegel	86
i.	Rational Autonomy : from Kant to Hegel	87

ii.	Foundations of Rational Autonomy in Hegel's <i>Logic</i>	89
iii.	Hegel and the Reciprocity Thesis	93
2.2.6)	Implications of Hegel's speculative metaphysics	98
2.3)	The Role of the Individual in Hegel's Political and Social theory	100
2.3.1)	Outlines and preliminary comments on Hegel's social theory	100
2.3.2)	Levels and divisions in Hegel's theory of Social Freedom	102
i.	Personhood as a lower configuration of Freedom	103
ii.	The Implications of Freedom beyond Personhood	105
2.3.3)	Personality as Property and Property as Personality	107
i.	The Hegelian Doctrine of Private Property	107
ii.	The Implications of Property as Personality	108
iii.	The significance of Personality as Property	111
2.3.4)	Hegel, Rousseau and the two-fold structure of freedom	113
i.	Hegel, Rousseau and the Paradox of Social Freedom	113
ii.	A Tale of Two Freedoms	114
iii.	The Two-Fold Structure	116
2.3.5)	The Subjective Disposition	116
i.	Unity of Will	118
ii.	Unity of Essence	120
iii.	The social order as a product of ongoing individual activity	123
2.3.5)	Hegelian freedom as a freedom of individuals	126
i.	Hegel and Methodological Atomism	127
ii.	Hegelian thought as inclusive of strong individualism	130
2.4)	The Hegelian Individual recast	131

Chapter 3 - The social order in Mill

3.1)	Preliminary considerations on the Millian social vision	133
3.2)	Liberty & Utility	135
3.3)	The Individual within Society & the Social Context of Rights	139
3.3.1)	Customary Morality and the tyranny of the majority	141
i.	The aims and first grounding of the Liberty Principle	141
ii.	The Liberty Principle as a safeguard for rational autonomy	145
iii.	The Liberty Principle vs. Social Disintegration	150
iv.	Practical considerations on the Tyranny of the Majority	154
3.3.2)	Boundaries of Self-Regarding vs. Other Regarding Action	156
i.	Natural vs. Legal penalties	157
ii.	The harm principle and beneficial collective obligation	160
iii.	What counts as harm?	167
iv.	Problems of application to public practice	169
3.3.3)	Offence vs. Harm	174
i.	Framing the ambiguity between harm and offence in Mill	174
ii.	The question of offence as harm	176
iii.	The question of offensive public action	185
iv.	A viable Millian 'indecentcy' policy	193
3.3.4)	Liberty of Expression	196
i.	Context and framing of the arguments for Liberty of Expression	196
ii.	The dialogue model	197
iii.	Harmful non-dialogue effects and hate speech	199
iv.	The Plausibility of Mill's fallibilism	205
3.3.5)	The limits of positive state action	206
3.3.6)	The Liberty Principle distilled	211
3.4)	Mill's relevant ethology and sociology	212
i.	The unwritten 'Ethology'	212
ii.	Mill on the Phases of History	213
iii.	Order vs. Progress	215
iv.	The Inevitability of Progress and the Fate of Dogmatism	217

3.5) Concluding considerations on the Millian social vision	218
---	-----

Chapter 4 - The Social Order in Hegel

4.1) Preliminary comments on the Hegelian Social Order	220
4.2) Principles and Architecture of <i>Sittlichkeit</i> as an Embodiment of Freedom	221
4.2.1) The Objective component of social freedom	223
4.2.2) The Self-Determining Social Whole	225
i. Features of the Social Whole as an Embodiment of Freedom	226
ii. Hegel's Organicism	229
iii. <i>Sittlichkeit</i> as a Rational Mirror of the Concept	231
iv. <i>Sittlichkeit</i> as inclusive pluralism	233
v. The Role of Public Opinion	235
vi. <i>Sittlichkeit</i> as a framework of enriched Social Freedom	238
4.2.3) The Social Conditions of Individual Freedom	239
i. Conditioning the Citizenry for Freedom	239
ii. Human Need as Reason's catalyst	241
iii. Need as Catalyst in The Family and Civil Society	242
iv. Conditions of <i>Sittlichkeit</i> as worthy of Citizens' Affirmation	245
v. <i>Sittlichkeit</i> as both description and ideal	247
4.2.4) Moral Subjectivity in <i>Sittlichkeit</i>	250
i. Background and Implications of a Reflective Unity	250
ii. True vs. Formal Conscience	252
iii. Conditions for the Development of True Conscience	254
4.3) Emergent Dynamics and Critical Assessment of the Hegelian Social Order	256
4.3.1) Critical Assessment of the Hegelian Conception of Social Freedom	257
i. Hegelian vs. Contractarian Freedom	258
ii. The Necessity of Self-Interested Behaviour	260

iii.	The State as the Locus for Mutual Recognition	261
iv.	The Common Mind Recast	263
v.	Positive Freedom Reconsidered	266
4.3.2)	Critical Assessment of the Hegelian Conception of The State	267
i.	The <i>Rechstaat</i> and the <i>Notstaat</i>	268
ii.	The Hegelian State as a Civic Humanist Conception	270
iii.	The State as Objectively Rational	272
4.3.3)	Strong vs. Weak Identification	274
i.	Questioning the Role of Background Moral Norms	275
ii.	Hegel's Ontology as a Model for Weak Identification	276
iii.	On the Possibility and Implications of a Rational Ethics	277
iv.	The Inapplicability of Strong Identification	278
v.	Reflective Trust as Modern Social Capital	281
4.3.4)	The Issue of Rational Dissent in <i>Sittlichkeit</i>	282
i.	Rights of Conscience in <i>Sittlichkeit</i>	283
ii.	<i>Sittlichkeit</i> as an ordered zone of Ethical Engagement	285
iii.	Possibilities of Active Dissent	286
iv.	The Issue of Radical Social Criticism	288
v.	<i>Sittlichkeit</i> and the Full Demands of Reason	290
4.3.5)	So, what do we do with <i>Geist</i> ?	293
i.	The Difficulties of Discounting <i>Geist</i> from Hegel's Principles	293
ii.	Essential Properties of <i>Geist</i>	294
iii.	Dangers of Abstracting to Vagary	295
iv.	<i>Geist</i> Revisited	298
4.4)	A Modern Hegelian Position	303
Conclusion:		
Hegel & Mill - revisited		305
Bibliography		317

Preface

Many thanks and acknowledgements are owed and due.

To Dr. Ivor Sarakinsky, for opening the floodgates to a wider tradition of thought, for correctly suggesting that a one-time journalism graduate might gain something invaluable from a full thesis masters in a discipline he loved so much as an undergraduate, and, of course, for guiding him through it.

To my parents, for gracefully reconciling themselves to the notion of a wayward academic as an eldest son.

To Andrew Rae and Shirley de Villiers for their running status as political wingpersons.

To Michaela Baker for her multiple roles as muse, editor, philosophical sparring partner and theorist of sex in parks.

To Eusebius McKaiser, Warren Solomons and other assorted campus intellectuals for countless hours and coffee-pots spent in the service of a thesis not their own.

To Legends Diner for rescuing me from the looming claustrophobia of the four walls that housed my bookshelves and keyboard.

To the Wallflowers, Better than Ezra, Dave Matthews Band, Gin Blossoms, Midnight Oil, Dire Straits and REM for providing the ideal soundtrack to elegant dissent.

And, ultimately, to all my former teachers and overseers. Consider this the repentance of someone who hitchhiked his way through academia, only to wind up somewhere where he had to work his guts out.

Primary Sources

Hegel, G.W.F

PR - *The Philosophy of Right*

Edition Used:

Elements of the Philosophy of Right,

Wood, Alan (ed), H.B. Nisbet (tr.), 1994, Cambridge: Cambridge University Press.

PhG - *The Phenomenology of Spirit*

Extracts used from:

The Hegel Reader, Stephen Houlgate (ed.), 1999, Oxford: Blackwell Publishers.

IHP - *Introduction to the History of Philosophy*

Edition Used:

On Art, Religion and the History of Philosophy, Gray, J. Glenn (ed.), 1997, New York: Hackett Publishing Company.

VG - *Die Vernunft in der Gesichte*, J.Hoffmeister (Ed.), 1995, Hamburg: Felix Meiner Verlag.

(As cited in Hardimon, 1994)

VPR 1 - *Die Philosophie des Rechts: Die Mittschriften Wannenman (Heidelberg 1817/18) und Homeyer (Berlin 1818/19)*, Ilting, K.H. (ed.), 1983, Stuttgart: Kelttcotta.

(As cited in Neuhauser, 2000)

Mill, J.S.

Mill 1 - *On Liberty*

Edition used:

On Liberty and Considerations on Representative Government, McCallum, R.B. (ed.) 1948, Oxford: Basil Blackwell.

Mill 2 - *Utilitarianism*

Edition used: *Mill's ethical writings*, J.B. Schneewind (ed.), 1965, New York: Collier books.

Otherwise: excerpts used as cited in Secondary Literature.

Mill 3 - *On Representative Government*

Edition used:

On Liberty and Considerations on Representative Government, McCallum, R.B. (ed.) 1948, Oxford: Basil Blackwell.

Mill 4 - *On the Subjection of Women*

Excerpts used as cited in Secondary Literature

Mill 5 - *System of Logic*

Excerpts used as cited in Secondary Literature

Introduction

Seeking common principles in a clashing ancestry

On the political level, one of the most widely debated issues in Western Democracies concerns the respective merits of individual freedom and socio-political bonds - or (in current terminology) of *Liberalism* versus *Communitarianism*. Inspired by the legacy of Reformation and Enlightenment, champions of individual liberty consider the essence of politics to be the defence of personal rights and liberties against encroachments emanating from government or the public sphere; seen from this vantage, all community standards or shared public bonds appear questionable and possibly oppressive ... Countering this liberal focus advocates of community are quick to point to the corrosive effects of egotism and *possessive individualism* on moral and political life (Dallmayr, 1993: 4-5).

If there is a crux point, a fault-line in the discourse over the concept of freedom as practiced in a modern democracy, it lies with what can seem like a dangerously nebulous set of concerns. Our concepts of individual liberty, community and social morality are often, it seems, on a three-way collision course.

Whenever we turn to our bills of rights in a state of moral confusion, bemused at whether pornography counts as free speech or drug use as cultural expression, we step, sometimes blindly, into this centuries' old grey area. We do so as the heirs to a patchwork synthesis of ideas and concepts drawn from a series of thinkers who believed radically different things about the nature of the individual and society, and about how a state oversees the interaction between the two. The bill of rights (and to a large extent constitutions and law in general) in a modern constitutional democracy is often a broadscale cease-fire in a bloody, multi-faction ideological running war. We laud freedom

of speech and opinion as libertarians would. Our notions of the fierce protection of property and privacy still rest on the logic of the rights-primacy theorists. Notions of civic obligation and duty (such as compulsory voting) hark back to the principles of the republican school of thought. A weary nod is given to the socialists whenever we sign off on a welfare state protocol or some other broadscale economic safety net designed to further social equality. These days, the theories meld and reflect each other, rendering the battle lines less distinctive.

Throughout the above, one crucial tension runs. It is a tension seldom made explicit, but is certainly implicit within many of the debates ongoing within the democratic arena - questions surrounding gun control policies, hate speech, drug and substance abuse, specific cultural rights and even the long-standing moral questions of socialist state practices. This is the tension between varying notions and definitions of individual freedom, and to what extent the state is mandated to ensure and encroach on these. If we step back and assess any of the various civil liberties debates of our time, understanding them in terms of individual practice vs. social obligation, we find those fuzzy battle lines become far more clearly drawn. These debates, at heart, are questions of individual practice within a social context. The issue at stake is to what extent the one affects, and should be allowed to affect, the other.

One side, long versed in the dictates of liberalism and rights primacy, understands individualism as an atomized, singular force that must be shielded from the totalitarian proclivities of both state and mass rule. On this side of the line the cast is readily recognisable - civil rights activists, defenders of expanded free speech, campaigners for legalised drug use, pro-choice factions and just about anyone who feels the individual's conduct is their own affair, provided it doesn't hamper anyone else's freedoms in the process. The other side sees the abstracted political individual as a long-preached falsehood, insisting that the social context in which people find themselves and are

formed must be allowed to dictate certain norms and practices, usually culturally entrenched. Here we find the communitarians and conservatives, advocates of an enforced moral culture, people who use terms like “community standards”, “moral majority” and “family values” a lot. Their concerns, as Bell (1993: 7) sets them out are that “[t]here is undoubtedly a worrying trend in contemporary societies towards a callous individualism that ignores community and social obligations, and liberal theory does not seem up to the task of dealing with this problem”.

The aim of this thesis is to assess the architecture of principles put forward by two of the greatest of the political thinkers of the early modern age - John Stuart Mill and Georg Wilhelm Friedrich Hegel. They stand as the controversial heroes and intellectual ancestors of the libertarian and communitarian schools respectively. “In Mill” Skorupski (1989: 337) claims “Liberalism found its philosopher”. Wood, in the introduction to his edition of the *Philosophy of Right* describes Hegel as perhaps “[liberalism]’s deepest and most troubling critic”.¹

The contraposition of the two is eminently suitable for the purpose I have given myself here. Mill can be understood as a high priest of negative spaces - of a social structure in which individualism is sacrosanct. Hegel, conversely, is often associated with a highly conservative vision of society - one that demands that the individual’s ethics must be defined by the social norms and practices of the community that surrounds her. What I hope to achieve by drawing on the affinities and clashes between these two thinkers is a crystallisation and clarification of what the modern mindset values or scorns in individualism and social embeddedness. From this I aim to deduce which approach to civil rights best caters for a useful and valid modern sense of freedom.

¹PR – Editor’s introduction: xi

This requires cutting through much jargon and rhetoric (abundant on both sides) and assessing the principles that lie beneath. It requires a re-examination of what we mean by freedom, of why we place such a heavy premium on individuality, or on social cohesion. As will become more apparent over the course of this inquiry, there are tensions and clashes between the two thinkers that cannot be reconciled. This, I feel, is as it should be. In the spirit of rational confrontation that both men believed in (in one form or another) what I hope to draw out is not a broad scale parity between them, so much as a common consequence of principles inherent in both their theories.

Their visions of the ideal and developed social order are, after all, radically different. Hegel's ideal social structures are all directed to allowing individuals to feel at home in the world they inhabit, to be able to affirm the universal will as their own. Individuals in the ideal Hegelian social structure participate in a harmonious, if diversified, whole which itself embodies freedom, but which they treat ultimately as consequence and embodiment of their collected wills as individuals. As Hegel argues:

The ignorant man is unfree because he faces a world which is foreign to himself, a world in which he tosses to and fro aimlessly, to which he is related only externally, unable to unite the alien world to himself and feel at home in it as much as his home (Hegel, as cited in Plant, 1983: 147).

This idea of true freedom as a reconciliation between self and social environment has been taken up by modern communitarian writers as a demand for a state that recognises, and legislates to protect, the importance of community standards and practices.

Mill has no such high-gloss theoretical strictures in mind. His ideal order is a realm of constant intellectual flux - his institutions an island of sanity and tolerance in a diverse and uncertain world, in which even a commitment to maintaining order requires openness to the most progressive of thinking. If

there is harmony, it comes from tolerance, and a mutual understanding of boundaries that must be in place - lest state rule, mass rule or the arbitrary wills of others render society a stagnant quagmire of long-held dated, and dangerous notions.

If we look beyond the surface tensions between the two theorists, we discover that there are certain key affinities. I aim to prove that there is room for Mill in Hegel, and room for Hegel in Mill. A few thinkers, such as Allan Wood, have already toyed with this comparison:

For Hegel, as for John Stuart Mill, freedom in the ordinary sense is a very important good, but its value is conditional on the specific conditions of human self-actualisation in modern society (Wood, 1990: 52).

The chapters which follow examine just how deep such affinities of principle run. The crux of my comparison of these two theorists will be to examine the thought and principles at play in their respective major works on the subject of the state and the individual. These will be Mill's famed essay *On Liberty* and Hegel's last published work *The Philosophy of Right*. Other works will be referred to only as relevance demands.

In the coming chapters, the role the individual and the social order play in each theorist's position are examined. The relevant background philosophical dynamics and political theory goals that underpin each social vision are discussed as a pre-amble to each, in order to provide the necessary conceptual vocabulary to assess the architecture of their principles.

In doing so, I do not take the Millian and Hegelian positions precisely as set out in the original texts. As Nietzsche would remind us: "One repays a teacher badly if one remains only a pupil" (1971:103)². Both bodies of theory require

² Nietzsche, F. 1971 *Thus Spoke Zarathustra* (Translated by R. J. Hollingdale), Harmondsworth: Penguin.

some degree of re-construction, clarification, and identification of their central, durable, framework of principles. The examination of *On Liberty*, as it was never written as an expert-level text but rather as a public appeal, necessitates a significant drawing out of practical implication and principle architecture, with reference to other hallmark Mill works.

Whereas Mill stands guilty of saying too little, Hegel, in a sense, is guilty of the opposite sin. The detailed minutiae of the system he sketches out in *The Philosophy of Right*, such as Hegel's conception of the state structure and his treatment of class and gender, are often archaic and indefensible as modern policy guidelines. Thus, I concur with Hardimon that:

[t]he central motivation for abstracting from the details of Hegel's own account is to make it possible to appropriate the features of his account of the modern social world that are attractive while avoiding those that are unattractive (Hardimon, 1994: 254).

This being said, I believe one must be careful in such a process of abstraction not to jettison anything crucial to Hegel's actual principles or (obviously) to splice in anything that would contradict them. It is the spirit of this respect for the coherence and authenticity of his arguments that I attempt to re-interpret troubling and obscure (yet nonetheless central) concepts such as *Geist* (the objective universal or world spirit) in the Hegelian position, instead of simply jettisoning them as many modern scholars are inclined to.

What emerges from this examination is a distilled Millian and Hegelian position on the structure and institutional ethos of the social order, purified of superfluous archaisms. I identify within both of these certain profound commonalities and compatibilities, specifically and significantly in the way both theorists understand the ideal social order as safeguarding and enhancing (rather than limiting) true individual freedom without instantiating a callous or disinterested society. I see both theorists as holding that the social order is best conceived as a rational common framework for the management of ethical

and policy engagement, dedicated to preserving and developing the capacity for true individual autonomy in an intersubjective context. Beyond this, I argue, ultimately, that the Hegelian and Millian projects are complimentary - each includes useful elements the other is not opposed to, but simply lacks. What I believe I identify by the close of this enquiry is the suggestion of a *via media* between contemporary liberalism and communitarianism that recasts, but does not diminish, either of their central concerns as social and political theories.

Chapter 1

The individual in Mill

1.1) Preliminary comments

It really is of importance, not only *what men do*, but what *manner of men* they are that do it (Mill 1: 52, my italics).

It is not by wearing down all that is individual in themselves, but by cultivating it and calling it forth, within the limits imposed by the rights and interests of others, that human beings become a noble and beautiful object of contemplation (Ibid. 55).

It would have perhaps seemed fitting to the object of our inquiry that he remains, over a century after his death, a figure of no small controversy. John Stuart Mill has done his time in the intellectual stocks ever since he was first published - accused of inconsistency, hypocrisy, eclecticism that borders on confusion, of being an unsystematic and messy thinker in general. The counter, his greatest praise, seems to be found not simply in the modern defenders of his doctrines, but in their widespread application throughout the western democracies. Versions of the liberty principle, to be examined at length in the coming chapters, have found their way into the practice, policy and analysis of the modern democracy. When the Wolfenden commission made their landmark recommendations on the repeal of the laws regulating homosexual behaviour in England, it was to Mill they appealed in claiming a private morality over which the government had neither jurisdiction nor right of interference.¹

¹ Crisp (1997: 179) sees the Wolfenden report as drawing explicitly on the harm principle in holding that the purpose of law is not to protect citizens from themselves, but from others. In the report's own words:

[T]he function [of the criminal law], as we see it, is to preserve public order and decency, to protect the citizen from what is offensive and injurious and to provide sufficient safeguards against exploitation or corruption of others, particularly those who are particularly vulnerable because they are young, weak in body or mind or inexperienced (Wolfenden, 1959, as quoted in Hart, 1963: 14).

But the value of Mill stretches far beyond issues such as rights of conscience that are more obviously his home terrain. The subtlety of his vision of the individual and the social order and their sympathies with the Hegelian picture of the same are my grand concern here. This chapter is tasked with laying out and assessing the “individual” branch of Mill’s project.

My aim here is not to defend Mill to the dying gasps. I will not claim he was above certain confusions of his own, or biases of his era. I will not claim his system in its entirety deserves some long overdue immediate application. Neither he nor Hegel can claim that vast a privilege by modern terms. Rather, I follow the lead of Mill himself, when he claimed few great social systematisers left their entire blueprint as legacy:

[F]ew of the systems of these systematic writers have any permanent value as systems. Their value is the value of some of the fragments. But the fragments (the parts which are excellent in wholes which are inadmissible) if published separate would probably have attracted little notice. This is a tribute mankind unconsciously pay to the value of theory and systematic thought (Mill as quoted in Ryan, 1987: xxvi).

The fragments I examine have remarkable relevance both to the modern moment and to the whirlwind of contempt and praise surrounding Mill. In the coming pages I examine Mill’s rationality and various strands of his philosophy of science, the implications of his concept of the self, finally leading into an examination of the individualist dynamics of *On Liberty*. Through this I will grant the reader a view of the broader intellectual landscape of Mill’s ideas, foundational to the well-known peak of *On Liberty* itself. All these point to a Mill far more socially concerned and progressive than his detractors have cast him, with a substantial love for enlightened self-government in a far deeper and broader sense than it is usually claimed he supported. What comes to light

Furthermore, Crisp (Ibid.) claims “Hart’s own famous response is explicitly based on Mill”. See Hart, 1963: 5.

is a definitive teleology in Mill, the *telos* of which, much like Hegel, was not a static point so much as an arena of institutionalised enlightenment. In the process, I will show how Mill's social space is neither one of blind atomism, nor brute self-interest. I will show how Mill's intellectual battle cry is always a humbling respect for particularity - of individuals, of forces, of nations - and with that a demand for boundaries and measures that allow said particularity to develop in an authentic and rational sense - individually and socially.

1.2) Background philosophical dynamics to Mill's Individualism

Most slights against Mill suffer from a number of central misgivings and misinterpretations, the source of which often seems too shallow an examination of Mill's entire body of work, and thus too shallow an examination of the architecture of his principles. This is unfortunate, but also unsurprising. As Ryan (1987: xxv) claims, Mill is seldom thought of as a systematic thinker, even by his defenders. The picture one gets is of a vast rank of detractors, most of whom seem to have conveniently forgotten that Mill published any works besides *On Liberty*, *On Representative Government*, and *Utilitarianism*. A corrective school of authors such as Skorupski and Ryan has arisen in recent years that traces the provisions laid out in these texts more faithfully to the foundational philosophical dynamics laid out in works such as Mill's *System of Logic* and his various treatises on the moral sciences. I see these as conceptual backgrounders to Mill's understanding of the interaction between the individual and the social space as a zone of progressive rational engagement. The dynamics I have focused on are thus those tied most directly to such an inquiry, being Mill's understanding of the process of reasoning and his conception of the self and its developmental aspect.

1.2.1) Mill's Rationalism

i. Inductivism and deductivism

For the purposes of this chapter, we are concerned with the individual within Mill's system. But for Mill, as for Hegel, the individual was not a static element that is simply added to the social mix. The individual, as we shall see, progresses through interaction with others, and eventually finds her interest bound up within the social interest. Thus what we are concerned with, when assessing the nature of individuals and society, is the integration between the particular and the general in terms of the theories under discussion, and this forms our departure point into Mill's system.

The first set of issues has to do with Mill's understanding of the nature of reasoning itself.² The significant philosophical dichotomy at hand is between deductive and inductive reasoning. Do we argue towards truth best by the syllogistic application of general principles, or can we rely on rules of inference/probability which basically amount to glorified guesswork? Ryan (1987: 17) sees Mill as striking through the heart of this dichotomy, and standing somewhere between the two. Mill believed that the major premise of a syllogism - i.e. the general principle, is a formula by which we evaluate our conclusions, not the direct evidence from which the conclusion is actually drawn. Thus by Mill's terms:

² Mill's entire logical system spans the first few chapters of Ryan's enquiry, and I feel it is neither useful nor possible to sketch out Ryan's arguments in their entirety here. The relevant elements are those which impact upon the way he understood society and the individual, i.e. the elements that would survive the final pages of the *System of Logic* and go on to haunt the remainder of Mill's works. This requires us stepping into the philosophical crossfire surrounding the nature of reasoning, ontology, and free will versus determinism. These are grand battles indeed, and to resolve them in any brief space would be neither useful nor possible. But I am concerned here not so much with their resolution but how Mill's take on them impacts upon and underpins his approach to social and ethical theory.

All inferences are from particulars to particulars. General propositions are merely registers of such inferences already made and the short formulae for making more (Mill as cited in Ryan, 1987: 25).

As Mill sees it, we argue deductively, but draw our evidence from observed experience, which we thence check according to general principles. Mill's problems with pure deductive reasoning have much to do with its rigidity.

As Ryan (Ibid. 14) holds, Mill felt the gulf between the non-empirical abstractions that are general principles and the empirical phenomena they sought to explain was often far too wide. There was for Mill in a system of understanding reality composed purely of generalities and abstractly derived laws an insufficient respect for the particular. This is Mill's crux point throughout all his works and is something we must return to again and again in terms of understanding the foundations of his thought. Pure deductivism bears the hazard of dismissing more everyday modes of explanation, of becoming dogmatic and stagnant. The laws of science and reason, when applied to everyday experience, become a matter of probable inference - their universality is too contingent upon a host of factors and elements that are either unknown or unpredictable, for it to be universality in the all-consuming sense pure deductivism claims. It is, by Mill's terms, too bold, too arrogant, too blind to the vast possibilities and variety of an uncertain universe.

When we step back from the mire of argument and jargon that accompanies the centuries old bad blood between deductivists and inductivists, the relevance of this all to Mill's understanding of social and ethical theory becomes clearer. Mill sought to remind us that probable inference was the best we have when we address reality, and not a realm of abstracts. The grand quest of the British empiricists of the enlightenment to secure a scientific and universally valid understanding of human society derived from abstract principle is to Mill, and to a large extent the modern mind, a fruitless one. At

best we are guessing, and must remember that lest, as Mill phrases it in *On Representative Government*, we form societies and governing bodies which “perish by the immutability of their maxims” (Mill 4: 179). To claim that we stand at the highest vantagepoint in all history is one thing, and even that fraught with the dangers our ignorance of the present might present.³ To claim that there will be no higher vantage to come is delusional. This is the warning Mill presents to rulers and policy makers in *On Liberty*.

A further point to be drawn out of Mill’s respect for inferential reasoning is that it does amount to something of a democratisation of the intellect. It nullifies the copyright on the search for truth the abstract sciences often claim they hold, and gives credence to the observations and experience of everyday people. This we shall see amplified in *On Liberty*, where Mill urges us to remember that progress can come, and often does, from the most unexpected corners when we legislate against certain practices and lifestyles.

But this is to leave the fray too early. We have not yet seen a thorough account of how we do reason, how the relation between the particular and general is formed and operates. Mill’s idea of inference raises a number of issues all its own, and the philosophical quicksand presents its dangers once again. So, once more, I draw out the elements I feel are significant to Mill’s social theory, without diversions allowed for elements to which Ryan, for one, devotes entire chapters worth of explanation.

We have first, to remind ourselves that Mill did see a very clear value in general statements. As Ryan (1987: 27) clarifies, he metaphorised them as a vantagepoint, a higher ground we could retreat to understand the particular dynamics of the everyday world we left down on the plateau. General

³ Bear in mind Mill’s own rather despondent jibe at the prevalence of parochialism in *On Liberty*: “[T]he world, to each individual, means the part of it with which he comes into contact; his party, his sect, his church, his class of society; the man may be called, by comparison, almost liberal and large-minded to whom it means anything so comprehensive as his own country or his own age” (Mill 1: 15).

principles have a nasty and crucial habit of reminding us what we are committed to when we operate by a rule of inference. They act as provisos against us accidentally committing ourselves to singular statements we have hitherto forgotten to consider. A farmer may claim, based on generations of family experience, that his soil will always yield a substantial crop. The general principle intervenes to remind him that farmers must always consider weather conditions when assessing what makes for a good crop, else his inference based statement may have committed him to claiming that his soil would yield a powerful crop even in cases of drought.⁴ Similarly are the general principles at work within *On Liberty* designed to remind us what we, as governments and societies, commit ourselves to when we claim certain practices or policies are beneficial or detrimental. The classic free speech example of hate groups comes to mind. Activists who wish to ban hate groups often fail to remember that they are committing themselves to a precedent by which governments may silence dissent, the very precedent that could be turned against themselves should the ruling elements suddenly view them with disfavour. It was precisely on these grounds that a Jewish leader of the ACLU⁵ campaigned for a Neo-Nazi group's right to march in Skokie, Illinois in the late 70's.⁶

ii. Inference and action

What then are the further implications (and complications) with inference as a tool of understanding and organizing reality? One of the key issues arising is its articulation. Ryan (1987: 30) quotes Mill's example of a tailor who knows how to achieve a certain colour of fabric with handfuls of certain dyes. The tailor could not put this process down on paper for others to follow precisely. Yet it is a reasoned process nonetheless.

⁴ This particular example links up with Mill's physics based understanding of sociology, examined below.

⁵ American Civil Liberties Union

⁶ A brief description of the key issues in this famous case can be found at <http://www.kansaspress.ku.edu/strwhe.html> (Accessed 07/01/2003).

Inference is both general and particular; a man may thus reason from particulars, committing himself to a rule of inference which he may have infinitely greater skill in employing than in articulating. To deny that he is inferring something would be perverse; to require him to produce his rules of inference, hopeless (Ibid. 30).

Rules of inference that count as argument or motivation for action must be communicable. We cannot appeal to sheer instinct or sentiment, or belief divorced from an understanding of consequence and application. But this sets us on a collision course with a potentially disastrous objection to Mill's system. That belief is a key driving force in precipitating action, and the person following an inference rule checked against what we describe as a general principle may not be doing so at all. They may be acting in a vacuum and not give the remotest credence to the generality of what they argue, thus nullifying the check and balance function of general principles. If this objection holds true, the grand Millian notion of society as a zone of rational engagement, in which fallible individual perspectives clash to produce better guiding principles becomes highly dubious. Such a social vision is premised on the possibility of general principles being a guiding force in the first place. As such, the Millian response here is fundamental to the internal coherence of a Millian account of the possibility of individually driven social reason.

The answer to this, Ryan (Ibid.) argues, lies in clarifying further the relationship between the general and the particular. Particularity of explanation lies in the particularity of the facts used to do the explaining. The generality of the explanation is that they are only relevant in certain respects. "The commitment to a general principle is thus not a commitment to *knowing* a general principle" (Ibid.). This, by Ryan's terms, resolves the psychological objection about what the inferrer in fact believes he or she is doing. Mill is concerned with us being rational by analysing our association of ideas. This can only be done if we make our inferential patterns and chains of thought *explicit*. The acid test of these, for Mill, is the deductive syllogism.

The upshot of the above points for the Millian understanding of human reasoning and its value is what Ryan (Ibid. 31) holds can be referred to the logic of consistency - we must make explicit what we are already committed to. We cannot hold two inconsistent statements about the same fact. The process of reasoning from particular to particular may well lead us to a divergent feature of another particular that either is covered by our inference rule or falsifies it. Without this borne in mind, superstition may thrive because no one recognises the counter-instances to it. Thus we see the pattern arising again of particulars feeding into a grander understanding of the universal.

The logic of consistency point is but one key feature of truth sought through rules of inference. The wider point of emphasis, as Ryan (Ibid. 32) points out is a *caveat* to the inductivists: where our inference rules fail, we must recognise they fail. General principles must always be dependent on particular cases. Mill's marching orders to a society in pursuit of truth, can, if we consider the above, be phrased as such: Strike the delicate balance between gathering inductive evidence and testing it deductively. Maintain an awareness and respect for the particular when forming rules of inference, but where those rules fail, admit as much. Achieve the discourse necessary to this by making your thoughts and ideas explicit. This goes a long way to explaining many key elements of Mill's political thought we shall examine further on - such as his mistrust of irrational custom being translated into institutional practice and his insistence on a kind of demarcated pluralism for an advanced state of society. A key illustration of how these concerns are integrated into his social theory is Mill's musings on which methodologies of the physical sciences provide the most compelling blueprint for a social science, an exposition the next section takes up.

iii. Physical science as a model for social sciences

Mill wrote at length on the nature of scientific experiment and procedure. Alexander Bain⁷, in his biographical outline of Mill's philosophy, recalls working through the various drafts of Mill's system of logic with him, and helping him source out the most advanced ideas on experimentation protocols the day had to offer, and acting as Mill's sounding board as he integrated the principles of Comte's scientific sociology into the final volume of *Logic*.⁸ This was not to be an exercise purely in the philosophy of science. As Ryan (Ibid. 133-147) illustrates, Mill develops the claim through the various volumes of the system of logic that sociology as science must reflect the methodology of the natural science most suited to the task of comprehending human behaviour and society, the way individuals operate and come to form associations and institutions. This science, for Mill, was physics. The way Mill applies this model gives us significant insight into how he understood the inter-relation of general and particular. The implications of this methodology for the analysis, prediction and amendment of social arrangements, we leave to Chapter 2.

What is interesting is Mill's choice of which branch of the sciences provided the most apt model for sociology. He dismisses, as Ryan (Ibid. 133-137) reveals, what he calls "the chemical method", in particular reference to Macauley, which makes it an attack on the hard-line empiricists. Chemistry, as a science, proceeds by experiment. It generates results based purely on observed phenomena, low-level laws specific to certain cases. It continually admits of slight alterations in the nature of the compounds under observation producing entirely different results. It allows for no general/universal principles. In terms of understanding human association, the chemical methodology is for Mill far too relativistic an approach. It amounts to throwing up our hands philosophically and claiming human beings are as they are, as they are formed under the specific conditions of their experience. The individual, under a

⁷ See Bain, 1882.

⁸ Mill and Comte were mutual admirers and enthusiastic correspondents, and as such we can trace a significant element of Comte's thought in Mill's own sociology. Comte's ideas on the division between

chemical analysis, subscribes to no fundamental laws of human nature, and no patterns can really be distinguished. Alter an individual's circumstances, and you have an entirely different compound, so to speak, to which general laws cannot apply.

Mill thence, Ryan (Ibid. 137-147) explains, turns to attack the geometric method, and in doing so attacks his own teachers, namely his father, James Mill, and Bentham. A geometric understanding of individuals and social arrangements begins with a key axiom and premises all arguments from that point forth upon it. It is such with classical economics, which takes as the key formative factor of social relations economic self-interest. It is equally so with his father and Bentham's thought, which followed the enlightenment era rights-primacy pattern established by Hobbes and Locke in putting forward self interest as the driving force of human interaction. Mill felt this left the picture of the individual and the society he moves in incomplete and overly reduced. Most specifically, it does not allow for the plurality of causes that can feed into individual motivation and social formations. Culture, religion, belief and various other factors could be as crucial to community formation as self-interest. Economic prosperity is as easily the result of good soil as sound fiscal policy.⁹

For Mill, social understanding had to mirror the achievements of Newton in science, thus it is not surprising that it was Newtonian physics he turned to as his ideal model for social analysis. As Ryan (Ibid. 149-150) explains, it was physics, to Mill's thinking, that must be ranked first in the hierarchy of sciences.¹⁰ In sociological terms, the Newtonian model of human association

Order and Progress in terms of the goals of state, and Mill's reworking thereof, is the province of Chapter 3.

⁹ This is not to say Mill did not give credence to certain of these "geometric" social sciences. As we shall see further on, he assigned economics, for one, the status of an "art", much like medicine. Mill's notion of an art and its place within the hierarchy of the "art of life" shall be examined later in this chapter.

¹⁰ Mill's idea of scientific unity through an interlinked hierarchy, and it's parallel hierarchy in the social sciences will be further explained in the next chapter.

has profound significance to the discussion at hand. It exists somewhere in the ether between the empirical, context-bound nature of the chemical method and the abstracted generalities of the geometric. Physics operates by general principles that serve as a guideline to understanding specificities. Mill's affinity for such an approach is aptly demonstrated by the above discussion on his rational system. It furthermore allows for the plurality of causes and forces acting on a given situation or phenomenon, but does its best to reduce these to a set of fundamental laws of mechanical activity. It does so, ultimately, by reducing all activity to the atomic level. This is what Mill aimed to do with the social sciences.

The Newtonian-driven conception that individual human beings can be likened to atoms is well documented. It can be understood as one of the key influences on the rights primacy thinkers, notably Hobbes and Locke. The atomised understanding of the individual remains one of the key issues of contention between the modern liberal and the modern communitarian and as such is destined to re-appear constantly throughout this enquiry. Mill's physics-based sociology entails this atomism, but I believe, in a sense quite different from Hobbes and Locke. Mill never lost sight of the fact that the atoms eventually form an organism, and through increased interaction begin to understand their own interest in terms of the interests of the whole. The social contracts of Hobbes and Locke suggest this pattern, but they lack the emotional depth and theoretical variety of Mill's model, in that they still premise themselves at every turn upon an assumption of human beings as brutally self-interested creatures. They thus fall prey to Mill's criticisms of the geometric method of social reasoning. There is no sense in classical rights primacy of social perfectibility through self-perfectibility and increased awareness and education, a principle I will prove in the coming pages and chapters Mill firmly believed in. Thus we must be careful when judging too quickly Mill's use of the atomic model to understand the movement from individual particularity to social generality as standard-issue British empiricist

selfish individualism. The atomism here is a starting point of explanation. The atom, in this case the individual, is the basic unit with which we begin our examination of the whole, in this case the social organism. It is not to say the atom will remain unchanged by increased interaction with other atoms as we examine the nature of the organism.¹¹ This, I claim, is in fact precisely what the Millian social space is all about - progress through rational engagement, perspective clashing with perspective. Mill, I believe, puts forward a compelling picture of how a social theory can begin with atomistic analysis, but nonetheless understand the social structure itself organically or holistically.

The driving point of the scientific elements of Mill's philosophy as they lead into the sociological remains his *caveat* that we never lose sight of the particularity and multiple facets of any phenomenon, especially the human being and the society he constructs around himself. This lurks in the shadow of all Mill's full-throated defences of individual rights and practices, as well as his warnings to us never to attempt to outrightly impose generally derived precepts upon particular situations. This for Mill applies as much to states, communities and individuals as it does to problems of Newtonian physics. It is against the backdrop of such an ambition that the Millian analysis of self and society which this enquiry seeks to evaluate is foregrounded. It is to the Millian self that I now turn my attention.

1.2.2) Mill and the self

i. Phenomenalism and Naturalism in Mill

We are drawing steadily closer to an examination of the individualistic element of *On Liberty*, but there is a deep and slippery chasm we must cross first. This

¹¹ This dynamic in Mill's thought shall be further examined directly below, as we deal with Mill's conception of Mind and Reality and individual character formation.

has to do with Mill's understanding of the individual in terms of the nature of perception, the relation of mind to reality, and freedom as rational autonomy. The first issue of relevance is Mill's understanding of the nature of ideas and perceptions themselves. The philosophical crossfire between the phenomenalist and naturalist understanding of reality has run for a good few centuries at this stage, and Mill stands somewhere in the centre of it. The dynamics of this debate flow from whether or not we grant our perceptions and theories the status of truth, or sceptically assign them the humble status of being mere subjectivities. Skorupski (1989: 209) sees Mill falling heavily on the side of the phenomenologists, believing that the naturalist realist position (i.e. the belief that the qualities things have are those we perceive them to have)¹² could be "embedded" within the "deeper metaphysical perspective of phenomenism". Mill's inductivist credentials, as well as his belief in subjectivism, lead him to be classed as a phenomenal relativist, with a subjectivist interpretation of the way humans form perceptions and ideas. In more intellectually pedestrian terms: we operate and perceive the qualities of the world external to us in subjective terms. This flies against scientific realist approaches, which holds that our perceptions are inferences from actuality, and provide objective data as such. Under the phenomenalist approach, the perception is endemic to the perceiver, and the perceiver must bear this in mind when drawing generalised conclusions.¹³

One of Mill's flagship issues when it comes to the nature of perception and thought is what Skorupski (Ibid. 213) calls "underdetermination" - the rider attached to any hypothesis that another could arise, presently or at a later stage, with equal claim to the status of truth. This leads Mill, Skorupski extends, to an instrumentalist understanding of the nature of theoretical reasoning. Once again cutting through the jargon this translates into the belief

¹² I accept that this is something of a whistle-stop tour of this particular philosophical issue. Skorupski notes that Mill was denied the discourse of the century to follow, which subjected this particular position to far more rigid examination. My concern here is more to see how Mill's understanding of the issue helped form his understanding of individual perception in the political arena.

that theories are merely ways of better training ourselves to comprehend reality. They identify uniformities and patterns, and improve our capacity for prediction and inference. They are not truths, so much as paths towards it. Thus, once more the *caveat*: truth as propounded by theory is fallible and slippery at best. The same approach applies here as with Mill's logic - the use of the general is to enable us to make better sense of the particular. Taking the current point and the above section on Mill's scientific methodology into account, we can surmise the following: The world seen through Millian eyes is a domain of subjective perceptions struggling against each other and intermingling, with the perceivers comparing notes through expression of ideas and theories that are understood as instrumental, by no means fundamental, to the discovery of objective truths. Applied to individuals in a social context, we get a sharp glimpse at the kind of thinking that leads Mill to insist on the higher levels of human development being domains amenable to the free-flow of ideas and criticism. If we contemplate that Mill's naturalism posits the comprehensibility of individuals and social orders through an understanding of their context and circumstances, we can understand that one of the crucial¹⁴ and more controversial upshots of such a philosophical project is that social entities are ultimately reducible in a fundamental sense to the consciousness and activity of the individuals therein. This is a doctrine that finds classical expression in Mill, which has by our age acquired a definitive tag - methodological individualism.

¹⁴ Mill, as Skorupski (1989: 240) points out, throughout his philosophy believed that human minds were "natural entities and can be studied as such". Skorupski maintains that this tension in Mill's thought borders on unresolvable. He is, after all, seeking to reconcile a view of the universe that entails that all perception is relative and particular with a conviction that human beings are composite of a natural context that can be studied and understood. While I do certainly enrich my analysis to suggest how I feel Mill does this with some degree of success, I lack the space here to investigate how Mill resolves the more abstract tensions between a naturalist and phenomenalist position, something Skroupski's analysis deals with at some length.

ii. Methodological individualist dynamics in Mill

To frame the discussion in scientific terms, the methodological individualist as Ryan (1987: 158) explains, holds that all social substances are reducible to individual substances, that there is no collective substance generated with its own emergent and universal qualities. Popper, ironically (considering his antipathy towards Mill) is one of the central modern proponents of this doctrine. What the doctrine amounts to in real terms is a refusal to make concrete generalisations from the interaction of one group of individuals to another. The individual remains the core unit of analysis, tempered with circumstance. No social psychological dynamics can be inferred from individual ones, at least in no concrete sense. Thus, on Popper's terms: "[t]here is no such thing as England, only a lot of Englishmen" (as cited in Ryan, 1987: 158). I will briefly outline here the theoretical crossfire between Popper and Mill, as it does help to clarify the deeper fundamentals of Mill's understanding of the social formation of individual perspective and character.

Popper, as Ryan (Ibid. 160) outlines, accuses Mill of three key sins, all linked to what he sees as "Psychologism" in Mill's theory, which renders the reduction of social phenomena to individual components problematic. The first is that Mill's approach presupposes a complete understanding of the diversified and varied institutions that can influence human mindframes - i.e. account for similarities in the varied ways people are educated and socialised. The second is that the approach ignores that social science deals with the unintended consequences of people's actions, thus what we must examine is not supposed laws of psychology but hard facts derived from empirical observation. The third objection Popper raises is that to assert fundamental psychological laws is to assert a psychological framework that existed before socialisation could happen, thus a pre-social psychology that contains the seeds of a historicist approach.

Ryan (Ibid. 160-162) takes up Mill's cause against Popper on all of these charges. The rebuttal to the first objection lies in remembering that it is precisely on account of the vast differentiation of human experience and culture that Mill asserts the importance of studying these, under the banner of the science he calls "ethology" (a science of human nature). He maintains simply that certain pre-requisite human capacities are necessary for human interaction, few that these may be. This approach does not by any means undermine the position that the vast majority of human diversity can be linked to diversity of experience. Ryan goes on to point out that this similarly answers the objection concerning intended and unintended consequences - only the most delusional conspiracy theorist would maintain a position that stated that all human social institutions and practice could be directly traced to some kind of heavily co-ordinated human intention. Ryan answers the third objection by pointing out that Popper has constructed something of a straw man. Mill was never concerned with the ability to trace social origins back to some grand historical pre-social moment through analyzing general dynamics. His concern when analyzing the broad sweep of western social conditions is with identifying trends that affected its future. When Mill looks to the origins of society, it is to prove a case that is distinctly Popper's own: that the complex interplay of human character and the institutions it forms renders any attempt at predicting human historical development from a vision of human nature and posited original position impossible.

This all leads us back to one of the central dynamics of Mill's system, one which we must investigate carefully if we are to understand his notion of how individual character and belief is formed, and the questions awaiting us of how its development must be nurtured and allowed for at a social and legislative level. This is the doctrine of the self as simultaneously a rational, self-defining entity and something formed by the circumstances around it, a doctrine classed by the vocabulary of modern ethical theory as "compatibilism".

iii. Compatibilism and rational autonomy in Mill

The question of the self - as both a natural being formed by circumstance and an autonomous, willing agent - is a paradox that plagued Mill throughout his earlier years and continues to plague modern political philosophy. The central issue of the atomised vs. socially embedded individual, crucial to the liberal-communitarian debate, flows directly out of this paradox. To quote Skorupski directly:

It was very important to Mill to reconcile free agency with causal determination - if that were to turn out to be impossible then the fracture line would go right through his entire philosophy. For on the one hand he rested the potential progressiveness of human nature on the doctrine of 'formation of character by circumstances'. But on the other hand the ideals of rational autonomy and self-culture - the formation of the self by the self - were central values of his ethical and political thought (Skorupski, 1989: 42).

Skorupski (Ibid.) traces how Mill recognised this dilemma and found what he believed to be its solution. Mill reflects in the autobiography the frustrations of countless who have to face up to the possibility that their character is not of their own formation, that they are, ultimately, the hapless victim of circumstance. His path out comes with a re-wired understanding of the way circumstance operates upon us. The distinction is to be made between resistible and irresistible causes. A broken limb or geographic location is an irresistible cause of not partaking in a fencing match. A pre-disposition towards cowardice, or aversion to violence, is not. In the domain of resistible causes, we maintain the capacity for free will in our choice to what extent these causes affect us. As Skorupski (Ibid. 43) puts it "I am free to the extent that I can resist desires when there is no reason to do so - moral freedom is rational autonomy". As Skorupski (Ibid.) clarifies, when we make judgements based on experience, assessing rationally the way circumstance affects us - we are in effect reconciling our free will with our natural predicament as beings

existing within causal chains. If I refuse to sleep with someone in the knowledge that they lead a reckless sexual lifestyle and may well be HIV-positive, this represents a causal chain of reasoning. My knowledge of their lifestyle allows me to be aware that should I sleep with them I could cause myself to contract the disease. My understanding of the causal nature of my circumstances has allowed me to make a free choice. If my desires overcome me in spite of this, only *then* am I a powerless link in the causal network. Those who can understand and place themselves within a context of causal circumstance, and choose to what extent the changeable factors - such as belief, desire, bias and aversion - affect them, harness their own will in spite of their being bound to a causal universe.

This, Skorupski (Ibid. 250-251) holds, is Mill's "moral freedom", fostered by a "habit of willing", i.e. the development of the capacity to bring one's desire and inclinations under the regimen of rational self-control. It is thus that Mill accedes to Novalis's conception that "[a] character is a completely fashioned will" (as cited in Skorupski, 1989: 251). But in maintaining this strange hybrid picture - of human beings as naturally conditioned and comprehensible creatures that nonetheless possess the capacity to assess and alter the nature of said conditioning - Mill sets himself a daunting task. He must prove how "a purely natural being can be morally free".

Mill does this, Skorupski (Ibid.) claims, through a sequence of philosophical manoeuvres in the *Logic*. The first is of a profoundly Humean strain. Mill strikes at the paradox of believing in a mysterious necessary connexion between an antecedent (a motive or inclination) and its consequent (an action), whilst rejecting that motives or inclinations automatically compel actions "as by a magical spell" (Ibid.). As such, Mill rejects the notion that the link between motive and action is causal. But this, as Skorupski (Ibid.) argues, is but a first step. Since the doctrine as it stands would only identify an actions' freedom in terms of the absence of "mysterious constraint" (Ibid.) - a

condition common to all causal sequences - all actions are equally free, and thus equally free from distinction. Mill must, to prove his case, provide a means of distinguishing when actions are necessitated and when they are not, i.e. when the agent could and could not have acted otherwise.

This, Skorupski (Ibid. 252-253) continues, is where the distinction between resistible and irresistible causes becomes crucial. Without it, any naturalism-derived determinist picture would be consigned to fatalism, and as such would be incapable of including rational autonomy as the highest bulwark of human action. Such a fatalist picture of character formation - the conviction that our characters are made for us by external forces and circumstances - was the creed of the Owenites, another set of Mill's contemporaries he treated with particular disdain. The Owenite position is a more familiarly determinist one, and Mill must prove his own position more plausible for his naturalism to elide convincingly with the remainder of his doctrine. The charge to be answered is that the "will to alter our character" (Ibid.) that Mill posits is a fiction if presented as a process of *self-formation*. Any desire we have to alter ourselves or our behaviour is heteronomous - it stems from factors outside the self and beyond the self's control. As such the "character formation process" Mill points to is, in fact, determined. Mill is charged with proving that though the wish in question must indeed be determined by external circumstance, it is nonetheless *not* heteronomous - that the self is still doing the wishing.

The resistible/irresistible motive distinction will not suffice here. Skorupski (Ibid.) gives the example of a cat waiting by a mouse-hole which is distracted from the vigil by a saucer of milk. The second motive (the desire for milk) trumps the first (the desire to catch the mouse), proving the first is resistible. This is not enough to get us to treat the cat as autonomous - it is still trapped in a seemingly fatalistic desire-action pattern. There must be a further dimension identified that gets us to the idea that an agent actually has the

power to *resist* motives. This is where Skorupski sees rational autonomy ascending to the highest stratum of Mill's doctrine of character:

[Rational autonomy] credits me with the ability to recognise and respond to reasons. I act freely if I would have resisted the motive on which I in fact acted *had there been good reason to do so* ... The difference between a heteronomous agent driven by conflicting motives which are capable of checking each other, and an autonomous agent who himself resists his motives lies in the fact that the latter responds to, and acts on, reasons (Ibid.).

The key question though, still lingers - does this in fact elide with Mill's naturalism? Skorupski (Ibid. 254) feels it does, in that consideration of reasons derives from experience. He takes the example of a man who avoids drinking based on previous experience of hangovers, or someone who avoids the edge of a cliff because they can see it is crumbling and dangerous. Such persons are responding neither to irrational desire nor social programming - they are making informed decisions based on experience (or observed experience) of an external set of conditions. The question, under such an analysis, becomes not one of whether or not a motive is causally determined, but a question of *the manner* in which that determination occurs. "It must" Skorupski sets out "be so related to the facts as to constitute a good reason" (Ibid.). The question of the will which shapes and alters character follows the same pattern: the formation of character must be tied to circumstances beyond the individual's control, but the formation of character can be understood as autonomous "if it results from our grasping that there is reason to change ourselves, and not, say, from a puritanical obsession entrenched by childhood indoctrination" (Ibid.). It is thus that we can understand Skorupski's contention that for Mill freedom *is* rational autonomy: it is the capacity to resist motives and courses of action where there is reason not to pursue them. This retains "the deep liberal insight that freedom is rational autonomy, but without Kantian transcendentalism" (Ibid.).

In this sense, as shall be seen in the coming chapters, Mill and Hegel are indeed on the same page. What adds further force to claims for such a sympathy is Skorupski's (Ibid.) further analysis that Mill's conception of moral freedom is Aristotelian: it is no binary, all or nothing condition derived from a transcendental rationality - it is a sliding scale of developed capacity. One can be more or less free, or more or less autonomous, in accordance with the degree to which one subjects one's motives, desires and inclinations to rational scrutiny. One's motives and actions are only externally dictated if one exhibits no capacity for rational reflection, or allows weakness of will to invalidate such a capacity. As such, it is possible to *make oneself more free* by fostering such mental abilities - the capacity to form and shape motives based on reason and the strengthening of will to overcome the force of irrational inclination.

As such, Mill finds his philosophical lot cast in with Hume in concluding that "the doctrine of universal causation is compatible with our practical feeling of moral freedom".¹⁵ Mill's doctrine of the self has, as we shall see, profound implications for the role of individualism in his social theory. The idea of a self locked into a circumstantially determined causal chain that nonetheless is not the ultimate determinant of character logically underpins Mill's insistence on the social quest for variety in the social space. A variety of circumstances forms a variety of perspectives. As these perspectives inevitably clash, it is the capacity to examine motives and courses of action with self-reflexive rational insight that becomes so socially crucial. The intersubjective development of this capacity feeds into the rational convergence that Mill stands convinced drives social progress. As individuals learn to rein in their inclinations and subject their actions and motives to rational scrutiny, so they provide external evidence of alternatives for others. One of the key benefits of the naturalist picture is that it firmly suggests that rational convergence on ends is possible. As naturally comprehensible entities, it makes sense that human agents can reach a state of rational mutual agreement on optimal courses of action

through the crossfire of ideas formed by the variety of circumstances and ideas between them. Thus, in outline, is individual and social progress linked in Mill. This, in the second section of this chapter, will be shown to be one of Mill's key parallels with Hegelian thinking.

Having established some of the philosophical fundamentals that drive Millian understanding of the individual within a social context, I now turn to an examination of how this relationship is treated in his political and social theory proper, focalised by Mill's treatment of these issues in *On Liberty*.

1.3) The individual in *On Liberty*

Of all Mill's works, *On Liberty* is the most widely read and known. Of all his political writings, it is the one that graces the reading lists of humanities faculties throughout the globe. There is strong evidence that Mill intended it to be his *piece de resistance*. Bain (1882: 104) recalls that Mill, at the time of its publication, was convinced it would outlast in social memory all his other works. Mill takes care to point out that it is no complex system or blueprint in and of itself. It is merely, in Mill's own words, "an essay", but an essay that has come to hold the status of being one of the founding texts of modern liberalism.

The principal issues at hand within *On Liberty* are few in number, but remain the most contentious areas of debate within modern democracies. These are liberty of thought and expression, the value of individualism as a tool of social progress, a balanced and sceptical approach to the dictates of custom and the opinions of the mass. Flowing out of these is the famed and controversial liberty principle: that individual practice, provided it cause no harm to others or trample on their liberties, is an area exempt from legislation, even if it is claimed such is for the individual's own good or the good of society at large.

¹⁵ Riley, 1991: 221, n. 14.

The full arguments that underpin Mill's vision of the social order, as well as their implications, are the province of the coming, larger examination of his social theory in Chapter 3. At this juncture, I am concerned with a set of ideas and dynamics he explores in the earlier chapters of *On Liberty*, the issue of individuality as one of the elements of well being.

The first issue we must address is made clear by an objection raised by liberal feminist writer L. Susan Brown (1993: 38-59) in reference to Mill's feminist writings. She lambastes Mill for abandoning an existential individualism, which considers the autonomy of the individual as a good in itself, in favour of an instrumental individualism which is understood as a good only in terms of the broader societal good of social perfectibility. This, for Brown, is a betrayal of true individualism.

Brown has, I believe, dramatically oversimplified, but in so doing clarified the set of questions we must ask of Mill's doctrine of individuality. Firstly, we must know what, for Mill, gives individuality its status as a highest order social value. Secondly, we must clarify what picture does this give us of the way Mill sees individual's constituting their conceptions of self and the good (this, as shall be seen, must be answered in terms of Mill's idea of the "Art of life") and, finally, we must understand what place autonomy, as an abstract value, holds in Mill's system. Once these are conclusively answered, I will be in a position to more roundly assess the role of the individual (and individualism) in Mill's social thought.

1.3.1) The worth of individuality

i. A post-social right to individual liberty

Brown's "instrumentalist" argument points to a crucial element in Mill's defence of individualism, but it is one I feel strengthens his philosophical

credentials as opposed to weakening them. Skorupski is careful to point out that Mill stands in the centre of the crossfire between the rights primacy theorists and the Romantics. He argued for both the negative conception of liberty in terms of freedom from coercion, and the romantic sense of liberty as necessary to self, and social, perfectibility.¹⁶ Under Mill's approach, the two are eminently reconcilable. Noting the patterns of thought inherent within Mill's approach to the sciences and the self explained above, we can see that Mill understood the self, and the society it operated in, as a life-long work in progress. Individualism is understood as valuable because it is crucial to this progress, because the stagnant attitudes and arrogance of natural or popular moralities are too often obstacles to intellectual forward motion, at both a particular and general level.¹⁷ He did not follow the rights primacy tradition beginning with Hobbes in adducing a "natural right" that must be valued in and of itself. As Skorupski puts it:

The priority of Liberty cannot be grounded on any abstract or formal feature of social organisation, or rationality, as such. It is not the tautology that each individual is a distinct individual, nor the dubiously meaningful assertion that each individual is 'born free', that gives liberty its value: these are mere rhetorical modes of expressing a commitment to its value. Whatever value it has must rest on its importance as protecting, or constituting, a real human end (Skorupski, 1989: 347).

But if there is, on this analysis, no pure abstract right as such, why not place the reins of social progress surely in the hands of the wise and educated? Why not force people to learn from the best minds of their time, and allow social progress to be directed by the intellectual aristocracy? Mill's answer is a rhetorically powerful, but fairly ponderous one:

¹⁶ This particular feature is quite possibly drawn from Mill's reverence for the German romantic Wilhelm Von Humboldt. A quote from Humboldt's *On the Spheres and Duties of Government* opens *On Liberty* itself. The Mill/Von Humboldt dynamic will be borne out more fully shortly.

¹⁷ We shall see this expanded when we come to examine the utilitarian creed in proper detail in the next chapter.

Where, not the person's own character, but the traditions or customs of other people are rule of conduct, there is wanting one of the principal ingredients of human happiness, and quite the chief ingredient of individual and social progress (Mill 1: 50).

What Mill means by this is sketched out throughout the third chapter of *On Liberty*, where we find his key criticisms of a social space dominated by entrenched customary practice.

ii. The individual vs. custom: fallibilism and self-development

Mill begins with the very question I have just put forward - why should we not allow the collected wisdom of social experience to dictate our actions? He reminds us that the customary norms held others represent what experience has taught *them*. This, for Mill, presents a three-fold issue. Firstly, their experience may be too narrow in scope, or their interpretation of said experience might be flawed. Secondly, the experience of others may be correctly interpreted, but not suitable to all. "Customs", Mill somewhat glibly cautions, "are made for customary circumstance and customary characters" (Ibid. 51). The diversity of human character and experience dictates that even the most widely held norm must be limited in that applies only to a particular range of experience experienced by a particular breed of character. Thirdly (and this is Mill's strongest counterthrust), even if the experience is both interpreted correctly and suitable to the individual who is being asked to conform to it "to conform to custom, merely *as* custom does not educate or develop in him any of the qualities which are the distinctive endowment of a human being" (Ibid.).

What Mill has in mind here is the exercise of the mental faculties that are inherent in deciding and choosing the best course of action *for oneself*. This is to him in stark contrast to acting simply according to even true and useful

received opinion, which for him requires "no need of any other faculty than the ape-like one of imitation" (Ibid.).

The first two objections are vintage Mill fallibilism, a theme that recurs throughout his social theory. Mill's concern is that we cannot, frankly, guarantee that the best minds of our time will be those in power. In Mill passionately displays his distrust of the intellectual capacities of the ruling political class, fettered as they are by human weakness, and bounded by the fixity of their own protocols:

[T]he absorption of the principal ability of the country into the governing body is fatal, sooner or later, to the mental progressiveness of the body itself. Banded together as they are - working a system which, like all systems, necessarily proceeds in a great measure by fixed rules - the official body are under constant temptation of sinking into indolent routine, or ... of rushing into some half-examined crudity which has struck the fancy of some leading member of the corps (Ibid. 102).

One of the concerns expressed here is one of Mill's more compelling insights into the dangers of a ruling body governed by traditional political practice at the expense of reasoned insight. Political cultures and political thinkers tend to suffer from what Robert Pirsig would describe as "value rigidity".¹⁸ The systematic nature of modern politics tends to produce mindsets that cannot see beyond the supposedly realistic boundaries of their transitory protocols. It is thus left to minds which operate outside the system to criticise and amend such.¹⁹ This stands in profound and compelling antagonism to rosier exhortations to conservatism such as Oakeshott's (1962: 181) which holds that "the more familiar [routines] become, the more useful they are". Where I feel Mill's crucial insight lies is in pointing out that this systematic rigidity is an

¹⁸ Robert M. Pirsig, *Zen and the Art of Motorcycle Maintenance* (25th Anniversary Edition), 1999, New York: Vintage Books, pp 312-313

¹⁹ A prime example is the running debate over the political entrenchment of lobby group politics in the American political culture, which often alienates the interests of ordinary citizens at the expense of corporate entities. So entrenched an aspect is this "corporatisation" of politics that it is left to completely radicalised political entities such as Ralph Nader's civil-society birthed party to meaningfully question it.

almost *inescapable* characteristic of ruling bodies, and that it is crucial to a healthy social order to maintain powerful critical centres outside of the ruling framework, *however* functional it actually is. Mill's other branch of concern is a fairly standard one, but no less compelling for that. This is one he expands on in *On Representative Government*, that rulers often have something of a half-cocked understanding of many technical policy areas, and the public have no say over the advisors that are selected to guide them. The only real remedy to this *is* the kind of open-forum policy framework that Mill pushes for at various levels. Even the ideal social order cannot seek the highest of its social wisdom in the rulers alone, and this means maintaining a healthy culture of individual critical appraisal towards public policy.

At the very least, we cannot allow the ruling classes to declare themselves infallible and act in the name of a consensus "natural morality". On this one, I feel history bears Mill out. The last few centuries are riddled with examples of regimes that persecuted the most progressive amongst them. The famed examples of Socrates and Galileo come to mind, but the courts of Athens and the inquisition were not the first nor the last example of a regime that acted repugantly in the name of what it felt were the highest ethics and wisdom of its time. They surely felt the rectitude and enlightenment of their actions as surely as some presently feel the same concerning modern morality.²⁰

Mill's third objection to a custom led life is, however, rooted in a very different intellectual strand in his social vision. It is no co-incidence that he includes near the very beginning of the third chapter the following set of quotations from Von Humboldt's *On The Spheres and Duties of Government*:

[T]he end of man, or that which is prescribed by the eternal or immutable dictates of reason, and not suggested by vague and transient desires, is the highest and most

²⁰ This is by no means the last word on the fallibilism issue, and it is examined in more far-reaching detail when we come to consider the social context of individual rights in Chapter 3.

harmonious development of his powers to a complete and consistent whole'; that, therefore, the object 'towards which every human being must ceaselessly direct his efforts, and on which especially those who design to influence their fellow men must ever keep their eyes, is the individuality of power and development'; that for this there are requisites, 'freedom and variety of situations'; and that from the union of these arise 'individual vigour and manifold diversity', which combine themselves in 'originality' (Ibid : 50-51).

Whilst Mill never explicitly states it as the case, what he is here concerned with is the concept of rational autonomy - the development of a rational capacity of critical assessment as a key foundation of both social and individual progress. This becomes clearer as he extends his argument throughout the chapter. He compares the developmental exercise of mental faculties involved in making an informed choice with the developmental power of physical exercise on the body's muscles. As such:

The faculties are called into no exercise by doing a thing merely because others do it, no more than by believing a thing only because others believe it. If the grounds of an opinion are not conclusive to a person's own reason, his reason cannot be strengthened, but is likely to be weakened, by adopting it... rendering his feelings and character inert and torpid, instead of active and energetic (Ibid: 52).

Mill thence pauses to admit a possibly weaker version of his position for the sake of argument: that it can be admitted that an *intelligent* following of custom is preferable to a "blind and simply mechanical adhesion to it" (Ibid.). But does this thence imply that our desires and impulses should be given free reign in the development of character? Is this not a recipe for a society of brutes ?

Mill's answer is an interesting one. He feels (similarly to Hegel) that desire and inclination are part and parcel of the human condition, and that "strong impulses are only perilous when not properly balanced" (Ibid. 53). His maintains that when people act out their desires wrongly or injuriously, it is

not the strength of the desire, but the weakness of their conscience that is at fault. He maintains there is no connection between a strong desire and a weakness of moral sensibility, but rather "[t]he natural connection is the other way" (Ibid.). What Mill suggests is that terms such as "strong inclination" can be re-described in more general terms as "energy" (Ibid.). This energy may be turned to bad uses as well as good. Those who exhibit high levels of energy are thus capable of both more evil and more good than those who do not. But such lacklustre folk are unlikely to be of any real social use: "[M]ore good may always be made of an energetic nature than of an indolent and impassive one" (Ibid.).

It is thus that Mill concludes that such energetic characters must be *cultivated* and not suppressed (whilst, one presumes, cultivating other sensibilities, or putting in place other boundaries, that ensure such energy is not to put to ill use). Such energy is the source of both the strong passion that underscores barbarity *as well as* the potentially equally strong passion for its opposites: virtue and self-control. As Mill contends with a trademark flourish: "It is through the cultivation of [strong susceptibilities] that society both does its duty and protects its interests: not by rejecting the stuff of which heroes are made, *because it knows not how to make them*" (Ibid., my italics). Impulses are thus, for Mill as they are for Hegel, part and parcel of the human condition, not to be outrightly repressed so much as counterbalanced by the development of "higher" capacities.

Mill is akin to Hegel in another sense here, in that he does not stipulate this as a brute application formula for *all* forms of societies, but rather sees it as a further point of development from a more brutal historical antecedent. In this, he also finds the source of the counter-individual forces he identifies in modern society. He contrasts the modern social order with more remote periods in history when "these forces might be, and were, too much ahead of the power which society then possessed of disciplining and controlling them" (Ibid.).

What he has in mind are times when the strong individuality of the barbarian clashed with *any* attempt to be controlled by social measures that required that impulses be contained. Out of this arose a regimen of law and discipline that "asserted power over the whole man, claiming to control all his life in order to control his character" (Ibid: 53-54). This, Mill argues, is how a modern social order came to overshoot the mark, and came to stand guilty of mental repression and stagnation. We, have, to put it brutally, gone too much the other way:

Things are vastly changed since the passions of those who were strong by station and by personal endowment were in a state of habitual rebellion against laws and ordinances, and required to be rigorously chained up to enable persons within their reach to enjoy any particle of security. In our times, from the highest class of society to the lowest, every one lives under the eye of a hostile and dreaded censorship ... I do not mean that they choose what is customary in preference to any inclination. It does not even occur to them to have any inclination, except for what is customary. Thus, the mind itself is bowed to the yoke (Ibid. 54).

Mill sees the Calvinist doctrine, which sees human nature as something inherently destructive and in need of control ("that the one great offence of man is self will") as the extreme outcome of such an intellectual binding. Through such a lens, humankind are served best by surrender to the will of G-d, and that any other use of the faculty of the will is dangerous, sinful and undesirable. What worries Mill is not just this particularly harsh religious extreme, so much as what he calls its "mitigated form" - where the same pattern is applied in a slightly watered down form. By this he means social outlooks that see citizens as being allowed to satisfy *some* of their inclinations, not in the way they desire, but through obedience to the prescriptions of authority premised in the supposed will of G-d. This, he feels, instantiates a social space of "pinched and hidebound" characters (Ibid. 54-55).²¹

²¹ This is by no means an attack confined to the Christian social reformers Mill so held to account. The pattern of this argument applies to *any* unreflectively enforced communal/moral norm. It remains, to this day, a charge the communitarians must answer in claiming that such norms are the formative basis and

What Mill proposes is that such social visions represent a direly narrow view of human excellence. What he calls for is a blend of "Pagan self-assertion" and "Christian self-denial", tied together in "the Greek ideal of self-development". This we could, without injustice to Mill, interpret as a call for a balance between progressive individualism and a sense of other-regarding restraint. Thus, Mill is by no means contending that all social frameworks fall by the wayside. The basic frameworks that guarantee the rights and interests of others he sees as both necessary and (once again distantly echoing Hegel) actually *of benefit* to those restrained:

The means of development which the individual loses by being prevented from gratifying his inclinations to the injury of others, are chiefly obtained at the expense of the development of other people. And even to himself there is a full equivalent in the better development of the social part of his nature, rendered possible by the restraint put upon the selfish part (Ibid. 56).

But this is not to throw the gates to social restraint wide open and leave the position guilty of concession verging on hypocrisy. Mill immediately qualifies this with a crucial rider:²²

To be held to rigid rules of justice for the sake of others, develops the feelings and capacities which have the good of others for their object. But to be restrained in things not affecting their good, by their mere displeasure, develops nothing valuable, except such force of character as may unfold itself in resisting the restraint (Ibid.).

Thus Mill's society of self-aware and self-(and socially) critical citizens does admit of certain limitations. But how widely does he see this ethic of critical spontaneity applying? Is it not something of a pipe dream ("a liberal

framework of any society and must thus be adhered to and left largely unchallenged. This shall be discussed shortly in reference to Gray's critiques of Mill.

²² The fuller development and implication of which I discuss at length in Chapter 3.

voluntarist utopia” as Gray would put it²³) to expect a broadscale questioning of broadly socially shared values? Mill would indeed stand guilty of severe delusion if he honestly expected every citizen to exist in a state of constant critical adversity with the social framework. But delusional he is not. His fears are that quite the opposite will happen, which is why he seeks to protect the critical and useful individual perspective not only from the ravages of state practice, but from public practice as well. The danger he sees lurking in the masses is a perspective formed by “collective mediocrity”.

iii. Genius and Collective Mediocrity

Mill does not expect *all* humankind shall, at any foreseeable stage, be capable of what he sees as the proper exercise of the critical faculties. This is, indeed, part of what worries him. “[T]he general tendency of things throughout the world,” he maintains “is to render mediocrity the ascendant power amongst mankind” (Ibid.58). It is the stymieing power of the mass, the “collective mediocrity” that leads him to further value the contribution original minds can make. He worries that, though it means a very different kind of people in different parts of the world, that the mediocre mass, leaving decisions on policy to people ostensibly “much like themselves”, without proper or deep consideration. The power to change this, the power to take point on the charge towards progress, resides not with the many, but with the few. This for Mill, is the proper role of genius. He holds that no government ever rose above the mediocrity he so bemoans “except in so far as the sovereign many have let themselves be guided (which in their best times they have always done) by the counsels of a more highly gifted and instructed few” (Ibid. 58-59).

This is, however, no call to oligarchy. He does not countenance genius mutating itself into a kind of totalitarianism of the wise. All those of genius

²³ Gray, 1989: 229

can claim, by Mill's terms, is "freedom to point out the way". (Anything beyond this violates the fuller scope of Mill's doctrine, and furthermore becomes "corrupting to the great man himself".) This being said, Mill is not displaying contempt for the mental capacities of the average man. In his view, quite the opposite. "The honour and glory of the average man is that ... he can respond internally to wise and noble things, and be led to them with his eyes open" (Ibid.). It is thus that Mill comes to maintain that eccentricity and genius must be cherished rather than suppressed. He sees the potential for such repression not merely in state persecution of perceived social heretic, but in the mass disregard for the value of genius and originality. "People think genius a fine thing" he scoffs "if it enables a man to write an exciting poem, or paint a picture. But in its true sense, that of originality in thought and action ... nearly all, at heart, think that they can do very well without it" (Ibid.). The reason for this he feels, is a tragically logical one:

Originality is the one thing which unoriginal minds cannot feel the use of. They cannot see what it is to do for them; how should they? If they could see what it would do for them, it would not be originality. The first service originality has to render them is that of opening their eyes (Ibid. 58).

But is Mill not being somewhat optimistic here, or at the very least possibly inconsistent? The attitudes and ideas those of genius lead the mass to accept may well be those that run counter to liberty, or even be directly harmful to one sector of the population? Think of particularly charismatic and eccentric racists with eloquent and unusual ways of providing justification for such doctrines. Mill admits that liberty and the "spirit of improvement" can have an uneasy relationship "for [the spirit of improvement] may aim at forcing such improvements on an unwilling people; and the spirit of liberty, in so far as it resists such attempts, may ally itself locally and temporally with the opponents of improvement". But these he sees merely as temporal and transitory aberrations, exceptions to the general dynamic that "the only unfailing and permanent source of improvement is liberty, since by it there are as many

possible independent centres of improvement as there are individuals” (Ibid. 62-63). Beyond this both “spirits” he identifies here can claim a common enemy in the “sway of custom” (Ibid.). They also both stand opposed to the blind, dark side of custom’s reign - despotism:

Even despotism does not produce its worst effects, so long as individuality exists under it; and whatever crushes individuality is despotism, by whatever name it may be called, and whether it professes to be enforcing the will of G-d or the injunctions of men (Ibid. 56).

Here we find the seeds of a dynamic already partially identified in the preceding discussion on Mill’s background philosophical positions. With the tools of the distanced naturalist at his disposal, Mill displays something akin to intellectual Darwinism towards social orders that can survive in no other manner but through persecuting dissenters. He calls for a free-flow of intellect and criticism that he is fully aware will often be messy and profoundly uncomfortable to traditional mindsets and traditional policy and social practice. But, Mill coolly reminds us, if social norms cannot withstand such internal criticism, then they are mere dogma - a hindrance to progress, liberty and the baseline interests of the developed human mindscape. They must either perish or re-invent themselves. Such is the *very nature* of human reason and human social progress.²⁴ The question that yet lingers is how realistic this understanding of individuality is. In assessing this, we run headlong into one of the crux issues in the liberal-communitarian debate. This is the issue of to what extent a liberalism such as Mill’s posits a radically unsituated rational self that cannot be realistically abstracted from the modern social matrix. It is, after all, a key communitarian contention that it is a system designed for such abstracted critical entities, and not flesh-and-blood socially embedded citizens that leads the modern liberal state to undercut the identity-constituting mechanisms through which communities provide social cohesion. I believe

²⁴ This position is merely sketched out here. It is examined in much fuller detail in Section 4 of Chapter 3.

many of the resources to deal with such a criticism of Millian individualism are already laid out above, but it is time to deal with such questions specifically and in deeper detail.

iv. Millian individualism: a voluntarist liberal delusion?

There is something of both the virtue ethics theorist and the expressivist romantic in Mill's position - a call for courage and spontaneity as the redeeming and progressive virtues of human thinking. But what does Mill imply here? That we must consistently re-assess and re-discover the entire spectrum of social belief at every stage in order to make ourselves more intellectually capable? This is not necessarily the direct upshot of Mill's position. He is concerned more with the atmosphere that cultivates the kind of character that *may* do so. But this must be chased a fair deal harder, for there is a crux question at stake here. How workable, how *realistic* is Mill's understanding of individuality ?

This is a key point at which the Millian system stands or falls. The standard communitarian opposition to liberal individualism expressed by critics such as Gray (1989: 224-229) sees the Millian understanding of the individual as both unrealistic and as the incorrect locus of true social progress (which Gray, for one locates institutionally). If this criticism holds, then all of the fine Millian notions of individual progress as the locus of social progress, and the necessary enshrinement of the right to "experiments in living" , fall away as justifications of the *caveats* entrenched in the Millian social vision.

Gray (Ibid.) contends that Mill presents a "radically defective" notion of individual autonomy at odds with the very cultural and moral framework of any civil society, much of which he sees as the very grounding of liberty itself. He feels that Mill, in identifying progress as an inherent tendency in the human mindspace, its development controlled by individual innovations in the realm of

ideas, presents "no extended or systematic discussion of the institutional preconditions of the growth of knowledge". This, he maintains, leads Mill to paint custom as "falsely hostile to self-realization." Gray asserts that it is far more plausible to see customary practice as fundamental to the preservation of liberty and peace, in that it allows for the co-existence of diverse viewpoints without having to constantly re-constitute social boundaries through legal action. Thus, Gray concludes that Mill's liberalism is "crippled by voluntaristic Utopianism".²⁵

I follow Riley (1991: 220) in concluding that such charges would indeed stick – were they not such a shallow and misconstrued reading of Mill's position. Gray, I feel, has set up a significant straw man on a number of levels. Firstly, as Riley convincingly argues (in accord with the discussion of Mill's naturalism above), Mill is by no means guilty of the "rationalist metaphysics" that Gray saddles him with. There is no "radically unsituated self" in Mill to which he appeals in defending autonomy/individuality as a cardinal social virtue. Mill would heartily concede that our very framework of choice is institutional, and that our inclinations and judgements are formed by social circumstance. But to claim that it follows that social circumstance is the *only* generator of character and inclination is a patent false dichotomy. Thus, Mill can quite consistently claim that it is possible and desirable that characters formed within a social framework be allowed to make uncommon and unpopular choices, without demanding some kind of supra-social, narrowly rational "quiddity" be the driving force of such choice.

²⁵ Gray (1989: 224-229) sees the idea of individual experiments in living as a "rationalistic fiction". Such experiments he feels, if they exist at all, exist collectively and unconsciously, evolving over generations. He rallies to his cause Spencer and Hayek, in claiming that such evolutions occur independently of individual judgements, and that truth is not the ultimate variable in social progress that Mill sets it up as. False belief systems may give their holders "a competitive edge in the survival stakes". He sees this based in Mill's assumption of an essential individual "quiddity" impossibly and implausibly abstracted from all social and communal attachment – a pre-social and narrowly abstract self that must be realised and not suffocated. A self, Gray feels, Mill cannot plausibly posit. I stand with Riley in decrying this position in the main text.

As Riley (Ibid. 221) argues, individuals (as empirically comprehensible social entities) are, on a Millian analysis, sufficiently similar to be capable of coming to a state of rational convergence in their judgements. But even where this is possible, characters (as with all other natural entities) sufficiently differ by circumstance (including natural capacities) to remain diversified. All individuals, through a Millian lens, possess different levels of naturally endowed capacities (crucially with respect to the strength and exercise of will - the self-aware sceptical mind vs. the blind acceptor of custom). Throw into this mix the difference in *conditions* (educational and otherwise) that contribute to character formation and we have a sense of the diversity Mill speaks of. There is only one crucial respect in which individuals are universally alike - they are all to some extent fallible, and their choices to some extent imperfect.

This is where, as Riley (Ibid.) holds, Mill's compatibilism (as discussed above) is crucial to understanding his social schema. His framework of ethical confrontation in terms of individual choice and lifestyle are premised on the capacity to see beyond the edicts handed to us by custom (as well as, in some cases, our own brute inclinations) and make moral choices that are not directly tied to these, even as we admit we possess them. It is in constant convergence that humans overcome the imperfections of their own perspectives. The point is, as Riley argues that none of the grounding features of Mill's defence of individuality can be tied to a hyper-abstracted self.

But what of Gray's further criticisms that Millian individualism undermines the very shared conditions that make liberty possible? To address those, I follow Riley in examining some further elements of Mill's individualism. He identifies, in Mill's following of Von Humboldt's social ideals as a call for a "habitual love of liberty" (Ibid. 222-223). This is composed of the two requisites of "freedom and variety of situations", more explicitly describable as the capacity to make

choices premised on one's own wants and judgements, exercised within the framework of institutionally pluralist society. "By implication" Riley argues "the habitual love of liberty can be acquired only after experiencing liberty itself; and can be maintained only if society remains pluralist to some degree" (Ibid.).²⁶

Liberty, Riley (Ibid. 225) argues, does not require that our social conditions and factors have *no* influence on our decisions, so much as that such decisions be ultimately our own. Where they diverge from the common weal, such must be allowed (within the requisite social framework constraints to be discussed in detail in Chapter 3) in order that individuals have the capacity to shape their own characters in accordance with rational self-governance. "Thus" Riley continues "a person's character formation is directly related to his disposition to govern himself in his cultural milieu" (Ibid.).

But this is but the first of the two requisites. Individualism, Riley (Ibid.) contends, requires a further institutional dimension: an atmosphere of social pluralism. The plurality of paths, the multiplicity of possible sources of improvement must be enshrined within a culture that can institutionally tolerate and manage varied approaches to life. Such, for Mill, are the circumstances conducive to progress. Their absence (as we have discussed) is, for a Millian, a recipe for social stagnation. The reason, we recall, is that the masses and their elected representatives become used to an increasingly uniform way of doing things. With the crushing of non-conformity comes the

²⁶ The call for liberty as a constant, often counter-cultural exercise of the mind is, as Riley argues, by no means incommensurate with Mill's compatibilist naturalism:

Mill argues that our feeling of moral freedom is our knowledge that we can employ our given power of will to alter our circumstances in accord with our judgement and inclinations. That our endowed willpower may be determined ultimately by circumstances beyond our control does not alter the fact that we have such a power and may be held morally responsible for its reasonable use (Riley, 1991: 224).

crushing of variety, and with it the extended intellectual possibilities that such variety allows for.²⁷

What is interesting here is that such provisions, on the surface, look remarkably similar to those laid out by Oakeshott (1962: 182-196) as arguments designed to defend what he describes as a brand of political *conservatism*. He, similarly to Mill, sees government taking on the role of managing the clash and flux of human activity and perspective, the competing "dreams" of its citizenry, without dictating positive moral content itself:

An 'umpire' who at the same time is one of the players is no umpire; 'rules' about which we are not disposed to be conservative are not rules but incitements to disorder; the conjunction of dreaming and ruling generates tyranny (Ibid. 194).

The interesting thing here is that Oakeshott, like Gray, locates this framework of free living in a set of shared understandings about the way things operate in a peaceable society. "The intimations of government", he holds in stark contrast to Mill, "are to be found in ritual, not in religion or philosophy; in the enjoyment of orderly or peaceable behaviour, not in the search for truth or perfection" (Ibid. 188).

This could be construed as something of a body blow to the Millian social vision. If Oakeshott's position holds as coherent, then we could justifiably claim that none of Mill's grand arguments for the development of the capacities of self-development within the citizenry and society as a whole are

²⁷ As Riley (1991: 226) points out, Mill does not suggest that it will be possible to dethrone public opinion as a reigning social power, nor that such a move would be desirable. Rather, he idealises a situation in which there is a wider popular support for the possibility that opinions different from the mass have value – in a sense a social ethic of open-mindedness. He thus conjoins individual freedom and an atmosphere of pluralism as the two separately necessary (but only jointly sufficient) conditions for flourishing self-development. Mill's famed conclusion that the institutionalised tolerance of diversity is the crux of an intellectually (and otherwise) flourishing society is drawn from this. "The mass itself," as Riley puts it "has no incentive to depart from existing mass opinions and customs" (Ibid.). If we accept Mill's arguments for the value of original thought, and the unlikelihood of such value's recognition, we can affirm that diversity of lifestyle and choice must be enshrined within a social framework of demarcated pluralism.

in fact conducive to a stable and progressive society. Such a society is better established by mere common assent to a ritualistic politics of co-habitation.

But this is precisely where I see Mill setting up vital conditions for a social order dedicated to liberty that theorists such as Gray and Oakeshott miss. I would contend here (and throughout this inquiry) that the Millian social vision is indeed a social space dedicated to tolerance and institutional management of conflicting perspectives and life-plans. But Mill emphasises as fundamental the necessity of enshrining an active and critical mindset within the citizenry, something Oakeshott (ibid. 170) assumes to be at odds with the way everyday consciousness operates. "A man's identity (or that of a community)", he asserts, "is nothing more than an unbroken rehearsal of contingencies, each at the mercy of circumstance and each significant in proportion to its familiarity". It is thus that Oakeshott understands the ideal citizen as cautious and sceptical of innovation and unfamiliar ways of doing things. This is a disposition I believe to be profoundly at odds with the kind of passive cohabitation he sees as the profound legacy of modern social ritual.

Those that cling to what is familiar as the supreme court of appeal are by no stretch of the imagination suited to such a co-habitation. New ideas, new moral outlooks, new lifestyles, offend and rile them, and are often seen as threatening. One only has to look at the conservative religious attitudes to personal moral choice issues such as homosexuality and abortion to see that those that cling to what is familiar to them, personally and communally, are seldom tolerant. The politics Oakeshott praises is a politics of avoidance, not engagement. His ritual is a ritual of passivity. It lacks the uncomfortable but genuinely progressive element of the Millian zone of ethical engagement described in Chapter 3. And it lacks, most relevantly here, the key Millian insight that a society of mindsets scraping and scurrying before the familiarity of custom and ritual is an intellectually and practically stagnant place. As I see Mill arguing, it is being on even-handed terms with the *unfamiliar* that renders

a society genuinely stable *and* genuinely progressive. Without it, bigots are never confronted with proper grounds to reconsider their bigotry, reactionary elements remain constant blockades to genuine improvement. The space of tolerance Oakeshott insists upon must be a space of managed intersubjective ethical confrontation if it is to be ultimately stable, and his position lacks the crucial Millian elements that make such a position useful and coherent. If we relate to the social order as a constant, it must be as a rational framework constantly inviting our scrutiny and ready to prove itself rationally worthy of our assent.

This is by no means to say that there must be a blanket disregard for social practice. As Riley (1991: 227), argues, Mill at no stage elevates individualism to the point where it “swamps social customs and traditions altogether”. The elements Gray is so concerned Mill disregards (i.e. those that embed the framework of social pluralism itself) are covered at length in a separate section of Mill’s doctrine: the liberty principle, of which his doctrine of individualism is but one supporting rafter. The social context provisions of Mill’s social theory and their implications are covered at length in Chapter 3, and as such I leave off detailed discussion of them here. I will simply accede, for now, to Riley’s (Ibid. 228) (to my mind uncontroversial) interpretation that for Mill “individuality is rightfully paramount over social norms only with respect to purely self-regarding concerns”. Furthermore, Mill was by no means entirely opposed to all received social wisdom. As he himself states:

[I]t would be absurd to pretend that people ought to live as if nothing whatever had been known in the world before they came into it ... Nobody denies that people should be so taught and trained in youth as to know and benefit by the ascertained results of human experience (Mill 1: 51).

As Riley (Ibid. 228-230) reminds us, Mill’s aim is not to dismantle any and all received wisdom, but to end the despotism of custom over rational adults. Not quite the wholesale replacement of the social order with a utopia of rational

beings that Gray accuses him of. The individual's "aesthetic duty to himself" to improve his rational and critical capacities in order to make authentic choices never trumps the valid moral obligations he holds to others.²⁸

As such, I conclude with Riley that Gray's (and with it the standard communitarian) attack, on the whole fails. The nature of the liberty-enshrining institutional framework he misconstrues as missing from the Millian doctrines will only be discussed in full detail in Chapter 3, in the course of examining the liberty principle. There I feel, it will be conclusively proved that this particular charge fails. The charges of radically unsituated selfhood do not, I feel, stand in light of Riley's responses. Mill was no crude atomist, and to claim that any concession of social influence on character and choice commits one to sanctioning full-blooded social determinism is the most facile breed of false dichotomy. As for the charge of undermining the true conditions of liberty, I believe I have shown, at least in outline, that a conservative position that tries to set itself up as etching out a space of tolerance and co-existence as a matter of custom or ritual is internally contradictory. It must either impose the majority's conception of the 'familiar', or take on the Millian conceptions that make such a space intellectually viable.

There remain, however, certain questions we must yet ask of Mill's doctrine of individualism. We must understand at a deeper level how far Mill would push autonomy as a baseline social virtue, and we must further understand the breed of individualism such autonomy is designed to enshrine and guarantee. What in other words, the "aesthetic duty to oneself" just mentioned is meant to secure. This is the task of the two following sections.

²⁸ A lengthy discussion of the nature of said obligations is to be found in Chapter 3.

1.3.2) The question of autonomy

Mill's conception of rational autonomy has been discussed at some length in the above sections, in reference to his conception of freedom as the capacity to rationally control circumstances' effect on the self, and character as an ultimately will-forged entity. But this is but a first step into the fray. An examination of the role of autonomy in *On Liberty* must address at least two further key questions. Firstly, to what extent is autonomy, in terms of the capacity to rationally direct one's own life, a highest order social principle that can trump all others? Secondly, what social conditions can be set up to optimally promote autonomy through the rights framework of the social order?

The second question can only be answered when we come to the social context of rights in Chapter 3, but the issue of whether it must be asked at all comes down to how we answer the first question, an answer which falls decidedly within the scope of the present inquiry. This is because rights, for Mill, are not pre-social as they would be for a natural rights theorist. They are, as shall be discussed in Chapter 3, side constraints protecting primary utilities (or, to phrase it less controversially, vital human interests). The question of autonomy as a right *at all* rests on whether we can, by Millian terms, define it as a fundamental interest of *all* individuals.

i. Autonomy as capacity and freedom in Mill

Skorupski's (1989 : 355-360) argument on this is interesting, as he ventures somewhat outside the boundaries of Mill's own schema of principles. Instead of incorporating autonomy as a *component* of happiness under the utility principle he argues that it in fact functions in Millian terms as a categorical end

in its own right.²⁹ Whether we accept such a re-interpretation or not (and we shall consider it further in a moment), we can still usefully attempt to discern what role autonomy as a valued end plays in the Millian social order.

Skorupski (1989: 355) distinguishes between “autonomy as freedom” and “autonomy as capacity”. The latter we have already discussed at some length above. It is the former that interests us here. We can begin with the capacity for rational autonomy as a pre-condition. The freedom to be autonomous is the freedom to direct one’s own actions and life plan according to self-discovered and self-imposed rational principles. The *capacity* for rational autonomy is, by Millian lights, an empirical capacity common to all humanity, but it does not arise spontaneously in any fully developed form. It must be fed on the resources to develop, and freedom is crucial to this.

What must such a freedom entail? It is *not* a simplistic freedom to do as one likes. As Skorupski (Ibid.) clarifies, the individual’s life is her own in a dual respect. She does not wish another to direct her courses of actions for her, but as a direct flipside she must forego the right to do so for others. The freedom to be autonomous here is “sovereignty over my own life, not sovereignty over anyone else’s”. Thus, at points where life-plans and courses of actions intersect (what Skorupski labels “common space”), the individual has a say, a co-directing role with the others that share such a space.³⁰

It is thus that Skorupski (Ibid. 356) sees Mill coming to the post-social notion of a “private domain”. Mill’s conception of autonomous action has a social compatibility dimension logically built into it. The concept of a private domain must be defined against a background of what is *not* private to make any sense. Autonomy is indeed for Mill an individual end, but one which presupposes a

²⁹ I alas lack the space here to trace the entire scope of Skorupski’s arguments for autonomy as a primary utility. Since I have foregone an in-depth analysis of Mill’s utilitarianism over the course of this thesis, this argument is interesting in implication, but not relevant here in its full length.

social context. As such, autonomy as freedom cannot simply be the freedom to satisfy one's desires, or to seek one's own happiness. Either of these may well include infringing the autonomy of another. This leads us to the critical question of how autonomy is to be considered in a Millian welfare calculus. Is it a part of welfare that may be sacrificed if circumstances demand, or must it be considered a foundational end constitutive of welfare itself? This is the question we must address now.

ii. Autonomy as a categorical human end

If we can justifiably make the tricky definitional move of setting up autonomy as a categorical human end in Mill, Skorupski (Ibid. 356-357) convincingly maintains that we can make sense of a Millian contention that might otherwise seem somewhat contradictory. This is that it is possible for a private life-course that is not objectively best in itself (in that another life-course chosen of the individual's own free will would objectively be better), to in fact qualify as best in that it is chosen autonomously. To coercively ensure that the individual live the objectively better private life would be to undermine her autonomy, and as such diminish her welfare at a crucial level. If the better life course is to be taken, the individual must choose it.

Skorupski (Ibid.) is quick to point out that there do seem to be consummate difficulties (from a Millian perspective) in separating autonomy's value as a categorical end in itself from its value as a component of human happiness or welfare. Mill certainly does not seem to regard the two as separate. As he puts it in *The Subjection of Women*:

He who would rightly appreciate the worth of personal independence as an element of happiness should consider the value he himself puts on it as an ingredient of his own (Mill 3, as cited in Skorupski, 1989: 357).

³⁰ This schematic of demarcated pluralism, sketched in rough outline here, becomes, once filled out, the

This need not, however, force us to conclude that Mill completely sublimated autonomy into happiness. We can concede that having her autonomy respected contributes to the individual's happiness and general welfare. But where does such a contribution stem from? (Why, in other words, is it so valued by individuals so as to constitute a part of their happiness?) The answer we are led to is that it is valued as an end in its own right. Thus "the consciousness of it makes one happy". Skorupski (Ibid. 357-358) thence develops the argument in reference to Mill's notion of the value of developed personality, captured in Millian phrases such as "the greater fullness of life." Such fullness is achieved by a dual measure of realisation and diversity. As Skorupski succinctly puts it : "A life is fuller the more it realises any categorical human end; narrower inasmuch as it fails to realise another" (Ibid.). As such, Skorupski holds that to underpin the liberty principle's contention to be grounded in the "permanent interests of man as a progressive being" (Mill 1: 9), autonomy must be understood as a categorical human end in its own right. In sanctioning autonomy as a crucial value of its own accord (however implicitly), which the liberty principle underscores and nourishes the capacity for, Mill can justifiably make such a claim.

In fact, as Skorupski continues, if autonomy is *not* understood to play such a part in the Millian system, some fairly severe lacunae open up. Skorupski takes the following passage as an indicator that Mill viewed assaults on autonomy as harms:

The moral rules which forbid mankind to hurt one another (*in which one must never forget to include wrongful interference with each other's freedom*) are more vital to human well-being than any maxims, however important, which only point out the best mode of managing some department of human affairs ... the moralities which prevent every individual from being harmed by others, *either directly or by being hindered in his freedom of pursuing his own good*, are at once those which he has strongest

broad blueprint of Mill's social vision.

interest in publishing and enforcing by word and deed (Mill 2, as cited in Skorupski, 1989 : 358).

It is precisely here that Skorupski (1989: 358-359) identifies an element in Mill's thought that he feels his re-definition can correct. If harms through assault on autonomy are only *indirect*, i.e. they are not harms in themselves, but only become harmful if they diminish happiness, then the liberty principle is severely weakened. It suggests that invasions of autonomy do not constitute harms unless the agent is conscious of them, and is thus made unhappy. If autonomy of an individual is violated, but she remains unaware of this, society has no coercive power to prevent the violation, since it does not count as harm. There can then subsequently be no obligation derived from the liberty principle to reveal the violation to the agent. This Skorupski argues (correctly, I feel) generates a profoundly un-Millian guiding social principle. If autonomy is instead enthroned as an independent categorical end, the liberty principle becomes consistently Millian once more, since assaults against autonomy can count as harms in their own right. If autonomy is enshrined as a primary utility, Mill can justly deploy his rights structure to defend it. This follows because, as shall be seen in Chapter 3, rights in a Millian structure are side constraints defending vital human interests (or primary utilities).

Skorupski (Ibid. 359-360) backs up his defence of autonomy as a categorical end yet further. He argues that defining it as a crucial human end in its own right also has the useful upshot of clarifying Mill's opposition towards paternalism. If autonomy is but one desirable element of well being, cast in amongst many, then there will be many cases where a consequentialist calculation can override the value of autonomy in the name of greater individual or social good. With autonomy thus diminished as a crucial human value, it is difficult to see what is lost when we allow otherwise benevolent paternalism to govern individuals' lives. The only good that is infringed by coercing individuals to be validly better people is, in point of fact, their autonomy.

Skorupski (Ibid. 360) continues by contending that there still can be no absolute ban on paternalism, since there will come times when the benefit to the individual outweighs the benefit of enshrining her autonomy, but he qualifies this with a reminder that interference with by, say, family members is a very different thing to interference by public officials. It is here that he sees Mill's anti-paternalism at its clearest:

[Mill's] opposition to paternalism is consequentialist; based on a fear of the 'tyranny of the majority', and a high estimate of the good consequences of letting people make their own decisions (Ibid.).

Here I feel Skorupski has indeed cut to the heart of the issue. Mill's implicit appeals to autonomy as a cardinal human *social* value will only be brought to the fore in Chapter 3. But the same pattern we shall see there applies here. Mill is concerned that society's interference in individual lives will often be misguided, agenda skewed and fallible. Thus, for Mill, paternalism must be the extreme and rare exception rather than the rule. As a guiding social tool it risks the grand social stifling Mill (quite justifiably) fears. This crushes both the moral freedom of the individual and the social value that the eccentric mind may possess. Both of these are fair concerns, and provide strong reasons for respecting individuality.

This seems coherent, but there is a final question yet lingering at this stage of the enquiry. That is the issue of what, more precisely, it is that Mill seeks to enshrine, to rescue from the claws of collective mediocrity. We must understand why, society's fallibilism aside, there is necessarily something of value that must "breathe freely in an *atmosphere* of freedom" (Mill 1: 57).

1.3.3) The art of life and the human being as a "noble and beautiful object"

In Ryan's analysis of *On Liberty* we find an interesting and not too often discussed dynamic of Mill's thought on individualism. This is the notion that the rational system set in place is there to safeguard the development of things that lie beyond the realm of the rational, in the spaces of the imagination, emotions and less-defined aspects of the self. This is the deeper level of respect for individual spontaneity and development that underpins much of Mill's claim that the liberty principle is "grounded in the permanent interests of man as a progressive being". Ryan's conclusion is that:

Mill's picture of what makes a man happy is not unclear. It is the possession of a character which is self-reliant, rational in its assessment of the world, tolerant, wide-ranging in its interests and spontaneous in its sympathies. Not merely can we not make men like this by coercing them, coercion is logically at odds with the creation of such a character (Ryan, 1987: 255).

Much of this Ryan (Ibid. 214-215) ties in to Mill's schematic of the "art of life", the schematic of human action of which morality (or other-regarding rules, as shall be seen) are merely a part. Mill's art of life is his teleology, his "general premises" forming his "body of doctrine about ends". It is, essentially a clarifying structure by which we assess the nature and interplay of the rules that govern us as individuals within a social space, in reference to a more all-encompassing end goal.

i. The Art of Life

First, Ryan (Ibid. 214) explains we must understand what Mill meant by "an art". He makes the distinction between the body of scientific thinking and what he terms an "art". An art does not seek to prove a supreme guiding principle - it takes one and investigates the means necessary to reach it. In so doing, art forms an interplay with science: Art sets out the goal. Science considers it as it would a phenomenon or effect, sends it back to art with a

theory of the circumstances and practices by which it must be produced, based on an understanding of its causes and conditions. Art, finding these directions desirable and practicable, forms them into a rule or precept.³¹ Just as Mill believed there was a unified hierarchy of the sciences, with physics as the highest level, and the experimental and abstract sciences underpinning it, so too did he believe there was a hierarchy of the arts. The highest level is the art of life, into which all the underlying arts - medicine, architecture, literature and all motivated forms of human action feed. The point here is that none would dispute that the higher principles at work within the specific arts are bad things - the issue is one of ranking one over another. To this end, the art of life is established as a kind of meta-art, by which all human action may be classified and assessed.

Mill assigns it three divisions³² - the prudential, the moral, and the aesthetic. An agent's actions can be assessed prudentially in terms of actions that have an effect upon her alone - we avoid fire lest it burn us, avoid poison lest we die. Actions may be assessed morally inasmuch as they affect others. The key concept here is one of duty. Morality, as be discussed in the third chapter is for Mill purely a question of other-regarding action, of the affect certain actions have on others welfare. This shall be discussed in detail in chapter 3. It is the final element of the art of life that is interesting here - the aesthetic. This has to do with elements of human activity and character that factor into neither a moral nor prudential calculus. They are, as Ryan puts it "a matter for the imagination". In Mill's terms appeals such those to :

[T]he sense of *honour*, and personal dignity - that feeling of exaltation and degradation which acts independently of other people's opinions, or even in defiance of it; the love

³¹ To borrow Ryan's (1987: 214) example, medicine as an art takes as its supreme guiding principle the pursuit of better health. It does not seek to prove that this goal is a good thing; it is concerned with the means necessary to reach it, which medical science provides it.

³² There is another tri-partheid division which Mill presents in an essay on Bentham, where he talks of actions having a moral, aesthetic and sympathetic aspect. This melds far less neatly with the nature of the

of *beauty*, the passion of the artist; the love of *order*, of congruity, of consistency in all things and conformity to their end.³³

It is this set of elusive and mercurial human ends, Ryan (1987: 216-217) maintains, that allow us to make sense of Mill's famed contention that it is better to be Socrates dissatisfied than a pig satisfied. The difference between the actions necessary to secure a man's happiness and a pig's is neither moral nor prudential. Were it moral, the best course of action would be to shirk from human contact as much as possible. Were it prudential, then a man that desired nothing would be optimally well off. It is the susceptibility to the virtues of higher ends and pleasures that makes for a more complete human being by Millian terms. The moral, the prudential and the aesthetic all underpin actions conducive to individual and social welfare. It is not a case of ranking one over another, so much as bringing the three into as much harmony as possible that allows for Mill's more complete and worthwhile individual.³⁴

ii. The role and implications of the aesthetic dimension

It is this final aesthetic dimension that Mill feels can never be coercively prescribed. Beyond the rules necessary to secure individual safety and the interests of others, the question of personal ideals is kept socially open, the province of Mill's persons of "genius". It is the widest experience possible that makes one the best judge of such matters. As such, the optimal social conditions for Mill are those imbued by an open-minded social order. As Anderson (1991: 25) puts it: "[t]o discover a superior conception of the good, we must be free to explore different ways of life under conditions of

arguments set out in *On Liberty*, and as such I follow Ryan in concluding the version presented in the *Logic* is the one to stand by. (See Ryan, 1987: 215.)

³³ Mill, *Dissertations and discussions*, Vol. I, p. 360 as cited in Ryan, 1987.

³⁴ Mill's conception of the "higher values" is an area of his philosophy I have not sufficient space to explore here. It is, as Andersen argues, the crux point at which his philosophy breaks from Bentham, in implicitly setting up values other than happiness as ideals of human life. This plays into the deeper question of the exact nature of Mill's psychology and philosophical utilitarianism, dynamics of his thought I treat only indirectly in this thesis. For a detailed discussion of the "nonhedonic" elements of Mill's conception of the good, and the relation between these and his theories of human psychology, see Anderson, 1991.

toleration". Thus it is a free realm of "personal aesthetics" Ryan sees Mill attempting to secure with the rationalist framework of *On Liberty*:

To be a saint or a hero by order is just a nonsensical idea. The whole point of saintliness and heroism is that they establish new goals, new standards of what man can do when he tries. Without freedom, there can be no such moral progress as this leads to ... Mill's concern with self-development and moral progress is a strand in his philosophy to which almost everything else is sub-ordinate. And this is why, once we have established the rational society, scientifically understood, controlled according to utilitarian principles, *the goals we aim at transcend these*, and can only be understood as the *freely pursued life of personal nobility* - the establishment of the life of the individual as a work of art (Ryan, 1987: 255, my italics).

This is part of what Skorupski (1989: 362) refers to as Mill's "Hellenism" - a respect for "spontaneity of consciousness". Values that are spontaneously admired or despised do not "overlap cleanly with moral virtues and vices". We may, to use Skorupski's example, praise courage as virtue, but we do not judge others for their lack of it, except in such cases as harm is caused. Where we cannot identify harm, there is no reason to "root out" personal values and traits. Rather, we are best served by "the presence of different ideals of character", associated with different ways of life" (Ibid.).

Thus, Mill's respect for the spontaneity of character can be understood as analogous to the demarcated pluralism that vitiates his entire philosophy. We may set up boundaries that prevent harm and maintain harmony, but within these, individualism and particularity must be allowed to flourish. This is because only the perfect society could possibly manufacture ideal characters. No such society has ever existed and (given the constant shifts of circumstance Mill naturalism cautions us to remember) *can* never really exist. As such, even the most developed social order cannot afford to allow the individual's personal, internal quest for the good to be socially directed at the level of character itself. Society, for Mill, does not make heroes and visionaries. They

most decidedly make *it*. For them to arise Mill's "atmosphere of freedom" (Mill 1: 57) is the only oxygen that will serve. Such will the passionate interplay of ideals drive the social order, and such (crucially here) will people of passion and character arise to represent these.

Thus understood Mill's individualism is not *all* social instrumentality. It is also the desire to allow people to bring forth that which makes a human being "a noble and beautiful object of contemplation" (Mill 1: 55). It is not that Mill would not have us seek to make citizens better people, but rather that we risk too much in forcing them to become so in matters regarding themselves alone. In understanding these as his aims and principles, we can endorse Skorupski's interpretation that Mill implicitly appeals to autonomy as a baseline social value to be respected and defended from molestation. For it is only through a respect for autonomy as a crucial element of the individual's rights framework that Mill can ensure the diversity he so praised, and heed the *caveats* he so eloquently sets out.

1.3) The Millian individual revisited

For Mill, the boundless diversity of human intellectual and social thought and practice was something to be rigorously ensured. It was towards a vital, dynamic and diversified world that the proscriptions of Liberty pointed in Mill's mind. As Ryan points out, this telos, this "society of happy men" had to have, for Mill, freedom as its central ingredient. The proscriptive rationality, the consequentialist system of boundaries and guiding principles at work in Mill's thought represent a mere framework. A framework that guarantees people the space to develop their character and creativity, which for Mill was something too diverse, and necessarily so, to ever be proscribed or limited by some kind of positive doctrine of self-regarding action. Mill sought to set people on the best path towards self-actualization within a social context. But once we

become capable of self-education, of warning ourselves against the fallibility of our precepts and beliefs, of becoming aware of both our duties and the reasoning behind them, of respecting others in doing so - then does the proscriptive element of Millian thought end. Beyond this, we follow only the ultimate expert on our wants, our desires and our happiness - ourselves.

If this seems trite, it is because it remains a theme to which our world of arts and letters constantly returns. For those who consider Mill an anachronism, a footnote to a darker and more legislatively arrogant period of history, consider how much he might have acceded to the lyrics of Bob Dylan:

Come mothers and fathers
Throughout the land
And don't criticize
What you can't understand
Your sons and your daughters
Are beyond your command
Your old road is
Rapidly agin'.
Please get out of the new one
If you can't lend your hand
For the times they are a-changin'.³⁵

We have, I feel substantially outlined the dynamics behind Mill's individualism. It is time to find out to what extent Hegel might have agreed with him.

³⁵ <http://www.bobdylan.com/songs/times.html> (Accessed 07/01/2003)

Chapter 2

The Individual in Hegel

2.1) Preliminaries

2.1.1) Introduction - The mismatched legacy of Hegelian thought

Hegel's legacy, like Mill's, is an exercise in negotiating controversy and misinterpretation. As Wood (1990: xiii) puts it, at the close of the 20th century and first glimmers of the 21st "everybody knows that Hegel is an important thinker who cannot be easily ignored or dismissed. But the broad outlines of Hegel's thought are much oftener discussed with sophistication than his writings are read with comprehension".

A possible reason for this is the aura of complexity that surrounds various elements of his overall thought. Wood (*Ibid.* xiv) bemoans his "pretentious style and abstract jargon". Patten (1999: 194) describes crucial sections of his *Logic* as "impossibly dense". Thus it is not surprising that seekers of political enlightenment will draw together arguments from assorted fragments of his writings and transcribed lectures, claiming him as their intellectual ancestor. Archconservatives will draw on his arguments for the enforcement of social norms, conveniently forgetting that Hegel was a firm proponent of a progressive society. Socialists will laud the tracts on alienation and dialectic that influenced his most famed and notorious disciple, Marx, conveniently forgetting that Hegel was staunchly committed to the notion of private property.

I am fully aware that I may stand equally accused of such selective appropriation of Hegelian concepts. I maintain, however, that if we wish to draw out of these two-century-old texts anything useful for modern purposes, there are certain elements we must cut free, or at least radically re-interpret. This being said, the grand question of "what is alive and what is dead in Hegel", while obviously relevant in certain respects here, is not the central pre-occupation of my enquiry into his theory. In chapters to come I will indeed present alternate interpretations of such theoretical hallmarks as the notion of *geist* (or absolute spirit) and his conception of the organic whole that is the modern state. For the purposes of the current chapter, all I seek to unearth is the nature and importance of the individualistic elements within his structure of basic principles.

It must also be noted that what I attempt here is not, and I feel cannot be, a broadscale exposition of Hegel's entire system. While relevant details of such complex elements as his blueprint for the nation-state and his theory of history will be explained where they apply, what I am concerned with here is an application and re-examination of his foundational principles of social theory. This is by no means to duck the issue, intellectually speaking. It is here, within the realm of these foundational notions that the modern communitarian heart beats, not in the minutiae of the Hegelian system, or the darker depths of Hegel's logic and epistemology.

2.1.2) The Hegelian project

The subsistence of the community is its continuous, eternal becoming which is grounded in the fact that spirit is an eternal process of self-cognition, dividing itself into the finite flashes of light of individual consciousness, and then recollecting and gathering itself up out of this finitude - inasmuch as it is in the finite consciousness that the process of knowing spirit's essence takes place and that the divine self-

consciousness thus arises. Out of the foaming ferment of finitude, spirit rises up fragrantly.¹

Cloaked here in trademark obscurity, is a nutshell exposition of a philosophical framework that has influenced a stunning range of modern western thought. To understand fully the nature of Hegel's theoretical foundations, it is crucial to know first what he understood the driving project of his social theory to be. The Hegelian system is complex, but remarkably consistent in terms of its proposed outcomes. Hegel seeks to reconcile the modern citizen to the world one lives in, to reveal it as rational, accessible and ultimately commensurate with one's (fully developed) ² intentions as an individual. As Hardimon sets it out at the inception of his text on the Hegelian social project:

The central aim of Hegel's social philosophy was to reconcile his contemporaries to the modern social world. Hegel sought to enable the people of the nineteenth century to overcome their alienation from the central social institutions - the family, civil society, and the state - and to come to 'be at home' with them (Hardimon, 1994: 1).

Hardimon (Ibid. 2) thus sees the major thematic of the Hegelian philosophy to be rational "reconciliation" - between self and society, and even (at a more personal level) self and self, in response to the alienation from modernity that he saw as so rife around him. This by no means renders any appraisal of Hegel a mere act of intellectual archaeology. The concept of 'alienation' - from the institutional structures of the social order, from the morality and ethical principles of the social space, from self - is the central charge by which communitarians in particular hold liberal democracy guilty of having failed to address genuine human concerns. Claims of a "spiritual poverty" and resultant cries for a reclaiming of "thick" conceptions of community have, at the very least, a Hegelian taint to their ancestry. What I aim to prove by a detailed examination of Hegel here is that such reconciliation between individual and

¹ Hegel, Religion III, 233n as cited in Ermanno Bencivenga, 2000, *Hegel's Dialectical Logic*, New York: Oxford University Press.

social reality by no means necessitates the crushing of individuality, or even of counter-cultural dissent.

This is not what might be considered a conventional reading of Hegel. The Hegelian system, as shall be shown below, lays out an interlocking progression of dialectical development - of individuals, societies, political orders, the very course of history itself - through which the human race learns to better shape, manage and understand a reality that at first seems alien and hostile. For Hegel, unlike Mill, these intermingling marches of progress had a definite end point. The task of humanity and history itself is to actualise *Geist*³, to use the analytical tools of the Concept to realise the Idea, a mammoth undertaking, but nevertheless one with a finite end.⁴

The point here is that for Hegel, unlike Mill, at a certain point history seems to stop. Once the *telos* is reached, Humanity's long and often bloody phases of trial and error are at an end. If this is accepted as an inevitable consequence of Hegel's principles, then it has profound and dire implications for my

² As shall be explained in detail below.

³ The varying interpretations of *Geist* would be a lengthy (and I feel unnecessary) diversion at this point. It is best understood as a driving collective spirit, a concrete objective universal that informs and underlies the very fabric of human reality. Further down the road, I will indeed present the issues relating to *geist* in greater detail. For now, I shall only draw out its implications only as they apply to the discussion at hand.

⁴ The Concept and The Idea are two more weighty Hegelian concepts that run the risk of drowning a modern scholar in a quagmire of epistemology. As with *geist*, I will explain each further only as each becomes relevant. For now, let me lay them out in the simplest fashion I can. The Concept refers to a rational mode of understanding reality which applies throughout human experience. It is a capacity which is embryonic within each of us, but must be developed in a social context to be fully realised. The *Concept* as Kainz defines it is :

[A] concrete Concept characterized by dynamic unities-in-distinction. These unities in distinction are exemplified *subjectively* by the syllogism, which captures the rationality of reality; *objectively* by the teleology which unifies particularity and universality; and *absolutely* in the rational-reality or particularized universality of Life, Cognition and Willing (the absolute Idea). (Kainz, 1996: 28).

The *Concept* can thus be understood as a scientific, logical and philosophical means of comprehending the *Idea*, which is essentially the rational structure underlying all reality, ultimately comprehensible to the developed human mind. To follow Kainz once more: "As life emerges in nature, the Idea becomes explicit first as subjective Spirit passing from unconsciousness to the 'Phenomenology' of consciousness and self-consciousness, and to the higher stages of cognition and will; then as Objective spirit embodied in familial and political organizations and corollary systems of rights and laws" (Ibid. 29).

investigation here. It could be argued that at a time when humanity reaches this zenith, the tolerance of dissent and fallibilist *caveats* he seems to share with Mill could be done away with. At the end of History, it might be argued, we have no need of new ideas.

But this, I shall contend, is a position that commits a stunning array of intellectual sins. It is, first and foremost, a very shallow reading of Hegel's teleology. As shall be examined in detail forthwith, tolerance and diversity are both crucial tenets of Hegel's ideal framework. The set of rational institutions that Hegel feels facilitate the highest in human capacity (and indeed, by his terms, realise the divine) are no stone-cast order of elitist codes and practices. His *telos* is, if anything, a place that lets the particular flourish within the universal, an organic unity of necessarily different ends and practices bound up within an organic whole that itself is a living, breathing embodiment of freedom. The further implication I aim to draw out from his position, and one which I feel points directly to the commonality of consequence among his and Mill's principles, is that this *telos* is by no means only to be interpreted as a static point. Indeed I feel it serves both his principles and their modern applicability best to see the *telos* as a place with a powerful institutional framework that is nonetheless in a constant state of flux and self-evaluation. Over the course of this enquiry, I shall draw out textual evidence for this position, as well as argument for it from Hegel's own principles.

The concerns covered in this chapter relate to the individual in the Hegelian system - the extent to which individual subjectivity and self-determination play a role in the Hegelian framework, philosophically and practically. This can be a difficult task if one appreciates the interlocked nature of the Hegelian social schema. Consider the following quotation from the closing sections of *The Philosophy of Right*:

The individual, whose duties give him the status of a subject [*Untertan*], finds that, in fulfilling his duties as a citizen, he gains protection for his person and property, consideration for his particular welfare, satisfaction of his substantial essence, and the consciousness and self-awareness of being a member of the whole (PR §261, 285).

This should highlight that, for Hegel, the metaphysical development of the individual and the abstract conception of individual freedom are inextricably tied in to the structure of the social order. As such, in order for this investigation to make any sense, I must map out two distinct yet related areas of the Hegelian mindscape - the individual-specific speculative metaphysics in which Hegel's social theory is grounded, and the space the individual occupies in the social theory itself as codified in *The Philosophy of Right*. It will then be possible to assess to what extent the individual's goods and freedom are catered for in the Hegelian system. As I see it, we can understand Hegel's commitment to the individual as a crucial locus of his social theory as more than mere lip service, or creative window-dressing for conservatism. The individual is the driving force of the Hegelian project, even as the social order (as discussed in Chapter 4) is understood to embody something beyond her (which, crucially, includes and is shaped by her). I contend that we find in Hegel a theory of political community that pays heed to concerns of social embeddedness, but nonetheless safeguards the essential freedoms of individual practice and rights of conscience that permeate the modern liberal discourse.

2.2) Key metaphysical conceptions underpinning Hegel's social theory

2.2.1) The self and its boundaries in Hegel

The Hegelian "self" is a difficult entity to discuss in isolation, largely because Hegel did not believe that a fully developed self in isolation could exist. For Hegel, the nature of freedom and individual development is bound up within

the self's reconciliation to its social context. The very capacity for true freedom can only be realised in a context of other selves. Thus for Hegel, unlike the social contract theorists, the social arrangements individuals enter into are not a matter of mere rational choice so much as the constitutive conditions of freedom itself. There are several elements to this that bear discussion as they, or their intellectual spectres, are destined to haunt the remainder of this thesis. As such, the discussion that follows, in addition to clarifying the Hegelian conception of the individual, provides a necessary conceptual vocabulary for the entire breadth of the Hegelian discourse in this thesis. This follows logically, since, as shall be seen, the individual is the starting point of an intricately woven vision of social development that is consistently threaded throughout the Hegelian system. The areas I have highlighted for discussion are those necessary to understanding how Hegel sees the self not as static, but as developmental by nature, and why this development must be a process driven by the individual herself, as opposed to some external coercive social force. Thus I examine the Hegelian doctrines of individual development of self-consciousness, the development of the rational will, the notion of *Bildung* (or self-education) as it applies to individuals, and the understanding of freedom as rational autonomy in Hegel. All of these contribute, in one sense or another, to an understanding of the Hegelian idea of "freedom".

2.2.2) The formation of self-consciousness - the Individual's Dialectic

i. Of Masters and Slaves

"Self-consciousness", Hegel claims, "exists in and for itself when, and by the fact that, it so exists for another; that is it exists only in being acknowledged" (PhG ¶178). Thus begins Hegel's famed exposition of what he calls the

development of "Independence and Dependence of Self-Consciousness" (Ibid.), known far more widely and conventionally as the master/slave dialectic.

Its relevance here is in providing a crucial first approximation of how Hegel sees the individual's conception of self developing through the intersubjective "struggle for recognition" - the process Hegel identifies as formative of self-consciousness and self-certainty (Ibid. ¶179-80). Hegel demonstrates his schema of the development of said consciousness through the thought experiment of abstracting the self from all contingent properties and tracing its process of self-definition. This leads to what Patten (1999: 127) calls the "parable" of the master-slave dialectic. I will briefly sketch out this process here.

The first stage is a brute and immature form of pre-social consciousness. This cannot be self-consciousness, as that is impossible without the conscious recognition of an "other" against which the boundaries of the self must be measured and defined (PhG ¶179-180).

The human being without socio-political bonds is a bizarre creature in Hegelian terms - he sees the reality around him, which includes other creatures he does not yet truly recognise as similar to himself, as also having boundaries of consciousness and intentionality. There is the world on one side of the line, and he on the other. Thus he cannot know himself, as a face cannot know its appearance without a mirror. To define himself, he must cordon himself off mentally from the remainder of humanity, and can only do that with the recognition of the "other", i.e. his fellow man. Wood sees Hegel setting out the following conceptual pattern:

I am "recognized" by another when the other self-conscious being has an image of me as a being self-conscious like itself, and I am aware of it as having this image. Hegel suggests this by saying (both hyperbolically and paradoxically) that the other of which I am aware *is* myself - myself as other ... The point of the hyperbole is that at this stage

we are abstracting from all our particular properties, and so simply as free self-consciousness we are exactly alike. There is nothing to distinguish one of us from another except my awareness of you (and your awareness of me) *as other* (Wood, 1990: 86).

Patten (1999, 125) lays out the reasoning process behind this rather neatly. Self-certainty i.e. confirmation of one's freedom, has to be established by interacting with one's environment. The simple assertion of freedom is ultimately empty. Men, to know themselves as free, must know that their will has impetus, that they are capable of directing reality and are not, as Patten puts it "a plaything of outside forces and authorities". Thus, the agent seeking self-certainty faces three choices. The first is to prove his independence of the non-human world by destroying or altering it. This, for Hegel, is insufficient. In altering an object, the agent proves nothing more than his independence of the object in its present form. He remains uncertain that he is not dependent on the matter itself. Destroying the whole of his material reality has the rather self-defeating side effect of the agent causing his own death. Destroying individual objects leaves only the memory of an independent action, and that is far too flimsy a basis on which to build one's self-certainty. What is required is an external factor that can be negated without its own destruction. Patten (Ibid. 126) follows Taylor in labelling this a "standing negation". This form of negation only another agent can provide by recognising the independence of the agent.

Thus, the agent's second choice is to "force" other agents to recognise his independence. This leads to an impasse. As Wood explains it:

Each of us wants recognition from the other, but sees no reason to recognize the other. My recognition would only attest to the other's independent existence ... and that would be a threat to my self-certainty. Each of us therefore tries to do away with the

other's immediacy, that is, with its bodily life. The struggle for recognition becomes a struggle to the death (Wood, 1990: 86).

But this, Hegel points out, becomes unworkable. The "trial by death", he claims, "does away with the truth which was supposed to issue from it, and so too with the certainty of self generally" (PhG ¶188). This is because, in simple terms, destroying another consciousness is no more a source of standing negation than destroying another object. It is thus that the master-slave relationship arises. One consciousness submits rather than die, and becomes the slave, or servant to the victorious consciousness, the master. These exist as two "opposed shapes of consciousness" - a seemingly independent being-for-itself (bound, for this recognition to a "thinghood" - the slave) and a dependent being-for-other (PhG ¶189-190).

ii. Contradictions and implications in the Master-Slave dialectic

As Patten (1999: 127) points out, the famed reasoning behind Hegel's master slave dialectic exposes the forced assent of the slave as an insufficient source of self-certainty, and thus contrary to the very nature of freedom. The master subdues the slave when two agents clash in their first attempts at primitive negation. The one submits rather than die, and becomes subservient. This does not, in the long run, provide the master with the recognition he requires, confirming his status as a free, self-standing being. He finds himself dependent on the slave for the goods and services said slave provides him, and thus has no true sense of directing his own existence. The slave has become something of an animated object.

The second, more crucial contradiction in the relationship, Patten (Ibid.) maintains, becomes clearer when we realise that the slave's recognition could only be worth something if it were given freely. Ordering the slave to maintain that he (the master) is free amounts to a deferred assertion on the part of the

master. The slave's pleading assent to his master's freedom is thus, by Hegel's terms, ultimately worthless. Only the freely given recognition of another agent can give the master the standing negation he seeks - and this must, by the terms laid out, be a mutual recognition.

Thus the third choice presented to agents seeking self-confirmation (and with this true freedom) is for Hegel ultimately the only choice: a social context of mutual recognition of independence and free agency. This, for Hegel, is one of the determinate factors of truly free choice - the Hegelian perspective on which will become clearer as we discuss the individual will in the Hegelian system.

The key contentions that I feel we draw out of this metaphysical parable are, firstly, that the self-consciousness of the individual is developed through an *intersubjective process*. Individuals come to know themselves and their ends within the context of other individuals, and do so developmentally, not instantaneously. Secondly, it is a society of mutually recognising *free* agents that Hegel quests after. Forced assent to the will of another is ultimately fruitless, individually and socially. Thirdly, goods such as the recognition of others play a crucial role in the Hegelian social order and, Hegel believes, come to be secured in the rights and framework of the rational state. This will be discussed in section 2.3.

Thus, the question at hand is to what extent (given the above discussion of the necessity of society as consciousness forming) the individual needs society to be *free*. The answer to this can only come with a deeper understanding of the Hegelian notion of the individual (a discussion I continue immediately below) and a fuller understanding of precisely how individualistic the provisions of Hegel's social freedom in fact are (the task of section 2.3).

2.2.3) The Hegelian will

The concept of the individual will in Hegelian analysis is one of the features that most clearly distinguishes his doctrine of free action from more conventional philosophical accounts. Hegel himself states in the introductory section of *The Philosophy of Right* that it is pointless to speak of will and thought as separate faculties, even if it does make sense to discuss them as separate concepts. Will, inclination and the higher stages of representational thought all play a part in the ultimate Hegelian vision of what constitutes free agency. To understand the internal dynamics of the will, Hegel instructs us to examine both its determinate and indeterminate qualities. In the unity of these two "moments" we discover the true nature of the will.

i. Moments of the Will

The indeterminate moment is described in §5 of *The Philosophy of Right*. It is the point at which the will attempts to throw off all determinations and dissolve all limitations, be these desires, natural inclinations, or limitations set in place by some other source (custom and public sentiment, for example). This Hegel describes as the will in a state of "absolute abstraction" (PR, §5, 38). It is the conception of one's own inner experiences as universal and unbounded, the point where one's own subjectivity is foregone, forgotten or abandoned. It is freedom, certainly, but it is, in Hegel's own memorable terms "the freedom of the void" (ibid.). Confined to its pure theoretical form, it becomes the stuff of such religious cultures as "the Hindu fanaticism of pure contemplation" (ibid.). If made action, the result, Hegel warns us can only be destruction. For this positing of oneself as the objective universal must crush all that differs from itself to prove itself valid. It may think it furthers some positive end - such as religious truth or social equality, but in doing so it becomes tyrannical and repressive, violently suspicious and hostile towards differing particularities. The examples Hegel uses are of religiously fanatical regimes and the French Revolution's Reign of Terror. Key examples for our own time would be fundamentalist groups and repressive theocratic regimes

such as the Taliban. Forgetting to factor in their own subjectivity as a limitation, fundamentalists and fanatics consider themselves privy to objective truths they feel they personify, and enforce this conception by either violently "re-educating" or destroying all opposing perspectives. This is a tendency readily recognisable in all examples of fanatical rule.

Thus Hegel forces us to factor in the "determinate" moment of the will in §6. This second moment is set out with trademark Hegelian reasoning as emanating from conditions within the first. Here, "I" establishes itself as something definite and determinate, as something particular. This, as we recall from the previous section is a process of "negation". The individual wills something, and in so doing gives the will its limitation - it is not setting itself the task of doing all things, but rather a particular thing. The source of this limitation may be internal or external. This is an act of "particularisation". It can be as one-sided a determination of will as the first moment, if taken alone. As Hegel points out further on in §22:

When understanding regards the infinite as something negative and hence as *beyond its sphere*, it believes that it is doing the infinite all the more honour by pushing it ever further away and distancing it as something alien. In the free will, the truly infinite has actuality and presence - the will itself is the idea which is present within itself (PR §22, 54).

Thus what must be found is reconciliation between the two moments, a process Hegel describes in §7 as the development of true individuality (which he equates with the "concept" of the will).

ii. True Individuality and True Intentionality

Hegel is careful to point out that his understanding of individuality is distinct from the more common conception of the word. For him, true individuality is

found in the formal will, which Hegel describes in §8 as “self-consciousness which finds an external world outside itself”. Through the process of rendering the subjective aspects of their will objective, individuals come to better understand the mediation between the two, and only then do they fully comprehend the broader significance of their own particularity within the universal. Hegel sees us finding our rational place in the world through considering the way we apprehend it (as Inwood (1983: 479) phrases it “by thinking about thinking”).⁵

[F]reedom lies neither in indeterminacy, nor determinacy, but is both at once... Freedom is to will something determinate, yet be with oneself in this determinacy and return once more to the universal (PR § 7).

If we understand these rather speculative underlying dynamics, it becomes easier to see why Hegel’s conception of individual freedom moves somewhere beyond the common sense notions of the term. Freedom is not simply the capacity to choose. This is simple willing or *wilkur*. As Inwood (1983, 482) explains, *wilkur* exhibits part of the pre-requisite of the formal will, in that it is “free reflection which abstracts from everything and dependence on content and material given from within or without” (PR §15), but falls short of Hegel’s requirements of the formal will in that it cannot *will itself*.⁶ What Hegel means here is that, as Inwood puts it:

“Reflection”, the capacity for refraining from action on any desire that one has, is not sufficient, if one eventually has to act on some desire or other. What is needed is that the will should determine its own goals and in that sense have itself as object (Inwood, 1983: 483).⁷

⁵ The process by which Hegel understands this happening is complex, and I can but sketch out the rough dynamics of it here.

⁶ As Hegel states it: “Only when the will has itself as its object is it for itself what it is in itself” (PR §10).

⁷ See PR §15 for Hegel’s fuller exposition.

For a will to will itself, is, as Plamenatz (in Pelczynski (ed.), 1971: 37) explains not nearly as obscure and ridiculous a concept as it may sound taken out of context. A will that wills itself does not merely resist compulsions and desires in certain instances. It "*aspires to self control*" (Ibid. my italics). But this cannot merely self-control for its own sake. It is here that we can understand Hegel's requirement that a man makes himself his own end comes in. The self-control in question, Plamenatz (Ibid.) continues, is a tool to shape oneself into the kind of person one wants to be, and to direct one's ends accordingly. Such a definition of self, as discussed above, is an intersubjective process.

True intention is ours when we are capable of understanding the broader implications of our actions, and the objective barriers and limitations we choose, and rationally set out the ends our will seeks, as opposed to merely acting on a set of desires. Thus, we intend, rather than simply will an action, when we properly understand the interplay between our inclinations and desires and the reality they must be realised within, shaping our actions according to a will that knows its own objectives, and knows them as self-affirmed. For only when we act unencumbered by delusions of what is possible or ignorance of consequence, within a framework directed by a will that knows its own ends, only then are we truly free. To be fully at ease and reconciled with the discourse between our reality and ourselves (consciously recognized by ourselves as a distinct entity with distinct ends, independent of, though still affected by contingent desires) is to be able to make real choices.

By now, at least a few of the interlocking complexities that feed into Hegelian freedom should be coming through with more clarity, as should the underlying Hegelian dynamic of reconciliation between particular and universal. The truly rational and free being, in Hegel's eyes, is she that recognises herself as a necessarily distinctive part of an objective social order, and is willing to accord others the same recognition. This is a dynamic that will be subject to

examination throughout this thesis. The next immediate step is to understand more clearly how Hegel saw the self's developmental process unfolding.

2.2.4) *Bildung* and the Developmental conception of the Self

Education, in its absolute determination, is therefore *liberation* and *work* towards a higher liberation ... Within the subject, this liberation is the *hard work* of opposing mere subjectivity of conduct, of opposing the immediacy of desire as well as the subjective vanity of feeling [*Empfindung*] and the arbitrariness of caprice ... [I]t is through this work of education that the subjective will attains *objectivity* even within itself, that objectivity in which alone it is for its part worthy of being the *actuality* of the Idea (PR §187, 225).

Such is Hegel's understanding of *Bildung*⁸ as expressed in *The Philosophy of Right*'s section on Ethical Life. The basic notions should by now be reasonably recognizable. The above discussion has been fraught with terms such as "intersubjective development", "self consciousness", and "self realisation". Those well versed in philosophical movements will recognise here the common vocabulary of German Idealism at work. But to assess the value and implications of these ideas, we must know more. To come fully to terms with Hegel's concept of the self, we must understand better the way he understood the self's development. We must know what he meant by *Bildung*, and examine its implications.

i. Background and aims of dialectical development

We begin with the very basis of the *bildung* process - what Wood (1990: 1) describes as the "lifeblood of the Hegelian system" - the Hegelian dialectic.

⁸ The term *Bildung* is used pervasively and in multi-faceted fashion in Hegel's theory. As Kelly (1969: 342) points out it is a word that "means not only education, but maturation, fulfilment, joy, suffering, a drenching in the stream of time and an emergence to the plateau of judgment. This occult, fascinating treatise is Hegel's wordy ... paradigm for the acquisition of all worthwhile knowledge".

Wood outlines the broad philosophical move that Hegel made beyond Kant, perhaps one of his most significant predecessors:

Kant argues that when human reason attempts to extend its cognition beyond the bounds of possible experience, it is not only tempted to make unwarranted claims to knowledge, but also is in danger of contradictions (antinomies); the only way to avoid them is by carefully observing the proper limits of its cognitive powers. The part of this account Hegel retains is the idea that our thinking has an inherent tendency to go beyond every limit, and thus to undermine or overthrow itself. He associates the idea with the human self's tendency to change, develop and progress through a process involving a stage of self-conflict followed by its resolution (Ibid. 2).

The dialectical method of thinking is crucial to any well-heeled understanding of Hegelian concepts.⁹ This idea of progress through the resolution of internal conflicts applies to cultures, regimes, the background history and conditions within which they operate and - most importantly for our current purposes - to individuals. Only in Chapter 4 will I fully present and assess Hegel's idea on the interlinked nature of the aforementioned dialectical processes. For now, I seek merely to understand the place of the individual within it all.

⁹ Kainz (1996 : 1-2) provides a succinct introduction to Hegel's dialectical reasoning , beginning with Hegel's own statement that :

Dialectic is the immanent forthgoing wherein the onesidedness and limitedness of intellectual determinations shows itself for what it is – namely, the negation of these same determinations" (Hegel, cited in reference).

Kainz explains Hegel's thinking thus :

As we explore a specific determination, we arrive at its limits and are necessarily drawn into a consideration of what it negates, that which is other, especially that which is diametrically other: the opposite to which it is conceptually related. Then the process continues (Ibid.).

The literature on dialectical thinking is vast, and for lack of space and relevance I have not included it here. For the purposes of this discussion, I feel it is sufficient to regard it as signifying a reasoning process driven by the necessary resolution of internal contradictions, in which lower stages of development are corrected and sublimated within higher stages.

ii. *Bildung* as an individually driven social process

Wood (1990: 18) traces Hegel's ideas on this back to the principal writings of Kant and Fichte. The central conception that emerges is that of the human self as a rational construct, tied to the culture and circumstances in which it finds itself, but mandated by its very nature to discover through what could be simplistically labelled as trial and error (both on the part of the self and its culture, or political order) a genuine sense of self-knowledge. This vision of the rationally constructed self might seem to devalue the individualistic elements of selfhood. As Wood (*Ibid.*) points out, it is quite the opposite. It tends rather to emphasize it. The process by which development happens is not an external one. It is certainly influenced and mediated by external factors, particularly other selves. But it is ultimately an intensely personal and highly individualised process. The agent of final construction, the ultimate architect of self, remains the self. As Wood succinctly phrases it: "Our fundamental vocation is to make ourselves into what we are" (*Ibid.*). In understanding the *bildung* process, we further clarify the discussion above on the will coming to know itself as its own end. As Plamenatz explains it:

The essential attribute of the self-conscious being is that it develops its capacities in the process of exercising them. By its actions it transforms itself. It is 'self-creative', not in the sense that it strives deliberately to recreate itself to a model clear to it before the striving begins, but in the sense that it gradually acquires self-knowledge and self control as it acts and reflects on its actions and their results (Plamenatz in Pelczynski (ed.), 1971: 34-35).

This is, however, only one element of the *bildung* process, since such a progression, though individually driven, cannot occur in the absence of other selves. Patten (1999: 102) identifies *bildung* as "a process of education and *socialization*" (my italics) which develops "the capacities, goals and attitudes of a free agent". The capacity in question is more nearly (if metaphysically)

defined by Hegel as the capacity to subordinate the particular to the universal (PhG ¶488).¹⁰ This Wood (1990: 97) argues can be interpreted as the capacity to enter into situations of mutual recognition with others. "We have taken possession of ourselves," Wood explains, "when we have acquired the capacity to think of ourselves as persons by regarding ourselves as members of a community of persons" (Ibid.). This is why Patten (1990: 102) further holds that recognition is foundational to such a process - the process of becoming a free agent requires the recognition by others as such, and, as discussed above, this recognition must be uncoerced and mutual to be of any authentic significance.

iii. Emergent principles and dynamics of the *Bildung* process

As Kelly (1969: 345-346) argues, there is little at first that seems to distinguish Hegel's understanding of *Bildung* from that of Kant and the transcendental idealists. In reference to the quote with which I began this section (PR §187), he sees Hegel identifying *bildung* as striving "towards thought and system, picking up the essential, kicking over the material traces". Hegel seems, at first glance to be claiming, alongside Kant, that man is only free in being educated, in developing self-discipline. That education is simply the preparation and practice of rational autonomy. "The difference," Kelly (Ibid. 346) claims "is that Hegel scorned the infinite human experiment, the sacrifice of any present for a future". Hegel did not endorse the right of despots to rein in a modern social order, to crack the whips of authority to force the uneducated into a communal and obedient mode. Hegel would not see the "toiling masses" cast into a "model school that would 'force them to be free' on behalf of an infinite endeavour" (Ibid.).

Bildung, as the process of education, is "the art of making men ethical" (PR §151). The participation in ethical life, with its various institutions and

¹⁰ Hegel also credits the process of implementing the universal by comparison to happiness in PR §20.

processes is what provides this education, this culture of self-realisation. Not for elites, but for all.

Over the remaining chapters we shall gain further insight into the complex system by which Hegel believes the individual self becomes reconciled to its social context - the elaborate web of historical, cultural and political institutions that serve to mediate and facilitate the self's development. Throughout this process, one constant remains - it is the sum of individual wills that forms these institutions, and it is these very wills that they nurture and feed.

As has already been noted, the content of these wills alters in response to varying and developing social conditions. This brings us to the crucial element in the make-up of the Hegelian self - the doctrine that it is in a constant state of development. This has various implications. One of the more hazardous is that it logically commits us to regard all stages of personal development, even those we would regard as base and brutal, as necessary developmental steps towards the ultimate, enlightened self. What we must remember is that we are not casting the self to the winds of chance and hoping it flutters back to us fully formed and ready for participating in a society of rationally free beings. It is not about leaving the criminal and miscreant to their own devices in the hope that the burnt hand will teach best. Rather, the political order is a kind of nursery of the self. It provides the correct conditions for survival, growth and prosperity.¹¹ In doing so, though, it abides by the principal that one of the conditions for said growth, if it is to be lasting and significant, is that the plants learn to grow for themselves.

The idea that a certain period of development is necessary before we accord individuals the status of rational agency is not exactly new to us. The fact that

¹¹ We shall examine the implications of Hegel's conviction that the nursery itself has to learn the hard way how to improve itself, as well of his vision of the ideal nursery in *The Philosophy of Right* in Chapter 4.

we set a legal age marker to the time beyond which an individual may drive a car, consume alcohol, absorb certain types of media and engage in sexual conduct is premised on very similar reasoning. We assume a period sufficient for individuals to acquire the necessary self-discipline and rational capacity to undertake such actions responsibly. But this doctrine represents something way more far-reaching and significant. When we assess this doctrine's implications in modern terms, our conclusions can be varying and controversial.

One interpretation is that this is a doctrine of positive freedom that allows the state to curb choices and free actions, even if their effect on others is not perceptible, as the actions of an as yet embryonic self that has not yet developed full rational capacity. This is an interpretation towards which communitarian thinkers especially, I feel, would be inclined. It would justify, for example, legislating on the basis of community norms or "moral" principles¹² that the individual in question has not yet fully recognised the value of. But I believe it to be an interpretation that largely misses the point.

As I have argued (and, I feel, proven) thusfar, there is an element of individualism that remains the driving force of this endeavour. If these processes are completely foisted upon the individual, they become counter-productive. It is much like Mill's argument against enlightened despotism (see above) in *On Representative Government* - if the education of slaves at the hands of a benevolent master were ever truly successful, they would rail against the very notion of their slavery as a slight upon the autonomy of thought that education granted them (Mill 3: 140). Hegel, I feel, was in the final analysis, an archenemy of submissive and ignorant societies in much the same way Mill was. He just had slightly different reasoning and criteria behind

¹² I must point out to avoid confusion that I am not here referring to Hegel's own concept of the moral which is the major focus of Chapter 4. I am using the term "moral" as used by such groups as the conservative right in the U.S. - as established community standards often premised on watered-down religious principle. Whether or not Hegel would agree with describing such attitudes as "moral" is one of the key issues to be discussed in Chapter 4.

said enmity. Both displayed an inherent distrust of custom rigorously enforced - seeing it as a mechanism of stagnation and repression.

If there is a modern advocacy to be drawn out of *bildung* as it applies to individuals, which, as stated, is an element of the entire process that Hegel charges the state and society to bear firmly in mind at the higher stages, I believe it is this:

We should eternally strive in the construction of our institutions and the manner in which they operate to have the selfhood of the individual firmly at heart. We should seek to contribute to the conditions that create awareness rather than enforcing attitudes based on our own particular "enlightened perspective", as valid as these might be.¹³ We should seek to promote in our educational systems a sense of responsible and rational individual agency, allowing learners to internally negotiate the whirlpools of their own contradictions, and assisting them in doing so, rather than demanding they simply submit to the "higher wisdom" of their elders. We should always, in a developed social environment, give citizens credit for intelligent and rational capacities, and attempt to educate before blindly enforcing.

Perhaps, for example, we could curb drunk driving far more effectively if offenders were forced to assist in the emergency rooms that treat crash victims¹⁴, imbuing them with a sense of consequence and context. The notion of *Bildung* as valid self-formation, if accepted, represents not only a more humanistic, but also a somehow more complete approach to individuals in the social context. It also provides the state with a clear guiding principle against which to check its laws and actions.

¹³ Comparable, I feel, to Mill's famous aphorism that "Truth thus held is but one superstition the more" (Mill 1: 31).

¹⁴ This is NOT a practical policy suggestion, but rather outlines the principle of the kind of approach I feel Hegel might support.

All this presages a claim I will only be able to make conclusively by the fading pages of Chapter 4 - that the Hegelian *telos* is no stagnant space, but rather an arena of freeflowing ideas presided over by institutions designed to facilitate awareness, tolerance and the capacity for ongoing self-education. For the moment though, there is still one significant element missing from our picture of the Hegelian individual. I have not yet set out a concrete picture of what being a rational and self-aware individual entails in Hegelian terms, and what makes this particular brand of self so free, i.e. why the *bildung* process is understood by Hegel as the path to *free* agency. To understand this, we must assess more deeply why and how Hegel understands freedom as *rational* autonomy.

2.2.5) Freedom as Rational autonomy in Hegel

The will which is free as yet only *in itself* is the *immediate* or *natural* will. The determination of the difference which is posited within the will by the self-determining concept appear within the immediate will as an *immediately* present content (PR §11).

The system of this content as it is *already present* in its immediacy in the will exists only as a multitude of varied drives, each of which is mine *in general* along with others, and at the same time something universal and indeterminate which has all kinds of objects [*Gegenstande*] and can be satisfied in all kinds of ways. Inasmuch as the will, in this double indeterminacy, gives itself the form of *individuality* ... it is a resolving will, and only in so far as it makes any resolutions at all is it an actual will (PR §12).

The above quotations lay out the beginnings of the Hegelian dialectic of the formally free will, as already discussed above. The question at hand in this section is that of what makes such a will particularly “free”. As evidenced by the last few sections, Hegel’s idea of what constitutes freedom is somewhat different to the general conception thereof in a liberal democracy. Most of our common sense, and even our more formally defined notions of freedom tend to

equate it with options, with choice, with autonomy. Pelczynski (in Pelczynski, 1984 (ed.): 62) maintains that Hegel's conception of freedom is best described not as a single term but as a theoretical structure composed of "a whole series of separate but related concepts linked together in a systematic way". Hegel's conception of *individual* freedom is indeed premised on autonomy, but a very highly developed kind. The Hegelian individual becomes free when he is capable of rational self-government. We have to delve deeper into what Hegel means by this, if we are to further understand how the individual can be understood as free in the Hegelian social order. We can begin by a brief nod to the concept's ancestry. As those versed in Liberal political theory will already recognise, the concept of freedom as rational autonomy was espoused by another long-standing figure of enlightenment era German philosophy: Hegel's most famed predecessor - Kant.¹⁵

i. Rational Autonomy: From Kant to Hegel

Patten (1999: 47), for one, sees a strong Kantian element in Hegel's ideas on this issue. For both theorists, individual freedom is more than just a matter of following one's desires, but rather, as discussed in the previous section, a matter of moving beyond them. For Kant, there exists a profound opposition between the human being's rational capacity and her contingent wants and desires. A condition of true freedom also includes freedom from the more impulsive elements of one's self. The will which is capable of abstracting itself from its own determinations, particularly those in place due to factors beyond rational control, such as appetite or circumstance, is the free will. Thus rational self-government is intimately tied to the capacity for self-criticism and enlightened self-interest.

¹⁵ Kantian and Hegelian thinking exist in a rather bizarre love-hate relationship, and a full investigation of the clashes and affinities between the two is a thesis unto itself. Thus I treat here only the correlations (or lack thereof) that apply to the concept of individual freedom as rational autonomy.

For Hegel, the picture is slightly more complex. Wants and desires are not completely cut away, so much as sublimated or *aufgehaben*.¹⁶ As the self grows to govern itself rationally, it does not forget that it has desires, impulses, so much as realise they must be assessed with enlightened self-criticism, with an awareness of their context and consequence. The picture that emerges is that of an ideal self that is capable of stepping beyond itself, of judging its actions, aims and needs from a cooler, rational angle, with sharper understandings of its relation to others and its environment.

Robert Wallace (2001), in his examination of the Kantian affinities in Hegel's *Logic* gives us a clear picture of the process by which this becomes so. Wallace sees Hegel as rescuing the Kantian account of freedom from an untenable dualism between thought and nature. The Kantian approach to freedom sees thought as an exercise in abstraction. We forego the limitations and contingencies of nature by locating freedom in a realm distinct from nature - our own minds. This is the famed divergence between the "noumenal" realm of free mental activity, and the contrasted "phenomenal" realm in which nature, and natural determinism is located. The philosophical tagline for this breed of thinking is "subjective idealism". Thus it should not surprise readers that Hegel as a famed "objective idealist" thought somewhat differently about the interplay between thought and reality. Thought and reality are not understood as distinct entities, but rather as interlocking dynamics which affect each other mutually. As Wallace (*Ibid.*) phrases it:

[F]reedom is not radically opposed to nature, but instead it consummates (for lack of a better word) aspiration that is inherent in nature, and thus it does not need to be located

¹⁶ This is perhaps one of the more controversial phrases in Hegelian terminology, and many texts devote entire glossary pages to clarifying this term alone. It is perhaps best captured by terms such as "sublimation" or "supercession" (I accede here to Robert Wallace's explanation of it). One finds the exact meaning becomes clearer upon contemplation of the term's function in the dialectical system. Throughout the progressive stages, as the inherent potential of a thing - be it person, culture or universe - unfolds, certain elements are cut away and others are, in a sense carried over. They are included differently in the newly ordered stage of development, but nonetheless recognisably present.

in a fundamentally different realm from nature; nor does it need to present itself simply to a different "standpoint" from that to which nature presents itself.

In understanding this key difference between Kant and Hegel, we also understand why Hegel does not call for the complete abandonment of natural inclinations and desires that Kant does. The determinate natural qualities of human beings are the starting point that developed selves move beyond, but also in a sense drag along with them, sublimating them within their later rational systems of self-government. Wallace (Ibid.) ties this in to Hegel's concept of the "true infinite", a conception of the infinite no more or less transcending than that of the finite.

ii. Foundations of rational autonomy in Hegel's *Logic*

We have already discussed Hegel's application of the above reasoning to the *Bildung* process discussed in *The Philosophy of Right*. What follows here is Wallace's (2001)¹⁷ interpretation of the argument for the development of rational autonomy as it appears in the *Logic*, reflecting the same dynamics of self-definition at a more fundamental level.

As Wallace (Ibid.) sets out Hegel's position, the space under which our understandings of distinctions between things are organised is conceptual, not an act of empirical labelling. The first moment of definition concerns separating the thing we seek to describe from what it is not. It is a moment of "negation". So the first moment of determinate being is its negation of reality. The hard-line split between negation and reality cannot last, though. It is, in Hegel's terms, "uncomfortable". The being feels it must be, in some way self-determining. Thus follows a further negation of the first negation, the being as "something" - i.e. a being that seeks to define itself independently of its relation to others. This does not completely cancel out the first negation,

but throws it into the now more complicated mix by "by subsuming in higher level unity the first, necessary distinction". Labelled "being in itself", this is still a very early phase of self-definition and one of the early footfalls on the path to rational self-rule.

As Wallace (Ibid.) continues, the fact that beings-in-themselves still depend upon the existence of the other for their determinate qualities leads to what seems like a philosophical dead end. A strong element of "being for other" remains present in the ongoing process of self-definition. If both types of being are meant to be concrete elements of the determinate being, then it seems that "being for itself" has amounted to nothing more than different class of "being for other", trapped as it is in a dynamic of relating to others. In simpler terms, the self struggles with defining itself in and of itself if it must constantly do so in reference to other selves.

As Wallace (Ibid.) notes, Hegel is careful to point out that the way out of this quandary is not a simple one. Thus the next phase is a solution which he admits is flawed. (Wallace feels he does so in order to be thorough and systematic). This is something he calls "finitude". In this phase, the self downplays the relevance of the other - defining itself inasmuch as possible as if the other did not exist. This, in effect, collapses the entire system of self-definition into as many negative spaces as there are selves, leaving each self master of his own definition. This becomes immediately problematic "because it defends the something's being-in-itself only by limiting its being" (Ibid.).

The limit allows the something to exist, but in doing so forces it into a definitional relation with others once more. This limit, as Wallace quotes Hegel, becomes "the middle between the two in which they cease ... as the non-being of each of them it is the other of both". This leads the something to

¹⁷ I make use here of an unpublished manuscript with the kind permission of Robert Wallace himself, as secured for me by Dr. Ivor Sarakinsky. I thus cannot provide page numbers or publication details.

once again seek beyond itself for its capacity for definition, to direct itself towards the point of its non-being and declare this to be its being. This Hegel describes as the "contradiction of the finite" - in trying to define itself, the self is forced to move beyond its own definitions. This is the process that leads the determinate self to seek definition in the infinite.

The process by which this happens Wallace (Ibid.) argues, does in fact make perfectly good sense if we consider it carefully. The self perceives a limit, or limitation upon itself, in so doing, there must be an element of the self that is doing the perceiving. In perceiving the limitation at all the self is "already halfway to actualizing the conception of what it would be like not to be constrained by the limitation".¹⁸ The self understands that it this "limit" represents a blockage, or barrier. Once the self realises it has potential efficacy and purpose beyond its finite determinations (what Wallace calls a "higher vocation"), it is able to transcend said determinations and "move beyond itself". This notion Hegel links with the idea of the "ought" - which is where Wallace sees the entire discourse leading directly into the Kantian idea of rational self-government. The "ought" is a rescued version of the categorical imperative.¹⁹ Only by abstraction and self-criticism can a being move beyond the dictates of its inclinations alone. Only in the space beyond our finite limitations are we capable of understanding the possibility of a life without them. This freedom is acquired speculatively and reflectively, through the workings of our internal reason.

Wallace neatly sums up the virtues of the self-transcending being as the endpoint of this particular dialectic:

¹⁸ This seems to bear an at least surface affinity to Sartre's arguments for the radically free mind. A brief discussion of the interrelation between Hegelian and Sartrean accounts of radical autonomy follows shortly.

¹⁹ Brief note for those alien to Kantian notions - the categorical imperative in Kantian terms represents freedom through universalisable rational action, as opposed to the hypothetical imperative which simply tells the agent how to satisfy a contingent inclination.

[A] "self-transcending" being ... solves the problem that "something" and finite being were unable to solve: It has its quality by virtue of itself and thus has the "reality" or "being in itself" that something and finite being failed to have ... By going beyond its finite qualities, the self transcending being is in charge of whatever qualities it will now have (Wallace, *Ibid.*).

Wallace (*Ibid.*) feels that this line of reasoning rescues the Kantian notion of freedom by proving that nature and freedom are not counteractive or opposing forces. The free being must, after all, transcend from the contingent and determinate elements of nature to the infinite, not abandoning nature completely so much as sublimating it within the process of transcendence. For now, it is time to leave Wallace and the realm of Hegel's logic, and assess the implications of this understanding of individual freedom.²⁰

As Davis (in Cullen (ed.), 1988: 48-49) illustrates, drawing on Hegel's exposition of his psychology in his *Philosophy of Mind*, Hegel sees the end-point of the development of individual will just discussed as a state of "radical autonomy" in rough parity with Sartre's conception of radical freedom, in that the agent comes to assume total rational responsibility for her actions. As Davis clarifies:

Fully self-conscious free will is acquired when the agent can fully explain and articulate his own activities to himself and others. Free will is therefore attained when the individual realises that he *is* radically autonomous. His thought and intentions are embodied in his actions ... The agent can abstract himself from anything. The substance of thought is practice, practice is articulated in the will and the will implies freedom of choice (*Ibid.*).

Davis (*Ibid.*) argues that Hegel departs from Sartre in linking his conception of mind with his understanding of the ideal social order. It is his claim that certain types of social orders contribute to the development of the faculties

²⁰ Wallace's further discussion in the same paper I have omitted, largely for reasons of space. Of particular interest to the reader may be his discussion of the clash between "spurious" and "true" infinity, a doctrinal assessment I see as not entirely relevant to our present purposes.

that allow for full-blown freedom, rather than representing barriers to them. This is foundational to Hegel's conviction that an ideal social order is an embodiment of freedom, rather than a managed threat to it. This, as shall be examined in detail further on, is how we may usefully interpret Hegel's notion of a concrete universal or common mind. The success of Hegel's position on this can only be fully assessed when we come to examine his conception of the ideal social order in Chapter 4. But a crucial immediate concern with Hegel's understanding of freedom as rational abstraction presents itself here.

iii. Hegel and the reciprocity thesis

As Patten (1999: 82-84) identifies, any account of freedom that premises itself on the rational self-determination of the individual must eventually hit upon the recurrent social theory clash point of the "reciprocity thesis". This is essentially the claim that rational self-government sets citizens up in an appropriate relationship to ethical requirements, that freedom and subjection to moral law are ultimately reciprocal. This is a burden of proof that Hegel's social theory must bear alongside Kant's. It stands accused firstly of setting up an impossible standard of free action, and secondly of attempting to derive ethical requirements from principles of rationality, which the broad sweeps of modern philosophical judgement hold as impossible.

Both of these come down to two more fundamental issues, both of which form branches of the "empty formalism" objection. The first is that rational self-determination as a measure is essentially vacuous. The categorical imperative, Kant's formula for rationally self-governed action, in that just about any action can meet the criteria for universalizability. This is an objection directed against Kant by Hegel himself, and it is one that Patten (*Ibid.*) contends most modern commentators do not hold by.²¹

²¹ I absolve myself of entering the specifics of this debate, as it would be tangential to my current purposes, and sheds no real light on Hegelian principle as such.

The second issue, however, is one that Patten (Ibid. 87-88) believes strikes at a profound weakness in the Kantian system, which the Hegelian system can remedy. Rational self-government, as explained above, requires abstraction from the contingency of desire and inclination. In so doing, we are meant to come to authentic reasons-for-action that do not appeal to some irrational desire, which is held in the same intellectual contempt as appealing to some irrational and arbitrary authority. This ultimately forms the bedrock of Kant's arguments for the categorical imperative. If there are ultimately two forms of reason for action, the legitimate form of the maxim (the categorical imperative) and action based on desire, and desire is proven to be a limitation, then the only standard of free and ethical action is the categorical imperative. When we cut through the abstracts and come back to more practical elements of this, we can imagine ourselves trying to get an individual to justify her reasons for acting. She most likely claims some desire or another. When we ask what underlies that, the answer will be some broader desire or inclination, and so on and so forth. This is the process of abstracting the individual from her contingently given desires. Now the categorical imperative is meant to halt this infinite regress. But, the objection runs, why does it? Why should an agent not look for some justification or reason for following the categorical imperative itself? The answer Patten (Ibid. 92-93) draws out of Kant's sympathisers and defenders amounts to a series of assumptions that ultimately beg the question. The categorical imperative is assumed to be "intrinsically reasonable", thus rendering the argument quite starkly circular: this is precisely what Kant and his defenders are trying to prove.²²

This, Patten (Ibid. 93-94) contends, is why Hegel describes the freedom of the individual will as a "contradiction"²³ - once abstracted from all particular

²² There are obviously further subtleties and sub-issues that arise, but I have, for space and clarity, cut Patten's account to the central points. I advise readers interested in this dynamic to consult the original text.

²³ VPR iv. 118 as cited in Patten, 1999: 94.

commitments, the will seems stripped of any reason for action. To prove that there is a sense in which rational self-government ultimately results in a commitment to other-regarding action, Hegel must resolve this contradiction (explain how content for the self-determined will is in fact generated) and in so doing, prove that this content will engender in the individual will a commitment to ethical action.

In assessing Hegel's own contention of how he does so, we are drawn to the confusing space of the concrete universal, for it is this that Hegel understands as key to resolving the contradiction.²⁴ Patten (Ibid. 94) points here to PR §24 where Hegel distinguishes between the "concept and its object", describing the will as "*universal* because all limitation and particular individuality [*Einzelheit*] are superseded within it". Hegel claims this is possible as the formal will is an embodiment of the concrete universal, as opposed to communal universals of reflection, or the abstract universal described in reference to the indeterminate will. The universal he has in mind, which he feels the will ultimately comes to reflect and embody, is the "*universal which extends beyond its object*" (Ibid.). Hegel thus sees the fully developed will as the embodiment of rationality, and thus, by his terms, of freedom itself.²⁵

The concrete universal, Patten (Ibid.) explains, is embodied and made actual through teleological structures guided by an "inner purposiveness". As shall be discussed in more detail in Chapter 4, the goal and nature of organic structures

²⁴ Patten, like many commentators, disavows himself of the need to delve into precise interpretations of what *Geist* might mean by modern terms. (This is something I will attempt to resolve towards the end of this chapter.) Nonetheless, his ideas on the application of the concrete universal to the problem of the self-determining will, as shall be brought out in Chapter 4, lend weight to my final thesis on the matter.

²⁵ Patten (1999: 95-96) follows Hegel's reasoning, and examines the connection between the concrete universal and the teleology of organic structures. He illustrates the Hegelian notion of teleology further by bringing out Hegel's exposition of teleological relationships from the *Logic*. These two follow a structure of Hegelian reasoning that is immanently consistent with the remainder of his system. The relationship can be analyzed from three "perspectives". The "subjective end", which is grounded in pure subjectivity counterposed to the external world, the "means" which are the factors that affect the way the subjective end is played out in objective reality, and the "realised end" which is the transformed objective sphere wherein ends are achieved in reality through the "deployment of various means".

is to adapt to circumstance to ensure their own self-preservation. This framework, as applied to the concrete universal, suggests simply that it generates particular ends as means necessary for its own continued existence. It still qualifies as self-generating since all the particulars deployed, though new developments, can be traced back to something that was present from the very start, namely the purpose of the entity. This, once applied to the concrete universal at hand, namely the free will, leads Patten to translate this dynamic of Hegel's thought into an argument far more recognisable to modern sensibilities:

In some sense, at least, the generation of the content of freedom simply involves the application that Kant's famous dictum that "he who wills the end wills (so far as reason has decisive influence on his action) also the means which are indispensably necessary and in his power" (Ibid. 97).

But this, Patten (Ibid. 97) warns, has only taken us halfway towards resolution. The fact that it sets up a plausible structure of interplay between means and ends as parts of a self-generating whole is worthwhile. But this leads nowhere without the concept of a given end that can generate particular commitment, and thus particular content that does not fall prey to the justification requirement highlighted above. There must be some "universal purpose" to which the free will as such is necessarily committed. Kant, as we recall, attempted to do this with the dubiously defensible conception of the categorical imperative.

It is here that one of Patten's (Ibid. 97-98) more inventive and sensible interpretations of the Hegelian system come to the fore. This is that even once it has undergone complete abstraction from all contingent desire and circumstance, the free will remains committed to one grand abstract end, and that is the sustaining of its own independence and freedom. This resolves the issues at hand in a number of key ways. It is exempt from the justification requirement, because it is a necessary condition of possessing the capacities by

which said requirement arises, i.e. the capacity to abstract the self from contingent circumstance it finds itself in, to subject one's desires to critical examination. This is the capacity that Hegel sees as foundational to truly ethical conduct, and the great defensive barrier against irrational conviction and emotive responses masquerading as such:

This self-consciousness which comprehends itself as essence through thought and thereby divests itself of the contingent and untrue constitutes the principle of right, of morality and of all ethics. Those who speak philosophically of right, morality and ethics and at the same time seek to exclude thought, appealing instead to feeling, heart, emotion and inspiration, bear witness to the profound contempt into which thought and science have fallen; for in their case, science itself, having sunk into despair and total lassitude, even adopts barbarism and thoughtlessness as its principle (PR §21 A).

The "infinite subjectivity" required by the process of self-abstraction presupposes a commitment to sustaining one's own free, independent standpoint in reference to the rational realities of the world. This commitment is thus not vulnerable to a further stage of the infinite regress the way the categorical imperative is.

This may seem circular, but it is, upon reflection, rather what Patten (1999: 101) terms "recursive". If agents are to be in any position to even contemplate the determinate ends of freedom, they must maintain a commitment towards their own freedom and independence. This, as grounding for the concrete universal, slots in rather neatly. In Hegel's own words:

When the spirit strives towards its centre, it strives to perfect its own freedom, and this striving is fundamental to its nature. To say that spirit exists would at first seem to imply that it is a completed entity. On the contrary, it is by nature active, and activity is its essence; it is its own product, and is therefore its own beginning and own end. Its freedom does not consist in static being, but in constant negation of all that threatens to destroy freedom (VG: 55/48, cited in Patten, 1999: 101).

This concept of freedom as a continual state of combating unfreedom makes sense as a concrete universal. It amounts, Patten (1999: 101) holds, to an inviolable condition that the self-determining will be committed to the perpetual struggle against factors that seek to undermine freedom, and thus to an ongoing process of self-liberation.²⁶

But, to return to the grander question at hand, how does this resolve the issues inherent in the reciprocity thesis? How, in other words, can this basic abstract commitment to the maintenance of one's own freedom result in a commitment to ethical conduct? The answer is present in the exposition undertaken above, concerning the function of *bildung* in fostering the capacities for true self-determination. If the capacities for freedom can only be developed within a community of mutually recognising agents, then Patten (1999: 103) concludes the universal abstract commitment to the maintenance of freedom wills, as one of its means, the commitment to participate in the ethical institutional structure of the community. This, of course, hinges on the validity of Hegel's concept of social freedom, the viability of which requires substantially more interrogation. Such a discussion awaits in Chapter 4. For the moment, it is useful to pause and consider the broader implications of the high-concept metaphysics discussed in this section for the architecture of Hegelian principle as a whole.

2.2.6 Implications of Hegel's speculative metaphysics

Hegel was certainly not the first philosopher to propose that freedom in its true sense is rational self-government. Both Kant and Rousseau would accede to the broad sense of the sentiment, and following Taylor (1985: 337) it is fair

²⁶ This, I feel, also adds significant force to the closing arguments of this chapter, in which I shall attempt to show that the Hegelian *telos* is a diversified, non-static point, committed to an ethic of tolerance and diversity.

to credit Kant with the first rigid formulation of the idea. He sets Kant and Rousseau up as enemies of the idea of reason as an instrumental tool, popular amongst enlightenment thinkers.²⁷ As we have seen, Hegel sees the rational figure not as abstracted from her natural self the way Kant did, but rather as eventually capable of a higher form of reason that could reconcile that natural self to a rational way of life.

The conditions such a baseline conception of freedom sets upon the remainder of Hegel's system are manifold, and often forgotten by those who cast him as a conservative or apologist for tyrants. The individual remains a baseline driving force of Hegel's social order. The concept of freedom he works towards, though developmental and social in nature is tied to *individual* capacities, and premised on *individual* self-development within a context of a diversified social order dedicated to mutual recognition. I will argue over the course of this thesis that the fuller coalescence of Hegel's principles cannot be any kind of window-dressing for totalitarianism. This, however, is a claim I can only make conclusively once we have a clearer picture of how the Hegelian social order can, in fact come to represent an embodiment of freedom.

What has been established thusfar is that the Hegelian self is a life-long work in progress. The rational capacities of self-formation that Hegel identifies as constitutive of freedom are not contingent features of the individual, but must be developed, intersubjectively and through exercise of them. Kelly (1969: 346) recalls that Hegel "ridiculed the Gascon 'who would not go into the water until he could swim'". The will which is truly self-determined and free is not something we are born with, so much as something we develop through exposure to the reality that surrounds us, through an ever-growing awareness and reconciliation to the rationality of the social structure. Of course, for this

²⁷ Mainstream enlightenment reasoning, as evidenced by the earlier discussion of Mill, saw reason as a mechanism which provided the means for advancing ends or goals that were determined by instinct or

to be so, said social structure must indeed *be* rational. Where it is not, experience must allow it to be criticized and amended, in a broader social reflection of the process the individual will undertake. It was with this in mind that Hegel constructed the complex social blueprint that is *The Philosophy of Right*. A discussion of Hegel's social theory thus follows on perfectly here. The conceptual vocabulary set out by the theoretical breakdown of Hegelian self-formation above will be crucial in understanding the driving force, structure and aims of what follows.

2.3) The Role of the Individual in Hegel's Political and Social Theory

2.3.1) Outlines and preliminary comments on Hegel's social theory

The values of individuality and social membership are not to be thought of as competing or mutually exclusive ideals. In fact, each of these ideals, properly understood, can only be realised in conjunction with the other (Neuhauser, 2000: 15).

The conclusion Neuhauser puts forward here spells out the basic contention I will be defending in this section. His reading of Hegel (from which I have drawn much of the structure and echoed much of the substance in my discussion here) sees Hegel as holding that "social theory must reflect on the kinds of subjective capacities individuals require in order to realise themselves as free ... and on the role institutions can play in equipping their members with those capacities" (Ibid.).

Hardimon (1994: 257) echoes such sentiments in a slightly narrower sense when he claims that one of the central problems that Hegel addresses is "how meaningful political participation can be combined with the possibility of

feeling. Kant was the first major philosophical thinker to put forward the idea that reason was what had to

leading a private life". It is thus that Hardimon feels that Hegel can be understood as laying out in his social theory "the basic ideal of a social world that is a home" (Ibid.).

It is in the identification of the ideals and principles of Hegel's social framework that I feel the true value of modern Hegel scholarship lies. Anachronisms of policy and attitude abound in the theory, among them Hegel's understanding of class, of gender politics and of the supposed viability of a massively hierarchical politics. I contend that most of these minutiae refer to dusty extensions of his theory that can be cut away without any significant damage to the coherence or the viability of the principles that make up the whole. Many such cases will be briefly discussed in the coming discussion, but I feel to focus on them is to miss the point. In presenting the arguments and discussion I do here, I fall amongst a number of modern Hegel scholars (Neuhauser, Hardimon, Patten and Wood come to mind) who have distilled Hegelian principle through abstraction from the almost suffocating detail of the original texts.

This serves as an introductory to the treatment of Hegel's social theory in this thesis. This section is more narrowly concerned with the role and place of the individual in Hegel's social schema. Given the comments just made on the aim of Hegel's social theory in general, the task of the following discussion is fairly straightforward. We must understand how Hegel understands the individual progressing in capacity and understanding through the three levels of freedom Hegel lays out in *The Philosophy of Right*. We must thence understand exactly how sacrosanct the individual's sphere of private will remains in the social order. This I undertake through an examination of Hegel's doctrine of private property, and the crucial implication it holds in terms of Hegel's understanding of the interrelation of property and personality. I thence examine Neuhauser's outline of the Rousseauian "two-fold" (subjective as well as objective)

ultimately provide said goals.

structure of freedom, and present his clarifications of the subjective element. Following on from these is a discussion of the extent to which Hegel's social order can be understood as methodologically atomistic (whether, in other words, it secures the goods and ends of individuals even if these are not the only goods and ends it achieves). The discussion that follows establishes a reading of Hegel's position that is faithful to the aim of preserving (and enriching) individual freedom that his speculative metaphysics commits him to. In proving such, as I see it, we are a fair way to identifying a significant respect for individual rights of conscience and practice in the Hegelian system.

2.3.2) Levels and divisions in Hegel's theory of Social Freedom

The basis [*boden*] of right is the *realm of spirit* in general and its precise location and point of departure is the *will*; the will is *free*, so that freedom constitutes its substance and destiny [*Bestimmung*] and the system of right is the realm of actualised freedom, the world of spirit produced from within itself as a second nature (PR 54).

From this introductory quotation we can understand how Hegel's speculative metaphysics permeate his social theory. Having discussed these at some length, we are now in a position to examine the principles of the social theory itself. *The Philosophy of Right's* three famed divisions - Abstract Right, Morality and Ethical Life - correspond to various other tri-partheid divisions in Hegel's theory, and the nature of these interconnecting strands shall be laid out in further detail as relevance demands. For now I am concerned with the three levels of freedom that are addressed in each of the book's sections: personal freedom, moral subjectivity and social freedom.²⁸

As with many elements in the Hegelian picture, there is a dialectical progress of individual capacity through these three forms. The individual's increased integration into the social space relies on the progressive development of the

²⁸ I have used Neuhauser's terminology here. Patten (1999: 49) identifies the same three-part hierarchy, but labels the three stages *natural freedom*, *reflective freedom* and *rational freedom*.

capacities for the three forms in sequence. I deal only with personhood in detail here, as it is the level of freedom primarily concerned with the individual as a distinct entity.

i. Personhood as a lower configuration of freedom

Each of these three configurations of Hegelian freedom²⁹ comes to represent a distinct but interlinked set of conditions that the rational social whole must meet in order for it to be affirmed by the individual wills of its members.³⁰ Each configuration represents a form of self-determination. Each is, to Hegel, crucial in its own right. The progression through them as Neuhauser (2000: 27) points out, reflects a relationship of interdependence between the three stages - the higher forms represent a more substantial and developed form³¹ of the self-determination the lower forms embody, and without these higher forms "the lower cannot be actualised in the world in a manner consistent with the essential character of a self-determined will" (Ibid.). Though there is indeed progression from personhood through to social freedom, this does not mean that the final configuration of social institutions may disregard personhood as some earlier immature phase of will. The personhood and moral subjectivity of all citizens must be catered for and recognised in the rational social order if it is, indeed, to be rational (and therefore accessible and comprehensible) at all.

Neuhauser (Ibid.18) explains that personhood, as a concept, represents earliest phase of individual free choice. It is driven by *Wilkur* or mere choosing (as already discussed) and basically amounts to the choice between competing drives and impulses. It must be noted, as Neuhauser (Ibid. 24-25) illustrates,

²⁹ Hegel uses the term "shapes" (PR §32).

³⁰ The criterion that the social order as a whole be something commensurate with the individual wills of its members is a central Hegelian condition. The more difficult issues of whether the individual will must be "re-conditioned" in order for this to be so will be addressed further down, when we come to examine the subjective disposition of citizens to the social order.

The question of whether or not the overall good of the social order is reducible without remainder to the individual goods of its members will be addressed in the coming section on methodological atomism.

³¹ Hegel in PR §32 Z uses the term "richer".

that this does not merely encompass the brute physical drives (although Hegel does indeed consider the “animalistic” needs of human beings as an essential part of human nature that must be catered for)³² but can include what Hegel calls “spiritual” inclinations.³³ The dialectic of the will in the social process begins here, for though there must be knowledge of external reality there is no real sense of another will as an obstacle to individual endeavour. The domain of the arbitrary will in the social order, i.e. the delineations of what falls exclusively within the individual’s jurisdiction, is the individual’s life, body and her materially owned possessions.³⁴

The concept of a delineated space around individual personality, body and property will be readily recognisable to rights-primacy theorists and social contractarians in general. For them, the debate over legitimate state practice centres on how to ensure this kind of “negative” sphere is kept as sacrosanct as possible.³⁵ But, for Hegel, it is merely a starting point. The capacity to understand one’s self as a discrete individual with particular projects and products of arbitrary will is only a lower form of freedom. Hegel, with Rousseau, sought to understand how a society composed of distinct wills, with projects and expectations that will inevitably clash, can still remain free. The question, as Neuhauser (2000: 27) reminds us, is different and slightly more complex in Hegel’s case. We must remember that his project is not driven by concern for enshrining abstract notions of pre-social freedom that drives rights

³² As shall be seen as we examine more of the conditions Hegel sets upon the rational social order, part of the requirements set down in order for it to be affirmed independently by each individual will is the provision that such basic needs as sex and food be in some sense catered for. This has interesting implications when we pause to consider what kinds of “basic” needs fall into the gamut of those that Hegel is considering here. This is an issue to be addressed further on, when I lay out how Hegel sees individual interests playing into the overall social order, and how he feels clashes between individual and collective interest are to be resolved.

³³ These correspond to a higher level of will development and correspond to one’s ethical duties. They are mediated by both reason and social interaction. The example Neuhauser gives is the desire to care for one’s children, which is neither an animalistic impulse nor an abstractly determined rational end. (Neuhauser, 2000: 302 n.10)

³⁴ One element of this sphere is more complex than it seems, and this issue of what Hegel understands by private property, an issue discussed in the section immediately following.

³⁵ The key contrasts between Hegel and the social contractarians will be brought out in the section on Methodological Atomism below.

primacy, but rather by concern for the full actualisation of freedom for each person through rational reconciliation to social reality. Thus, true freedom - i.e. the true capacity for self-determination (being, as noted above, a cocktail of the capacity for self-reproduction and freedom from the dictates of externality) - can only be realised in the sphere of practicality. This practicality is the plurality of diverse ends operating within a common system that marks a modern human society.

ii. Implications of freedom beyond personhood

It is contact with this particular aspect of social life that Hegel feels necessitates the progression from egoistic personhood to a state in which one recognises and accedes to a concept of the "good", i.e. begins to consider the ends of others, and thus the collective ends of the society one lives in.³⁶ This is moral subjectivity, the second level of Hegelian freedom.³⁷ Hegel outlines his argument for the necessity of the progression of freedom beyond personhood in the opening pages of *The Philosophy of Right*:

If we stop our enquiry at arbitrariness, at the human beings' ability to will this or that, this does indeed constitute his freedom; but if we bear firmly in mind that the content of what he wills is a given one, it follows that he is determined by it and is in this respect no longer free (PR §15 A).

Thus it is within the sphere of intersubjective social activity that the further enrichment of self-determination must occur. It is here that Hegel's account

³⁶ Hegel and Rousseau proceed along very similar argumentative lines in proving how this transition happens. As individual wills clash against each other, it becomes more and more apparent that the plurality of ends and complete arbitrary will cannot co-exist. Through the mediation of social contact, the subject comes to rationally recognise the necessity of social co-operation, and eventually internalises the good of others as part of the "general" will that she comes to recognise as representing both her own good and the good of all. This is not a claim merely that social participation becomes seen as enlightened self-interest, as it is in strictly contractarian visions of society. In Hegel and Rousseau's eyes, the very mindspace of the subject is expanded to include the good of others, and she begins to strive for and affirm goods beyond her own, not out of an egoistic agenda, but rather an increased awareness of her role in the social organism and its value to her.

diverges from what is commonly understood as “freedom” in a liberal democracy. He identifies as constitutive of freedom the very structures natural rights theorists understand as constraining it - these being the state and the institutional structures of modern social life. It is such arguments that have led to Hegel being cast as a conservative and proto-fascist. It is my contention that this is profoundly not the case, but such a claim requires far more interpretation and clarification.

The analysis of this chapter thusfar has provided us with the crucial insight that Hegel’s freedom is one tied to rational reconciliation between self and context, an individually driven process of intersubjective development, which has, as its ultimate outcome the individual making herself into her own end. We are now faced with examining Hegel’s contention that the institutional structure of the modern social world reflects and nurtures this very process and is thus constitutive of the higher level social freedom he argues for.

This, at first, seems something of a difficult task. As Wood (1990: 50) puts it, the claim that our social duties and roles do not constrain but rather liberate us “may seem to go a step beyond paradox, passing over into doublethink”. But Wood thence immediately points out that it does, upon a fuller consideration of the Hegelian system, make sense. The social role-fulfilment Hegel describes becomes liberating in that it “allows us to actualise ourselves as part of this rational system of co-operation” (Ibid.).

The further analysis of Hegel in this thesis will be dedicated to making sense of and assessing this claim. The discussion of the Hegelian social order will clarify and assess how the institutional framework of *Sittlichkeit* can be understood as constitutive of a higher freedom than its members could achieve in isolation. The progression and integration of personhood into the broader framework of the social order will be dealt with there. The remainder of this chapter,

³⁷ Moral subjectivity, its nature and its place in ethical life will form part of the subject matter of Chapter 4.

however, is dedicated to remedying some of the central and immediate concerns that arise, namely that Hegel seems to sacrifice the individual upon the altar of the social order. While Hegel claims that his system must cater for the freedoms of personal space, it is not immediately clear that it in fact does so. In order to assess this, it is necessary to understand the role Hegel feels the *particularised* individual space has in his enriched idea of freedom. In more practical terms, we must know what role the individual as a particularised entity occupies in Hegel's political and social framework. A clarifying entry point to this can be found in Hegel's doctrine of private property.

2.3.3) Personality as Property and Property as personality

i. The Hegelian Doctrine of Private Property

"The person must give himself an external *sphere of freedom* in order to have being as Idea" (PR, §41: 73). With this typically abstract and bold declaration, Hegel begins the discussion of property in the "Abstract Right" section of *The Philosophy of Right*. He goes on to outline a doctrine he credits in part to Fichte, of property as an objectified reflection of character, and of private property as a constitutive element of freedom. An added and interesting complexity is the way in which the definition of property is expanded to include thought and personality. Both these dynamics bear examination if we are to fully understand the notion of abstract right in Hegel.

Let us begin with the first set of dynamics - property as a constitutive element of freedom and objectified reflection of character. Patten's (1999: 139) exposition and argument on this issue paint Hegel and Fichte as putting forward a fairly common, if lofty, justification of private property, with some interesting philosophical additives. The basic reasoning is that if a concept of free agency, and in particular the ability to perceive the effects of one's will

and one's will alone, is a necessary feature of individual freedom, and in fact a constitutive element thereof, private property must be sacrosanct in order to facilitate this. The individual must be able to perceive her own efficacy upon the objects with which she labours, the elements and tools with which she shapes her world. Objects and material things, which she shares with others, cannot grant her this perceptible personal efficacy. Furthermore, in a practical sense, others may try to deliberately hinder or obstruct her, by claiming, altering or mismanaging the objects upon which she labours, in the process of furthering their own ends. If freedom is, as painted thus far, a heady cocktail of personal efficacy and options within a social context, then the negative spaces of private property must be enforced to allow this.

The more interesting element of the argument is what Patten (Ibid. 140) describes as a *developmental thesis* within Hegelian notions of property. The self grows by interaction with its external environment, but cannot do so without interacting with elements of it to which it alone has access, and thus understanding the fuller context of the limitation and possibilities that apply to it as a self. Property represents both an objective set of elements by which the individual objectifies his character and personality, and a tool of *bildung* or (as already discussed) ongoing self-education.

ii. Implications of Property as Personality

The latter idea - of property as a reflection of personality, is perhaps one of Hegel's more fascinating arguments. Property is understood not simply as things humans possess, but an external reflection of our character and the objectification of our free personality. It is part of the ways in which we declare ourselves to the world. We have affected and altered this object as no one else could have, and demand that it be recognised as an extension and reflection of us. When the world recognises the things we imbue with the trademark touches of our character, it recognises us. It is part of our sphere of

freedom as mutually recognised independence. To those to whom this sounds a touch too idealistic or over-analytical a doctrine to be applied to mere objects, consider the immense symbolism that objects of a personal nature can hold for certain persons and social groups, in negative as well as the positive ways. Consider that when the campus feminists of the 60's and 70's burned their bras, to them it was not simply an act of burning an everyday item. It was the destruction of a piece of their personal material sphere they considered an imposition, something unreflective of them as individuals. The same dynamic applies in reverse to gang colours, sub-cultural fashion trends and other concrete symbols of minority ideologies. Admittedly, the preceding examples apply to groups, not individuals per se, but there at least two key reasons for that. The first is that the individual examples are present, but far too numerous to mention. The second is that individuals grow to see their objectified selves in correspondence to certain social dynamics, which they either accede to or disagree with. In the ideal Hegelian political community, these groups co-exist in state of mutually respected particularity, much as individuals do within the broader social context.

In terms of the function of property as a mechanism of self-education Patten (1990: 142) follows Waldron³⁸ in asserting that the reasoning behind this is that human beings need the institution of private property to develop the discipline necessary to be fully functioning and free beings. "Free" here refers to the broader Hegelian sense of the term - free not only from the direction of another's will, but free also from their own ineptitude and ignorance of their own capabilities. The way the individual acts upon objects has certain long-term consequences she must learn to plan for and foresee. The example used in Patten's (Ibid. 141) text is that of a carpenter. Once she has done certain things to the wood, she cannot do certain other things. Only if the wood is her private property are these implications made apparent to her. Common property acted upon by others would give leave her uncertain as to which

consequences and implications are the results of her actions, and which are the result of the actions of another. Patten remains unconvinced that this is a sufficient justification of the institution of private property, as he feels the understanding and self-discipline required of free beings could be as viably developed within a context of, for example, state owned property allotted to individuals for a limited period of time.

Without delving too heavily into this issue³⁹, I would disagree with Patten on the grounds that a sense of consequence, of personal efficacy and accountability is what is required, and this is optimally provided by a sphere entirely the individual's own. This is a point brought to the fore significantly in the master-slave dialectic, and it is one that seems to make a fair deal of sense. If I myself am responsible for my own cooking and cleaning, I will be far more hesitant to waste food or leave dishes unwashed than I would be in the kind of situation where I could defer such duties to a maid. Constant interaction with a material sphere in which I have efficacy and accountability educates me as to my own abilities, the will and far-sighted discipline necessary to act with real intention, and the consequences and implications of what I do. It makes me more careful, more tolerant, more open-minded and (as it gives me a definitive space of self-certainty) more confident. In short, it contributes to and facilitates the development of my formal will, and readies me for formal freedom. Dudley Knowles summarises rather clearly how property functions as mechanism for integrating the individual into the social space in a manner that furthers, as opposed to constrains, freedom:

Freedom would be impossible were men not able to accumulate and dispose of the assets required to support the conception of the good life which they adopt. As soon as this conception goes beyond a conception of the self as atomistic consumer, men will appropriate durable items which can be employed regularly in the satisfaction of socially ordered recurrent desires. Property is a social relation akin to language in

³⁸ Waldron, *The Right to Private Property*, Chapter 10.

³⁹ My task here, after all, is to understand the underlying principles behind Hegelian individualism.

interesting ways, a medium of social transparency, it permits both self-expression and public intelligibility, both self-identification and mutual recognition (Knowles, 1983: 57).

iii. The significance of Personality as Property

Knowles' language analogy is, I feel, far more on the mark than it may seem. For what makes this entire picture more interesting is that mind and personality themselves (or at least the products thereof) count as a form of property. Hegel proceeds very carefully in the early stages of *The Philosophy of Right*, defining his terms at any given stage. In assessing the elements of our material sphere that fall within the scope of our ownership, he includes this footnote to clarify that this includes the physical manifestation, or expressions of internal abstracts:

Intellectual accomplishments, sciences, arts, even religious observances ... inventions and the like become objects of contract ... Knowledge, sciences, talents etc. are of course attributes of the free spirit, and are internal rather than external to it; but the spirit is equally capable, through expressing them, of giving them an external existence and *disposing* of them ...so that they come under the definition of *things* (PR, §43).

Let us then pull together a few strands of Hegelian reasoning. First, take the above provision that our intellectual expressions count as objects within the sphere of our private property (possibly the most direct expressions of our internal free spirit). Take this in conjunction with the Hegelian commitment to the respect of private property as central to mutual recognition relations outlined above. Then consider that, given the aim of private property as a mechanism of *bildung*, these more ethereal intellectual possessions are eminently suited to this aim. They are after all, concretisations of our internal will and character that can be tested and amended against others' experience of them, allowing us to better develop the capacity for formal freedom.

Taken together, this all takes us to a very interesting space. It is one not dissimilar to Mill's political community of interacting minds, where the expression of one's opinions and ideas is both a property that is respected and a concretisation of our selves that can be recognised by others. Said others may then emulate or deride such, opening the possibility in the process of us reconsidering our positions in the light of new understanding. This all, in my mind, points to a Hegelian justification of a Millian vision - a society formed around the mutual respect for the variety of ideas and expressions within it.

What the Hegelian doctrine of property clarifies here is the way abstract right can be analytically cleaved from the remainder of ethical life, allowing us to better understand how the inter-relation between the two operate. As Patten (Ibid. 144) argues, one of the grounding assumptions of Abstract Right is that the social world is composed of agents (wills) which possess *personality*.⁴⁰ This is the arena of distinct, or entirely particular activity, where subjectivity does not quite apply, for there is nothing to be subject *to*. It is only in the social space described by morality and ethical life that subjectivity and substantiality are properties that make sense as applied to agents. Patten (Ibid.) goes on to argue that this has both a positive and negative implication. The positive aspect of Abstract right is that it enshrines the value of personality and property, and we are thus easier reconciled to a social space that allows these too flourish unmolested. The negative aspect is the key contention behind Hegel's vision of social progression: that a society of utterly distinct individuals and ends is insufficient and unworkable if said individuals are to remain truly self-determining. It would, in fact, be self-undermining. Without the recognised boundaries and frameworks of common institutional practice, these private ends would clash, and often be overridden by the arbitrary wills of another.

⁴⁰ See PR §§33-35.

It is the Hegelian contention that agents must both value their particularity and be reconciled to the objective institutions which enshrine it - the institutions of ethical life. To clarify this complex interlocking of subjective freedom enshrined within the objective, I now follow Neuhauser's lead in identifying the Rousseauian structure of Hegel's social theory.

2.3.4) Hegel, Rousseau and the two-fold structure of freedom

i. Hegel, Rousseau and the paradox of social freedom

Perhaps one of the more striking features of Neuhauser's (2000: 81) analysis of Hegelian social theory foundations is his profound unearthing of the debt Hegel owes to another controversial yet highly influential figure of the period - Rousseau. As Neuhauser (Ibid. 55-73) outlines, Rousseau struggled throughout his thought to resolve one central and profound paradox - the very same malady to which Hegel feels he has the remedy - how to reconcile the idea of a society of free beings with the practicalities of obligation within social arrangements. Neuhauser (Ibid.) claims that for Rousseau it is the factor of dependence that becomes the crux issue of his social theory. Social participation (initially the mere economic give and take of the market-stall, later the more complex social arrangement of a law-bound society) exhibits dependence as an inalienable feature. The task of a free society is thus not the impossible one of ridding itself of all dependence, but rather of managing and re-negotiating this dependence so that none is subject to another's arbitrary will. This can be achieved if the individual can come to trust and depend upon not other individuals, but a procedural system of laws and practices that serve the interests of all. This is part of what constitutes Rousseau's famed concept of the General Will.

What we must ask of such a conception is how the individual will can find itself reflected and affirmed in the general will. The answer, Neuhauser (Ibid. 66-

69) claims, lies in an area of his theory where Rousseau parts company with the contractarians and finds himself counted amongst the earliest of the Romantics - the concept of *Amour Propre* or self-love. It translates, in simple terms, into a need for status, a need to count, to belong. This is strikingly similar, in many regards, to Hegel's great founding ideal of mutual recognition. To Rousseau, this is a need that must be served if the will is to be truly free and self-determined. For otherwise, all action of the will is the frustrated wrangling of an outsider, and such a will cannot count itself as free. This brings out another crucial dynamic in common with Hegelian thought - a "thick" conception of community within which individuals find and define their roles and identities. The idea central to such a disposition - of social bonds as an essential locus of character formation and individual identity - will bear discussion shortly.

ii. A Tale of Two Freedoms

What Neuhauser (Ibid. 78-79) argues is that both Rousseau and Hegel must reconcile two distinct types of freedom. The first, what Neuhauser labels the freedom-through-personal independence model, holds that freedom is found in a set of objective conditions that mitigate and prevent the subjection to the arbitrary wills of others. This is a breed of freedom familiar to liberal mindsets - a "civil" freedom of negative conditions that stand guard at the clash points between individual wills, bringing an objective sense of equality to bear to ensure that none is subject to the arbitrary will of another. The second is what Neuhauser (Ibid.) calls the social autonomy model, which holds that laws and institutions should be an embodiment of precepts assented to by all, as recognised foundations of the common good. This is a social space more familiar to the communitarian mindset, in which the individual assents to the goals and principles of the community as ultimately commensurate with her own. This is what Rousseau calls "moral freedom". The personal independence model has to do with an objective freedom - it sets out a set of objective conditions that function as a prescription for a free society. The

social autonomy model, on the other hand, sees freedom as located in the subjective affirmation of the general will by the citizens it rules. This might seem, at first, to set the two at odds.

As Neuhauser (Ibid. 80-81) points out, there need be no real conflict in these two forms of freedom co-existing in a modern state. Moral freedom cannot encompass the entire scope of human life, and thus it is fair and logical to set out a social landscape in which moral freedom is confined to certain elements of life practice, beyond which civil freedom guarantees the individual exclusive jurisdiction over her own actions.⁴¹ Where the two doctrines clash, rather, is in terms of how they understand the connection between individual wills and the general will. One sees the general will as a kind of management nexus for individual freedom; the other sees it as the very embodiment of freedom itself. This seems, once again, irreconcilable.

Neuhauser (Ibid.) resolves this by pointing out that the two are not only reconcilable, but in fact mutually dependent. Though the two do represent two distinct breeds of freedom, each without the other is an incomplete form of freedom. Objective freedom alone falls short of the mark in that citizens that do not consciously affirm the principles and provisions that constrain them cannot be said to be truly exercising their free will in obeying said conditions. Conversely purely subjective freedom in the sense under discussion here is pointless if the principles that the subjects affirm objectively promote unfreedom. Individuals that will their own slavery cannot be said to be exercising their free will in any complete and meaningful sense.

iii. The Two-Fold structure

Thus what we find on the Rousseauian social drawing board is a two-fold structure of freedom which I maintain, following Neuhauser (*Ibid.*), that Hegel shares. True and complete social freedom is a combination of objective principles that themselves promote freedom, and the requirement that these be affirmed by the subjects as their own. As a framework, this indeed makes sense, but much more is required for us to assent to this as a viable picture of freedom in a modern state. We must know what this subjective disposition entails, how it is commensurate with individual wills, what these objective social conditions are, and how empowered the individual is to question (and change) them.

The nature of the subjective disposition and the extent to which Hegelian social freedom can be considered individualistic will be examined in the sections that immediately follow. The nature of the objective conditions of freedom and the extent to which the individual has freedom of conscience in objecting to these will be examined in Chapter 4.

2.3.5) The Subjective Disposition

The first of the major conditions shared by Hegel and Rousseau, as just discussed, concerns the subjective relation individuals must have to the rational social order in order for it to qualify as free. This line of enquiry leads us further on into the murky terrain of how individual wills may find themselves expressed in the collective will, and seeks to answer the question of what subjective freedom-promoting value social structures and institutions can be to the individual.

⁴¹ This is indeed the kind of final social structure I see Hegelian principles leading towards, but much more discussion and exposition is necessary before we may examine where the boundaries of each freedom

Much of this will be concerned with assessing how individuals can come to regard the goods and ends of society as their own, and thus obey social dictates not out of blind adherence but as a consequence of their enlightened free will. In seeking to understand this, I follow Neuhauser (Neuhauser, 2000: 85) once more and examine the structure and content of this "subjective disposition". At a fundamental level, Hegel sees the individual's ideal relation to the social order as one of "trust" (PR §268). This is not however, a blind breed of trust that allows the social order to entirely determine individual ends. The trust in question is drawn from the belief that the state will do quite the opposite:

[The political *disposition*] is in general one of *trust* (which may pass over into more or less educated insight), or the consciousness that my substantial and particular interest is preserved and contained in the interest and end of an other (in this case the state), and in the latter's relation to me as an individual ... As a result, this other immediately ceases to an other for me, and in my consciousness of this, I am free (PR §268).

Thus understood, this trust is thus drawn from the sense of one's ends being undifferentiated from those of the social order (see PR §147). This latter requirement plays directly into one of the key controversies that plagues modern Hegel scholarship. The language of being "undifferentiated" seems heavy with freedom crushing tendencies, as it seems to strip the individual of any right of criticism or distance towards the social order. As Neuhauser (2000: 85) takes constant pains to point out, the semantics of expression notwithstanding, this is a position profoundly at odds with the innate structure of the Hegelian social vision. The attitude towards the space of personhood that must be preserved in the ideal social order represents but one of many strands in Hegelian thought that point towards a complete resistance of blindly adhered to social principles. The claim I will strengthen throughout this section, and indeed throughout this thesis, is this: that the individual's rights to particularity, criticism and rational distance from the social order are cherished and necessary elements of the Hegelian social framework, and that

sphere lie.

by modern terms the consequences of these principles paint a far more free-flowing picture of Hegelian social membership than is usually thought.

For now, let us begin by examining the content Hegel gives to the subjective disposition. In understanding that, we begin to understand what Hegel feels must be true of the social order for individuals to feel themselves free in co-operating with its dictates. Hegel feels the enlightened attitude to the social order must exhibit three types of "unity" between one's self and the social institutions that surround one: a unity of will, a unity of essence and a sense that these institutions are products of the subjects own ongoing activity (PR §257). Once we have examined each of these in turn, I will be in a better position to discuss the broad principles that underlie the subjective disposition as a rafter of Hegel's architecture of principles.

i. Unity of Will

Unity of will, as a condition, is premised on two further defining features, distinct yet closely related. The first consists in a harmony in content between the individual and social will. As Hegel recursively puts it: "In furthering my end, I further the universal, and this in turn furthers my end" (PR §184 A). This is most apparent in Hegel's sphere of civil society, where Hegel demonstrates that individuals only have to pursue their own ends to further the social good of productive labour and serving social needs. Neuhauser (2000: 87-88) sees this as an explicit incorporation of Adam Smith's vision of a society of self-interested individuals ultimately producing a social space that serves all.⁴² But, as Neuhauser clarifies, the Smithian vision alone is too limited in scope for Hegel. The apparent unity of content in this breed of social interaction happens "behind the backs" of the social members. The social will, and the

⁴² This also bears similarity to Kant's doctrines on the issue, but as shall be shown as I examine the further complexities of the Hegelian social space, it is but one level of Hegel's analysis and prescription, and for him it does not go far enough. This led Hegel to deride and dismiss as incomplete Kant's final vision of an ideal society. The reasons for this shall be examined shortly.

wills of other subjects remain an external factor (and even an obstacle) in the minds of the subjects. Hegel's grand quest for the "interpenetrating unity of particular and universal" demands that this unity eventually be a voluntative, conscious thing.⁴³ As Wood (1990: 37) illustrates in his enquiry into the nature of Hegelian freedom, it makes no sense to use Hegel's principles to speak of coercion of will, as the will is always capable of detaching itself from its desires, its contingent factors and circumstances. It must assess courses of action independent of these.⁴⁴ Thus, the particular will must (in ways yet to be fully discussed) find itself reconciled within the universal of the state, as it was within the instinctual common purpose of the family.

This leads us to a crux point in the Hegelian understanding of the individual. What exactly does Hegel mean by "particularity"? Neuhauser (2000: 86) maintains that the particular in Hegel is always associated with two key conditions: Qualitative determinacy and difference from others. The former refers to some kind of determinate quality, a fundamental that defines one as a person, which is not shared by all other members of society and humanity in general. The latter is concerned, in a much related way, with qualities that render the individual different from at least some other individuals. The upshot of this extremely open definition of particularity is that the particular is *not necessarily the unique*. Particularities can, and in fact must, be a source

⁴³ It serves, at this point, to elucidate the three types of unity Hegel feels make up the "moments" of the Concept – in other words the tools by which we may assess the rational progression of the individual into society. These are, respectively, immediate unity, difference, and mediated unity. As they correspond to the three institutions of ethical life – the family, civil society and the state – the three moments can be defined as follows:

Immediate unity – typified by the relationships of the will within the family (to be explicated in the main text shortly). It is an instinctual unity, arising from an emotional sense of belonging.

Difference – Typified by the relationship of the will within civil society, wherein individual wills are unified by their coherence within the system, but are largely unaware of such, pursuing their own particular end.

Mediated Unity – The highest level of progression, wherein the particularities of individual wills find themselves harmonised within the universal, typified by the State. Individuals find both the varied particularities of civil society and the sense of belonging and emotive common purpose they know as members of the family.

(See Neuhauser, 2000: 135-137).

⁴⁴ This relates back to the understanding of the will in Hegel's speculative metaphysics, as discussed earlier

of commonality amongst citizens. The clearest examples of this can be found in such determinate qualities as family roles and vocations within civil society. Being a father, though a role formative of particularity (in that it is a determinate quality not shared by all, and renders one different to at least some members of society and humanity) does not render one incapable of sympathizing with other fathers. Quite the opposite applies, really. The same can be applied to fellow cobblers, stockbrokers, I.T. support specialists, actors, writers, artists etc. It is, in point of fact, the increasing awareness of these commonalties that leads the individuated wills of the social space etched out as Civil Society to unify and fuse their interests in trade associations and collectives. These, as we will see shortly, are crucial in allowing them to feel their will has efficacy at the state level.

ii. Unity of Essence

This leads in rather neatly to what Neuhauser (2000: 93-95) sees as the second key moment of Hegelian social unity within the subjective disposition - Unity of essence. This has to do with individuals finding themselves both confirmed (as beings of status) and more importantly *formed* by the roles they find themselves occupying within the social order - as particularised family members, workers within civil society and citizens of the state.⁴⁵ Hegel sees these roles as not just a matter of individual vocation but in fact formative of individual identity itself. Thus the "essence" referred to is the abstract nature of the individual made practical through an actualised identity. These identities do indeed fall within the realm of self-conscious reflection, but they exist through a set of objective conditions and precepts already at work within the objective social structure. Society recognises the roles of mother, artisan and citizen - thus they have an objective, recognised existence within the social whole.

This must not, Neuhauser (2000: 95) cautions, be understood as a claim that individuals are nothing more than the roles they perform. These practical identities give individuals expression and social form, and can thus be considered practically expressive of who they are. But this by no means reduces the individual to some kind of social automaton. These roles can basically be seen as a rationally mediated expression of the individual's abstract self. They are crucial in that they give said self a framework and *content*. The social roles individuals occupy provide them with not only their day-to-day projects, but also their lifelong aims. Their ends, and thus their will, become bound up in the fulfilment of these roles. This, in Hegel's terms, amounts to "stepping into determinate particularity" (PR §207).⁴⁶ Once we unpack the language surrounding these "practical roles", it becomes clear that we are dealing with a sphere of individual obligation towards the social structure.

If Hegel is correct in asserting that these identities are indeed crucially formative of the practical self, then to deny such obligation becomes a case of denying selfhood. Hardimon (1994: 157) provides a backing and substantiation for Neuhauser's position in arguing that in rejecting social roles, both in thought and practically, "one's self-understanding will become abstract and impoverished". A lack of a sense of one's context leaves one feeling alienated from the practical obligations of the role they occupy, as well as the emotive context of one's community.

This has led us into dangerous territory. Hegel could be interpreted as saying that in the name of preserving the authenticity of the individual will that Hegelian freedom cherishes, society could be empowered to punish or coerce

⁴⁵ A key example of this pattern can be found at PR §162 where Hegel describes how the supposed "self-limitation" of marriage, is not a limitation at all: "[S]ince [individual personalities] attain their substantial self-consciousness within it, it is in fact their liberation".

⁴⁶ Wood (1990: 209) sees this aspect of the "ethical disposition" as Hegel's response to the Kantian dichotomy between duty and inclination.

those who do not fulfil their duties and obligations in the manner society defines these. Since these roles are objectively structured and recognised, this would seem to deny the individual the right to criticise the nature of her social roles and obligations. This line of reasoning should sound vaguely familiar. It is after all, remarkably similar to one of the threshold communitarian notions - that the socially embedded nature of individual identity renders any criticism of established norms on the part of the individual null and void.

But, I would argue, this is certainly not Hegel's take on the matter. First, let us recall that these practical identities come about as a mediated unity between the particular self and the social institutions and circumstances surrounding it. As Neuhauser (2000: 98-99) clarifies, the particular and the universal, as with just about all Hegelian processes, each form a branch of this unity. There is indeed an increased reconciliation with the universal, in that the same dynamic that applied to the unity of will applies here - the commonalties among particular roles lead to an increased awareness of the social whole.⁴⁷ But the particular, as always, is never eliminated. In order for the nature of these roles to be individually affirmed, *their content and very nature must be subject to rational criticism*. Individuals must have the capacity and space to distance themselves rationally and objectively from these obligations and be able to see them as rationally justifiable.⁴⁸

In addition, Hegel himself held that there were certainly times when rationality may dictate a need to *withdraw* from the social world:

When the existing world of freedom has become unfaithful to the better will, this will no longer finds itself in the duties recognised in the world and must seek to recover in ideal inwardness alone that harmony which it has lost in actuality (PR §138 R).

⁴⁷ These in fact lead to the kind of elective associations among, for example, those of similar occupation that Hegel sees as performing a crucial mediating role between the lower levels of *Sittlichkeit* and the State.

This Hardimon (1994: 158-160) takes as proving that "it is not Hegel's view that there is a sort of transhistorical guarantee that people will always be able to find meaning in the existing social roles". Hardimon ties this to Hegel's perception of the impoverished conception of freedom in the ancient Greek world, where individuals had no consciousness of themselves as distinct from their social roles, and were thus "unconsciously united with the universal end" (VG, 249/202 as cited in Hardimon, 1994: 160). It does not take a Hegelian metaphysical analysis to understand that individuals in such a sphere could not be considered self-determined. What is necessary is the "mediated unity" with the universal, requiring the capacity for rational reflection that proper *bildung* engenders. Hardimon (ibid. 167) identifies the crucial step Hegel makes here as one of his most enduring insights. Hegel is not calling for an "immediate" identification with one's social roles, but for a *reflective* identification. This, Hardimon contends, "is to identify with them *as a self*". As such, Hegel's account *includes* the moment of alienation from one's social framework that accounts such as Kant's idea of the moral subject describe, but moves beyond this to a point where such alienation can be *overcome* through reflection.⁴⁹ This progression of abstraction, reflection and identification, as shall be shown numerous times in the inquiry to come, applies to the full breadth of the Hegelian social system. Since it implicitly sets out the condition that the ideal social order must be rationally affirmable upon reflection by its citizenry, it is a dynamic of his thought that contributes, I feel, to the "commonality of consequence" I aim to prove his principles share with Mill's.

iii. The social order as a product of ongoing individual activity

The mediation between individual and social structure (and the necessity that this structure be rationally affirmable) is further clarified by what Neuhauser (2000: 102-104) identifies as the third key feature of the subjective disposition

⁴⁸ Wood (1990: 212) concurs that this Hegel apart from contemporary communitarian doctrines which see tradition and ethos as close to inalienable.

- the condition that individuals feel that the social order and the principles that rule it are the products of their own activity. This dynamic of the subjective disposition makes the rational status of the social order conditional upon individuals understanding themselves as a crucial element in the reproduction of the society they find themselves in. After all, social circumstances are not re-made by each new generation - the social substance, with its attendant circumstances and objective roles to be fulfilled, is pre-existent to the individual that is born into it. But, Hegel reminds us, it nonetheless cannot exist without the individual wills that make it up, and that bear the responsibility for re-producing it. Thus, for the rational social order to be not merely protective, but constitutive of its members' free wills (that on which it must rely for its very existence) said members must have a sense of efficacy and be capable of shaping the content of the social roles they inhabit. Otherwise, even the most coherent and rigid external structure has no hope of finding itself reproduced in the long term.

This presents a profound rejoinder to the accusations of conservatism levelled at the Hegelian thought structure. The idea of a social role as something of permeable content, premised upon reflective as opposed to immediate identification, is not nearly as individuality-crushing as Hegel's critics would have us believe. This is best understood, I believe, as the first level of a dynamic I see running throughout Hegel's thought structure. This is that the broader framework of *Sittlichkeit*, once purged of Hegel's less relevant minutiae, retains significant space for the (re)shaping of the particular content of individual lives and social policies.⁵⁰

Taking all three of the defining elements of Hegel's doctrine of the subjective disposition into account, the following key principles emerge. First, it is the

⁴⁹ Hegel describes this recursive structure of reflective identification at PR §147 R.

⁵⁰ My interpretation on this obviously compliments and agrees with several of the modern Hegelian scholars to some extent or another. In particular, Neuhauser's contention (covered in Chapter 4) that reconciliation to the world *as it is* is not reconciliation to the world *as it stands*.

task of society to construct and manage itself in such a way that the individuals who inhabit it may affirm the goods and ends which guide it as their own. Thus, in a profoundly Rousseauian sense, the individual obeys the general will as an activity of her own freedom. But the second principle relates to issues certainly not raised by Rousseau - the doctrine of social roles as crucially formative of individual identity. What arises from this is, I feel, one of Hegel's more powerful contributions to the discourse of rights. The identity making nature of society must be something that is recognised by the social order, as well as individuals within it. In other words, social institutions must understand that the functions and activities of social members do indeed become a practical realisation of who they are, and that individuals occupy a multiplicity of these roles at once.⁵¹ This has profound implications for our thinking on a number of social issues - most notably issues such as employment as basic right and parent's rights in the workplace. At the same time, the third element discussed above serves as a caveat to the social order not to attempt to define rigidly the nature of social obligation so as to allow no space for the determinate particularity that individuals must imbue their social roles with.⁵²

Just below the skin of all of this courses Hegel's grander design - the project of allowing individuals to see the world as rational place, hospitable and even encouraging of their most deeply held principles and desires. The conditions that arise from the subjective disposition discussed here demand that the rational social order be worthy of its members' trust. This sets off a number of liberal alarm bells, premised largely, as Neuhauser (2000: 112-113) points out,

⁵¹ Modern laws relating to crèche facilities in the workplace, and the concept of parental leave are just two examples of social recognition of the role of parent as co-existent with the equally vital definitional role of worker.

⁵² This is a caveat with profound modern implications, especially in light of recent controversies surrounding psychological and legal approaches to the concept of the ideal family environment. Much family law over the last few decades, in terms of custody battles especially, has relied on a "community" derived normative account of the healthy family. Such thinking is directly responsible (and remains so) for the extreme legal obstacles gay families have faced in gaining legal acceptance. Kaufman cites the particularly pressing example of *Bowers vs. Hardwick*, a 1986 US Supreme Judgement that held that gay couples were not entitled to the same privacy protection as heterosexual married couples. Legal

on our modern day assumption that trust has to be blind and unconditional. This need not hold at all.⁵³ While social freedom can exist for Hegel in an atmosphere of unreflective faith, this is neither ultimately beneficial, nor does it remove the condition that social institutions and their principles be subject to rational criticism and rational affirmation.⁵⁴

Thus, the further condition of the social order's transparency arises. If the individual must rationally affirm something, she must have access to the full range of evidence available, and must be given the space for rational insight into the objective conditions of the ideal social order - discussed in Chapter 4.

The grander question that yet remains for *this* chapter to answer, though, is the one with which it began. This is to what extent the Hegelian thought structure can be understood to cater for the freedom and ends of individuals as particularised entities, as opposed to practically subsuming these into the ends and structure of the whole with some classy conceptual rewiring. More simply stated, (to borrow Neuhauser's phrase) to what extent Hegelian freedom is a freedom of individuals *as* individuals.

2.3.6) Hegelian freedom as a freedom of individuals

The preceding sections have established that the Hegelian thought structure at an abstract and practical level makes significant provision for individual particularity. But, at the same time, there has been much talk of integration of said individual space into a social whole, the more detailed framework of which yet awaits discussion in Chapter 4. Before embarking on such a detailed assessment, it is necessary to establish to what extent the grounding principles

commentators, including the four dissenting judges, held that it was the majority's "obsessive focus on homosexual activity" and its perceived abnormality that led to the judgement being carried.

⁵³ The discussion of trust as set out by Hegel in §268 (cited above) adds further force to this interpretation.

of Hegel's social theory, with its simultaneous respect for individual particularity and intersubjective universality, put forward a doctrine of freedom that caters for individuals in their pursuit of their particular ends, as they stand distinct from those of the whole.

i. Hegel and Methodological Atomism

Neuhauser (2000: 175-176) introduces a discussion crucial to our purposes here when he presents his analysis as to whether Hegel's social theory can be commensurate with Methodological Atomism. As Neuhauser himself takes pains to explain, Methodological Atomism as a doctrine is not to be confused with Methodological Individualism, an intellectual legacy I have already demonstrated Mill forms part of. Methodological Atomism does not amount to the claim that all elements of the social order are ultimately reducible to the states and activities of individuals, but rather that social goods accrue their value in the benefits that individuals derive from them *as* individuals.⁵⁵

It must be noted that Neuhauser (ibid. 176-177) does not metamorphose the Hegelian position into one of methodological atomism entirely. Rather, his aim is similar to mine here: to prove that benefits social goods hold for individuals *as* individuals deserve to play a strong role in the measure of the ideal social order. I will stand with Neuhauser in arguing firstly that Hegel's rejection of the contractarian tradition do not render his position incompatible with methodological atomism, and secondly that many of Hegel's key reasons for rejecting contractarianism (and with it strong individualism within the social

⁵⁴ The question of whether or not individuals can make qualitative changes in the social order they apprehend on the basis of such criticism will only be answered conclusively in Chapter 4.

⁵⁵ This does require some explication – Methodological Atomism can best be understood as a vision of society that understands individuals entering the social space to accrue certain goods collectively they could not accrue alone. These goods nonetheless benefit them *as* individuals. Neuhauser (2000: 177) gives the example of a group of dancers that gather together for mutual benefits such as practice facilities, mutual criticism and general improvement. The good is achieved collectively, but it is the individuals that benefit severally.

space) represent archaic elements of his social theory which require, if not dismissal, at least radical re-interpretation.⁵⁶

As Neuhauser (Ibid.) reminds us, both Rousseau and Hegel understand the state and the institutions of the social order not as traded-off optimums, but as formative conditions of complete freedom, and a strong element of this is to be found in the notion that individuals achieve a form of freedom co-operatively that is more self-enriching, more secure and ultimately more expressive of their developed will within a social context. But it is precisely here that the application of principle becomes tricky. Are we thus to understand social goods and institutions as purely instrumental? In other words, we must discern whether or not such a conception of freedom commits us to understanding individual self-interest as the driving force of the social order, and thus only being able to justify social co-operation on the basis of enlightened service of individual ends.

Hegel's response to this is stated very clearly. He is profoundly opposed to the contractarian vision of society precisely because of these instrumental tendencies (PR §258). To him this would reflect only a half-formed phase of social understanding, appropriate perhaps to the space of civil society in *Sittlichkeit* but profoundly incomplete.⁵⁷ The first key reason is that Hegel understands the state as embodying a supra-individual "divine" good, as "G-d's march on the world" (Ibid.). This is an aspect dealt with conclusively and at length in Chapter 4, and as such, I lay it aside for the moment. We are concerned for the moment with discerning whether and how individual goods are composite of the social good, supra-individual and divine or not.

⁵⁶ Specifically, as shall be seen shortly, Hegel's insistence on the divine majesty of the state and his differentiation of rights according to social classes.

⁵⁷ The elucidation of the difference between the *Rechtsstaat* and the *Notstaat* in Chapter 4 will further clarify this.

In seeking to understand how collective co-operation can be premised on individual good, Neuhauser (2000: 183-188) points to the possibility of a good that accrues to individuals that could only be achieved if said individuals took the good of others into account. It is his contention that both Hegel and Rousseau are committed to the existence of just such an individual interest and that it is, in point of fact, an interest in *freedom*. He argues for this on the basis that both theorists posit a system of institutions that mediate the freedom of particular ends, but put forward, as a further stage of social development, a model of freedom that finds itself expressed in the recognition of such institutions as *formative* of a deeper, more holistic conception of freedom itself. This can only be achieved if the laws of the social order are consciously embraced by all as their own. Thus individuals can only be free in their subjection to these laws if they can will the common good, which furthers the good of all.

Therefore, Neuhauser (Ibid. 189) concludes, social freedom requires that citizens have more than simply private wills. This illustrates that a political theory can indeed begin with consideration of individual interests and lead to a call for supra-individual goods. An offshoot of this line of reasoning is that there must be a constantly maintained and encouraged arena of public debate and openness, to ensure the common good is understood as "by its nature a joint enterprise". This I feel further indicates a commonality of consequence with Millian principles.

But for now, there is *still*, as Neuhauser (Ibid. 197) clarifies, a lingering paradox of a call for affective social bonds ("we") addressed to self-interested, self-maximising beings ("I"s). Hegel believed he resolved this paradox through the integration of particular satisfaction into his conception of an organic social whole that in itself embodies the qualities of self determination. (This, too, awaits full discussion in Chapter 4.)

Unlike the contractarians, Neuhauser (2000: 199) illustrates, Hegel is not concerned with constructing the social order from scratch. He is concerned with showing elements already existing to be rational. But he still imposes the key condition that these institutions be worthy of member's affirmation. The Rousseauian structure of the general will as composed of the wills of individuals vitiates his theory, and thus of the requirement that social goods be reducible to individual affirmation and directed as the satisfaction of individual interest remains strong. While *Bildung* is required to get citizens to see themselves as more than purely self-interested, this *Bildung* points not away from individual satisfaction, but beyond it, to a richer sense of social freedom yet to be fully discussed.⁵⁸

ii. Hegelian thought as inclusive of strong individualism

Considering the full breadth of the current discussion we can see that the Hegelian system *does* include catering for fundamental individual interests as a founding condition of the social order. The proviso that it be good for individuals *as* individuals is a necessary element of it being rational. Where Hegel's idea of the social order builds on this is the conviction that catering for individual interests does not exhaust the range of goods the social order can achieve.

Hardimon (1994: 167-169) clarifies this further by pointing out that various elements of Hegel's ideal social order are tasked with *fostering* strong individuality. Through various dynamics that will bear much fuller discussion in Chapter 4, civil society becomes a realm predominantly of *difference* in Hegel's theory, where the individual must engage with choices *as an individual* with recourse only to personal reflection. The family and state (as shall also be discussed in Chapter 4) underpin the formation of such differences. The

⁵⁸ A central element of this is Hegel's further addition to the Rousseauian strategy, the self-determining social whole, this along with the conception of the state as "divine" will only be discussed in Chapter 4.

family by producing individuals who are secure in their particularity, the state by maintaining the structure of civil society itself within which such differences (and with them strong individuality) is realised. This is why Hegel clearly states:

Particular interests should certainly not be set aside, let alone suppressed; on the contrary, they should be harmonized within the universal, so that both they themselves and the universal are preserved (PR §261).

Thus understood, a large part of the identification citizens feel with the modern state can be traced to their understanding of it as a guarantee of their particular interests, property and person being granted space to flourish.

Hegel's account can thus be understood as *including* the concerns of a contractarian theory, but maintaining that the role of the state does not stop there. As Neuhauser (2000: 244) argues, Hegel does not begin from a contractarian question of how to best cater for the assumed freedom in a hypothetical state of nature, but from the abstract question of what makes a will self-determined – his answer is that individual wills can do this only imperfectly. Only a rational community can completely erode arbitrary determination by another.

2.4) The Hegelian Individual recast

Under the analysis presented, Hegel's doctrine of individuality, I feel, loses much of its supposed freedom-crushing menace. If we consider the understanding of the role of Abstract Right I presented in section 2.3.3, and bear in mind the discussion immediately above, a fairly clear and intellectually attractive picture of the Hegelian doctrine of individual freedom emerges. In areas that are firmly the domain of our particularity, our individuality is, and must be, ensured. In the domains of our interaction with others, the domain

within which we are subjects of one kind or another, some form of management of the multiplicity of individual ends is required. This is where rights primacy ends, and Hegel extends. The institutional structure must go beyond something merely external to the will of the subject. To leave it at such a point would render it cold, distant and alienating to those it oversees. To be *truly* self-determined, individuals must understand themselves within the context of such a structure, and understand it as a guarantor of their freedom, as harmonised as much as possible with the freedom of their fellows. They must participate in its formation and function at various levels, constantly developing a wider awareness of their actions and their intersubjective implications. Through this, participation in the structures of the social order becomes willing co-operation, not hidebound obedience. This is what lies behind Hegel's contention that "the destiny of individual is to lead a universal life" (PR §258).

Given the Hegelian conceptions of self-development presented in section 2.2, the onus is on the structure of the social order to foster the capacities necessary for such a "unity and interpenetration of universality and individuality". Questions of whether Hegel's structure achieves this, and whether such a rationally reconciled citizenry is a theoretical and practical possibility, must be addressed in a full discussion of Hegel's understanding of the social order itself. This very discussion awaits us in Chapter 4.

Chapter 3

The social order in Mill

3.1) Preliminary considerations on the Millian social vision

On Liberty is an appeal to the Victorian public to reconsider their existing law and customary morality in light of the principles of utility and liberty, and thus allow individuality to flourish (Crisp, 1997: 189).

At one level, that is an entirely accurate description of what has become one of the grounding works of contemporary liberalism. It has indeed, for us, become a great deal more. It was written, as Skorupski (1989: 337) argues, not as an expert-level text designed to clarify higher-order concepts amongst the intellectual elite, but to convince a public shackled to a stagnant and dated moralism to free themselves from intellectual and moral tyranny, both legal and societal. But, in so doing it “gathers together the ruling pre-occupations of a life-time”: the worth of flourishing individuality (as covered in Chapter 1), the liberty of thought and discussion, and the limits of social authority over the individual.

Mill certainly could have left those who take up his legacy a simpler task if he had written up these arguments solely for expert level consumption. We might, for example, have had a technical definition of such nebulous concepts as ‘harm’ to work with. We might have had a clear blueprint of how to assess when social norms count as tyranny of opinion and when they should be defended. We might have had clarity on some highly pertinent issues such as where precisely the line lies between acts which inspire distaste (which cannot count as harm) and acts that qualify as public nuisance (which seem profoundly similar in a technical sense, but are nonetheless explicitly ruled out by Mill).

Taking *On Liberty* in context, we can understand why these issues arise. There are certain actions which, it has been argued, if we take Mill's principles to their consistent extreme, we should philosophically allow, but would have shocked and alienated his public (as well as many contemporary publics) had he supported them.¹ Furthermore, and somewhat ironically, Mill falls prey on occasion to high Victorian sensibilities concerning what counts as graceful and admissible public conduct. This is not merely an interpretation issue. It strikes to the heart of a quandary that *On Liberty* itself goes a long way to trying to resolve. How do we strike the delicate three-way balance between actively combating the ignorant and parochial elements within a society, allowing for a plurality of perspectives and life-visions, and respecting the deeply held norms that permeate a social order?

It is a set of questions that still cuts deep into public policy issues at a practical level and the liberal-communitarian debate at an intellectual one. When we come to assess issues such as gay adoption, pornography legislation, policies on illegal drugs and numerous other policy thorns that prick at contemporary democratic consciousness, these are the questions we ask (or at least should be asking). As such, the in-depth discussion of the social space etched out in *On Liberty* that follows ties in directly with the grander aim of this thesis, as these are the very questions that haunt the Hegelian picture as well, for all its breadth and complexity (Mill, as I argue in my concluding Chapter, trumps Hegel in his grasp of practical social sign-posting, but seems to fall somewhat short in terms of systematic and structural depth and clarity). The task of this Chapter is thus two-fold: to examine the rational implications of the Millian social principles which Mill himself (either through lack of intention or lack of foresight) sometimes failed to make clear, and to set these against the wider background of Mill's social philosophy. In so doing, I will establish what I believe to be the purified Millian liberal position on these issues. This position,

¹ This, as seen below, is the position argued for by Crisp. It is, as shall be discussed, one I do not entirely agree with. Nonetheless, bearing in mind *On Liberty*'s aims as a text is crucial to understanding its implied

as I will show, is neither entirely content-neutral nor disinterested, and aspires to a very similar set of internal goals to those I believe to be ultimately expressed by Hegel, specifically, social progress through individual progress, rational perfectibility at an individual and social level, and the constant quest for social authenticity and truth through (often destabilizing) discourse.

What I aim for here is a broad sketch of Mill's vision of the ideal social order as a set of rational structures designed to manage and allow for healthy ethical and logical confrontation. Thus both the principles that Mill would have governed the social order and their design and implications are running themes that must be addressed. This is largely the province of section 3.3, which forms the bulk of the Chapter. Sections 3.2 lays out, as a preliminary measure, my approach to Mill's utilitarianism in this enquiry, whilst section 3.4 provides a wider context to Mill's principles through an examination of his views on civilization and progress. This allows me to lay out the relevant architecture of a modern Millian position in section 3.5.

3.2) Liberty & Utility

Before embarking on any significant inquiry into Mill's social theory and the social implications of his political philosophy, I must absolve myself of full discussion of one of the more controversial areas of modern Mill scholarship - the question of Mill's utilitarianism. Crucial as it is to Mill's understanding of the social framework, questions of space and relevance demand that it cannot be covered at length here.

For indeed, utilitarianism is a creature he may have originally tamed, inheriting it in its more base and brutal form from Bentham, but it grew up wild and varied on the plains of 20th century philosophy. It has stood accused of numerous faults, attacked and defended by numerous modern thinkers and

principles, even though the extent to which Mill self-edited is indeed debatable.

commentators. An analysis of the applicability and evolution of modern utilitarianism alone would require a project perhaps twice the length of this, and to leave it at the juncture Mill did would be unjust to any useful discussion of the theory.

This is a massively controversial area in Mill scholarship, and various interpretations of the role of utilitarianism in Mill's general political theory abound. To give a brief and sweeping outline of some of these, Lyons (1976: 101-120) holds that Mill's basic theory of morality and justice do not assume utilitarianism, and that thence a failure to maximize utility in action is not morally wrong. Mandelbaum (1968: 35-46) similarly understands Mill as setting out morality and virtue as distinct from utilitarianism as a concept. Hoag (1987: 417-431) sees Mill setting up happiness as a higher order inclusive end for all life goals. Skorupski (1989: 283-336) concurs with a slight variation, in that he sees Mill claiming that all human ends are encapsulated in happiness, but in the more practical aspects of his theory treating other categorical ends (such as autonomy, as discussed in Chapter 1) as primary utilities in their own right. Ryan (1987: 207-211) understands utilitarianism in Mill as an attempt to set up a rational ethics appropriate to the inductivists and their attack on the intuitionists, with happiness as the *summum bonum* of the Art of Life. Brink (1992: 67-103) sees Mill putting forward a version of happiness whose dominant component consists in the exercise of one's rational capacities. Berger (1979: 115-136) understands utility as tied to considerations of fairness and co-operation, premised on an enlarged conception of what is of value in human life. For Anderson (1991: 4-26), Mill's utilitarianism is tied to the cultivation and gratification of the higher sentiments. Crisp (1997: 155-167) understands Mill as setting up utilitarianism as valid customary morality for the modern society.

My interpretation, for the purposes of this enquiry is slightly different from all of these, even if there are points of commonality. Of all the interpretations

just mentioned, Crisp's falls closest to mine in holding that utilitarianism is an appropriate ethical framework for a modern society. But I do not see Mill treating some specific positive doctrine of human happiness as the ultimate court of appeal in matters ethical. Had he done so, to my mind, there would be no point in the significant infrastructure of ethical and moral engagement he sets up in his theory of post-social rights. I understand utilitarianism in Mill operating similarly to true conscience in the Hegelian system - an objective ethical framework for the morally diversified modern social space within which competing conceptions of the good can co-exist and amend each other through confrontation.

It is indeed utterly unfaithful to Mill to exclude any reference to utility from the discussion of his social vision. Nor is the discussion of such impossible without discussing the bulk of Mill's utilitarianism in its full form. Many of the concepts that emerge in the coming sections make perfect sense in reference to the less controversial idea of the general social interest, and the baseline requirements of social and individual welfare. I would argue that leaving out Mill's ideas on utilitarianism as *personal* ethical structure does not impoverish Mill's conception of general social utility as a guiding factor in *managing* social morality. As a framework of social and legal ethics concerned with the negative *consequential* effects of human action on vital social interests, it is aptly suited to the role I have accorded it of a consensus social morality which allows for the co-existence of competing conceptions of the good in a framework of demarcated value pluralism. This is backed up, I believe, by Crisp's (1997: 182) explanation (covered below) that utilitarianism recognises no moral "duties to self". It is an ethical framework concerned purely with the *social* implications of individual and state action. Thus questions of personal ethicality not premised on utility can exist within it, provided they cannot be forced upon those that do not share them (it is, of course, a profound rafter of Mill's social vision that completely irrational beliefs are 'natural victims' to discourse). That this causes moral distress on the part of those holding to such

an ethics is a given, but that is part of an issue that holds for a vast range of social theories - the question of how to reconcile numerous and varied moral norms within a space of social pluralism. Beyond this, I hold by interpretation I aim to prove conclusively in the coming sections - that often uncomfortable ethical confrontation is of fundamental *value* in the Millian social space, within certain rational limitations, provided it is overseen by a social order institutionally arranged to manage such confrontation as a given. This is the 'politics of engagement' I put forward embryonically in Chapter 1. To put to rest the issue of the moment, I contend that the issues that face utilitarianism as a general social ethic face *any* rational structure that seeks to harmonize clashing moral perspectives into demarcated value pluralism, and discuss Mill's social provisions in reference to such.

Another key utilitarian notion that makes a significant appearance is the conception of rights as post-social side constraints protecting primary utilities, or (more broadly) fundamental elements of human welfare. The interpretations put forward by Skorupski, Lyons, Waldron, Wollheim, Reese and Wolff all follow Mill's description of his rights structure as coherently acting just this way in his theory. This is translatable (without, I feel, any injustice to Mill's intentions) into a doctrine of rights as protecting vital social interests in terms of foreseeable consequence in a long-term sense. That autonomy is included amongst these is by no means a position confined to utilitarianism, but is shared by any doctrine that would accede to Mill's arguments for the value of autonomy and individualism as individually and socially crucial values, as covered in Chapter 1. The issues and implications surrounding such a rights doctrine are addressed below.

Thus, I see no issue with defining the utility principle for the purposes of the present discussion as a framework for a pluralistic social ethics that need not make any final claim on individual conceptions of the good. The combined exposition and analysis presented in the coming sections will, I feel,

sufficiently prove that Mill's social vision is indeed intended as a balance-of-interests model for managing society's destabilizing moral pluralism through rationally assessing both the impact of actions and the long term implications of measures taken against them.

3.3) The individual within society & the social context of rights

We turn now to what could be justly considered the most memorable practical thrust made in *On Liberty*. It is epitomised by the following quotation, with which just about any account of the principles at work within the text must begin. I include it in its full length here, as it presents a neat Pandora's box of the issues to be dealt with in this section:

The object of this essay is to assert one very simple principle, as entitled to govern absolutely the dealings of society with the individual in the way of compulsion and control, whether the means used be physical force in the form of legal penalties, or the moral coercion of public opinion. That principle is, that the sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number, is self-protection. That the only purpose for which power can be rightfully exercised over any member of a civilised community, against his will is to prevent harm to others. His own good, either physical or moral, is not sufficient warrant. He cannot rightfully be compelled to do or forbear because it would be better for him to do so, because it will make him happier, because, in the opinion of others, to do so would be wise or even right. These are good reasons for remonstrating with him, or reasoning with him, or persuading him or entreating him, but not for compelling him, or visiting him with any evil in case he do otherwise. To justify that, the conduct from which it is desired to deter him must be calculated to produce evil to someone else. The only part of the conduct of anyone, for which he is amenable to society, is that which concerns others. In the part which merely concerns himself, his independence is, of right absolute. Over himself, over his own body and mind, the individual is sovereign (Mill 1: 8-9).

What is generated above is what I follow Skorupski (1989: 340) and the vast range of secondary literature on Mill in calling the 'liberty principle' - the position that only actions which are calculated to cause harm to others are fit subjects for legal (or organized social) correction.

The picture seems, at first, a clear one. Mill is certainly not guilty of the charge so often levelled against him, that he is idealizing a society of disinterested egoists unconcerned with the welfare of their fellow citizens. His ideal social order is, like Hegel's, a realm of constant discourse and flux. What stability it has it draws from a framework that can rationally weather the new and uncertain.² Within this, no one can be ultimate expert on anything, but there is only one expert on what the practical consequences of self-regarding action should be, and that is the self in question. The Millian baseline conception of justice, as discussed briefly in Chapter 1, defends welfare by enshrining the necessary conditions for it, and Mill's principles ultimately hold that interference in the self-regarding domain without just cause (for which calculable harm to others is a necessary, but by no means sufficient condition) is a threat to both individual and social welfare, and as such must be vehemently guarded against.

The exposition in Chapter 1 of Mill's notions on the worth of individuality and give us a strong sense of where the highly individualistic thread that runs throughout Mill's theory comes from, but it is by no means the sole source and grounding for the liberty principle. The fuller grounding must stand judged by its coherence and implications if we are to accord any worth to Mill's position, and that judgement is the task of this section.

Like so much in Mill, we may be swept up in the initial rhetorical force of his statements, but must then pause to consider the breadth of implications

² This is an aspect that shall bear heavy discussion further down, when I come to Mill's attack on Comte's division between societies dedicated to order and those dedicated to progress.

inherent. Many of Mill's arguments on this score are well known, and most have, at the very least, an intuitive plausibility. But Mill himself would have been first to remind us that intuitive plausibilities are the first things we should rationally question, and test against all possible alternatives. Thus what follows below includes re-statement and examination of Mill's famed key arguments, along with a further assessment of their implications as general principles.

Of the above quotation, we must ask some tough questions, some of which we cannot turn to Mill's own writing to answer, even if we seek to defend him. We must know when and how benevolent concern mutate into moral coercion, what the exact boundaries are between self-regarding and other-regarding action, what constitutes 'harm' under Mill's analysis and to what extent incurring others' distaste for certain classes of behaviour is a form of it. We must understand whether, under Mill's analysis, citizens can be positively obliged to perform certain actions, socially crucial or merely beneficial. Finally, how and with what efficacy does *On Liberty's* famed defence of freedom of expression tie into this? These shall all be dealt with individually below.

3.3.1) Customary morality and the tyranny of the majority

i. The aims and first grounding of the Liberty Principle

Perhaps *On Liberty's* most famed and controversial contribution to the cannon of political philosophy and social theory is its highly evocative caveat against a concept Mill has made notorious throughout liberal thought - the tyranny of the majority. Mill himself clearly lays this out as one of his crucial fears in the opening pages of the text, in which he traces the historical context of threats to liberty. In the first tentative breaths of democracy, in the early and shining idealisation of elected governments as true reflections of the will of the

governed, little precaution seemed needed against the repressive potential of elected officials. But it soon became clear to the socially observant that

[t]he 'people' who exercise the power are not always the same people over whom it is exercised; and the 'self government' spoken of is not the government of each by himself, but of each by all the rest (Mill 1: 3).

As Mill goes on to point out, this is not a cry for the fundamental checks and balances hardwired into the most basic mechanisms of democracy, but for something beyond - checks and balances against the possibility of *society itself* becoming a despotic force.

[R]eflecting persons perceived that when society itself is the tyrant ... its means of tyrannising are not restricted to the acts which it may do by the hands of political functionaries (Mill 1: 4).

Mill's fear is thus two fold - that elected officials may brandish the will of the majority as backing for paternalistic or unjustified repression of minority actions, ideas and lifestyles, and that the forces of public opinion (what Mill calls the forces of 'prevailing feeling') may themselves execute these same unjustified mandates without the hindrance of due legislative process.

Mill's prescriptive answer to these flows directly from the liberty principle. We must delimit the range of actions (and forms of expression)³ over which any possibility of social control is even *justifiable* (this, as shall be clarified below, merely sets the possibility up for debate - it does not immediately sanction it) and confine our legislative regimen to these. Furthermore we must attempt as fully as possible to ensure that non-legislative forms of social coercion do not simply take such unjustified legislation's place. This delimitation for Mill is simple - it extends only to other-regarding actions (loosely defined, for the

³ The question of the key differences between expression and action in terms of the liberty principle will be addressed shortly in the discussion of the Millian doctrine of liberty of expression.

moment, as actions which prejudicially affect the interests and welfare of others).

At first sight, this seems yet another case in which history stands firmly on Mill's side. We can roll out all the examples once more - from Socrates, to Galileo and beyond- to show how often a social order fired up by the wisdom of the majority persecuted, tortured and executed persons that would come to be recognised as the greatest contributors to the realm of human knowledge and understanding. But to assess this long-held liberal creed by the standards of a modern context requires far more of even a sympathetic interpreter. This is, after all, one of the key areas in which communitarianism holds liberalism to account for the social dysfunction of modern society. The accusation runs that we so cower in the shadows of fears such as Mill's that we refuse to allow for legislative and social action that could preserve the threads of community, and by inference identity, which keep social orders ethical and coherent. The key attacking figure when it comes to Mill specifically is Devlin, who gets his due hearing in a few pages' time.

As the discussion in this section evolves, we shall unravel some of the more complex implications of this doctrine. First, though, we must understand why Mill holds it so dear. McCullum suggests that Mill's own time and social context provide a key insight into the vehemence with which he held to the provisions of the liberty principle as regards the influence of prevailing social sentiment:

If a young man of this age were to find himself back in the eighteen sixties, provided he had some moderate affluence, he would be astounded at the easiness of life and the trifling demands of the state upon him ... On the other hand, in many matters affecting his private and intellectual life, his love-affairs, his views on religion and science and sex, he would find himself bound by a constricting orthodoxy and would have to guard his words and actions with a care he might find intolerable (McCallum in Mill 1: xiv).

When we add to this Mill's long-standing issues with the intuitionists and their validation of deeply held popular sentiment as proper justification for public policy, we can sense that Mill was very much a product of his time in this regard. His writing is the natural product of a freethinking and open mind writing at a time of widespread and entrenched moral stagnation.

A case can be made that many of the interpretive difficulties and supposed inconstancies that arise out of *On Liberty* flow from Mill's failure to make a firm bridge from his railing against the repressive nature of high Victorian sentiment to thoroughly consistent principles by which to oversee future social orders. As a clarification, this is perhaps useful. As an objection to his fuller doctrine in its entirety, it is fairly piffling and fruitless. Firstly, many of the key issues of contention between Mill and the unofficial reign of drawing-room social outlooks are still very much with us. A direct analogue can be drawn to the battle between American libertarians and the religious Right in the United States, where policies and perspectives largely shaped by particular and (theoretically personal) religious convictions still vie to be accepted as social policy. If they lack the pervasiveness of high Victorian sentiment, it is quite possibly because many of the kinds of checks and balances Mill had in mind have been set in place, legislatively and socially, within the US context.

But secondly and more importantly, the deeper philosophical underpinnings of Mill's position have a significant general force which even his opponents cannot outrightly dismiss as the whinging of an unconventional mind under the yoke of a constricting orthodoxy. It is here that we may brand Mill with our intellectual support or contempt, for it is here that the valid philosophical battle lies.

ii. The liberty principle as a safeguard for rational autonomy

One of the first, and most obvious philosophical foundations for the liberty principle as regards bounds set against legislation and prevailing sentiment is

an aspect of the Millian philosophy that we have already covered at some length in Chapter 1 of this thesis - autonomy. Whether we accept Skorupski's thesis that autonomy deserves the status of a categorical end (see 1.3.2), or the related but slightly different contention that autonomy is a necessary condition for any kind of developed conception of happiness, there is a strong case to be made that any utilitarian reading of Mill must somehow safeguard autonomy as a baseline social right. Even if we read Mill on other grounds, the romantic strain of his thought sets up rational autonomy as a crucial locus of individual and social perfectibility.⁴

The implications of this are very similar to the implications a similar contention holds for Hegel - that a social order that in any way dedicates itself to the improvement of the rational capacities of its members must allow them, once their faculties have matured, the space to manage their own lives in matters affecting only themselves. We have a simple and highly pejorative phrase for policies that do otherwise: paternalism. It is straightforwardly logical that there must come a point beyond which even the most benevolent *rational* social order must grant members exclusive jurisdiction over choices which affect only themselves. This is the precise point that Mill makes in his chapter "On the limits of authority of society over the individual":

Armed not only with all the powers of education, but with the ascendancy which the authority of a received opinion always exercises over the minds who are least fitted to judge for themselves; and aided by the *natural* penalties which cannot be prevented from falling on those who incur the distaste or the contempt of those who know them; let society not pretend that it needs, besides all this, the power to enforce obedience in the personal concerns of individuals (Mill 1: 74).

The point is a well made one, if we take into account the fallibilism with which Mill, with admirable scepticism, regards any social initiative. If we

⁴ This is an element of Mill's thinking that will be further discussed and explicated in Section 4 of this Chapter.

accept that orthodoxies have often been mistaken about even widely held conceptions of what counts as individually or socially harmful personal action, and we accept the corollary that the orthodox conception may well be mistaken on some fairly crucial points in the future, then our commitment to social progress (as well as the baseline values of democracy) entails that we allow all possibility for orthodoxy to be rationally challenged.⁵ When it comes to choices of personal conduct, rational challenge means granting adults of mature and rational mind the right to live them.

Mill's argument that orthodoxy has ample resources at hand for its own perpetuation is a powerful one. Whilst it is obviously true that education is not directly analogous to indoctrination, the dominant values of a society will to a large extent inform the particular spin given certain issues when individuals are at their most intellectually formative, i.e. at the hands of their teachers. Furthermore, unorthodox behaviour on the individual's part will often elicit certain natural reactions on the parts of those closest to her - concern and worry as much as anger and resentment⁶. A choice of action or lifestyle that weathers these two massive sets of constraints must surely be granted the right and space to be lived out if orthodoxy is not to stagnate and become intransigent and unchangeable, trapped in the "value rigidity" discussed in Chapter 1.⁷

Mill's fears extend largely to the "sway of custom" (Mill 1: 62).⁸ He sees society as duty bound to purify and test every precept at every opportunity, lest the often-uncomfortable opportunity to realise a wider truth slip away. A new perspective may be a new truth we are unjustifiably unwilling to face, or

⁵ This is an argument that I shall examine in its fuller implications as applied to liberty of expression.

⁶ The issue of "natural" reactions towards individual lifestyle choices will be covered shortly.

⁷ The question of whether it is always desirable to have societies that prioritise progress at the expense of order shall be discussed in Section 4 below.

⁸ To use the phrase "customary morality" is confusing, as Crisp for one (as seen in Section 2 above) sees Mill not as arguing against customary morality per se, but only invalid customary morality not tacitly affected by utilitarianism. I use the phrase "custom" in this section to refer to a set of non-rationally justifiable social norms, usually drawn from a religious background.

may, more likely, contain some portion of truth or benefit we may unwittingly dismiss in dismissing the whole. Furthermore, there is Mill's prevailing concern that long accepted (even true) beliefs become dangerous when their grounding is forgotten, and the rational justifications for them can no longer be summoned up.⁹ This is all captured with neat rhetorical force in one of his more memorable aphorisms:

The beliefs which we have most warrant for have no safeguard to rest on, save a standing invitation to the entire world to prove them unfounded (Mill 1: 18).

As Mill takes pains to point out, there will often be no immediately visible damage to a society that silences its heretics (or, for our current purposes, heretical activities). To many minds, of his time and our own, this is the very purpose and duty of the social order - to maintain and safeguard the beliefs and modes of life that maintain ordered existence.¹⁰ The weight of prevailing opinion (or prevailing custom) becomes a kind of silent inquisition. Without the necessity of visible and ugly legal measures of persecution, the orthodoxy (however flawed) is maintained against the potential onslaught of heretical thought and activity. There is no need to burn heretics at the stake if they are simply treated as outcasts. This is, as Mill maintains:

[a] convenient plan for having peace in the intellectual world, and keeping all things going on therein very much as they do already. But the price paid for this sort of intellectual pacification is the sacrifice of the entire moral courage of the human mind (Mill 1: 28).

This ultimately plays into a far larger and as yet unresolved set of questions. As Crisp points out, it is difficult to see how judgement of another's choice of lifestyle isn't a moral judgement (Crisp, 1997: 186) and the question of moral sentiment is one that looms large not only in Mill, but also throughout this

⁹ This is yet another set of arguments I forego full discussion of until the section on freedom of expression

¹⁰ Mill's rather powerful attack on this conception will be covered below in section 3.4

thesis and the entire liberal-communitarian debate. The principle that self-regarding action should go unmolested seems at first glance to be somewhat uncontroversial, until cast into the midst of modern debates concerning social morality and identity. This remains one of the central crux points of the communitarian critique of liberal attitudes - that the boundary line drawn around individual behaviour leads to a society of disembodied and disinterested egoists, denied the capacity or encouragement to take an interest in one another's lives. This, it is maintained, denies the identity formative aspect that community provides:

[C]hampions of individual liberty consider the essence of politics to be the defence of personal rights and liberties against encroachments emanating from government or the public sphere; seen from this vantage, all community standards or shared public bonds appear questionable and possibly oppressive ... Countering this liberal focus advocates of community are quick to point to the corrosive effects of egotism and *possessive individualism* on moral and political life (Dallmayr, 1993: 4-5).

There are various answers to this already at hand within the Millian canon. Mill himself took numerous pains to point out that we should not draw a false dichotomy between social orders that go to great lengths to enforce their moral norms and social orders in which there is no interpenetrating interest in the lives of one's fellows:

It would be a great misunderstanding of this doctrine to suppose that it is one of selfish indifference, which pretends that human beings have no business with each other's conduct in life ... Instead of any diminution, there is a need of a great increase of disinterested exertion to promote the good of others. But disinterested benevolence can find other instruments to *persuade* people to their good than whips and scourges, either of the literal or metaphorical sort (Mill 1: 67, my italics).

We may well ask here precisely what Mill is asking of a social order. He attacks the prevailing weight of custom and opinion as a form of unofficial persecution, yet maintains a citizenry should still be as interested as possible in each other's

lives. He bemoans the fact that possibly valuable heretical activity is discouraged by a society of busybodies, yet seems to call on those same busybodies to take up the task of interpersonal social improvement.

The key, I believe, lies in the word *persuade*. Provided individual rational capacity and moral autonomy is respected, benevolent interest can healthily maintain its crucial function in social relations. We are once again at a juncture in Mill's philosophy where the Romantic strains he shares with Hegel can provide more clarity. In understanding individuals as engaged in a life-long act of self-education, which extends, through their organic membership in it, to the social order as a whole that they participate in, Mill's provisions make a fair deal of sense. As elements within a society contend within it to draw it closer to authenticity as an entity (this is, after all, the internal goal of a truth-seeking community of any kind), virulent interpersonal and public expression of concerns for their own welfare can be directed at individuals. But in order to be beneficial to either the individuals in question or the social order in general, they must be executed from a platform of respect for the individual's own choices - *persuasion* and not *coercion*.

If all arguments possible have been presented against a certain self-regarding activity, and they remain unpersuaded, adults of rational capacity should be allowed to continue in its practice. The entire scope of Mill's defence of liberty of expression (as shall be seen below) as a component of his wider defence of the necessity of ethical confrontation, does not presume social disinterest. Quite the opposite, really. Nor must it necessarily delimit itself entirely to other-regarding action. Coercive forces, for Mill, certainly can claim no purchase there, but there is nothing to say that, for example, opponents of pornography¹¹ cannot present frequent and virulent rational arguments against its consumption. Provided the rational choice to consume it

¹¹ Excluding of course forms of pornography whose production necessitates clear harm to consenting individuals or entities, such as child or bestiality pornography.

or not remains open to adults of developed rational capacity. The moment said practice spills over into foreseeable social harm of some sort, debate is then open as to whether legal (or social) countermeasures need be taken.¹²

iii. The Liberty Principle vs. social disintegration

But, the communitarian cries back, what of the bonds of social morality we feel it crucial to preserve? Can there be NO concrete defence of unifying moral sentiments that rule the vast majority of our codes of behaviour, no attempt to prevent the ethical disintegration of our longest held principles, as these fall prey to crude dissent and reckless, unconsidered immorality? Promote, vehemently if necessary, certain modes of life that history has proved socially useful? Interestingly and perhaps unsurprisingly, such claims were as present in Mill's own time as our own:

In the present age - which has been described as 'destitute of faith but terrified at scepticism' ... the claims of an opinion to be protected from public attack are rested not so much on its truth, as on its importance to society. There are, it is alleged, certain beliefs so useful, not to say indispensable to well being that it is as much the duty of governments to uphold these beliefs, as to protect any other of the interests of society ... It is also often argued, and oftener thought, that none but bad men would desire to weaken these salutary beliefs; and there can be nothing wrong, it is thought, in restraining bad men and prohibiting what only such men would wish to practice (Mill 1: 19).

Mill's immediate response to this is that it undermines the individual and social quest for truth and authenticity. It shirks off the charge of assumed infallibility by premising the justifiability of moral norms on their instrumental social worth as opposed to their objective truth-value. But, as Mill points out, the assumption of such worth is every bit as much an assumption of infallibility. It

¹² Issues as to whether certain less immediate forms of harm (such as the supposed propagation of negative physical stereotypes by pornography) enter this domain will be covered in the sub-section on distaste vs. harm below.

assumes certain truths about the nature of the social whole that require massive rational justification, which it cannot forego by the simple appeal that they are widely and deeply felt.

There is indeed more to the objection that certain classes of self-regarding action can be socially unravelling. Devlin, perhaps Mill's most famed detractor, is the most well known fount of such a position, and his ideas on this bear some examination. If nothing else, they represent the canonical conservative position on the subject, and as such must be coherently dealt with if we are to take Mill seriously.

As Ryan (1987: 248) illustrates, Devlin's signature work *The Enforcement of Morals* attacks the division between public and private morality¹³, claiming such a line cannot be drawn. By Devlin's terms, it makes no sense to speak of a public and private morality "any more than it does to speak of a public or private highway" (Ibid.). The realm of "private morality" the Wolfenden commission sought to define is, for Devlin, oxymoronic. But Devlin's, like many communitarian positions, withers significantly once one cuts away the rhetoric and subjects it to more careful analysis. As Ryan points out, a clear-headed assessment of the arguments presented reveals them to be "embarrassingly poor".

As Ryan (Ibid.) lays it out, Devlin claims that what allows society to function, as any kind of community of ideas is a set of commonly held norms concerning how its members govern their lives. If these commonly held notions are discarded, society as we know it collapses. His claim is that people 'drift apart' if their common morals disintegrate and history has proven that societies often disintegrate from within. Thus, his argument runs, the fabric of

¹³ As Ryan points out, what is referred to here as private morality is what Mill would have labelled self-regarding action of the prudential or aesthetic kind. For further clarification, see section on art of life below.

norms woven into a social order must be maintained to avoid this, and their maintenance, as a matter of social welfare must fall to government, through legislative protection for moral norms. To many, it might seem a coherent point, until we investigate certain key assumptions and implications of the position. Firstly, as Ryan highlights, the position rests on the assumption that when we call something 'immoral', we are using a universal set of criteria that point to some kind of perceptible social damage. It is in trying to make this explicit that Devlin finds himself in very murky terrain. As Ryan memorably and jeeringly puts it:

Does he really mean that we are in imminent danger of civil war, mob violence, or foreign domination if we do not share a common horror of, say, masturbation? (Ibid.).

As Ryan (Ibid. 249) argues, if Devlin's position is not to be this patently ridiculous, what precisely *does* he mean? In defining a society as a set of communally held ideas about the way members should govern their lives, he is essentially referring to what Mill would define as "the sum of our views on prudential, moral and aesthetic matters" (Ibid.). That dissent will cause these to collapse is indisputable, but whether this is in fact as terrifying as Devlin maintains is highly contentious. The collapse of such norms can only be considered dangerous if palpable social harm is done as a result of their collapse. Otherwise, there is no real foreshadowing of terror in Devlin's *caveats*. 'Society' in the strange sense here defined collapses all the time - views on certain practices (private as well as public) are amended and reconsidered, often even reversed - without institutional frameworks and social structures plummeting into blind and horrible entropy. Devlin tries to pull off a neat conceptual card trick here - he defines society in this loose and contingent sense, points to the inherent logic that dissent collapses it, and then returns furtively to the conventional sense of society (as the sum and scope of our institutional and social frameworks) to instil a sense of horror at what havoc this dissent might wreak.

Ryan (*Ibid.*) points out that Devlin's link between these two senses of society is another highly dubious assertion that people will 'drift apart' if their background moral norms are not upheld. This seems to suggest that private actions that inspire common dislike amongst the majority must be forbidden if social integrity is to be maintained. But this paints Devlin into an even stranger corner. If the criterion by which actions are to be allowed or forbidden is that they are disliked, then even the mere fact of someone disliking what one does in private is grounds for coercion. Devlin is smart enough to retreat from such a position, but in so doing drives the final nail into his own conceptual coffin. He moves from maintaining that an action is wrong in that it upsets other people, to maintaining this upset can only be considered grounds for coercion if it is "an upset caused by the judgement that social damage will be caused by the action" (*Ibid.*). He is now left with two purified streams of argument: either an action is wrong if someone thinks it wrong, or it is wrong because it causes foreseeable social damage (damage, in other words, to the interests or welfare of others), in which case the dislike for it is an irrelevance. The former position is logically, philosophically and practically untenable. The latter is an utter concession of defeat to Mill.¹⁴

iv. Practical considerations on the Tyranny of the Majority

What this all does reveal, though is how tricky Mill's provisions against non-legal forms of coercion can become. Much of the crossfire in this section has concerned the question of legislating to protect background moral norms. While it is certainly a key part of Mill's area of concern, we have yet to resolve

¹⁴ Of course, there is still a further case to be made that inspiring broadscale distaste can count as a form of social harm, but this is quite different from Devlin's position. It is premised on whether certain types of offence can in fact be considered intolerable infringements on the welfare of others, i.e., as a form of

what could practically be done about the other branch of social repression - the tyranny of prevailing opinion. This is indeed one of Mill's greyer areas. It is difficult to see what can concretely be done at an institutional level to prevent it. It is possible that Mill did not intend to give a clear answer to this. If we take *On Liberty* as an appeal to an educated public of his own time and times to come, rather than an expert-level blueprint for future social orders, it would be consistent to suppose that he leaves the resistance to tyranny of opinion in the hands of the same rational, autonomous adults whom he lauds and seeks to defend.

Attempting to in some way police expression and thought to ensure said resistance would be a blatant violation of Mill's own extensive *caveats*. As Crisp (1997: 186-187) points out, it can be argued that Mill's own principles leave him legislatively powerless against those he seeks to undercut: "What form of coercive action - by Mill's own principles - could actually alter opinions?"

This does not necessarily leave, for example, racist or homophobic mindsets, in the clear. It is still entirely possible to police other-regarding actions based upon discrimination, even if it is not possible to legally eradicate the discrimination itself.¹⁵ If I, for example, refuse to hire a qualified and competent gay man, refuse to rent him an apartment or deny him some service it is optional for me to bestow for no other reason than a personal judgement of his self-regarding practice, then I stand guilty of interfering with or limiting another's life plan on a paternalistic and rationally non-justifiable basis (since there is no way in which his homosexuality affects my welfare directly). It is a reverse corollary, in a sense, of Mill's example of the drunken soldier (Mill 1:

socially harmful *other regarding* action. This shall be discussed below in the subsection on distaste vs. harm.

¹⁵ It is difficult to imagine anything short of an Orwellian legal and linguistic assault on the possibility of thought itself that could concretely achieve this. There can well be valid arguments made at a moral philosophy level that the very mindset is itself a danger, but, especially if we accept the force of Mill's autonomy arguments, it must be left to the forces of discourse to eradicate this.

73). When we punish a soldier or official for being drunk on duty, we punish the breach of duty and potential harm caused to others as a result, not the drunkenness itself. It would be the same if he had exhausted himself studying to put himself through night school and had fallen asleep. It is the breach of other-regarding obligation we punish, not the attitude that underlies it. Since an opinion that never expresses itself in other-regarding fashion never enters the domain of legal concern Mill has defined, it seems it must remain similarly unmolested.¹⁶

Of course, to return to the example of the gay man, there are multiple ways in which the opinion can still do other-regarding damage, regardless of legislation set up to prevent this. I can simply hire an equally competent candidate over the gay man or find some other reason to refuse to rent him the apartment. Mill's doctrine exhibits a painful awareness of just this possibility, and this is precisely where the tyranny of the majority can be least visible but most threatening.

This is a breach in Mill that is not easily covered. But it is also one that haunts the entire liberal cannon of social thought. It is difficult to find any practical methodology that could eradicate unjustified discrimination that is not rendered into action, without becoming that which liberalism most hates and fears in this sense. As such, we are perhaps better served by an allegiance to principle. We can see the fear of the tyranny of the majority as a call for a more tolerant social mindscape. The task of governments is to help it along wherever they can, through attempts to encourage social dialogue and constant efforts to eradicate prejudice at an educational and public policy level.¹⁷ The task of the educated populace is constant constructive

¹⁶ This is further backed up, as we shall see in Sections 3.3.3 and 3.3.4, by Mill's notion that social truths benefit by constant testing against strongly held opposing viewpoints, which seems to suggest that a liberal society benefits by constantly testing itself against bigots that remain in it's midst. The further implications of this shall be discussed further below, but it does suggest that it is socially necessary that such opinions remain uncoerced provided they do not result in direct harm of some sort to others.

¹⁷ This, as shall be seen in Section 3.3.4, underpins the arguments in favour of liberty of expression.

engagement with new ideas and new possibilities. This shall all be expanded upon further when we come to the issues and implications surrounding Mill's arguments for liberty of expression.

For the moment though, we have the next difficult set of questions to answer on Mill's behalf. These relate to the issue of where the precise boundaries of the self-regarding and other-regarding spheres we have discussed in very general terms so far lie, and the further questions of how the harm principle applies to these.

3.3.2) Boundaries of self-regarding vs. other regarding actions

We are thus at juncture where we must assess what to make of the idea of the terminology "self-regarding" and "other-regarding", in their fuller implication and with the subtleties of more grey-area cases considered. In so doing, we can begin to assess two other controversial areas of Millian philosophy: his concept of harm and his doctrine of social obligation. Thus, the task of this (as well as 3.3.3 and 3.3.4) is to meld the discussion so far with the second branch of the liberty principle, which demands decisive legal coercion against actions which *do* unjustifiably violate the welfare of others.

i. Natural vs. Legal penalties

An interesting entry point to this comes through understanding the Millian doctrine of punishment. As Ryan (1987: 240-244) reminds us, Mill draws a strange and often fuzzy line between actions that are subject to some form of organised punishment and actions that incur certain "natural" penalties in the form of others' voluntary ostracism of the perpetrator. Mill's (Mill 1: 72)

signature cases in *On Liberty* are those that of the drunkard and debtor. Even though such individual's habits qualify as self-regarding, it will, Mill feels, be a logical off-shoot of such behaviour that higher-minded and cultivated intellects shall choose to avoid their company. This avoidance does not count as coercion, since it is, ultimately, a by-product of others exercising their freedom. It would be a different case indeed were the avoidance an organized or legally concretized phenomenon (in Mill's terms 'parading the avoidance') for this points not to a mere contingent reality of others' exercising their choices, but to something beyond - an organised intention to control the self-regarding sphere of a rationally autonomous agent. To highlight something as harmful to self, and point this out to the perpetrator in the hope she shall change her behaviour is a natural feature of human society. To interfere in any organized fashion is to run against the full gamut of Mill's caveats concerning fallibilism, the compromising of autonomy and the inherent risk of instantiating a stagnation of orthodoxy. Punishment is inflicted upon individuals *because* they have done something that harms or infringes upon the interests of others. Not because the punishment is a natural causal offshoot of the action. This would, as Ryan (1987: 240-244) points out, put society in a profoundly illogical position. A social order that punishes things it considers merely imprudent (as opposed to wrong), is in the odd position of proving it's judgements by making them come true - it becomes a policy equivalent of begging the question.

Ryan (ibid. 244) thence points us to a question many might ask. What is the point in drawing this distinction? The avoidance Mill speaks of is likely, in many cases of socially condemned behaviour to be rather broadscale. Is this not ultimately equivalent to an organised form of social punishment?

The answer, from Mill's corner is that the distinction is paramount in the way it affects both the direct conduct and attitude of social detractors:

It makes a vast difference both in our feelings and our conduct towards him, whether he displeases us in things in which we have a right to control him or in things in which we know we have not (Mill 1: 70).

Mill is once again calling on the social order to make a difficult but necessary distinction between benevolent concern and social persecution, thus once again striking a line between the self-regarding and other-regarding spheres of action. The picture that is steadily emerging crystallises the more we thresh out Mill's principles is that the concept of "duty" plays a central role. Where there is some justifiable positive or negative expectation upon us, legal and social penalties have a valid role in ensuring that expectation is met. Ensuring, in other words, that we do our duty. It is on the breaches of these expectations, these duties, we must focus in administering penalty and punishment of any sort, for this is the "moral" dimension of the art of life (as discussed in 1.3.3).

Thus, we can understand some of the canonical Millian examples already illustrated in section 3.1.1. The soldier on duty example remains one of the clearest. It is the breach of duty we punish in such cases, not the self-regarding 'fault'. Thus, under a Millian analysis, the term "duty to self" is illogical. Where there is no breach of social obligation (negative as well as positive, as we shall see shortly), the term 'duty' makes no sense. Mill carefully reminds us to distinguish between actions which we may socially classify as wrong and those which merely offend prudence or aesthetics. The former are the fit and proper subjects of legal penalty, the latter are liable for no more than concerned exhortation and entreaties on the part of concerned fellows.¹⁸

There is much yet to be cleared up here, specifically as regards what precisely constitutes the positive duties a Millian social outlook might expect of a

¹⁸ The fuller implications of this shall be assessed in section 3.3.3, immediately below.

citizenry. Ryan (ibid.) points to a potentially dangerous ambiguity here. He sees Mill as not giving sufficient clarity to the difference between conduct which is *right*, and conduct which is morally obligatory (by his terms), because others have *a right* against us to expect it. Certain actions are certainly benevolent and 'right' in the abstract moral sense, but cannot be considered a matter of social obligation. Ryan uses the example of a man donating a large portion of his wealth to charity. It is certainly socially beneficial other-regarding behaviour, but while *virtuous* it is not *obligatory*:

Men are not blamed for not being saintly or heroic. We punish people for not doing what is obligatory, for doing what is disobligatory; but not for *merely not doing what it would be virtuous to do* (Ryan, 1987: 242, my italics).

This being said, how far would Mill have our obligations extend? At various points he makes this at least somewhat clear. We have an obligation to refrain from damaging the interests of others (as already covered at some length above), and a positive obligation to perform certain actions necessary to the very function and maintenance of society and social relations. Mill's two key examples here are bearing one's share in the common defence and the performance of jury duty.¹⁹ Thus an action can be wrong by virtue of infringing on another's welfare (theft, assault) or by virtue of defaulting on socially necessary obligations (taxation, shirking of crucial social responsibilities). Such actions are offences not against individuals, but against the very system that guarantees the framework within which welfare is possible, and is thus punished on behalf of the entire membership of said system, namely society through the empowered (and publicly mediated) arm of legislation.²⁰

¹⁹ There are further arguments for the positive social benefits of obligations such as jury duty which will be covered below in Section 3.3.5.

²⁰ This bears a certain parity to Hegel's understanding of the state as the sum of the very conditions that make freedom possible. There are also parallels to be drawn to the Kantian notion of categorical imperatives, even though the Millian doctrine as a whole disjoints from the Kantian in terms of its consequentialism.

In a sense this may seem to undercut Mill's by now much discussed caveats concerning paternalism, fallibilism and autonomy. But this would, I feel, be a rather shallow reading of his doctrine. There will always be certain positive actions necessary to the very maintenance (and sometimes the very survival) of the base framework that is the social order. Mill's dangers only arise if unconsidered and ultimately transient moral norms are wrongly cast in this mould, as they are by Devlin.²¹

ii. The harm principle and beneficial collective obligation

I would contend that there is no necessary clash between the cannon of Millian principles and the obligation to assist in maintaining the very basis of the enlightened social order he seeks. But to contend this I must deal with a powerful criticism levelled at Mill by critics such as D.G. Brown. Brown (1972: 133-158) argues that the liberty principle as a sole grounding for interference with individual action is too impoverished a guideline to allow for social requirements that maximize overall social welfare, and as such is in conflict with Mill's own moral commitments as a utilitarian as well as a range of practices that seem socially necessary, such as taxation for welfare. Brown further claims that this renders Mill's own examples of positive obligation inconsistent. This is a fairly crucial aspect to be cleared up. If resolved, it clears Mill (and liberalisms such as his) of one of the stronger charges levelled against him - that of his being a framework for an institutionally callous and disinterested society, blinded to human suffering and the true welfare of individuals as human beings. As Brown lays out the charge:

²¹ Extreme cases such as times of defensive war were, to Mill, obvious instances in which positive obligations on the part of the citizenry could be stepped up. His logic here parallels both Hegel's - since the social order is very guarantor of the framework of social protection and obligation without which rights are formed and enshrined, it is rational to expect members to defend it from outright destruction. An interesting avenue which I lack the space to explore here is the Millian take on conscientious objectors. Theoretically, Mill would have to hold that only in cases where the state or society was legitimately in danger of destruction can the emergency provisions of crisis be called into effect. This becomes interesting in cases like the US offensive in Vietnam, which was understood by many as a matter of national security,

It seems to me that we have duties to help other people that go beyond the avoidance of harming them; that the performance of such duties can legitimately be extracted from us, very commonly in our roles as citizens and taxpayers; and that such exactions are not permitted by Mill's main principle. I conclude that the general ruin of Mill's impressive synthesis carries with it the principle of liberty itself (Brown, 1972: 158).

The thrust of Brown's argument is that the concerns raised in Mill's moral theory about the interests of society at large are undercut at a fatal level by the Liberty principle's insistence that the only justifiable reason for interference with individual action is the prevention of harmful action.²²

At first sight, Brown does seem to have struck at a major breach in the liberty principle's implication. What of callous or disinterested action that fails to prevent harm even though it does not directly cause it? What of justice and fairness? Are provisions that would interfere with individual action in the name of these ideals to be scrapped because they do not apply to directly harmful action?

But for all Brown's careful and systematic reading of Millian doctrine, he falls prey to a fairly common error in Mill scholarship which David Lyons (1979: 1-19) highlights to powerful effect. This is an unfairly narrow reading of the liberty principle itself. Lyons' contention is that, on a deeper reading of the liberty principle, we find that it is not exclusively tied to the prevention of harmful action, nor is that its sole guideline and criterion. If we focus on the idea of preventing harm, as opposed to merely harmful action (this is, after all, the way Mill states his case) then the scope of the liberty principle widens considerably. Conduct may be limited or controlled only for the purposes of

and many more, especially in hindsight, as a horrific extremity of national paranoia. I shall briefly consider this and other cases of civil disobedience in section 3.3.5.

²² This is a claim that is threaded deep into the modern communitarian position, namely that liberalism's hyper-individualism leaves it morally impoverished and guilty of abandoning the duties we owe to fellow human beings.

preventing harm, but the conduct itself need not be harmful or dangerous. This is a move from what Lyons calls a "harmful conduct prevention principle" to a "general harm prevention principle" (Ibid. 3-4).

Under this analysis, actions can be required of individuals that prevent harm to others on either an individual or social basis even though those actions themselves are not the sole or direct cause of the harm in question. These can be split into what Lyons labels "good samaritan requirements" (for example, the obligation to save a drowning man) and "co-operation requirements" (participation in socially necessary joint works). Lyons (Ibid.) claims his expanded reading of the principle can allow Mill to sanction both of these under the justificatory regimen of harm prevention.

The easier case, Lyons (Ibid. 3-7) argues is that of the Good Samaritan requirements. If it is the case that a citizen's action is not the cause of harm, but nonetheless could have prevented it, then the class of what we might follow Mill in calling "evils through inaction" is dragged into the class of actions liable for social sanction. This goes beyond simple negligence (which is, after all a punishable breach of duty from which harm has resulted) and extends the same pattern of reasoning to a wider set of actions.²³ Co-operation requirements, Lyons (Ibid.) admits, are more complex, but a careful reading of the nature and implication of the general harm prevention principle can still sanction them, without the need for appeal to any independent doctrine of

²³ Of course we must remember that, under the analysis I present here, harm remains a necessary but not sufficient condition for social or legal sanction being cast against an action. Mill, in bringing up the possible case of harm through inaction, adds the immediate warning that this is a far more difficult charge to pin down than harm through direct action. The warning stands if we consider the difficulties inherent in assigning cause to an action that was not committed, when numerous other causes can be held responsible. I follow a similar strategy to Lyons here in not attempting to unravel the complexities of this issue here, but simply aiming to prove that what might ordinarily be described as a "duty" of benevolent human action to prevent harm to a fellow citizen can in fact be described as a duty under the harm principle. The question of whether it is enforced must fall prey to the same set of social benefit calculations as a direct action harm does, most notably the question of whether enforcement will generate more evils than it is designed to prevent.

obligation.²⁴ The harms dealt with are societal, not specific to any one individual - key examples are social issues such as pollution and poverty - and no single individual action can prevent them. Rather, the harm prevention is a function of the co-operation requirements themselves and *the patterns of behaviour they create*. Pollution is not prevented by a single driver choosing to drive less, but by a legally required shift in social behaviour that prevents harms at a broader social level:

For the point of such a rule is not to interfere with conduct, but is rather to redirect behaviour so as to help create a social practice that will prevent harm (Ibid. 7).

Under such an analysis, single acts of non-compliance indeed become harm generating. This justification also runs to a deeper institutional level, to Mill's own examples the jury system and emergency conscription. Non-compliance here helps generate widespread social harm in that it contributes to disabling a system designed to prevent it, and thus interference with individual action to ensure compliance is justified. In point of fact, as Lyons (Ibid. 7) points out, a harm preventing institutional framework that generates individual obligation is often the *only way* to prevent certain types of widespread harms - higher taxation to fund welfare systems that combat homelessness is a prime example.

To those who would claim such a position seems profoundly un-Millian, there is ample evidence to suggest that Mill himself recognised the validity of such institutional obligations:

²⁴ Lyons (1979: 3-7) takes the debate out of the one-on-one heuristic examples of drowning men to the proper crucible by which we must test implications - the more complex and sophisticated institutional structure that characterises legal and social systems as we know them. Here the harm prevention is not the product of any single individual action, and cannot be.

[E]ach person bearing his fair share (to be fixed upon some equitable principle) of the labours and practices incurred for defending the society or its members from injury or molestation (Mill 2, as cited in Lyons, 1979: 14).

This, Lyons (Ibid. 7-16) concedes, may appear to clash with the clear lines that the liberty principle sets out for legal sanction of individual activity, but consider two key clarifying points that he brings out. Firstly, this not an attempt to form citizens into better people by force of law. True, individual citizens will benefit from the positive social results of their participation in such joint works. But the benefits to self are irrelevant under this justification regimen - the key issue is widespread social harm, which, under any analysis, affects distinct individuals other than the participant, and can thus be readily labelled harm to others. Secondly, this not an attempt to limit freedoms or other values for the sake of greater *benefit*, but for the sake of harm prevention. Trading off freedoms for others' benefit alone would indeed offend the canon of Millian principle, as the liberty principle cannot sanction trade-offs not based on harm-prevention. If Lyons' analysis stands, though, it is harm-prevention that drives the justification regimen of the coercion required.

The question of fairness and justice considerations is more difficult. Mill's utilitarian conceptions of justice and fairness are hard-wired into his political positions. Could they not provide independent reason for coercion in the absence of harm being caused? Could Mill not, in other words, be forced to endorse a course of action that produces greater distributions of burdens and benefits at the cost of liberty?

We must separate this into its composite issues. Fairness (and for that matter desert and merit) considerations, as Lyons (Ibid. 14) points out, are not justifications of actions so much as conditions set on actions undertaken. Thus, we may discern, on a Millian basis, between various equally effective

alternatives to social harm-prevention on the basis of which distributes burdens and benefits most equitably (or some cases in terms of merit) and which safeguard other crucial values such as individual rights.

This cuts to the heart of a further crucial point that Lyons (Ibid. 17-18) makes concerning the Millian doctrine of justice, of which fairness is an element. Consider the following broad definition that Mill offers in *Utilitarianism*:

Justice is a name for certain classes of moral rules which concern the essentials of human well-being more nearly, and are therefore of more absolute obligation than any other rules for the guidance of life (Mill 2: 33).

As such, under the analytical framework emerging, we can readily identify assaults on justice and fairness as assaults on baseline human interests, and as such as harms.²⁵ Justice and fairness can thus be understood as *rooted in*, not *independent of*, harm prevention.

To tie the threads together, justice considerations would only be problematic for the liberty principle if they provided *independent* reasons for coercion. But, this cannot happen if we consider as Mill's ultimate position that assaults on justice and fairness are harms.²⁶ The further we dig, it seems, the firmer

²⁵ The possible interpretation of harm as harm against interests will be discussed in reference to J.C. Reese's famed case for it in the following section.

²⁶ Lyons (1979: 18) points out that conventional interpretations of Mill often see him striving towards welfare-maximization with experience derived and evolving "rules of thumb" as guidelines. Fairness and justice are understood as such porous *axiomata media*. Under such an interpretation, there would indeed be issues justifying coercion based on fairness and justice under the liberty principle, but as Lyons points out this is something of a "caricature" of Mill's doctrinal structure, as the discussion in the main text bears out. Lyons (Ibid. 18-19) reading does indeed seem to do more justice to Mill's doctrinal structure. He sees Mill's morality as concerned with moral rights and obligations, his doctrine of justice as laying down obligations necessary to a system of correlating rights. As Lyons succinctly puts it: "To be moral is to perform our obligations, to be just is to respect others' rights". We can, ultimately discern no *general obligation* in Mill to maximize utility. Whilst welfare and interests, at an individual and societal level, are the guiding factor in moral considerations, moral obligation is neither reducible nor equivalent to maximizing utility. Mill's social calculations are a fair deal more complex and wider in scope than this. The principles of justice and fairness are founded on long-term considerations relating to the vital interests of human beings and the social order they inhabit – interests such as personal security, rational autonomy and individual freedom from others' intervention. As such they "exert independent weight in moral argument". They can, in the final analysis, veto considerations based on harm-prevention alone at the level

and wider the Liberty Principle's foundations stand in Mill's system. If Lyon's interpretation stands (and I believe it does), it adds an interesting dimension to my argument for the Millian principle architecture as a "politics of engagement" analogous with Hegel's. The Millian social infrastructure is one that is by no means blind to suffering in its midst, but simultaneously cautious of the cure being somehow worse than the disease. Systemic issues such as poverty are indeed harms, but like all harms the costs of various courses of actions against them must be weighed up against what other crucial social interests these violate. What Lyon's interpretation does is, I believe, to justifiably extend the concept of "harm" to recognise harms that individuals incur not as a result of individual action *per se*, but as a result of the systemic consequences of the infrastructure they participate in. Such a holistic conception of the social order is indeed very Hegelian, but it is also highly logical. The further benefit of such an interpretation is that it presents a liberalism not so trapped by its own phobias of paternalistic action that it cannot act to reduce dangers to individuals within it that are not direct offshoots of other individuals' actions. This, to my mind, closes off the objection that a Millian social vision is a socially disinterested one. What remains, though, is a more thorough examination of what 'harm' actually is, a question that, until this point has been treated fairly broadly and vaguely.

iii. What counts as harm?

What yet lingers, more precisely, is the question of what counts as harmful action and what does not. Ryan strikes a first path through this by highlighting

of the wider considerations we must employ when deciding whether or not to deploy legal or social sanction against an action that causes (or fails to prevent) harm. This would seem to concede Brown's attack that the liberty principle is either inconsistent or socially irresponsible, until we consider that the status accrued to justice and fairness is premised on the protection of certain vital human interests, and thus ultimately on harm-prevention. Lyons does add the caveat that this reading does not sanction the ultimate validity of Mill's system unless one accepts Mill's utilitarian doctrine of justice.

intention as one of Mill's key criteria. To test whether an action counts as self or other regarding we consider the intentions and calculations of the agent (or agents) involved. Mill lays this out fairly clearly in stating that in order to qualify for punishment an action must "be calculated to produce evil to someone else" (Mill 1: 9).

Thus to assess actions as other-regarding we must be able to describe them in a certain fashion. So, to paraphrase Ryan's example (1987: 248), to say that Mr. Orange lied to Mr. White must, to have moral force, be to say that Mr. Orange intended for Mr. White to be deceived. To recognise how crucial intention is to this scenario, imagine that Mr. Orange was reciting the lines to a script to himself, one of which informs another character his wife has been raped, and Mr. White mistakenly interprets this as applying to him. Mr. White has the temporary perception that something horrific has happened, and has, objectively been lied to. But the 'deception' here is purely contingent. If we examine this in the light of classes of actions we can actually legally police by Mill's doctrines, we see that intention remains a crucial guiding factor.²⁷ A prime example is Mill's support for regulating the sale of certain poisons. Because it is likely that such substances will be employed in a harmful enterprise, the rights of the seller and buyer to freedom of commercial activity are overruled, and a case made for heavily regulating or banning such substances entirely (Mill 1: 87).²⁸

²⁷ Mill, as Ryan points out, adds an interesting rider to the concept of self-regarding action by claiming that actions involving others remain self-regarding if their involvement is premised on their "free, voluntary and undeceived consent and participation". One of the key ways in which this rider applies practically will be examined shortly in terms of Mill's understanding of contracts.

²⁸ This particular example has some interesting conceptual fallout that I cannot, for reasons of space, investigate at length here. While it is of course likely that such substances will be employed with murderous intent to others, it is also possible that they might be used for the purposes of suicide. This would present an interesting problem for Mill. He contended that rational adults willingly selling themselves into slavery did not count as free action in that such a decision countermanded the very capacity for freedom (See Crisp, 1997 for a fuller discussion of this). One would assume that suicide would fall into the same category for Mill, as it is an action that undermines one of the crucial factors for rationally autonomous action, i.e. one's own life.

But, given his criteria, it cannot be the only factor. Ryan shows that a rather strong objection presents itself. This is that any action can have multiple descriptions. To take Ryan's (Ibid. 249) example, we can describe a man who regularly drinks himself into insolvency in multiple ways. In one sense it is purely self-regarding (he could, after all, have gotten to the same point through bad investments), but once we expand the scope of the action to include the detrimental effects on his dependents, palpable other-regarding harm enters the equation. There is no intention to cause other-regarding harm here, but it is nonetheless caused. Millian doctrine would certainly hold that there should be some intervention to protect the rights of the family members. Thus, if we consider that many actions can be simultaneously described in both self-regarding and other-regarding terms, even in cases where intention to cause harm is not present, then the great line between self-regarding and other-regarding action has yet to be struck.

Ryan's (Ibid.) answer is that intention remains a primary and vital element, if not the only, in assessing to what extent actions can represent punishable other-regarding harm. One of his strongest arguments to this effect is that for punishment as a deterrent to make any sense, intention must remain at the core of our doctrine of penalty since "a man can only be deterred from what he knows how to avoid doing". He thus amends Mill's principle so that:

it requires us to leave alone those actions of other persons where they intend no harm to others and where it is not readily foreseeable such harm will follow (Ibid.).

Ryan's interpretation is certainly useful. It allows us to make sense of Mill's claims that even unthinking negligence can be a punishable act, whilst maintaining intention as the highest cordon of accountability, as legal systems throughout the world do. It underpins the Lyons interpretation rather well, as it is indeed a *social* breed of unthinking negligence in terms of individual behaviour that is identified as harm-laden. But it does throw the door open to

a whole new set of grey areas. We are left temporarily bemused as to what can count as self-regarding action at all, under the terms described. Until, that is, we remind ourselves that it is the breach of duty we punish and deal with, not the supposed immorality of the self-regarding activity that underpins it. Thus, for example, the fact that alcoholism can be a cause of unintentional negligence is not sufficient cause to ban the sale of alcohol outright. What Mill is ever reminding us to do is to distil our own aversions and objections to certain actions down to what is a breach of rationally justifiable social obligation, and what simply offends our prudential or aesthetic norms.

iv. Problems of application to public practice

This can, as Mill admits, get problematic in the cases of certain activities that would be self-regarding if practiced in the context of one's private sphere, but are thence organised by enterprising individuals into a public commercial enterprise. The two cases which most worried Mill were two of the more morally heated topics of his own time - prostitution and gambling:

Ought this to be interfered with or not? Fornication, for example, must be tolerated, and so must gambling; but should a person be free to be a pimp, or keep a gambling house? The case is one of those which lie on the exact boundary line between two principles and it is not at once apparent to which of the two it properly belongs (Mill 1: 89).

Mill, in admirable devil's advocate fashion, threshes out the arguments for both sides here. In favour of tolerance, he notes that there should be some consistency of principle. If we accept his arguments that self-regarding acts should go unmolested, and we accept the autonomous right to follow an occupation and profit by the practice of it, it seems inconsistent to "make that criminal which would otherwise be admissible" (Ibid.). But Mill retreats from this in an interesting fashion.

He points out that even when society suspends judgement on a self-regarding action, exercising the wise sense of restrained judgement he has advocated, it does not take itself to a point of outrightly supporting it. The social order has merely refused to intervene lest it intervene wrongly and rob a rational citizen of their capacity to manage their own lives in things affecting only themselves. The rightness or wrongness of the action itself remains disputable. As such, he feels perhaps society fails its citizenry by allowing broadscale persuasion to a course of action at the hands of those who have a commercial interest in seeing it followed through. Such persons are not, ultimately, the kind of impartial rational force Mill has in mind as a persuasive factor in social dynamics (Ibid.).²⁹

These provisions seem rather shaky, and it is difficult to see how this is not a retreat from Mill's own principles. His own argument for why such practices must be tolerated seems to stand stronger than his own final arguments against it. The worries already discussed about the difference in attitude between natural penalty and legal punishment would suggest that banning the public provision for privately permissible activity would be cow towing to the very forces of prevailing opinion he seems to find so nefarious in other contexts. This being said, the concept of allowing only if the consumer acts in full awareness is interesting. The provision that people be forewarned of possible negative effects of engaging the services of a prostitute or smoking cigarettes is a socially healthy measure that simultaneously respects the rational capacities of the citizenry. But short of banning the practice of advertising altogether, it is difficult to see how we could make *any* marketing strategy rationally impartial.³⁰

²⁹ What Ryan (1987: 252) sees Mill saying here is that only when the provider of such morally questionable goods and services represents the fuller implications of what she is selling in their fullest sense can the provision be socially permissible. And, as Ryan points out "it is difficult to imagine many pimps remaining in business under such conditions".

³⁰ The example of cigarette advertising is interesting here, since in many countries the step of banning it outright has indeed been taken. It is, however, a very different case to something like prostitution, since the range of infections that arise from secondary smoking render it a breach of other-regarding conduct unless non-smokers voluntarily choose smokers company in full awareness of the possible effects. This

What this brings to the fore is that Mill is not so clearly an advocate of hyper-permissiveness as he is often made out to be (whether his own principles should drive him there if applied consistently is something we shall consider when I assess Crisp's interpretations shortly). But I feel on this particular score that Mill's worries about unbiased persuasion are not a particularly strong case against the widespread proliferation of brothels and gambling dens. For one thing, the terrain becomes shaky when we consider his own added *caveat* that to make something extremely difficult to obtain is often a watered down form of banning it, and Mill would have society make a clearer-cut decision in such a case. Such half-hearted bans should, after all, stand the trial of his other cautionary principles as much as fuller bans must (odd exceptions such as the poisons case excluded).

There is, however, another possible Millian argument against allowing industries to form around questionable self-regarding activity, which highlights a subtler (and far more profound) dynamic at work here. That is the argument that sometimes the social conditions surrounding the industries that promote alleged individual vice instantiate other-regarding harm. The violent criminal culture that surrounds the drug industry is a prime example of this, and it is often served up as a key non-paternalistic argument for drug enforcement. Of course, as long-standing pro-legalisation arguments run, it is often the banning itself that spawns the criminality.

The most oft used example here is the Falstead act that banned the sale and consumption of alcohol in early 20th century America (a latter day version of

requirement being laid down, the constant tussle between tobacco and anti-tobacco advertising along with the long legislated practice of health warnings on tobacco products should provide the necessary array of social discourse required for a rational citizenry to make an informed decision. The counter-claim can be made that there is a large possibility for detrimental effect upon minors who lack the rational capacity or developed social perspective to heed the warnings as well as the fanfare. The counter-thrust can then be made that this could be remedied by restricting such advertising to venues that should only be legally frequented by adults, such as bars and nightclubs. I lack space to thresh out this issue further here, but this brief discussion does highlight that Millian principles do not immediately entail a hyper-permissive society.

the Maine laws that Mill so castigated). In many senses, the act created Al Capone - the exponential demand for illegal alcohol in speakeasies was the lifeblood of his criminal empire. The same dynamics apply to the debate surrounding criminality and drugs, with an added sinister dimension. The Guardian newspaper, in a series of features on the heroin problem in the UK, identified that many of the harmful side-effects of popularly available illegal drugs were functions of the unregulated agents used to cut the drugs on the black market, not the drugs themselves.³¹

The above collectively considered casts a dark shadow over Mill's concluding thoughts on brothels and gambling dens, namely that it is beneficial that they be forced to operate with a degree of secrecy and "more than this society ought not to aim at" (Mill 1: 90). Mill was referring here to the possibility of further enforcement, but the statement seems to cut both ways. It smacks of a cease-fire between his sense of social practicality and his refusal to push his principles to the point of supporting the kind of proto-permissiveness that would have alienated his Victorian audience.

It leaves us at an odd juncture, though, in terms of the ongoing question of how we apply Millian principle in this particularly tricky area of social policy. When the international current affairs journal *The Economist* ran a special feature advocating the legalisation of drugs, it was to Mill they appealed in setting up the social principle of self-regarding action going unmolested. They thence applied his principles further to possible legalization of commercial trade in said drugs subject to regulatory standards.³² Is Mill inconsistent if not pushed to this boundary? The discussion of autonomy in Chapter 1, as well as the above discussion on the fears of a stagnant orthodoxy and the tyranny of prevailing opinion would seem to suggest that actions that we accept as self-

³¹ Nick Davies, 'Make heroin legal' *Guardian Unlimited*, Thursday June 14, 2001.

³² Frances Cairncross, 'Stumbling in the Dark: A survey on illegal drugs', *The Economist*, July 26th 2001.

regarding should not be chased to dark corners. This would be to give a sense of organised righteous indignation to those who would wish such actions disallowed and it precisely against organised righteous indignation that many of Mill's arguments are deployed. Mill's practical reminders that social interest necessitates certain precautions at least (the poisons example once more) counter-balance this slightly. We are not bound by Millian principles to let the sale of anything go completely unmolested if we can find justified cause to suspect it may cause social harm if used wrongly or in public excess. The culture of noise and occasional violence that can surround drinking establishments allows the harm principle to prevent us placing them on every street corner. But many cases of self-regarding activity publicly practiced will cause more offence than they will damage. Mill allows for these, in conceding in the 'Applications' chapter that certain cases of "offence against decency" and public nuisance can be justifiably penalized (Mill 1: 88). Thus, the purified question that underpins the issue under discussion is one we have been gradually edging towards all along: When, for Mill, does provoking distaste become other-regarding harm?

3.3.3) Offence vs. Harm

i. Framing the ambiguity between harm and offence in Mill

The issue at hand can be traced to an ambiguity Crisp (1997: 183) identifies in laying out the maxims that emerge from *On Liberty*. He distinguishes four classes of actions that the text ultimately considers:³³

³³ Crisp's interpretation, sets up the liberty principle as safeguarding what he calls "valid customary morality" based upon utilitarianism. As argued in section 3.2, I feel this and non-utilitarian accounts are consequentially equivalent in their setting a boundary line around self-regarding action, and the goal of general social welfare as a *summum bonum* is not restricted to utilitarianism. Thus I have etched out Crisp's arguments in less strictly utilitarian terms here.

- 1) Actions ruled out by the harm principle on the grounds that they are tangibly harmful to others, the clearest examples being actions such as theft, murder and fraud.
- 2) Actions not ruled out by the harm principle that nonetheless do cause some degree of harm. Mill's most well worn example of this is succeeding in a competitive examination. As an action, it harms the interests of others, but it is socially crucial that such harm be permissible. Thus, though as an act of other-regarding harm it is a candidate for interference by legal or social sanction, the harm wrought is not sufficient to warrant interference.
- 3) Actions not ruled out by the harm principle on the grounds that they do not affect others directly, even though the performance of them does provoke distaste in others. The legality of homosexual activity is a key example of this.
- 4) Actions not ruled out by the harm principle that do not affect others at all.

Some interesting issues of clarity arise from this. The first is the idea that harm does not immediately justify interference. All we can say, by Millian principles, of an action that affects others (even in a tangibly harmful sense) is that it enters the realm of *possible* legal and/or social sanction. Harm is a necessary, but not *sufficient* condition for an action actually being subject to enforcement. This is something Mill lays out most clearly in the final Chapter of *On Liberty*:

[I]t must by no means be supposed that because damage, or probability of damage, to the interests of others, can alone justify the interference of society, that therefore it always *does* justify such interference. In many cases, an individual in pursuing a legitimate object, necessarily and therefore legitimately causes pain or loss to others (Mill 1: 84, my italics).

Mill's own examples of professional competition and examinations (Mill 1:84) seem fairly benign, but we can nonetheless see how the principle can extend to less clear-cut cases. In its distilled form, it holds that we have to apply two

phases of judgement - we must first assess whether an action counts as harmful, and thence assess to what extent it is in the social interest (which, as we have discussed, includes certain provisions safeguarding individual interest) for legal and social sanction to be deployed against it.

This being said, there is an ambiguity to be resolved between classes (2) and (3) above. As we have just seen in the previous section, Mill does indeed retreat from what he calls "offence against decency" (Mill 1:88). Thus Mill opens up the possibility that public distaste can be turned into legitimate coercion when self-regarding actions are publicly practiced. We are left with two key possibilities here.. The first is that provoking distaste *is* in fact a harm of sorts, interference with which, at a private level, is not socially justifiable for the various reasons we have discussed, but is justifiable at a public level. The second is that class (3) admits exceptions on some unspecified basis yet to be established.

Crisp (1997: 185) suggests that Mill might have been more consistent to collapse classes (2) and (3) into one, and "rule out *any* interference based on feelings of offence". Crisp retreats from this on the grounds that it takes *On Liberty* too far out of context. If we consider that it is a work of political persuasion as much as anything else, all good effect of his work may have been lost had it been too shocking or radical in what it claimed should be permissible. This is a fair point on context, but for the purposes of present discussion leaves us nowhere. To assess the durability of Mill's principles, and to fully comprehend his social vision, we must see this ambiguity cleared up. To do so we must dig deeper into the architecture of Mill's principles and answer two rather tough questions. Do feelings of offence count as harm, and what are the implications thereof for the public performance of privately permissible acts?

ii. The question of offence as harm

This is indeed a set of issues that has sparked widespread debate in Mill scholarship. A good first point of entry into the issue is Reese's (1960: 113-129) position of harm as harm against interests. He re-frames the criteria of the harm principle to the question not of whether A's actions affect B at all, but rather of whether A's actions affect B in certain specified regards which are dependant on social recognition for their status as harms. Wollheim (1973: 5) attacks Reese's analysis as too conservative and too relativistic as it leaves the question of which "interests" are at stake open to some kind of transitory social convergence. His attack does seem to stick - the idea of harm as an attack on "standards and values" runs up against the charge of being profoundly illiberal, and profoundly un-Millian. Such "standards", if employed, must be tied to something more durable and vital to the interests of the individual and the social order. On this score, Wollheim (Ibid. 8-9) is not keen to divorce Mill from his utilitarian background. He sees Reese's reading in the term "prejudicial to interests" must be socially identified and defined, which does not cater for Mill's adherence to certain baseline social values.

Wollheim's (Ibid. 8-12) interpretation is rather different and key to the issue at stake: We must make distinctions between actions that have an actual effect on others, and those that only have an effect in that others hold certain *beliefs* about said action being right or wrong.³⁴ In seeking a more utilitarian underpinning for the liberty principle's concept of harm, he must contend with the issue that widespread emotional distress at the performance of certain actions looks very much like widespread pain. If accepted, this could lead us into remarkably dangerous territory, much of it already familiar from the above discussion on Devlin's objections. Are we then to credit the distaste caused to racists by the sight of multi-racial couples as grounds for banning said couples

³⁴ This, Wollheim (1973: 8-9) holds, like Reese's interpretation, answers the crude objection to the self/other regarding action split that no action is without some effect on another, but does so without appeals to the traditionalist mindset and is more open to derivation from utilitarian principles.

holding hands or kissing in public? A horrific laundry list of parallel examples can be rolled out - gay couples, obese couples, older men with younger women and vice versa. Some of these offend subjective religious sensibilities, others personal aesthetics. Neither of these would be grounds I can see Mill could allow for interference, for reasons we have discussed at length, the most notable being the infringements on autonomy and the propagation of a stagnant and narrow-minded orthodoxy.

Wollheim (Ibid.) sees two possible ways to discredit offence-based of feelings of distaste as a harm. The first is to limit the harm principle's scope to physical pain alone. This must be dismissed immediately, since Mill was far too sophisticated a thinker to completely discredit the notion that mental pain can be a harm, and to do so would undercut vast portions of his defence of individuality and freedom of thought. Thus Wollheim elects to proceed by another strategy: discrediting the pain caused by specific beliefs about right and wrong that emanate from individual feeling about the "right" way of life, under a utilitarian standard.

We can do this, Wollheim (Ibid. 11-12) claims, if we cut away the idea that such beliefs are in fact justified moral objections on a consequentialist reading. If we can prove that, when A's action distresses B, were it not for the beliefs of B, B would not be harmed, this serves. For utilitarian calculations must be made from a standpoint prior to the adoption of moral attitudes, lest said attitudes frame the morality of the action. Thus an action that causes pain simply because others think it wrong cannot be said to have painful consequences in a utilitarian calculation.³⁵

This seems systematically neat, but is it valid? Is the mental distress felt no less real for emanating from beliefs that can be described as false on the

grounds of consequentialist rational assessment? Wollheim contends that it is Mill's hope that such beliefs will fade to nothingness once exposed to wider social context and argument:

Moral associations which are wholly of artificial creation, when intellectual culture goes on, yield by degrees to the dissolving force of analysis (Mill 2, as cited in Wollheim, 1973: 14).

If accepted, this places a heavy premium on Mill's notions of the value of ethical confrontation. Much of Mill's defence of the freedom of thought and discussion (and by extension, with conditions, actions) hinges on the idea that ethical conflict within society is in fact *desirable*.

This is Waldron's (1987: 415) contention as to why moral distress cannot count as harm in the Millian system. Ethical confrontation plays a crucial role in facilitating social progress, in that it both brings to light new ideas and affects the way ideas are held in society itself. By its very nature, such confrontation makes people uncomfortable and leads to emotional distress - in fact high levels of distress are necessary for the clash of passionate viewpoints through which perspectives are either affirmed, amended or discarded. As Mill himself puts it with his standard rhetorical flourish:

Truth in the great practical concerns of life is so much a question of the reconciling and combining of opposites that very few have minds sufficiently capacious to make the adjustment with an approach to correctness, and it has to be made by the rough process of a struggle between combatants fighting under hostile banners (Mill 1: 42).

Thus, to use Waldron's (Ibid. 417) illustration, the homophobe confronted with a homosexual couple in plain sight undergoes a socially crucial process. He faces up to people who, like him, take their sexuality seriously. He is forced to

³⁵ This does not simply apply to a utilitarian account. My own argument in Section 2 that Mill's moral stand represents a kind of moral demarcated pluralism can also concur with such an objection when

at least reconsider his mental notion of homosexuals in light of the living instantiations of the lifestyle standing before him. As such, his capacity for rational appraisal should lead him to realise that sexuality is the province of neither the religious establishment, nor its heretical counterpoint. This leads to more balanced and sober social appraisal of the issues.

This may seem a rather rose-tinted approximation of how society operates, but Waldron's argument, at the abstract level, strikes deep. Ethical confrontation is indeed, as Mill consistently argues, a hallmark and indicator of an intellectually vital society. Without the sparks of such a convergence and clash of perspectives, complacency and orthodoxy slowly erode the critical and progressive faculties of the social order. For Mill, moral beliefs must stand or whither by the harsh terms of this crucible. As Wollheim (1973:14) puts it: "[T]o such discussion false moral beliefs, Mill believed, are natural victims". As such, Waldron cautions us about the dangers of including moral distress in the catalogue of harms liable for legal sanction:

Think, then, what would be entailed by an interpretation which regarded moral distress as sufficient to cross the threshold established by the harm principle. What ought to be taken as evidence of freedom of thought and lifestyle as promoting progress would be invoked instead as a *prima facie* reason for interfering with that freedom (Waldron, 1987: 417).

This is all convincing enough, and certainly has a profound Millian pedigree, but we must deal with a running assumption threaded throughout such a defence. If we refuse to certify morality-dependent harms, to use Honderich's (1982: 504-514) phrase, on the basis that they will face the crossfire of social discourse and be judged a falsehood (or at the very least amended), we are working under the assumption that non-rational moral perspectives are inherently false. If so, we have taken a fairly bold step that we have yet to justify.

assessing whether certain actions should be legally sanctioned.

Wollheim (1973: 15-16) feels Mill has an answer for this lurking in a corner of his doctrinal structure oft ignored – namely the distinction between moral beliefs and *preferences*. Wollheim suggests we can, in the Millian conceptual vocabulary distinguish between positions on what others ought to do which are validly moral expectations, and those which are merely personal lifestyle preferences which the offended individual is unjustifiably holding others to account for not living up to. Preferences emanate purely from feelings or emotions, while for Mill moral beliefs are of a utilitarian character and have to do with consequences. It is, in Wollheim's view, a difference in scope. Offence drawn from emotive sources is not really a position about what all ought to do with reference to the broadscale social consequences involved, but rather positions based on what the offended individual would like to see done. When such preferences are confused for moral precepts society "improperly invests its own preferences with the character of moral laws" (Ibid.). The key argument that Wollheim draws out of this is that the harms involved in B's distress at A's action are ultimately *self-generated*. The action is the *occasion* of B's distress, but not the *cause*. The cause is the belief.

Wollheim (Ibid. 16-20) backs this up by a further clarification of the difference between a belief and a preference in Millian terms. A preference is personally generated on two fronts – it stems from individual feeling or emotion and relates to the individual and her chosen/adopted way of life. These two criteria Wollheim sees as linked. If a belief fulfils the first condition, it by definition fulfils the second. This is drawn from Mill's theory of the "moral feelings", composed of "conscience" and the "sentiment of justice". These provide the *sanction* for moral principles, but not their *proof*. That must be drawn from consequence. On a weak reading, this means that reference to social/other regarding consequences independent of the belief are necessary to support it. On a stronger reading (which Wollheim attributes to Mill), reference to consequences is necessary for the belief to qualify as moral *at all*.

Thus "moral" is a social term in Mill, concerned with the rational identification of harmful consequences to others' vital interests. A "harm" drawn from non-rational emotive attitudes, without identification of such consequences, is self-generated by the holder of the attitude. If we accept this, we are better placed to contend that B is *not* pained by the action to which she objects. B is pained by a belief stemming from individual feeling - thus the link to second criterion, refers only to what B would like to see done and sees herself doing. As such, A's action itself falls outside the scope of B's belief. There being no other harm assignable to A's action, it must be classed as self-regarding. It is B's belief, not A's action that is the cause of the pain. "A's action may be the occasion of B's pain, but it is not, in any relevant sense, the cause of B's pain". Furthermore, interfering with A's action, above and beyond its being unjustifiable on this analysis, also reinforces B's predisposition towards pain. Would not the state be doing a disservice to B by pandering to him and getting A to 'tone down' thus decreasing the possibility of his learning to deal with A?

Honderich (1982: 504), for one, objects to Wollheim's line of reasoning on two counts. The first is that Wollheim has not offered any account of how we can assign beliefs truth value, in other words no way to declare them true or false. My response to this would be to endorse Waldron's line that truth, in Mill, is an internal goal of the entire social order. A great deal of Mill's doctrine on freedom of thought and discussion is, after all, premised on his fallibilist *caveats*. The whole point of a free social discourse is that no viewpoint on any issue can have a claim to the ultimate truth, and thus it is only through the clashing and melding of intersubjective social experience and exposure that we draw ever closer to it. What is at stake is not whether the truth or untruth of what we conventionally call moral beliefs can be assessed, but rather whether distress sourced in such beliefs counts as harm.

And this leads us squarely to Honderich's (Ibid. 508) second objection - that A's action and B's belief are both necessary and jointly sufficient conditions for the mental pain caused. The pain can be removed by the subtraction of either, yet Wollheim has only chosen the one. This, Honderich's claim seems to run, is either arbitrary or unfairly loaded as an approach. My response here is that the occasion for moral distress to occur does not have to be an action. The occasion for such distress can be the very knowledge that such things exist. The removal of the belief will remove the harm, removal of the action may not. In fact, given B's primary belief that the action is wrong, actual knowledge of the action's performance may not even be necessary. There is a lurking secondary belief on B's part that the action is being performed by *someone* which can occasion the same harm as B witnessing the action being performed.³⁶ This, to my mind, lends force to Wollheim's contention that we have, in a sense, failed B if we do not allow for the kind of social discourse that will allow him to be reconciled to A's action happening.

What is interesting is that Honderich (Ibid. 509-510) does not see Mill as supporting social or legal sanction being deployed against actions that are contentious merely by their causing feelings of distress. His position is merely that they are in fact harms (and as such in the class of actions liable to social sanction) but that deployment of particularly legal force against them is dismissed by Mill in terms of the costs such enforcement would have for other vital social interests (examples would presumably be autonomy, freedom of lifestyle and the positive outcomes of ethical confrontation). He feels that in most of the key examples in support of freedom of conscience from *On Liberty*, Mill is not undermining the value of moral distress, but bemoaning the blind authoritarianism with which social norms are applied.

This, I feel, is a dubious claim. For Honderich's distinction to hold, either there must exist forms of coercive action against moral-distress causing

³⁶ I must thank Michaela Baker for her significant help in clarifying and formalising this issue.

behaviour that are not blindly enforced social norms, or there are blindly enforced social norms that are not premised on countering forms of moral distress. Separation becomes technically impossible. All blindly enforced intersubjective social norms include preferences about the way people ought to act - else there would be no need to enforce them, as there would be no resistance to them. If the distinction fails, it only serves to highlight Wollheim's contention that preferences are often misdescribed as moral norms.

Honderich's contention that the mental pain caused by distress must feature in a utilitarian calculus also smacks of oversimplification. Waldron (1987: 421-422), for one, takes him heavily to task on this. He claims (with some validity I feel) that Mill could not have accorded such distress the status Honderich claims he does. If it were so, his arguments in defence of minorities that undertake otherwise self-regarding actions that disgust the majority would be untenable (think of the pork-eater in a Muslim land, the Protestant in Catholic Spain).

Waldron (Ibid.) ascribes this error to a fairly common misinterpretation of Mill's utilitarianism and how it plays into the liberty principle. As Waldron puts it: "Mill's utilitarianism is not a Benthamite calculus of pleasures and pains, or of satisfactions and dissatisfactions of all sorts". He takes Mill, in stating the liberty principle to be grounded in the "permanent utility of man as a progressive being" is on about something more than simply long term rather than short term calculations. He sees Mill making a broad statement here about the nature of the utilitarian values he seeks to promote. We may, he claims, find a lengthy exposition of such values in *On Liberty*: individual freedom, spontaneity, tolerance, progressiveness and a passionate yet open-minded approach to social discourse.

Whilst I agree with the tenets of Waldron's analysis, I would not go as far as completely sanctioning his interpretation that Mill would have us throw the

gateways to *all* distress causing action wide open. Though I feel Honderich's argument fails as it is presented, I feel his general strategy might well have some validity. Let us consider what Wollheim's interpretation does. He takes a situation in which mental distress arises. In seeking ways of eliminating such distress, he contrasts the two candidates for its primary source, evaluating which of the two sets of freedoms (B's freedom from distress, A's freedom to action) once curtailed is most likely to reduce the pain. Given his concession that it is unsophisticated and brutally simplistic to treat only physical pain as a harm, it seems to me that he *has* treated the distress as a harm. But he has argued that, on a balance of social interests, this harm is best dealt with, as a rule, by forcing the primary source of this harm (B's belief) into situations of ethical confrontation which will, in the long term, reduce the harm potential best, by allowing B the opportunity to rationally reconcile himself to A's way of life.

I argue that we can class A's action as other-regarding, and even grant it the status of a harm, but contend that the balance of social interests dictates it is better for B to be exposed to A's action than for B's irrational preference to be sanctioned. As such the distress is considered a harm, but one for which the balance of social interests cannot allow us to use legal or social sanction to prevent.

This, as I see it, in effect transforms all issues surrounding moral distress into balance of rights calculations (including B's right to full exposure to contrary evidence to his irrational preference as a means of furthering his right to rational autonomy). This, in combination with autonomy, equality and justice rights considerations (along with the calculation of the benefits accrued from ethical confrontation) loads the equation quite heavily against preferences (or, to be fair, non-rational, non consequentialist moral norms) being enforceable on the grounds of causing distress. I would claim we could, on this analysis, load it to the extent that the burden of proof lies with advocates of certain

cases of moral distress as a socially sanction-worthy harm to prove said cases the exception to the rule Wollheim's interpretation sets up. If we cast Mill's utilitarian calculus in the light that Waldron's interpretation does, I believe we have a powerful set of counterweights to the possibility of Mill's principles sanctioning an ill-considered moral totalitarianism, even if we do accord distress the status of a potential harm.

iii. The question of offensive public action

This is not simply a question of interpretative strategy. Whether or not we assign feelings of distress the status of harm in the Millian system has profound implications that become evident as we assess the second tough question with which this strand of enquiry began. This is the issue of whether we can legislate against the public performance of privately permissible acts on the grounds that they cause offence. I believe we have a far easier time dealing with this, one of the more thorny issues of any social theory, if we frame the Millian treatment of it as, at base, a balance of rights issue and not the abject dismissal of distress-dependent harm that Wollheim would have us set in place. Observe.

Why is sex in public places so wrong? It does not seem there is any definite other-regarding harm being caused. Think about sex in a public park as opposed to setting fires (potentially dangerous) or abluting in the open (unsanitary). It can be said that it is an example of attempting to privatise public space, comparable to playing a radio extremely loudly on a subway (in that it causes noise pollution and infringes upon others' rights to comfort, conversation etc.) but the two aren't necessarily directly analogous. Playing the radio extremely loudly is impossible to ignore unless others clamp their ears shut or move to another part of the train. While it is true that the individual who finds the sight in the park distasteful can simply look away, it could be argued that the offence caused would be a barrier to, for example,

others wishing to have family picnics. This still remains problematic. Noise pollution is unavoidable by virtue of having the sense of hearing, and as such can be a barrier to, for example, others' right to have conversations, listen to their own walkmans, and have as much comfort as shared public space can allow. There seems to be a parallel in terms of the latter condition - sex in parks would certainly make a large proportion of current publics uncomfortable. Especially considering it would include breaking the long-standing social taboo of exposing sexual activity to children. But it is when we unpack it further, to the source of the discomfort in question, that we come to the true meat and bones of the issue - society's issues with sex in general. In trying to pinpoint the source of such offence, we can throw up various candidates. Aesthetics would be a contender, but it is an area so subjective that any calculable distaste wanes to inconsequence if we are on a quest for principle. Why not then, for example, prevent overweight or tastelessly dressed people from going out in public at all? Social convention is another possibility, but we are thence quickly led to ask what dynamics it is based on. Ultimately, in just about any area in which sex and offence are linked, we are led to traditional religious perspectives as the dealbreaker.

Thus the running dynamic that rears up throughout this debate, and possibly any modern dispute of the nature of background morals. This is the constant face off between religious and non-religious perspectives. We have to accept that many of the long-standing aversions to disputed self-regarding practices - such as prostitution, pornography, and homosexuality - have a strong basis in traditional religious values. As such, we are back in territory endemically familiar to Mill, and can make a more useful assessment of how he saw his own principles applying to matters in which distaste based on religious perspectives is an issue. Examples of these abound in Mill. One of these is his attempt to assess to what an extent societies with a majoritive religious population are justified in legislating religious practice, he considers the example of 19th century Catholic Spain. At that time the practice of any other variant of

Christianity (let alone other religions) was not permitted on Spanish soil. Mill's analysis is predictably scathing:

No stronger case can be shown for prohibiting anything which is regarded as personal immorality, than is made out for suppressing these practices in the eyes of those who regard them as impieties; and unless we are willing to adopt the logic of persecutors, and to say that we may persecute others because we are right, and that they must not persecute us because they are wrong, we must beware of admitting a principle which we should resent as a gross injustice the application to ourselves (Mill 1: 77).

This is vintage Mill, and premised as much on common sense as upon arguments already discussed. What it does hint at though, is that tolerance implies an attitude of *mutual* respect and recognition. Thus we might ask that the couple in the park respect that the public parading of an action many consider morally questionable offends the pluralism of a tolerant society, and as such would be better practiced in private where it more firmly affects only themselves.

The obvious problem with this is the question of why we hold the religious perspective has more claims to a space of tolerant distance than, for example, the racist. Both can stand accused of being premised on an irrational set of assumptions about the nature of humanity. The difference I feel, from a Millian perspective, is that racism, at a fundamental level, is laden with far more potential for social damage than theism. It has inbuilt assumptions that demand that rights accrued to one portion of the human race be denied to another. If enacted into legislation it infringes not only social equity and individual autonomy but also the whole fabric of social welfare - it causes massive divisiveness and hatred and is fraught with the potential for tangible social harm. Theism enacted into legislation is equally problematic if it, as in Mill's example of Catholic Spain, dehumanizes and denies rights to certain sections of the population. The difference of course is that religion can be changed by human action, race cannot. One can convert to Catholicism, one cannot change the colour of one's skin. So we are back to the question of

whether and when personal religious choice can be enforced by even a majority upon a minority. By the terms of the tolerant social mindscape Mill has etched out, the legal status of irreligious (but not directly harmful) *private* practice is fairly straightforward. It is the public display - the private action turned social - on which we are still firmly stuck.

Mill brings up a key example in reference to the habit of empowered puritan social elites to ban the practice of public amusements - particularly theatre and dance:

How will the remaining portion of the community like to have the amusements that shall be permitted to them regulated by the religious and moral sentiments of the stricter Calvinists and Methodists? Would they not, with considerable peremptoriness, desire these intrusively pious members of society to mind their own business? This is precisely what should be said to every government and every public, who have the pretension that no person shall enjoy any pleasure which they think wrong (Mill 1: 78).

This principle can be applied more widely to, say, the availability of pornography and in particular the existence of adult cinemas and strip clubs. And this, finally, sheds some light on how we might keep conflicting social moralities in balance. We allow these practices since their moral status is, at a personal level left permanently *undecided*. Not because society immediately assumes the religious position on them is objectively wrong. Thus, while we cannot, by Mill's principles, outlaw the existence of strip-clubs as a public amusement on grounds of religious objection, it is not necessary to safeguard the rights of their patrons that strip shows be performed in public parks, or that we open them to children who have not quite formed the capacity for their own judgements quite yet.³⁷ This might well be to infringe as heavily

³⁷ This is by no means an argument for banning practical and balanced discourse tools such as the teaching of sexual education syllabi in schools. To merely present children coming into puberty with the hard and fast facts and implications of sexual activity to assist in their informed decision making is very different from allowing them access to places where sexuality is, to many minds, cheapened, commodified and unhealthily represented. Whether it is indeed these things is a question left to individual adult minds to decide as a matter of self-regarding practice.

upon the conservative element of society as the conservative elements once infringed upon the permissive.³⁸

This being said, there remains what Wolff (1998: 2-6) calls a "notorious" paragraph slipped into the final chapter of *On Liberty* that suggests Mill does indeed recognise public distaste for an action as a valid reason to prevent its public performance. This is where Mill states, rather hurriedly and almost as an aside, that "offences against decency" and actions that offend "good manners" must be privately permissible, but may be justifiably prohibited from being performed in public (Mill 1: 88).

It goes without saying that this all sounds rather un-Millian, given the broader schematic of his thought. Wolff (1998: 6) identifies four key routes marked out by the cannon of Mill scholarship to explaining the presence of what looks very much like a concession to legitimizing social penalties based on moral distress. The first two have to do with how we may manipulate the concept of "harm" so as to render such provisions consistent with the liberty principle. We may generate a concept of harm as a necessary *and* sufficient condition for the enforcement of legal/social penalty and somehow define it to fit the remainder of Mill's structure, or we may take the necessary condition interpretation already outlined above, whereby harm delimits the range of actions liable for social sanction, and the question of their enforcement is settled by assessing such a measure's impact on the broader range of social interests. The latter seems to fit Mill's principle structure far more coherently than the former (it

³⁸ This does not necessarily commit us to respecting the preferences of racists and homophobes. Racism, as I have mentioned, is an attitude laden with the potential for tangible damage that we can safely disregard. Homophobia is a more difficult case. On one hand, the objections to public displays of homosexual behaviour fall into the same category as the objections currently under discussion to *any* display of public sexuality. The objections to two gay men performing oral sex in public would be the same on a balanced perspective to a straight couple doing the same thing. As to persons who feel offended at the prospect of gay couples holding hands in public, we must remind ourselves that they would not deny straight couples the same rights, and thus stand in the same corner as the racists in denying social equity between two objectively equal classes of the population. So, we can ultimately, discuss moral objections to public displays of sexual behaviour that are not directly analogous to clear bigotry.

is, after all, the way Mill explicitly states it). But there are two more possibilities that Wolff considers - both relating to the idea that the provisions in question *are* inconsistent: the issue thence becomes whether Mill was unaware of the inconsistency (Waldron's view, for one), or was aware of it and felt the liberty principle admitted certain exceptions (Skorupski's position). This latter position would require a return to an interpretation of harm along the line of either Reese or Wollheim, but more broadly and with certain exceptional cases.

It is, ultimately, the harm-as-necessary-condition strategy that Wolff (Ibid. 6-7) adopts and, I feel, makes a strong case for how we may, under such an analysis, clarify and resolve the disjunct the "indecent policy" seems to represent in Mill. The first avenue open to us is the suggestion that public indecency (our by now recurrent sex in parks example will serve) represents a misuse of common space. This position, as put forward by Ten (1980: 105), suggests there is a distinction to be drawn between acts of public expression and "public nuisances". These Ten would define as actions that cause offence, and thus force others to unnecessarily alter their activities in order to avoid such sights, and this represents an unjustified sleight against their autonomy of action (think, for example, of families wishing to have picnics in the park in question). The problem of course, is that the grand question of whether we must thus sanction racist and homophobic offence arises immediately here. Wolff (1998: 6-7) does concede that Ten is able to find independent reasons for denying socially harmful attitudes the same privilege, but Wolff feels that a more encompassing doctrine (and one drawn more directly from the Millian cannon³⁹) would be preferable.⁴⁰

³⁹ There is, after all, aside from the reference to the phrase, no explicit doctrine of "public nuisances" in Mill.

⁴⁰ Beyond this, if we consider Waldron's points about the value of moral distress in Mill, it is difficult to see how a Millian social schema could sanction a society walking on eggshells around its more emotionally contentious issues. This will be discussed in terms of Waldron's issue with the "behind closed doors" interpretation, below.

Wolff's (Ibid. 8) exposition of an explicitly Millian defence of the indecency policy follows fairly simple lines. He begins with an echo of Waldron's contention that Mill's doctrine of rights is neither natural nor contractual, but rather a set of constraints safeguarding certain vital human interests. He adds to this the argument brought forward by Riley and Conway that distress-dependent harms in Mill are not a question of the nature of the offence, nor its source, but rather a question of the rights related consequences of prohibiting certain actions. Prohibiting homosexuality has dire implications for the individual (and by extension social) interest in safeguarding autonomy, the right to experiments in living (as discussed at length in the Chapter 1). It furthermore, as the discussion above has brought out, runs against the rights to equality before the law (we do not, for example, deny the right to sex before marriage to straight couples, even though this would be an equal source of distress to members of the religious sector), and runs the charge of being irrationally paternalistic (recall my discussion of Devlin's objections).

But, as Wolff (Ibid. 9-10) points out, the prohibition of the public, whilst not the private, practice of offensive acts doesn't necessarily incur such costs. Prohibiting the public performance of an action that remains privately permissible does not have the same dire and sweeping social consequences outlined above. The public prohibition can stand whilst the private lifestyle continues. The public version is "unnecessary".

This is, as Wolff intended, a neat way of tying up a fairly controversial policy point in *On Liberty*, but it is perhaps a little too neat. While I would support Wolff's interpretative strategy (with the same cautions which I applied in Honderich's case), I feel his case, as stated has certain pitfalls which must be negotiated. One of these is Waldron's crucial reminder that ethical confrontation loses all progressive force unless the manner of a viewpoint's expression is passionate, direct and public, in a manner that the viewpoint's opponents cannot ignore. He traces this to Mill's belief that vehemence and

toleration are ultimately compatible. Mill certainly does accept that the *manner* of assertion may be objectionable and subject to censure by public opinion - he specifically mentions sarcasm, invective and "vituperative language" (Mill 1: 47-48). But he immediately makes it clear that he feels law has no business censoring these, and besides which they are more likely to be used as repressive tools on the side of orthodoxy, hence Mill's famed contention that there is "more need to discourage offensive attacks on infidelity than on religion" (Ibid.). What this brings out is the crucial point that any form of protest activity or challenge to orthodoxy is likely to cause offence. Orthodoxies are not known to shake gently, and the most effective weapons at the activist's disposal are those most likely to incite passionate discussion - often, in other words, the most shocking. Offence is thus part and parcel of social progress, and it is easy to see how trying to balance in offence as a harm liable to legal sanction in rights calculations may have dire implications for what Mill (validly, I feel) sees as a socially crucial activity, namely heretical thinking and expression.

Wolff (1998: 11-16) does consider this issue, and responds with an interesting triad of classification for actions which cause offence, and by their very nature and intention can only be public. His three divisions are based upon the intention of the action: exhibitionism (roaming naked through the neighbourhood supermarket with "KISS MY WIGGLY BITS" painted on one's back) educative value (actions which broaden and enlighten the public perspective on an issue) and protest value (protest marches and other forms of public issue-based activism).⁴¹ On a balance of rights approach, Wolff contends, we can distinguish offensive actions which are socially useful from those which are simply offensive. He admits that distinctions between the three may blur, but we at least have a framework of interpretation within which to assess such application issues.

⁴¹ The latter two do seem to blur into each other somewhat. A gay pride march in a modern democracy is an example that falls into both categories.

I remain convinced that certain unseen dangers yet lurk at the edges of Wolff's position. One of these are issues with "permissible, but behind closed doors" distinctions that Mill scholarship of Wolff's shade often throws up. Waldron expresses what I must take a genuine Millian concern here - that lifestyles that exhibit novelty, eccentricity or some heretic strain will be driven by public opinion into the inscrutable private lives of those that live them, without even entering the social discourse with any significance. Requirements that moral distress be sanctioned as harm seem to Waldron an unfortunate parallel to the "transmitter shields" in Bruce Ackerman's "liberal" utopia, which allow citizens to immediately screen out any material they find offensive. These, Waldron (1987: 420-421) contends, would have horrified Mill, as they would short-circuit the very process that he feels ensures any form of social and moral progress, namely constant exposure and rational confrontation.

iv. A viable Millian 'indecent' policy

So, we must decide where the final force of argument lies. What do we do with the couple in the park? Do we go with Wollheim and Waldron in dismissing moral distress-dependent harms as alien to the Millian system, or can we calculate into a balance of rights approach that Honderich and Wolff might recommend? In a fashion I feel Mill himself would find ironically appropriate, the correct approach seems to strike somewhere at the centre, somewhere between these two ranks of scholars fighting under "hostile banners" (Mill 1:42).

I still maintain that neither Wollheim nor Waldron have conclusively proven that moral (or at the very least mental) distress cannot, under any circumstances be a sole generator of harm under Mill's analysis. There may, after all, be various mental harms that have no socially progressive value whatsoever - that drag society towards no ethical re-evaluation, nor provide

any launch point for progressive ethical confrontation (the "KISS MY WIGGLY BITS" example can only in a very distant sense be said to usefully question social morality). But there is disorder in the opposite ranks as well. The advocates of the balance of rights approach covered here seem to err on the opposite side by providing insignificant caveats that safeguard the foundational principles of the Millian social vision, most notably the confrontational social ethics just discussed.

I would thus advocate that my earlier suggested interpretation stands. We allow for the possibility of moral distress to count as a harm, but weight several values against it - all the hallmark Millian liberal interests already discussed at length as well the concern that such a calculation is not used to scare exemplars of potentially useful new life practices to the dark and barely visible fringe that is purely private action. Only distress that offends none of these significantly can be said to count as a counter-enforceable harm in our rights calculations.

The attitude this engenders is a kind of demarcated pluralism, but one which ultimately preserves the "politics of engagement" I ascribe to Mill. If we accept a principle of mutual social respect for moral perspectives, essentially an agreement to disagree, we can justifiably ban sex in the parks not in the name of morality, but in the name of furthering tolerance. We have not outlawed fornication (nor for that matter erotic adult entertainment, provided it is not set up on every street corner). Have we undercut ethical confrontation? I think not. We have simply insisted that in the context of an avowedly public space, actions that we allow on the basis of their moral status being permanently undecided should not be shoved down the throats of those who have decided against them, unless there is some grander social educative or protest value at stake, or a useful clash point of ethical confrontation. Have we crushed autonomy or outlawed the possibility of a socially significant and potentially beneficial lifestyle practice? Not really. The autonomy of those

involved is not significantly hampered by asking of them that they practice such activities in private, or at least not in a space so completely foresworn to pluralism as a public park. Sexual activity as a lifestyle ethic remains freely practiced and unhampered. In the name of a tolerant society, we can ask the couple in the park to find a room.

This is by no means a retreat to a politics of avoidance, if we consider that one of the rafters of the Millian architecture I am constructing insists that ethical engagement be something rationally managed and institutionally stabilised. This requires, at certain junctures, a broadened sensitivity on the part of the citizenry to the mercurial nature of common environments, and this, on a balance of interests, must sometimes be legislatively enforced. This leads us to the rather tricky question of how Mill would frame the rules of such a common discourse. The best way to answer such queries, I believe, is to examine and evaluate the Millian provisions for the clearest realm of ethical confrontation, namely that of spoken and written discourse. Thus we are led to Mill's most famed philosophical war cry, what Skorupski calls his "Glittering paean for liberty of expression" (1989: 369).

3.3.4) Liberty of expression

i. Context and framing of the arguments for liberty of expression

Freedom of expression as a liberal social conviction owes perhaps its greatest debt to *On Liberty*. It is neither necessary nor useful to list the various ways in which the tenets of Mill's position on such matters have influenced both analysis and policy. Mill is understood as an advocate of (almost) unlimited free speech and expression, and *On Liberty* has indeed gone on to become something of a handbook for defenders of such freedoms. The text's eloquence, however, can sometimes mask some of the trickier background

issues that present themselves in this particularly volatile area of social theory. As Skorupski (1989: 369) points out "these august pages persuade rather by inspiration than reasoning. As cold philosophical argument they can easily stick in the throat".

What an excavation of Mill's famed argumentation here can help crystallize is how far, and to what level, Mill is willing to push perhaps the grandest aim of his social vision: ethical and intellectual confrontation leading ever closer to rational convergence. For the question of what latitude individuals are given in the name of pursuing truth, and with what implications, gives us a quasi-final assessment of how viable Mill's adversarial community of ideas actually is. As such, my aim in this section is to grind down Mill's rhetorical prowess to a harder, finer grain in an attempt to gain a clearer conception of what his discourse-driven society might entail.

Mill's three-fold justification for why we cannot constrain opinion is well known, some of it readily familiar from the discussion above. Firstly, the opinion/expression being subjected to suppression might well be true. To suppress it is to assume an infallibilism beyond human faculties. Secondly, even broadly false opinions often contain elements of truth that we may well risk disregarding if expression of such opinions is suppressed. That most views, especially on any issue of common public concern, contain a rough mix of truth and falsehood is a common-sense observation. It is only through the trial by social fire that is the clash between warring perspectives that the full truth emerges. Thirdly, even positions that were originally premised on truth risk losing their vigour, vitality and rational grounding if not confronted with people that truly believe the converse (Mill 1: 30). There are certain issues of clarification with all of these (and I shall deal with them in short order), but first, to frame any useful assessment, we must understand what the argument for freedom of expression aims to achieve, and what few limitations Mill does give it.

ii. The dialogue model

Skorupski (1989: 369-370) sees the principle not as a wide-open rhetorical orgy that must go on unabated regardless of consequence, but rather as an attempt to strike down certain types of reasons for prohibiting expression. These reasons are any agenda that seeks to limit or constrain what he labels "dialogue". This "dialogue model", as Skorupski calls it, works by assessing the flow of rational responsibility for effects that flow from acts of expression. If Bob imparts certain opinions or information to Leonard, and Leonard then takes harmful action based on said information, said action cannot, on a rational analysis, be Bob's responsibility. The information had to pass the checkpoints of Leonard's rational capacity, and as such the actions that Leonard performs remain *his* responsibility. Bob has simply presented a viewpoint to an agent capable of rational judgement. But Skorupski realizes this is too simplistic a description of the way expression operates in a social context. One key exception here is when there is a definite *foreseeable* harm that the act of expression causes. Skorupski brings out Scanlon's example of a professor that discovers a simple home recipe for a lethal nerve gas, using easily available ingredients, and wishes to distribute it on flyers. Such an expression can be forbidden on the grounds that there is a readily recognisable possibility that such information would give persons of harmful intent simple and handy means to carry out indubitably harmful acts. A would-be terrorist that uses the recipe is following an *instrumentally* rational process in applying the information to objectives already possessed. The rational responsibility still accords to the professor in that he can reasonably deduce that such effects will follow from the information that he imparts.⁴²

⁴² This particular example is taken firmly out of the realm of extreme theoretical possibility and placed directly in the context of contemporary social reality when we consider the widespread dissemination of the *Anarchist's Cookbook* on the internet. The text, long banned from traditional publishing, instructs the curious how to perform a whole range of socially hostile activity, from misdemeanour level phone-fraud to the construction of home-made napalm and fertilizer bombs. I remain unconvinced, though, that distributing such a publication has as direct a line of responsibility to the distributor as Mill's rabble-rouser

As such, Skorupski distils his position further. "Dialogue" he claims, is "unconstrained *discourse* between *rational* people" (Ibid. 371, my italics). This, he (Ibid.) argues, puts us in a position to distinguish between dialogue and non-dialogue effects of an expression. Dialogue effects are responses routed through the autonomous rational faculties of someone who "engages with the act of expression critically, as an act of dialogue" (Ibid.) An action can fail to be a dialogue effect by a failure or defect in the recipient's rational capacity to interpret such as dialogue (setting limits on, for example, what acts of expression we may or may not expose to children), by dialogue not being the expresser's intention, or by the recipient not being in any state to use their rational powers of assessment (enraged mobs, as we shall see shortly, are a good example of this). We can under this analysis, be held responsible for the foreseeable, harmful non-dialogue effects of our expressions. Skorupski is quick to point out that the model does not end by affirming the principle that likely dialogue effects should always go unmolested. There are provisions that the expresser must follow, for example not telling known untruths. Intentionally misleading statements re-instate rational responsibility for dialogue effects, and such the general requirement that Skorupski brings out is *reliability*. The significance of this, must, he feels be judged against dialogue's highest internal goal, namely truth seeking:

The fact of unconstrained convergence on an opinion or attitude carries its distinctive authenticating weight only to the extent that each discussant responds individually to the requirements of right reason as they honestly appear to him. When we respond to evidence and reasons, we must have our eye on the evidence and the reasons, not on the other respondents. Only under that condition can convergence be regarded as a mark of correspondence to truth (Ibid. 372).

speaking to the mob outside the corn-dealers house. There is certainly curiosity value in such material for people who have no intention whatsoever of using it. There is even potential counter-harmful use in the

As such, the dialogue model translates the principle of liberty of expression into a position that honest dialogue effects should go unmolested. We are answerable only for the foreseeable, harmful non-dialogue effects of our expressions.⁴³ Furthermore, Skorupski maintains that all effects of expression are assumed to be dialogue effects until proven otherwise.⁴⁴

iii. Harmful non-dialogue effects and hate speech

Skorupski (Ibid.) thus sees the principle of liberty of expression supplementing the liberty principle, rather than presenting a special case of it. Once the liberty principle has set out the range of actions to which legal sanction can be applied (harm causing), the principle of liberty of expression must be called in to see when harm that can be tied to an act of expression. This is a straightforward case of assessing whether the responsibility for harm lies with the expression that aided or inspired it, or the agent that performed the harmful activity that results. That line is drawn at the harmful and foreseeable non-dialogue effects. This, Skorupski holds, clarifies Mill's own famed limitation example of the rabble-rouser outside the corn-dealers' house:

No one pretends that actions should be as free as opinions. On the contrary, Even opinions lose their immunity when the circumstances in which they are expressed are such to constitute their expressions a positive instigation of some mischievous act. An opinion that corn-dealers are starvers of the poor, or that private property is

material (as an alert, for example, to potential victims of credit card fraud).

⁴³ I would add the provision that this should apply only if the harmful non-dialogue effects were the *only* foreseeable result of an expression. If the principle of liberty of expression is indeed, as Skorupski claims, a subset of the liberty principle, then an expression that presents the possibility of a variety of non-dialogue effects, some of which are harmful and some of which are not, must be assessed according to the balance of rights model set out in the previous section.

⁴⁴ Skorupski (1989: 386) does set out that this is a profoundly liberal assumption, and one that seems at odds with the often ignorant and irrational nature of society, but this is not really a concern if we understand the principle of liberty of expression as part of a more general rights framework that includes principles of justice and restraint of violent activity. Besides which, as discussed, foreseeably harmful non-dialogue effect as might be caused by ignorant and irrational behaviour (inflamed mobs once more) are liable for legal counter-sanction under the Millian analysis presented here.

robbery, ought to be unmolested when simply circulated through the press, but may justly incur punishment when delivered orally to an excited mob assembled before the house of a corn-dealer, or when handed about the same mob in the form of a placard (Mill 1: 49).

It is thus that we come to a Millian framework for dealing with what bills of rights the world over describe as "incitement to violence" as a limitation on freedom of speech. But Mill's own example here has brought out the grey-area difficulties of this approach. Mill seems to feel that in the more remote dialogue forum of publications such sentiments should not be suppressed, even though they might inspire mobs to assemble before the corn-dealers house. Is this not the same pattern at one remove? Skorupski would hold that opinions expressed in publication, provided they are not deliberately misleading, fall under the heading of honest dialogue effects, and are thus defended by the liberty principle. But, it must be noted that we *do* have a highly controversial name for expressions of this kind - hate speech.

It is here, then, that we must cast a harsher light on some of Mill's arguments for allowing unconstrained dialogue. Need we really sanction the opinions of racists and neo-Nazis in the name of greater freedom? Crisp (1997: 194-195), for one, takes issue with this. He holds that Mill exhibits too naïve a faith in human rationality. He takes the example of Goebbels' notorious anti-Semitic propaganda campaigns as something that he feels the principle of utility would have to see silenced whatever the consequences for liberalism:

Nor is it at all plausible to argue that those who believed Jews and other minority groups to be morally equal to other human beings would have been led by the silencing of the Nazis into holding their beliefs as dead dogma ... The long term interests of humanity will be better served by encouraging the end of racism rather than allowing it to have its day. That particular list is better closed (Crisp, 1997: 195).

While Crisp (ibid.) does concede that certain comparisons can be drawn between the Nazis and their public, and the rabble-rouser and his mob outside the corn-dealers' house, he still feels that discounting the prohibition on certain forms of speech that represent attitudes loaded with social-harm potential is a major lacuna in Mill's doctrine.

I can't help but feel Crisp has made a crucial misstep here. The Nazi state machine was geared in multiple ways to prop up a system of subordination eventually resulting in genocide. The propaganda campaign was an aspect of this machinery, dedicated to winning over the support of the wider German population for policies that gradually extended to being harmful in the worst possible degree. Many things Goebbels' machinations were, but they were *not* an act of dialogue performed in a context of democratic ethical confrontation. Only through the callous and calculated wreckage of the very institutional structure of a liberal democracy were the Nazis able to perpetrate the vast majority of their social harms. We must also bear in mind that the worst of Nazi hate-speech was an act of *state* propaganda, which runs counter to the very tenets of Mill's society of dialogue. It is a profound disanalogy to compare the Nazi campaigns occurring in such a context to a racist or Neo-Nazi group casting its message of hate into the adversarial plurality of voices that is a modern democracy.

This being said - does Mill honestly maintain that in a society in search of truth *needs* racists and neo-Nazis to keep its belief in non-discrimination alive? Mill feels he proves his case for this by way of example and common sense. One of his key examples is the separation the Catholic Church strikes between the clergy and the laity - the former may read heretical texts for the purposes of being able to better strike them down in argument, whereas the latter may not. This Mill sees as a powerful analogy for the way developed social orders can dangerously preside over their citizenry by delimiting and denying a range of "untrue" beliefs from entering general discussion (Mill 1: 33-34). Even if the

beliefs are, as in the case of racism, socially tried and tested as false and dangerous prejudice. Chasing such expression for all time from the public forum can have a dangerous effect on the true beliefs in tolerance and equality that are such a doctrine's necessary and established social counterpoint. This is that:

[N]ot only the grounds of the opinion are forgotten in the absence of discussion, but too often the meaning of the opinion itself. The words which convey it cease to suggest ideas, or suggest only a small portion of those were originally employed to communicate. Instead of vivid conception and living belief there remain only a few phrases learnt by rote; or, if any part, the shell and husk only of the meaning is retained, the finer essence being lost (Mill 1: 34).

The danger is see Mill painting here is a theoretical extreme, but I feel this is a point too seldom or too shallowly discussed when it comes to issues surrounding freedom of expression. Blanket bans on discourses or opinions deemed to be racist are dangerous for a number of reasons. The first, obvious, one is that such labels become dangerous tools in the hands of censors and states in general, leading us back to the endemically Millian claim that state interference has a nasty tendency to perpetrate more evils than it seeks to outlaw. But the issue Mill has just brought out is an equally interesting reason to allow hate-based doctrines access to public discourse. Such doctrines often arise from adverse social circumstances, and often as a scapegoat for larger social problems. The link between hate-groups and populations in economic or social confusion is almost a given in the modern social order. The rise of neo-Nazi movements amongst working class youth in Europe during the economic confusion that accompanied the birth of the EU bears this out. If our own noble liberal attitudes take upon themselves the status of sacred edicts, to be obeyed and never questioned, a crucial opportunity to cut such hate group activity off at the root is lost. Only by allowing each new hate manifestation to foolishly expose itself, and be shown, as all others have, that the concerns it

points to have to do with a vast range of factors that have nothing at all to do with race, can such hate be successfully picked apart in the minds of the average citizenry facing the everyday concerns (unemployment, economic strife) that modern racists often roll out as "proof" of the "Jewish"/"Black"/"foreign" source of the "cancer"/"conspiracy"/"insidious influence" in society.

Banning anti-Semitic marches and outlawing the word "nigger" from publications does not end racism. Dictating a liberal ten commandments does nothing to disable it either. It must be engaged with and struck down as false, not blankly denied access.⁴⁵ This represents real confrontation with beliefs and social dynamics that could be far more dangerous if driven underground and allowed the delusion that the "establishment" is "afraid" of their "truth". Such attitudes can be the birthplace of a lethal breed of extremism. In the more common grey-area cases where right and wrong seem less rationally definitive, such an approach is even more crucial. There is something of Mill's naturalism at work here - the battle of beliefs becomes a kind of survival of the intellectually fittest. Outlawing whatever goes against "commonly held" truth runs the various risks that all of Mill's fallibilist *caveats* warn of, in addition to allowing the possibility that the proper grounding of our true and necessary beliefs will grow shakier, and leave them more open to attack from those we seek to eliminate by rational conquest - such as racists. Liberalism, forsworn as it is to rational scrutiny on the part of citizens, cannot allow its own positive precepts to become mere dogma.⁴⁶ This I see as the heart of Mill's politics of

⁴⁵ An interesting case of how this can be done is demonstrated by the website <http://www.hatewatch.org> that collects and itemises various types of hate sites according to region and category for just such a social purpose.

⁴⁶ This relates to what Skorupski (1989: 381) follows Ten in labelling the "avoidance of mistake" argument (this Ten distinguishes from the "assumption of infallibility" argument that we shall consider shortly). The mistake-avoidance argument identifies an all too frequently occurring social dynamic - that a belief so repeatedly withstands counter-evidence that the urgency of seeking out such counterpoints fades. It is thus that many socially entrenched beliefs came to be entrenched for centuries, only to be later corrected by new evidence and argument that was finally recognised. The only way to avoid such long-standing error is to have as much argument and discussion as possible circulating within the social order. Mill knocks down the possible objection that truth will always ultimately triumph over error in the long run (and the follow-on

engagement - a social vision where the best and worst is always out front, socially speaking, as opposed to lurking in dark corners. Mill would have, I feel, applauded Henry Kissinger's oft-quoted dictum that "there is no disinfectant like sunlight". This is not, however, a call to social anarchy. The limitations Mill sets out, as I see it, represent a rational framework for the management of such conflicts as do arise, preserving the viable intellectual and ethical conflict necessary to progress without fomenting physical chaos. Mill is ultimately asking us to institutionally and educationally frame the social space as a realm of dialogue - of ideas as well as lifestyles. This social vision, as I see it, can be credited in roughly equal parts to Mill's developmental idea of individual and social perfectibility (as discussed in Section 3.4) and his fallibilist *caveats*. Though I believe the two are intricately linked, it is the latter we must now subject to more rigorous assessment.

iv. The Plausibility of Mill's fallibilism

This ultimately leads us to consider a question that Skorupski presents - namely, how intuitive is the fallibilism argument? Mill's argument turns on censors assuming their certainty is the same as *absolute* certainty. The natural objection to be made here is that *any* action is based on a belief that may or may not be true, and thus falls short of absolute certainty. Are we to cease all activity on the grounds of our own infallibility? Mill admits this as an issue, and admits that there is, indeed, no such thing as absolute certainty, but there is "assurance sufficient for the purposes of human life" (Mill 1: 17). Mill thence sets up and knocks out a ghost objection to this: Is not the censor who cuts off

argument that it is not necessary to be as cautious of censorship as he would like us to be) with two key rejoinders. Firstly, to reward those who attempt to provide insights of lasting benefit to mankind with martyrdom is neither fair nor wise, in that it instantiates a social mindscape of cautious characters prone to accept falsehood. (Mill 1: 24-25). Secondly, true insights may well be "thrown back for centuries ... the Reformation broke out at least twenty times before Luther, and was put down" (Ibid.).

public access to beliefs he sincerely feels to be false acting with such assurance? Mill's response is that the censor's actions go beyond this:

There is the greatest difference between presuming an opinion to be true, because, with every opportunity for contesting it, it has not been refuted, and assuming its truth for the purpose of not permitting its refutation (Mill 1: 17).

Skorupski (1989: 378-380) accepts that this is not as intuitively plausible as it may at first appear. When we consider our framework of justified belief, a paradox arises. That which we are justified in believing, we must be justified in discounting. But the fatal error such an approach makes is to see justified belief as a static state. If we accept that we are only justified in believing something *relevant to the evidence and argument available at present* then the dynamic changes somewhat. Under such an analysis, we can see that Mill's point stands. In disregarding the possibility of new evidence and argument, the censor commits the dual sin of prematurely shoring up her own position, and more crucial to our current discussion *deciding such matters for others* without allowing them access to the contrary viewpoint to decide such matters for themselves. This is the assumption of infallibility Mill fears - the intellectual paternalism that he sees so sadly exemplified by the Catholic attitude towards the laity. This leads Skorupski to an overall vision of Mill's doctrine that is relevant both to this section and to the object of this thesis as a whole:

Arguing and assessing evidence is a collective pursuit. This is the deepest stratum of Mill's discussion, and at this level a link between the two themes, the theme of fallibilism and the theme that dialogue is necessarily communal, can indeed be found ... I can have confidence in the objectivity of my reasoning only so long as I can reasonably hold that in ideal dialogue others would freely converge on it (Ibid. 380).

The idea of ethical confrontation as a collective social pursuit is a further manifestation of the Millian conception of progress through the often adversarial clash of perspectives and attitudes. This is also, on a Millian

analysis, the *authentic* means of resolving and removing the socially harmful attitudes that underlie hate speech. Mill's discourse-driven society is not geared to be mentally comfortable. There is much to be said for his conviction that no social order short of utopia can be. Progress and advancement come at a cost, and that cost is precisely such an atmosphere of constant intellectual destabilisation.⁴⁷ What we must address now is what further application of these principles, at an institutional level, Mill would enshrine as provisions for such a discourse-driven social space.

3.3.5) The limits of positive state action

Towards the end of the final chapter of *On Liberty*, Mill brings out an interesting and very revealing dimension of his grander social theory. In reference to the lines he has drawn throughout the body of the text, Mill ponders to what extent a government is mandated to act for citizens' *benefit*, acting in their best interests, supposedly on behalf of the citizens themselves. He is careful to point out that he is dealing with cases in which individual liberty is not infringed in the process.⁴⁸ His concerns extend here to the slightly more general question of how far the state is mandated in pro-actively *enhancing* their citizenry's lives and affairs. To this he brings three objections.

The first is both familiar territory, and to a large extent already dealt with. This is where the government takes a pronounced interest in managing of, for example, citizens' financial affairs for them. The arguments from autonomy and fallibilism have already dealt with the management of their moral affairs,

⁴⁷ Whether progress is worth such a price is the question to be addressed in section 3.4.

⁴⁸ There is an ambiguity here that requires some clarification. Mill has deployed significant argumentative force against the idea of a state intervening in what it supposes to be the self-regarding interest of citizens. The arguments from rational autonomy and fallibilism already cover the ground of Mill's first objection to government interference in the affairs of citizenry. What Mill seems to be referring to here are cases that arise in the other 2 objections – cases in which the performance or management of personal affairs are not subjects of interference. These are cases in which citizens are positively obligated to the performance of socially necessary actions outside the scope of their own affairs, and cases in which the government takes a pronounced role in managing a wide scope of social affairs (for example where the state is responsible for a large portion of employment).

and Mill obviously feels the same applies to, for example, inter-citizen financial dealings. He feels that "there is no one so fit to conduct any business, or to determine how or by whom it shall be conducted, as those who are personally interested in it" (Mill 1: 98).⁴⁹

It is Mill's second objection that brings out an interesting dimension of his social vision that bears close sympathy with Hegel's. These are cases in which it is held that certain social functions would be better handled by government than the public themselves, and thus should not fall to private citizens. The prime example here is perhaps Mill's sole clear peacetime positive obligation example - jury duty. Whereas officers of government may well be better suited, on the whole, to such a task, Mill feels it is crucial the citizenry "as a means to their own mental education - a mode of strengthening their active faculties, exercising their judgement, and giving them a familiar knowledge of the subjects with which they are thus left to deal" (Ibid.).⁵⁰

Mill is careful to point out that this is not an issue of liberty (it would indeed be for Hegel, but that is only under the specific Hegelian doctrine of freedom) but an issue of social development. Mill is here making the long-standing civic virtue/republican argument that social participation at an institutional level has a crucial formative effect in the civic development of a population. He describes them as:

⁴⁹ This is a very interesting and controversial area which I, like Mill, forego discussing on the basis that it is not strictly related to the key issues of this thesis. It is not directly analogous with Mill's arguments for rights of conscience, for while moral issues often break down to irreconcilable antipathies, rational convergence on an issue such as corporate independence and trade practices should be theoretically possible. This is a hot-button issue in the early 21st century, especially considering the debates surrounding government interference in corporate governance in the wake of the Enron scandal and the resulting crisis of confidence in US financial institutions. Unlike the issues of liberty and moral norms, in regards to which the arguments for and against remain essentially unchanged since Mill's time, questions of trade practice have developed radically since the high Victorian industrial age Mill in which Mill wrote. Thus, for want of space and direct relevance, I have foregone further discussion of this issue here.

⁵⁰ Mill does point out that this is not the sole recommendation of jury trial. One presumes, especially given the third objection to positive state action, that he is concerned with the repressive potential of overly

[I]n truth, the peculiar training of a citizen, the practical part of the political education of a free people, taking them out of the narrow circle of personal and family selfishness, and accustoming them to the comprehension of joint interests, the management of joint concerns - habituating them to act from public or semi-public motives, and guide their conduct by aims which unite instead of isolating them from one another (Ibid. 99).

Stylistic differences aside (most notably brevity and accessibility), Hegel could have written the above paragraph.

Mill's sympathies with continental Romanticism have already shown up in our identification of the Aristotelian/Humboldtian roots of his individualism, as discussed in Chapter 1, and here we find a further manifestation. It bears out even further Mill's claim that a social order foresworn to his caveats and precautions is by no means a realm of hopelessly atomized and disinterested citizens. When we consider the full cannon of Millian principle thusfar discussed, this doesn't seem nearly the disjunction some might make it out to be. We can form laws that respect citizens' autonomy (as well as the cautions of fallibilism) and still justifiably involve them in the process of enforcing said laws for interlinked individual and social benefit. Especially considering the virtue that such a process is designed to enhance, tolerance and a wider understanding of our social context, is the very virtue that fuels much of Mill's argument for the liberty principle in the first place. What this also hints at is that the Millian social vision can be allied to more enriched accounts of social progress and virtue. This shall be addressed in terms of Hegel's thought in the concluding chapter of this thesis, so I thus forestall further discussion of it here.

Mill's third objection to positive state action is one endemically familiar to mainstream liberalism - that the greater the power and role of the state is

enlarged state participation in the social process. To what extent this is countered by the liberal doctrine of separation of powers remains an interesting, but separate issue.

enlarged the greater the potential for repression, instantiating "the great evil of adding unnecessarily to its power" (Ibid.). Mill's argument is that the more social institutions are branches of state control, the more people tend to regard and fear the state as an employer and benefactor, and are thus less likely to treat it with the critical approach so crucial to the citizenry of a democracy:

If the roads, the railways, the great joint stock companies, the universities, the public charities, were all of them branches of government ... [I]f the employees of all these different enterprises were appointed and paid by the government, and looked to the government for every rise in life; not all the freedom of the press and popular constitution of the legislature would make this or any other country free otherwise than in name (Ibid. 99-100).

Mill's further point is that if the most able amongst the population were to aim at government service, and this became the key focus of professional ambition, the result would be an en-pedestaled bureaucracy of the most stagnant kind. These are well made and to a certain extent familiar arguments, but to what extent do they contradict the call in the second objection for increased participation in public institutions? We must remind ourselves the two are not necessarily the same thing. There is a difference between jury trials that involve private citizens and a government staffing jury panels with permanent officials chosen by them for the task. A difference, in more general terms between certain duties that promote discourse as a socially useful side-effect (but do not look to it for their sole justification) is very different from an institutional framework that allows a state to become a multi-tentacled social patron that citizens tiptoe around. We do not censure a government only at times of election, but on ongoing basis as members of a public and as activists within civil society. A state that held too many of the vital strings of life could indeed too easily rule a society of puppets.⁵¹

⁵¹ This must all obviously be counterbalanced by concerns as to the levels of poverty within the social framework. A profound consequentialist such as Mill would not, I feel, push this line to the point of mass

What this also reminds us of is that, for all his reverence for reasoned intelligence, Mill is no supporter of oligarchy. He would concede that societies might indeed be more efficient if ruled by the best and the best alone, but he would remind us they would be less vital, and ultimately less progressive. This all gives us a stronger sense of where the boundary lines in Mill's politics of engagement lie. He is concerned that the citizenry develop inasmuch as possible a broader awareness of their social context and the functionality of the system they participate in. It is the role of the institutions that oversee them not to dictate to them how to be better people, but to provide the conditions for them becoming so on their own accord.

This being said, he is equally concerned that the transitory rulers of such systems be subject to broad critical scrutiny on the part of the citizenry. It is the stability of the system that I see Mill advocating as worthy of the citizen's trust and rational sanction, not the sanctity of any particular government. Once again, we have the image of Mill advocating an institutional framework that exposes and manages internal social conflict, and thus contributes to its citizenry's self-development, but never appeals to its own authority as the source of some kind of final truth on any issue. Having sketched out Mill's position thus, I now tie up the various ways in which I have discussed the liberty principle underpinning such an aim.

3.3.6) The Liberty principle distilled

What is still missing from the account, though, is a technical account of harm. It is possible that we cannot find one, and it is not entirely clear one is necessary. Offence-based harm, as dealt with on the balance of rights approach, is a constantly shifting social boundary. Actions that cause public

starvation as a consequence. But I feel he would encourage that the slack, where possible, be taken up by the private sector as opposed to the public authority.

outrage now will not do so in a decade's time.⁵² As the prejudice-dissolving process of ethical confrontation continues, Mill's provision that ill-considered moral positions are natural victims to dialogue seems to constantly prove itself correct. What the rights framework of the liberty principle does is ensure that the structurally vital social values are kept in place, whilst setting out a framework within which principle and action can be melded in the crucible of intellectual and ethical confrontation. Such is the nature and intention of Mill's demarcated pluralism.

Mill has, I believe, admirably proven his case that the policing of self-regarding action is neither rational nor prudent. As regards the more controversial area of what counts as a breach of other-regarding duty, Mill has left the game a little more open. What Mill has essentially done is set up a set of value constraints that any society that seeks to be internally authentic and progressive should rationally accede to. With the full breadth of the discussion above considered, we can sense that it is left to a given society to decide for itself (beyond obvious cases of assault on others' welfare) to what extent certain other-regarding actions offend individual and social welfare to the point where they should be policed. Mill would have a social order judge such on a utilitarian basis, but as established in section 3.2, this is not the only background against which Mill's principles can apply. Even if it were, the concept of interlinked individual and social welfare as something to be safeguarded is hardly as philosophically controversial as it might seem. Mill leaves the rational concept of the general good fairly open, provided such a conception respects the hallmark principles that he feels must underpin any rational and progressive social order. This means, in many regards, that Mill

⁵² An interesting and amusing illustration of this was presented to me whilst writing up the arguments around the issue of sex in parks. This came in the form of a newspaper article announcing that a certain European city had actually designated a park cordoned off for the purposes of sexual activity in order to encourage its younger citizens to procreate and start families in the area. The park chosen was one that was commonly used by lovers for just such purposes, though without legal sanction on their side. See 'Sex park boosts birth rate', *The Sunday Times* (South Africa) 13 October, 2002.

feels a rational society is charged with constant and onerous task of managing a constantly destabilizing moral pluralism. As the next section will, I believe, bear out, it is difficult to see how anything but a deliberately repressive and stagnant society could be anything but.

3.4) Mill's relevant ethology and sociology

i. The unwritten 'ethology'

Upon the completion of his *Logic*, Mill confided in Alexander Bain that he had a grand further project in mind - a work dedicated to laying out the principles of what he labelled "ethology", defined by Mill as:

[T]he science which corresponds to the art of education; in the widest sense of the term, including the formation of national or collective character as well as individual (Mill 5, as cited by Robson in Skorupski (ed.), 1998: 338).

Mill never wrote the work in question, but there is sufficient evidence of its composite elements lurking in the pages of his published texts to allow modern scholars to piece together what a Millian ethology would look like. In the course of such an expedition in intellectual archaeology, John Robson (in Skorupski (ed.), 1998: 338-395) presents some key tenets of the Millian social vision that are largely ignored by the bulk of Mill scholarship, namely those derived from his account of civilisation and culture. This is not, for fairly obvious reasons, thought to be Mill's proper terrain. The pervasive influence of *On Liberty* has carved out Mill's place in modern political philosophy as a scholar and champion of the individual. But his views of the nature of civilisation present us with some interesting additional background to Mill as a general social theorist. More importantly for the purposes of this thesis, they

reveal what I see as strong echoes of the Hegelian understanding of historical and cultural development, and thus of the social order itself.⁵³

ii. Mill on the Phases of History

Mill's wide study of history and culture, Robson (in Skorupski (ed.), 1998: 344) argues, led him to marvel at "the astonishing pliability of our nature, and the vast effects which may under good guidance be produced upon it by honest endeavour."⁵⁴ Thus did Mill draw from historical study a dynamic that underpinned his social theory - the analysis of social circumstance as formative not only of individual but also of *national* character in order to make concrete recommendations on how both of these might be improved.

As Robson (Ibid. 347) argues, Mill shared with Matthew Arnold, otherwise one of his theoretical nemeses, a commonality in the aims and nature of his programme for social improvement. They both held that improvement in individual culture was essential in improving society, both held by the vital importance of education and both believed in what can be referred to as "organic" and "critical" periods in history. This latter dynamic is what holds our interest for the moment.

Robson (Ibid. 345) clarifies that Mill's understanding of historical progress originally began with his following the lead of Thomas Carlyle and the Saint-Simonians. He shared their belief that there could be discerned in the 1830's "a 'Spirit of the Age', different from but also inheriting the 'spirits' of past ages, and containing the seeds of the coming one"(Ibid.). This led Mill to identify a "cyclical pattern", discerning in the historical process three

⁵³ Considerations of space and relevance prevent me from including a sketch of Robson's full account of Mill's ethology, interesting as it is. The elements I have included have a more direct reference to the scope of material already covered - Mill's concerns with diversity, improvement and the necessary destabilisation of the social order. Further discussion of his understanding of the specificities of national character, as Robson undertakes, is indeed interesting but not strictly relevant here.

⁵⁴ "Civilisation", as cited in Robson in Skorupski (ed.), 1998: 344.

successive periods⁵⁵: the organic, the transitional and the critical. The organic is characterised by a social structure in which the members are united by a set of common positive beliefs that bind their sympathies and actions into a mutual consensus. The collapse of such shared beliefs induces the birth of the critical period "marked by negativism, scepticism and selfishness". Linking these was the transitional period, of which Mill saw his own time as a prime example. What is interesting is that Mill did not thus damn critical periods as low points of civilisation, but rather held that humanity had to nurture the better elements of both the organic *and* the critical. The sense of order inherent in the organic periods is crucial to the preservation of the social infrastructure, but (as argued at length above) Mill believed advancement requires the diversity and upheaval characteristic of the critical periods. Thus, his conviction was that humanity is tasked with nurturing the positive dimensions of the critical period within the harmonizing context of the organic state.

Two interesting dimensions flow immediately out of this. One is the seemingly curious attitude that Mill held about the value of order in grander social structures. The other is the cool and distant "intellectual Darwinism" I have already alluded to. I shall briefly discuss each of these.

iii. Order vs. Progress

Mill's understanding of order is certainly not loaded with the usual conservative overtones of the term. Mill understood change in circumstances (and with them change in perspectives, mindsets and intellectual culture) as an inevitability. This did not, as Ryan (1987: 184) argues, mean he saw this change as necessarily positive. Whilst Popper accuses him of a naïve faith in mankind's capacity for improvement, such a charge misfires. Mill never

⁵⁵ This pattern closely follows the schematic outlined by Comte, but draws radically different conclusions. Comte's ultimate insistence was on a "pedantocracy" that could preserve both critical capacity and social

directly elides change with improvement. We find this clearly qualified in the *Logic*:

The words Progress and Progressiveness, are not here to be understood as synonymous with improvement and tendency to improvement. It is conceivable that the laws of human nature might determine, and even necessitate, a certain series of changes in man and society, which might not in every case, or which might not on the whole, be improvements (Mill 5: VI, x, 3. as cited in Ryan, 1987: 184).

He does not on the final analysis exhibit some kind of "cheerful belief in the inevitability of progress" as Ryan (*Ibid.*) puts it. Change is indeed cumulative, but it must be managed and dealt with correctly in order to be positive. Thus does Mill reply to those who seek to maintain order at the expense of change that they are ultimately delusional. Even "order" (in the sense of institutionally overseen, cohesive social unity) requires a great deal of progressive thinking to maintain itself in the face of changing circumstance. "[I]t is impossible" Mill maintains, "to point to any contrivance in politics, or arrangement of social affairs which conduces to Order only, or to Progress only; whatever tends to either promotes both" (Mill 3: 122). What Mill means here is compellingly clear. For progress to be possible in a healthy sense, a stable and ordered framework is a pre-requisite. But for such a stability to be maintained, it must be open to revision, correction and evolution in step with emergent changes in social circumstance and thinking. The nature of the ethical and rational confrontation this requires is necessarily dynamic, often adversarial, but it need not be hostile:

The release of the individual from the cares and anxieties of a state of imperfect protection, sets his faculties free to be employed in any new effort for improving his own state and that of others; while the same cause, by attaching him to social existence, and making him no longer see present or prospective enemies in his fellow creatures, fosters all those feelings of kindness and fellowship towards others, and

order, a breed of oligarchy that Mill could never sanction.

interest in the general well being of the community, which are such important parts of social improvement (Ibid.).

Thus, Mill maintains, to blindly enforce some form of surface order through repression is to run against not only the very current of history, but the very current of humanity, and is ultimately to short-circuit the very social process that guarantees both order *and* healthy progress, which is the flourishing of a new and better ideas within a context of stable confrontation. What Mill would have us set in place is not a social order that merely worships a set of static central values, so much as one that provides a framework for managing change. Those that cannot are doomed to failure. As he memorably puts it in *Representative Government*: "The disease that most affects bureaucracies, that which they die of, is routine. They perish by the immutability of their maxims" (Mill 3: 179). The central values he *would* have enshrined we have already examined at length. The essential elements of human well being that the Liberty principle and the baseline conception of rights enshrine are foundational to any social order that would not have itself regress to barbarism or the darker and intransigent narrow-mindedness that fuelled the inquisitions and repressive regimes of yore. And even this structure must be perpetuated not through heavy-handed indoctrination, but through inculcation in the populace, at both an educative and policy level. Otherwise we just have a modern and more palatable version of a society of educated slaves that revert to an uneducated state the moment the master's back is turned. This is no easy task that Mill sets a social order, but it is difficult to see how else a rational social order can preserve itself through the changing fortunes of circumstance without collapse.

iv. The Inevitability of Progress and the Fate of Dogmatism

In fact, if we recall the "intellectual Darwinism" I alluded to in the previous section, Mill is convinced that social structures that fail to meet such criteria

must fail. If they cannot manage change and win the assent of their citizens, if they resort to the whips and scourges of authority as a sole means of preservation, then Mill stands convinced their days are numbered. An example of this we find in his discussion of whether the developed communities of the world have the right to take on a *civilisade* against what they see as retrograde forms of civilisation.⁵⁶ In the course of this, he muses that the crushing of similar doctrines amongst their own people, lest the retrograde form infect and dismantle civilisation itself, is a patently ridiculous measure:

If civilisation has got the better of barbarism when barbarism had the world to itself, it is too much to profess to be afraid lest barbarism, having been fairly got under, should revive and conquer civilisation. A civilisation that can thus succumb to its vanquished enemy, must first have become so degenerate, that neither its appointed priests and teachers, nor anybody else, has the capacity or will take the trouble to stand up for it. If this be so, the sooner such a civilisation receives notice to quit the better. It can only go from bad to worse, until it is destroyed and regenerated (like the Western Empire) by energetic barbarians (Mill 1: 83).

Societies where dogma has replaced wisdom, where indoctrination has replaced education are natural victims to the march of progress. This applies at all levels in Mill's theory - from the "encrustation" of mindsets within a society all the way through to its very canon of principles. Beyond the schooling and persuasive influence the current orthodoxy can provide, the chips must fall where they may. Circumstance and intellectual culture must thence determine a society's fortunes. Circumstance can be governed to a certain extent by policy, but intellectual culture must be managed by the habits of rationality and liberty to produce a society of progressive beings committed to the more durable and better principles that guide human action. Society must internalize and manage change at an individual and social level,

⁵⁶ Incidentally, he concludes they do not, unless the repressed populace of such societies cry out for their assistance. Otherwise, all he would sanction would be the sending of "missionaries" to persuade and convince.

not do all in its power to resist it. Such is Mill's position, and it is difficult, on this, to see how either history or logic might prove him wrong.

3.5) Concluding considerations on the Millian social vision

I have, I feel, in the course of Chapter 1 and this chapter thusfar, outlined Mill's vision of flourishing individuality within a tolerant intersubjective social mindscape. This is the 'politics of engagement' I have attributed to Mill. Hegel, in many senses was after the same thing. He may have done this more systematically, and with more conceptual grace, but I remain convinced (as I shall show in Chapter 4) that these two supposed arch-nemeses respect and value many of the same elements within a rational social order, and demand similar things from both the members and overseers of a civilised community.

Mill's sympathies with the Hegelian social vision are, I feel, profound. Both saw conflict and confrontation at a social level as an inevitability to be managed and rationally reconciled to the social space, not as something at odds with the social structure itself. Social orders can let change wreck them, or they can develop in step with it, but they cannot ignore it. Both understood that institutions that can inculcate a rational awareness and habit of tolerance and open-mindedness are necessary. Both understood that mere dogma, however loudly and forcefully screamed across the social space, must perish. Both understood that individual capacity is the first locus of social capacity, and that a loss of respect for this - through repression or indoctrination - is dangerous, unethical and counter-productive. And both, I feel, understood that the social order is a rational *framework* within in which competing conceptions of the good must clash, meld and intersubjectively improve each other. The fuller and more considered comparison of their approaches I now leave to my concluding chapter.

Chapter 4

The social order in Hegel

4.1) Preliminary comments on the Hegelian social order

The discussion thusfar should not be seen as yet another modern attempt to "liberalise" Hegel. Not just yet, anyhow. All I have really demonstrated in the earlier chapters is that there exists a definitive individual space in the Hegelian picture. It is now time to examine how this individual space is reconciled to the social space and with what implications, in terms of both institutional practice and the principles that inform it. This is a theoretical territory in Hegel scholarship in which we may unearth the foundations of both his fame and infamy. When it comes to understanding political community and its obligations, thinkers of the communitarian school have appropriated his analytical framework and, to my mind, the shallow sense of his conclusions, but I feel they have failed to fully consider the profound consequences of his principles in this regard.

This is difficult and broad territory to navigate, and as such, I have limited my inquiry to what I consider the key issues in the Hegelian analysis of community and the objective social order in general. The first section of this chapter is devoted to a broad examination of the principles and architecture of Hegel's rational social order as an embodiment of freedom. Following this is a critical examination of the emergent dynamics of Hegel's social theory, considering to what extent it *can* be understood as such an embodiment. By the close of the latter inquiry, I will be in a position to re-assess two of the more contentiously objective elements of Hegel's objective idealism as social theory. The first will

concern how the concept of *Geist* may be plausibly amended or replaced within the Hegelian framework, followed by the second, interlinked question of what to make of the Hegelian *telos*.¹ By the close of this chapter, I hope to illustrate, with the aid of some established Hegel scholars as well as my own interpretive analysis, that a rigidly defined social arrangement, above the rational reproach of its members, is profoundly at odds with Hegelian principle, and that a Hegelian position comprehensible to modernity might well benefit from a few Millian caveats.

4.2) Principles and architecture of *Sittlichkeit* as an embodiment of freedom

To recognise reason as the rose in the cross of the present and thereby to delight in the present - this rational insight is the *reconciliation* with actuality which philosophy grants to those who have received the inner call to *comprehend*, to preserve their subjective freedom in the realm of the substantial, and at the same time to stand with their subjective freedom not in a particular and contingent situation, but in what has being in and for itself (PR §14).

This is indeed the grander aim of Hegel's social theory. As Kaufman (1997: 811) discusses in his treatise on the modern applicability of Hegelian principle, Hegel himself described *The Philosophy of Right* as his most ambitious work, in that it represents a massive confluence in his thought: it is his attempt to scientifically construct a political theory capable of allowing individuals to realise the identification relations necessary to achieve the concrete, enriched freedom they are rationally destined for, but not naturally pre-disposed

¹ This particular controversy concerns the argument as to whether there is a rigid "end of history" in Hegel. As shall be seen once this discussion begins in full, I am not heavily interested here in resolving this issue in terms of the more abstract depths of Hegel's epistemology and theory of history. Though such discussions might indeed prove profitable, my purpose here is to investigate the institutional applicability of Hegelian principle, and thus I aim to question whether a finite principle is a necessary requirement of the system at all. This is one of the key areas where I feel a Hegelian position could be profitably amended with Millian caveats, concerning fallibilism and catering for the shifting nature of social circumstance. See Chapter 3 for the full body of said discussion.

towards. As discussed at some length in Chapter 2, this enriched sense of freedom sets conditions for both individuals *and* the social order itself. The latter sets our field of discussion in this section.

In chapter 2, I briefly discussed how the contact with other ends and other wills forces the individual will out of its arbitrary cocoon and forces the individual to comprehend a social space with varied and diversified ends. Within such a space, one's capacity to rationally discern one's own conception of the good becomes crucial as what Neuhauser (2000: 26) identifies as the freedom of moral subjectivity. The "moral subject" knows her actions to be self-determined in that she recognizes that they are conditioned by a conception of the good that she rationally affirms, and that permeates the structures she participates in. This is why Hegel sees the most important right associated with moral subjectivity (in his terms, the "subjective will") is "that whatever it is to recognize as valid should be *perceived* by it as *good*" (PR §132). Furthermore, the actions said will can be held responsible for must be decided according to "its cognizance of the value which that action has in this objectivity" (Ibid.). The ethics and moral practice of any given set of institutions must be subject to the rational scrutiny of those they serve and oversee. Their concept of the "good" must be accountable to public discussion and debate. Only in this way can it be guaranteed that subjects will affirm said institutions as commensurate with their own wills.²

Moral subjectivity is a key milestone on the road to fully actualised freedom. But it is by no means the end of the journey. As Neuhauser (2000: 32) notes, there are certain criteria for the full actualisation of Hegelian freedom it does not yet fulfil. It sets up the correct capacities for social freedom, but does not give it form and content. In other words, it allows the interests of other wills to be taken into account, but fails to provide a universally affirmed structure,

² A far more detailed exposition of moral subjectivity and its place in the structure of *Sittlichkeit* follows in section 4.2.4.

within which particularity and diversity are harmonised within the universal of a common set of institutions and practices. It is, in Hegel's words "abstract" and "empty" (PR §§134-137). These deficiencies, Hegel believes, are remedied by social freedom, the end point of the dialectical progression by which the individual fully actualises freedom, by coming to understand the rational nature of the system that rules her, and understanding the value and nature of her unique and particular place within the whole. This is the end-point of the progression of the fully determined will described in Chapter 2. Thus, social freedom is to be a distinct individual who rationally affirms the structure, framework and principles of the social order that surrounds one, as one's own. The social order itself is thus understood, in Hegelian terms, as the structural embodiment of fully developed freedom. The capacity to recognise it as such and participate in it as a rational social member (the ethical disposition discussed in Chapter 2) is the highest stratum of self-determination.

In order to understand fully Hegel's vision of the ideal social order, we must understand the principles which underscore his intricate descriptions and provisions for these objective aspects of social freedom, i.e. what properties the social order itself must exhibit if it is to promote (and embody) the rational freedom of its members. Here I once again follow Neuhauser's expository architecture and divide this into 2 key elements: the self-determining social whole and the social conditions of individual freedom. This is followed by an expository discussion on the decisive modern question of the role Moral Subjectivity in ethical life. This latter section, as shall be seen, cuts to one of (perhaps *the*) key divisive issues in the liberal communitarian debate: the extent to which the individual is mandated to dissent from the dictates of the social order, and through what channels such dissent may be possible within a system foresworn to a space of harmony between members and their community.

4.2.1) The objective component of social freedom

Bearing in mind the grander Hegelian project, the question we address in seeking to understand the objective conditions of social freedom is ultimately this: in what sense may we regard social institutions themselves as exhibiting a rational structure, independently of how their constitutive members conceive them? What makes them *objectively* rational?

In considering this, we must first understand the various senses in which Hegel uses the term "objective freedom". Neuhauser (2000: 117) outlines three distinct senses in which it applies: actual freedom (as opposed to merely perceived freedom), freedom that has existence in the external world as an institutional force (as opposed to as a prevailing attitude amongst members of society) and, most importantly for our current purposes, freedom that exists independently of the consciousness of it on the part of the members of the social order.

Bearing these in mind, and recalling the affinities in structure between Hegel and Rousseau's understandings of the general will, as well as the Hegelian emphasis on the organic nature of the social whole, two key versions of the objective nature of social freedom emerge.

The first, as Neuhauser (Ibid. 118) maintains, is inherently Rousseauian, and has already been alluded to in Chapter 2. It sees the objective social order as tasked with restructuring the dependence inherent to human interaction in such a way that individuals avoid subjection to the arbitrary will of others, and embrace the general will as their own. In so doing, the paradox of reconciling free individuals to a society that must, of necessity, limit their natural freedoms is resolved. The structure of ethical life, as shall be seen, comes to represent a higher and richer form of freedom that the individual could not achieve outside the social structure.

The second version Neuhauser (Ibid. 119-120) identifies as distinctively Hegelian, and diverges quite significantly from the main canon of social theory. The social whole itself is, for Hegel, a more complete representation of the qualities of a self-determined will than any individual social member could ever be. He sees the ideal structure of the will embodied in the social "substance" itself³, above and beyond the structure of the will of its members. This, as shall be seen shortly, by no means discounts the importance of individual freedoms, but rather (as already discussed briefly in Chapter 2) includes them as a lower level and goes a step further. This is the step of ascribing the property of freedom to the *system* itself. The subjective disposition is the process by which individuals identify with it, and thus themselves become fully free as self-determined beings to a level not possible as distinct individuals.

Both of these "versions" of the objective social sphere play a part in the Hegelian vision of the social order, and to fully comprehend them, their implications and their interplay, it serves to examine each in turn, beginning with the latter.

4.2.2) The Self-determining social whole

Ethical mind constructs for itself a world of institutions in which individual selves lead a common life, and in which they find their highest and fullest freedom to be possible only by the whole-hearted acceptance of the ends of the community as their own (Reyburn, 1921: 120).

The concept of the social whole itself as an embodiment of freedom is one that is not, in substance, familiar to modern sensibilities. Like many peculiarly Hegelian notions, it makes sense in the context of a very specified set of ideas concerning the nature of societies' goals and definitive features. By this stage

³ The significance of term "substance" shall only be examined in the final section of this chapter when I come to address possible modern interpretations of Hegel's theodicy.

in my enquiry, the "obscure metaphysics"⁴ that set up a social system as an organic embodiment of freedom should be at least somewhat familiar. This is an advanced point in the Hegelian notion of social progression that flows into and out of notions already discussed - the interpenetrating unity of universal and particular, the organic conception of social organisation, the dialectical progression that harmonizes originally alien (even hostile) elements. In reference to the broad thematics, its place in the Hegelian system is not that difficult to discern. But there are many specifics that must be addressed if we are to gather what exactly is entailed in the position that the social system *itself* embodies the ideal of self-determination.

i. Features of the social whole as an embodiment of freedom

Neuhauser (Ibid. 122-128) lays out 4 key features of the social whole that allow it to qualify as self-determining by Hegelian terms. It is teleologically organised, self-reproducing, articulated into semi-autonomous functioning components, which in turn exhibit specific relationships with each other that mirror the structure of the Concept.

Upon careful examination, as Neuhauser (Ibid.) illustrates, these conditions merge and coalesce into architecture of principle. The ideal social order works towards a definite *telos* or end-point of development. The social order must be self-organizing in the sense that all of the various parts must contribute to the production and re-production of all the other parts: each member individually makes the whole possible, while the whole determines each member. The nature of this interrelation of mutual dependence is the province of the remaining three conditions. To be self-reproducing the social order must ensure that its various elements (in their differentiated capacities, as shall be seen shortly) contribute to and have as a common end the material continuation and reproduction of the social order itself. This is one of the key

⁴ As Neuhauser (2000: 120) puts it.

ways that the whole qualifies as more capable of full self-determination than any single individual. With an organised system of labour, for instance, society can better provide for the material needs of citizens than citizens could as, say, individual farmers trading on an unstructured basis with individual artisans. The social order is thus more resistant to shifting circumstance and therefore more self sufficient as an entity than the singular individuals who compose it.

But, Neuhauser (Ibid.) continues, there is a further dimension to this. For what must be reproduced, if the social order to be truly self-standing and self-perpetuating, is not merely a set of physical circumstances, but also a state of *common consciousness*, in Hegel's terminology both "substance and subject" (PhG ¶17).⁵

As Brod (1992: 133) argues, this is one of the fundamental insights that is both distinctive and useful in the Hegelian political vision. "What Hegel's political idealism successfully captures about the modern state", he claims, "is that modern politics, like no other political system or theory earlier, is founded on the consciousness of the citizens". Brod (Ibid.) sees Hegel echoing the social contractarian notion of basing political legitimacy on the will, but improves the position in recognising that the will it is based on should not be a private, individualised one. Such a conception "fails to do justice to the need for this will to be an internal part of political system in which it finds recognition of its efficacy" (Ibid.). It is thus that Brod sees Hegel arguing for a social or co-operative public version of the political will that can serve as a foundation for "an integrated, satisfying, political system that is subject neither to anarchy nor alienation" (Ibid.).

⁵ This essentially refers to the interplay between mental states of the citizens and the reality they find themselves in. *Sittlichkeit* is a realm of what Hegel calls "objective spirit", an embodiment of the world spirit or *Geist*. How this particular dimension of Hegelian thought may be usefully interpreted by modern terms is examined in the second half of this chapter.

This is, ultimately, as I see it, not a call for a unified common end, so much as a commonly understood *framework*. If the ideal social order, as a social whole, reproduces itself as "the kind of being it essentially is", the individual elements must be capable of carrying out the functions that sustain the tenets of the social order as an *internal* project. In other words, if the citizens do not consciously affirm within themselves that what they are doing is necessary and good, the fundamentals of their social space will eventually crumble. This makes sense of Hegel's claims that concrete freedom must include the freedom of individuals, even as it surpasses and enriches it. As Hegel outlines in the 'Ethical Life' section of *The Philosophy of Right*:

The state is the actuality of concrete freedom. But *concrete freedom* requires that personal individuality [*Einzelheit*] and its particular interests should reach their full *development* and gain *recognition of their right* for itself (within the system of the family and of civil society), and also that they should, on the one hand, *pass over* of their own accord into the interest of the universal, and on the other, knowingly and willingly acknowledge this universal interest even as their own *substantial spirit* and actively pursue it as their *ultimate end* (PR §260).

Thus, as Neuhauser (2000: 129) argues, contrary to certain far right interpretations of Hegelian community theory, brute coercion in any form renders the system dysfunctional.⁶ If the reproducers of social institutions are to be reliable⁷, if the social order is to progress, the social order must in some way produce the kind of citizens who *willingly* propagate, continue and improve on both the institutional structure and the social mindset of the whole. What this amounts to is a call for political education, or *bildung*, of the

⁶ As already alluded to in earlier chapters, this is a dynamic in Hegelian thinking which runs in parity with Mill's thought on the subjective disposition of citizenry, most notably the idea that a social system imposed and not internal to its members will be cast aside the moment the imposition lapses. Thus, without internal affirmation of the social system on the part of the citizenry, there can be no true progress.

⁷ The use of the term "reliable" (Neuhauser's, as well as mine) does point to a fundamental of all this that can only be addressed fully in the closing half of the chapter. "Reliable, by whose terms?" it might be asked. Reliable bearers of the consciousness of the objective spirit, is the short answer. The nature of what the members of *Sittlichkeit* must be relied upon to realise at the levels of a social and institutional mindset can only be addressed once we come to the examination of *Geist*.

citizens.⁸ The subjective disposition of the citizenry, as already examined in the previous chapter, must be realised by objective mechanisms within the social order that allow citizens to find their identities within the society around them. They may thus understand themselves as socially constituted, socially embedded and socially responsible at a personal level.

The question of the *content* of these identities is covered by the condition that the social order be articulated into semi-autonomous functioning components. The idea of the social order as a holistic embodiment of self-determination leads us to query, in more precise terms, who or what is being self-determined. How, in other words, can we understand the private wills and ends of individuals playing into the grander social whole? Must diversity amongst individuals be somehow re-configured to fit a generalised social bromide? The answer, from Hegel's side, is most definitively not.

ii. Hegel's Organicism

As Neuhauser (2000: 123) clarifies, there is certainly a sense in which *Sittlichkeit* does, in a decidedly Rousseauian sense, refer to a rational system for the effective and harmonious co-ordination of private ends. But the position that this is the *final* end of the social order is one that Hegel stands profoundly against, and is in fact the very approach for which he chastises the social contract theorists. No, for Hegel the social whole must have an end in itself, into which individual ends are sublimated. This has to do, once more, with the organic conception of society at work within the Hegelian system. If we return once more to the analogy of an organism, we can discern that organic systems work at multiple levels of organisation. In a biological organism, various individuated parts are organised into "relatively autonomous

⁸ This aspect will be re-addressed shortly, when I examine Patten's thesis that the Hegelian social space has key affinities with what is now labeled "civic humanism". Political, or civic, education as a fundamental of political systems would be one aspect that fits neatly into such a model.

subsystems" (ibid. 124), each of which can be described as pursuing their own end, or function. These subsystems, in turn, collectively contribute to the functioning of the whole. Thus, If we assess society as if it were a living creature, we can discern various types of ends, working at multiple and integrated levels. Individuals have their private ends, collectively realised in their family units and in the associations and corporations of civil society, which are in turn collectively organised under the broader universal of the state, all of which in combination co-operate as the still broader system of *Sittlichkeit*.

For Hegel, Neuhauser (2000: 125) maintains, it is not merely a matter of individuals and their associations and institutions being found in the same social space. This, after all, is hardly revelatory. It is more the notion that these elements are interconnected, and in fact mutually dependent. The fuller details of this position will be fleshed out in the coming sections. For now, the point to be discerned is that Hegel understands the social whole as composed of *necessarily differentiated* parts, which, though they possess private ends in themselves, nonetheless contribute to the overall end of the whole. Diversity is not to be crushed, under this analysis, but allowed (and encouraged) to flourish. The diverse elements are to be brought into harmony. Thus, the organic unity of differentiated elements does not merely make the social order more efficient (as in the division of labour within civil society), but allows the individual elements to more completely determine themselves by participating in a system in which their particularity is a crucial factor, and thus safeguarded and recognised.

As Westphal (in Beiser (ed.) 1993: 236) argues, Hegel's organicism in this regard is a response to what he saw as a false dichotomy in social theory, still prevalent in some senses today - that "[e]ither individuals are more fundamental than or are in principle independent of society, or vice versa: society is more basic than or 'prior to' human individuals". The pursuit of

individual ends has a profoundly social context that "provides specific objects that meet those ends" and "specifies procedures for obtaining them" (Ibid.). This social context of individual action, however, should not, on a rational analysis, leave individuals *subservient* to the social order. As discussed in Chapter 2, the social order cannot exist without them, as "there are no social practices without social practitioners - without individuals that learn, participate in, perpetuate, *and who modify* those social practices as needed to meet their changing needs, aims and circumstances" (Ibid.). The question of whether the individual or her social order is of more importance to Hegel is, in Westphal's (Ibid. 237) word's "bogus".

This is why Neuhauser (2000: 129-130) reminds us it is a mistake to understand the general social end, or the Hegelian *telos* as a universal, as one distinct, grand end to which the ends of individuals and their associations must be reconciled. Rather, the realisation of these particular ends is *part* of the end of the whole itself. If the self-determination of the whole is located in its capacity to reproduce itself as the "kind of being it essentially *is*", then this is not possible without enshrining the particularities of its constituent elements. This, for Hegel, is one of the key reasons why the freedoms of personhood and moral subjectivity must be safeguarded. Individual freedom and freedom of conscience are ultimately part of the ends of the social whole properly understood.⁹

iii. *Sittlichkeit* as a rational mirror of The Concept

This allows us to better understand the final condition, that the relationships between the components mirror the structure of the Concept - the framework of rational understanding that Hegel sees as underlying all reality. This, as was

⁹ This notion of integrated diversity as the driving conception behind the social whole is one of the foundational reasons for my thesis that *Geist* as a theoretical entity may be interpreted as a social attitude of progressive tolerance.

explained in the footnotes to earlier chapters, is a three-phase analytical structure that makes sense of the process by which particularity and universality come to be reconciled. The phases or moments are, in Hegel's terms: immediate unity, difference and mediated unity. They represent together the process by which instinctual or affective particularity comes to amend itself through increased interaction with originally alien other particulars, and thence comes to be reconciled as a necessarily particular element of the universal.¹⁰

The focus in *The Philosophy of Right* is on how the three institutions of modern ethical life - the family, civil society and the state - can be understood to represent such a framework. As Neuhauser (2000: 135-137) clarifies, the family represents immediate unity, in that members of the family, though they maintain and pursue private ends, also act in accordance with a common end, motivated by an immediate emotional attachment to their fellow family members (the emotion of familial love and trust is the driving force here). Civil society, in contrast, represents the moment of difference: vast multiplicities of private ends are pursued in this space. There are indeed general ends that are achieved, but these are an unconscious general effect of combined egoistic activity. A key example is the way in which the market, with its ultra-differentiated labour force, serves the general good of providing the elements of material well-being, even though the motivations of the providers are profit orientated and egoistic. It is the state that reconciles the substantial unity of the family with the hyper-differentiated sphere of civil society, as the moment of mediated unity. The particularised individuals understand their private pursuits in the context of a rationally harmonised

¹⁰ I join Neuhauser in swearing off the need to mine the darker depths of Hegel's metaphysics to understand and defend the Concept as an abstract entity. I feel it serves our purposes here to understand it in terms of its practical implication in Hegel's system: as an underlying universal pattern of social interaction that repeats in some form through all social systems, and comes to be recognised as such, and thus objectively actualised, in the ideal social order.

system, and thus come to trust and feel at home in the state as they do in the context of the family.¹¹

The important thing to note here, as Neuhauser (ibid. 137) reminds us, is that “unity” within the state is *not* simply a larger scale version of the affective emotional attachment individuals within the family feel. It is, to Hegel’s eyes, a different though complementary breed of attachment. It is a conscious, rationally considered and affirmed dedication to an inclusive common ideal. This process demands that individual citizens must progress from a state of immediate emotional attachment to a stage where they recognise the multiplicity of ends within society and understand them as co-ordinated within a rational system that legislates on the basis of deliberation amongst the diverse elements of society over the collective good.

iv. *Sittlichkeit* as inclusive pluralism

Individuals, in other words, have to understand and relate to the state as a realm in which their personal interests and needs have efficacy, if the organic unity sketched out so far is to function as Hegel envisions:

The principle of modern states has enormous strength and depth because it allows the principle of subjectivity to attain fulfilment in the *self-sufficient extreme* of personal particularity, while at the same time *bringing it back to substantial unity* and so preserving this unity in the principle of subjectivity itself (PR §260).

In practical terms, Neuhauser (2000: 138 - 140) lays out, this is achieved through a process of forming public policy that is transparent and inclusive in nature. The mechanisms of policy-making must be both visible and representative. One of the crucial means by which *Sittlichkeit* achieves this is

¹¹ The controversial element of “trust” in the Hegelian system, especially at a patriotic level, will come under heavy examination when I come to assess “strong” vs. “weak” identification in Hegel’s understanding of community.

the representation of interests through the associations and corporate collectives of civil society. By modern terms we might call these lobby groups, professional associations and trade unions. Citizens come to understand themselves as included in the legislative process through the inclusion of groups and associations to which they belong. As Hegel reminds us: "[T]he state is essentially an organization whose members constitute circles *in their own right* [*fur sich*]¹², and no moment within should appear as an unorganized crowd" (PR §303 A).

The activity of such "corporations" in civil society is what Hardimon (1994: 201-202) sees as Hegel's corrective to the alienation of the everyday citizen from the process of managing public ends. Lacking the capacity the ancient Athenian citizen was granted of direct participation in the machinery of government, modern citizens can still, by Hegel's terms, understand themselves as active and powerful in the social order by direct participation in the structures that manage public ends at lower levels. This is how Hardimon (Ibid.) sees the corporation playing a "quasi political" role in public life. This, in combination with the provision that the legislative process be, in Hegel's own terms, a public "spectacle"¹³, allows the citizen to see the legislation that governs her emerging from public deliberation over the common good. Hegel believes that "such publicity is the most important means of education as far as the interests of the state are concerned" for such a public convergence on policy at the hands of ministers and representatives are where it "becomes evident that a man's imaginings at home in the company of his wife or friends are very different from events in a great assembly, where one ingenious idea [*Gescheitheit*] devours another" (PR § 315).

¹² Neuhauser does make the point in his footnotes that the formation of these groups, and their function as a source of feelings of inclusion, does pre-suppose some form of prior affective attachment in terms of community. This is an issue I will deal with in the section on strong vs. weak identification.

¹³ PR §315.

It is Hegel's contention that *Sittlichkeit* allows for a public engagement and management of common concerns that lends weight to the notion that the social whole is more capable of constituting and safeguarding freedom than its component individuals. Beyond this, of key concern to this thesis is that Hegel's ideas on public opinion within the social whole are intriguing, in that many of the concerns he expresses almost directly echo Mill's.

iv. The Role of Public Opinion

Hegel accords public opinion a significant role in the structure of the ideal social order, describing it as the sphere in which "formal subjective freedom" (broadly defined as the realm of individual judgements on matters of universal concern) "makes its collective appearance" (PR §316). As a massive force however, it is something of a contradiction, being a sphere where the "*substantial and true* is linked with its opposite, with what is distinct within itself as the *particular opinions* of the many". It is thus a dangerous terrain, where the "essential is just as immediately present as the inessential." Hegel thus reflects on the dangers of such a disorganised force being such a driving feature of the modern state (Ibid.). Lacking the capacity for rational discrimination, the tide of public opinion is to be "*respected* as well as *despised* - despised for its concrete consciousness and expression, and respected for its essential basis" (PR §318).

What I see Hegel claiming here is that, while the essential elements of the ethical consciousness are present in public opinion (in terms of the concern for the universal), it is prone to fits of irrationality and over-emphasis of particular points of view. In his words, it "lacks the ability to raise its own substantial aspect to [the level of] determinate knowledge" (Ibid.). This task is left to the great thinkers and philosophers of an age. As Brod (1992: 133) interprets: "Public opinion is the repository of valid truths, yet these truths are lost in a

mass of scattered opinion. It is the task of philosophy to set out what is true and deserving of being preserved from what is not”.

As such, Hegel surmises, “the first formal condition of achieving anything great or rational, either in actuality or in science, is to be independent of public opinion. Great achievement may in turn be assured that public opinion will subsequently accept it” (PR §318). The truly progressive mind, or the “great man”, in order to achieve anything of gravity and lasting worth must be “able to despise public opinion as he here and there encounters it” (Ibid. A). This is an eerily faithful echo of Mill’s fears of the “tyranny of the majority” (see Chapter 3) stifling the genius of the individual social visionary.

Hegel’s ideas on the press and freedom of expression, though only briefly sketched out in *The Philosophy of Right*, are also pregnant with Millian sentiments, even if Hegel does not sufficiently spell out their implications, making his treatment of them appear condescending and dismissive. He feels the rational social order must be able to handle a freeflow of communication. This is because he understands the right to freedom of expression as structurally guaranteed by the ethical framework. These structural guarantees are most obviously present in the measures set up to curb expression’s ‘excesses’ (which he seems to see as direct incitement to violent or harmful action) (PR §319).

He does, incidentally, warn that such laws must be cautiously applied due to the indeterminate nature of the connections between exhortation and action (Ibid.). Furthermore, he suggests that a rationally functional social order should have nothing to fear from obviously irrational perspectives. Hegel understands the assemblies of the estates and public nature of policy formation as rendering misguided opinion “innocuous”, in that they provide a public and deliberative counterpoint to such “shallow and malicious talk” (Ibid.). His ideal social communicative floodgates are not, at first sight, as open as Mill’s.

He does hold that, while the possession of an opinion is indeed the spiritual property of the individual (an argument I provided backing for in Chapter 2), "all injuries to the honour of the individual, slander, abuse, vilification of the government, of its official bodies and civil servants, and in particular the sovereign in person, contempt for the laws, incitement to rebellion, etc., are crimes and misdemeanours of varying degrees of gravity" (Ibid.).

I am tempted to dismiss the conservative overtones of this position, on the grounds that a framework of ethical confrontation is central to Hegel's entire understanding of the sphere of public opinion. As Brod outlines:

[T]his confrontation between philosophy and ordinary language can take place successfully only when the encounter is mediated through established institutional recognition of public opinion. This recognition brings articulated public opinion into the light of the public forum. The forum itself then plays a pedagogical role in further refining public opinion (Brod, 1992: 133).

Thus, I would argue, archaic notions such as describing insult to the sovereign as a crime can be safely distilled out of the Hegelian position.¹⁴ Such provisions, it seems to me, are conditioned by Hegel's notion of the state as "divine", a notion I argue below can be justifiably re-interpreted in a modern assessment of Hegel. What remains consistent and prevalent in Hegel's discussion of public opinion is his contention that the institutional structure of *Sittlichkeit* guarantees a zone of rational public engagement, and as such qualifies as a constitutive embodiment of social freedom.¹⁵

¹⁴ A possibly strong explanation for such inconsistency could well have been the dangerous political atmosphere that followed the French Revolution, in the form of repressive measures such as the Carlsbad Decrees of 1819 (See Dallmayr, 1993: 92). Academia of the era existed in the shadow of reactionary paranoia on the part of the ruling classes. Hegel may well just have been playing it safe.

vi. *Sittlichkeit* as a framework of enriched social freedom

Once all these threads are pulled together, Hegel's vision of the social whole becomes clearer. Neuhauser sums it up particularly well:

Political life most clearly approximates the ideal of self-sufficient subjectivity (which is to say, spirituality) because it is the arena within which citizens, as a body, determine themselves in accord with principles arrived at through the exercise of their own socially constituted public reason (Neuhauser, 2000: 144).

This may not seem highly controversial at first sight, but there are difficult questions yet to be answered. The most contentious of these arises from the basic principle of holding that the social order as a whole more perfectly embodies freedom (or Hegel's version thereof) than the individual does. It follows from this that there may well be occasions in which the whole trumps its collective parts in terms of social priority, thus leading to an attitude and practice of paternalism and repression of individual freedoms. While the individualistic elements of his theory elucidated so far go some way to clearing Hegel of this charge, and Westphal's contention that Hegel's organicism considers neither the individual nor the state as prior or more important seems to hold, we cannot hope to resolve this issue one way or the other until we have considered the totality of Hegel's doctrine of objective freedom.

The above exposition, while it clears up some instinctive concerns as to how abstract metaphysical concepts such as organic unity and self-determining embodiments of the will can translate into a viable modern picture of social freedom, is still a touch to ethereal for any real assessment. What is lacking is a further fleshing out of the conceptual details; the actual conditions Hegel believes contribute to and maintain freedom for individuals in an objective social sense. This is the task of the following section.

¹⁵ The idea of *Sittlichkeit* as a realm of objective rational ethicality that allows for the intermingling of subjectivities is discussed in section 4.2.4.

4.2.3) The Social Conditions of Individual freedom

"[E]thical life", Wood (1990: 196) maintains, "is Hegel's name for an entire set of institutions - the ones anatomised under that heading in *The Philosophy of Right*: the family, civil society and the state." Later in his discussion, Wood concludes that:

In its objective aspect, ethical life is unified in the political state. Through the state, people decide how they will live together and this gives explicit rationality to the whole ethical community (Wood, 1990: 219).

The task of this section is to understand how Hegel understood the institutional structure of *Sittlichkeit* to be conducive to, and ultimately formative of, social freedom, as he understood it.

Let us recall some of the key structural points concerning the development of freedom in *Sittlichkeit* and its enshrinement in institutional practice. The social order is not only tasked with safeguarding the freedoms of personhood, moral subjectivity (as well as embodying the higher phase of social freedom). It is also incumbent upon it to condition citizens to be able to realise these freedoms, and embrace the final system that co-ordinates and harmonizes them, as their own. Hegel, as we have seen, feels this latter condition can be satisfied by a social space that allows its citizens to find their identities within it, and which allows them to feel their particularity is accounted for and encouraged. To fully comprehend the normative power of Hegelian principles, we must understand how the expanded political space of *Sittlichkeit* is meant to achieve these aims.

i. Conditioning the citizenry for Freedom

We can begin with the conditioning of members' freedoms. Neuhauser (2000: 147-148) divides the mechanisms by which this is possible into the internal and

external means¹⁶ the social order must use to allow members' to realise their freedoms. The external mechanisms are simpler, and do not require lengthy description and analysis. The safeguarding of personhood and moral subjectivity are, as Neuhauser points out, the more straightforward and uncontentious elements of the objective social order. Through the action of the courts and the justice system, laws are enacted that enshrine certain basic rights of personhood (such as the ownership of private property) and of moral subjectivity (allow citizens to act according to their own conceptions of the good, provided this does not conflict with the freedoms of others, of the freedom of the state as a whole).¹⁷

The internal conditioning of social freedom is a different matter altogether. It is here that we enter distinctively Hegelian and contentious territory, for, as already explicated above, it is in securing social freedom that the social order must focus its efforts on the internal dynamics of its members' wills. The internal conditioning of freedom must occur, Neuhauser (Ibid. 148) holds, in two key respects. Firstly, the state is responsible for the safeguarding and encouraging of elements that allow for the formation of citizens capable of self-determination, i.e. it is responsible for the *Bildung* of its citizenry. Secondly, it must ensure that individual particularity is satisfied such that the already much discussed embracing of the social order may take place.

The concept of *Bildung* in general terms has already been laid out in the first Hegel chapter. But it is only when it is brought out in its specific application to *Sittlichkeit* that the rather ominous sounding concept of Hegelian "subjective reconditioning" makes sense. For the reasons why subjects must be

¹⁶ I.e. external and internal to the activity of the individual will.

¹⁷ While these provisions might bear a surface resemblance to Mill's harm principle, bear in mind they are subsumed within the broader system of *Sittlichkeit* and thus must be reconciled with a "subjective reconditioning" of the subject that seems (at least for now) at odds with Mill's social vision. While I aim to prove this is profoundly not the case, I will only grant myself the space to do so in the final chapter of this thesis.

conditioned, as opposed to merely educated or instructed, we must look back to the Hegelian conception of human nature. Here, Neuhauser (Ibid. 149) explains, we find a strange paradox. Through Hegelian eyes, even though the aspiration to freedom (or at least its preceding conditions) is an essential element of human nature, humans are not, by instinctual disposition, suited to being free. This is a dynamic we find throughout the elements of the Hegelian system discussed so far - the freeing of individuals from the contingent desires and limited self-conception that hinder the realisation of their fully self-determined wills. The profound implications this has in terms of the way *Bildung* operates in *Sittlichkeit*, is that it must operate unconsciously and even involuntarily upon the members of the social order. Before we are scared off by the potentially dark and controlling overtones of this position, we must be clear on what exactly Hegel means by this.

ii. Human Need as Reason's catalyst

Hegel is not suggesting that we adopt a strategy like Huxley's subliminal suggestion sleep therapy in *Brave New World*.¹⁸ He is rather maintaining an eminently reasonable position: that individuals are drawn into the social space by basic needs, and thence find themselves subconsciously more aware of their social context and the viability of a rational social order. As he outlines:

Spirit attains its actuality only through internal division, by imposing this limitation and finitude upon itself in [the shape of] natural needs and the continuum [*Zusammenhang*] of this external necessity, and *in the very process of adapting itself to these limitations*, by overcoming them and gaining its *objective existence* (PR §187 A).

¹⁸ Strangely enough, an analysis of *Brave New World* from a Hegelian perspective does follow towards the end of this chapter.

This dynamic repeats itself throughout the two lower levels of *Sittlichkeit*. In Hegel's view the family and civil society *unconsciously* give the individual the emotional and intellectual resources for the conscious embracing of the state.

iii. Need as catalyst in the Family and Civil Society

As Neuhauser (2000: 151-157) points out the family in *Sittlichkeit* fulfils the larger task of preparing its children for social freedom by imbuing them with the capacities to participate in a rational social order. It represents the first social space individuals experience in which brute desires must be sublimated within the context of a collective, mutually beneficial social union that is built on affective emotional trust. The family imbues children with an affirmative attitude towards their own particularity. In being loved unconditionally for who they essentially are (or come to be) they learn to affirm these as intrinsically valuable, so that they are better capable of celebrating their own particularity in later life as individual members of the rational social order. Thus, they are prepared through family life for the freedoms of moral subjectivity as well as personhood.¹⁹ The modern family, unlike the ancient clan or tribe, is designed to *dissolve*. Children are prepared throughout their family life for the point where they reach the age of majority and leave to establish themselves as entities of their own. As Hegel states it: "Every marriage leads to the renunciation of previous family relationships and the establishment of a new and self-sufficient family" (PR §178).²⁰

¹⁹ This does stand in a certain contrast to what many perceive as the realities of modern family existence. There are, after all, countless shelves of psychotherapy texts attesting to the manner in which families render their children socially *dysfunctional*. This lends credence, I feel, to the argument I make in the coming sections – that *Sittlichkeit* ultimately represents more a set of normative standards that are constantly worked towards, but perhaps never universally achieved. I shall discuss this in detail in the section on the tenets and implications of the doctrine of objective freedom.

²⁰ This, for Hegel, also finds expression in the realm of law, where parents can claim no right over the property their children acquire once they leave the family at the age of majority. He also speaks out against inheritance practices that discriminate in the favour of male or eldest children. This is interesting in terms of an element of Hegel's theory that I have not dealt with yet, nor intend to deal with at any length: the strong and archaic gender bias in Hegel's theory. This is discussed briefly in the coming section on objections and implications of the social order.

As Hardimon (1994: 176) argues, Hegel's conception of the family as distinctly modern applies in another sense that links it inextricably with civil society. Unlike the families of antiquity and the middle ages, it is *not* a self-sufficient subsistence unit of production. It is, rather, a unit of *consumption*. Whereas in times past it may have been the locus of productive activity (agrarian farming communities are the clearest example), the family now consumes the commodities produced by the economic activity of civil society. The two can be recognised as interdependent in that the family must produce new consumers and economic agents for civil society, whilst civil society relies on the family to imbue children with the necessary capacities (just discussed) to participate therein. Hegel in fact even sees the family's *economic* reliance on civil society as part of what drives the *Bildung* process of the individual:

[Civil society] substitutes its own soil for external inorganic nature and paternal soil from which the individual [*der Einzelne*] gained his livelihood and subjects the existence of the whole family itself to dependence on civil society and to contingency. Thus the individual [*Individuum*] becomes a *son of civil society*, which has as many claims on him as he has rights in relation to it (PR §238).

Following the pattern of the Concept, as just discussed above, whereas the family represents affective emotional unity, civil society is characterised by vastly diversified particularity. "As [members of civil society]", Hegel claims, "[i]ndividuals are *private persons* who have their own interest as their end". To realise these ends, however, they must come to terms with a system "mediated by the universal". Thus, they learn to operate by "determining their knowledge, will and activity in a universal way and making themselves into a link of this social chain" (PR §187).

Neuhauser (2000: 158-165) sees the description of civil society as one of the clearest instantiations of Hegel's contention that individuals are drawn into the web of relations that will result in *Bildung* through a condition of natural need.

They cannot, quite simply, survive without the goods that participation in the system of exchange and production provides for them. The *Bildung* aspect, Neuhauser maintains, comes as an unconscious result of socially productive labour.²¹ The individual learns that she is bounded by material circumstance, as well as the wills and needs of others. One cannot give in to caprice and use raw materials whimsically. If one is to survive, one must produce things that have value to others, that address their needs, and take their desires into consideration. The labourer gives her ends objective expression, and thus, in Hegel's more dramatic terms becomes "master" of her "own destiny". The sole economic agent in civil society comes to understand herself as a person amongst others. She is conscious of her own determinate particularity, but simultaneously conscious of herself as an abstract universal subject.²² In terms of the latter, she realises she is identical to all others as regards the rights and obligations of the common system. These two moments of awareness provide part of the rational groundwork for embracing the state, as the objective guarantor of the rationality of such a common system.

Wallace summarises Hegel's views on this fittingly:

²¹ Loosely defined by Hegel himself as labour that somehow addresses the needs of others as opposed to being the mere product of inclination, or, in more strictly Hegelian terms, "conduct ... dictated by the ... properties of its object" (PR §187 Z).

²² Neuhauser (2000: 158-165) deepens the Hegelian understanding of civil society with a discussion of the relations of the diversified modern market as underscored by constant reference not to distinct individuals but to the "propertyless universal" of money or the market. Though I support and understand the principle at hand here, I remain slightly sceptical about this particular argument. I feel it holds true if one is selling washing powder, but not if one is selling designer clothing or flavoured condoms. Certainly, it would be unfair to have expected Hegel to anticipate the idiosyncracies of modern branding and niche marketing. But, since I am bound here to examine the more durable of his principles, I feel I should highlight that modern products are often designed with a determinate class of people in mind. This can run counter to the principles of *Sittlichkeit* in promoting certain prejudices of its own. For example, the producers of designer clothing may well become dismissive of those who do not follow high fashion. But the point remains that there is a constant awareness that anyone *may* buy the goods that are produced. Thus, I will support Neuhauser to a point – in conceding that a modern system of exchange relation, in broad terms, establishes a mindset by which people become abstract buyers and sellers in the eyes of the system and its members.

[A]lthough [*Bildung* in civil society] is experienced as the operation of (economic) necessity upon the individual (§186), it is in itself a process of liberation, because it makes it increasingly clear that what the individual experiences as needs in fact reflect social attitudes and expectations, rather than brute nature, thus opening up the possibility of reflecting on them and seeking a higher unity - what makes sense as a whole (Wallace, 1999: 419-434).

This gives us a sense of how Hegel sees the individual becoming reconciled to the co-operative structure of the social order, but it doesn't yet explain how Hegel sees the individual remaining necessarily particularised in the process. In seeking to understand how individual particularity is satisfied in the objective social order, what we ask of Hegel is what features institutions must possess in order to make the subjective component of freedom, as already discussed, possible. What, in other words, must the institutional framework of *Sittlichkeit* do to ensure its members find their identities through participating in the social space, in order that they do so as free beings?

iv. Conditions of *Sittlichkeit* as worthy of Citizens' Affirmation

Neuhauser (2000: 166-169) claims that for Hegel the answer to the above question is, once again, bound up with the concept of human need. In order to stand as "good"²³, the social order must have mechanisms for the satisfaction of the material needs of each individual built into its foundations. Both Hegel and Rousseau maintain (and just about any social theorist would agree) that a society that fails to cater for the basic material welfare of its members, regardless of how well or fairly it instils and reflects spiritual or emotional unity in its populace, will be neither enduring nor legitimate. Hegel wishes to prove that material (or welfare) needs and freedom are not simply compatible, but in fact mutually dependent.²⁴

²³ By Hegelian terms, to exhibit a unity of right and welfare (Neuhauser, 2000: 165).

²⁴ Neuhauser does take pains to explain that welfare, in the Hegelian sense, does indeed refer to spiritual needs as well as physical. The need for recognition would be the most prominent example. These needs are, however, largely catered for in terms of the subjective disposition already discussed in the first Hegel

Neuhauser (Ibid. 169-70, n 41) presents a powerful illustration of how Hegel sees base needs and desires as a powerful incentive to participation in the freedom-concretizing structures of *Sittlichkeit*. In the family, one the most powerful examples of the interdependence of need and freedom is seen in the satisfaction of the sexual drive, as a binding force between two adults. Need here fuels the activities that allow for substantial "ethical engagement", and thus is even something as instinctual as sex is elevated to the level of the ethical. This, Hegel feels, is appropriate, as it embraces the "totality" of the person - "mind, sentiment and sensible being" (VPR1, 253, as cited in Neuhauser, 2000: 170). One's natural desires and the ethical demands of one's environment are united in a mutually re-enforcing sense.

In terms of civil society, Neuhauser (2000: 170-172) contends this same relationship of mutual re-enforcement applies in a more obvious sense. The system of production and exchange produces the basic necessities of survival, and furthermore allows for the procurement of luxuries and additional material comforts. Hegel follows Smith to a large extent in maintaining that the unregulated market is the most effective maximiser of social goods.²⁵ In broad principle at the very least, it harnesses the driving force of self-interest to provide for the material well being of society.²⁶ This can be understood as a profound contribution to the rational social order. Members are given material incentive to participate in an institutional framework that, as discussed above, engenders members with the foundational capacities of realising social freedom. Mutual dependence amongst members becomes, through co-operation in civil society, a concrete and inescapable feature of the social

chapter. Thus, we may conclude that spiritual welfare of members is something that is *allowed for*, as opposed to directly instilled, by the objective mechanisms of *Sittlichkeit*.

²⁵ I unfortunately have no space here to digress into the highly interesting (and controversial) theoretical crossfire concerning Hegel and capitalism. There are numerous interesting dimensions to this, including the question of whether or not the Hegelian civil society could be interpreted in a socialist or market socialist manner.

²⁶ Hardimon (1994 : 192) concurs here, identifying affinities with a "Smithian hidden hand" in Hegel's conception of the market.

space. This is not, as Hardimon (1994: 192) claims, an accidental arrangement, so much as a function of the institution if rationally understood. Hegel claims it may appear anarchic and unstructured, until one realises it in fact conforms to the inherent rationality of classical economics (PR §189).

v. *Sittlichkeit* as both description and ideal

One issue here continues to mire the Hegelian system. Without stepping too blindly into the vast and virulent modern controversy surrounding capitalism and poverty, the question of the poor in Hegel's social structure points to a crucial defect in his structure. Hegel is, as Neuhauser (2000: 171-174) maintains, not as blind as Smith was to the negative fallout of unregulated capitalism, but nonetheless failed to find a satisfactory solution (by his own terms), to the problem of poverty. He rejected poorhouses as a concept as he felt they denied the poor the necessary spiritual satisfaction of the need for recognition as effective social agents. Assigning the task of caring for their unemployed members to the trade guilds, or corporations, falls by the objection that many of the unemployed will not belong to such an association. After considering various alternatives (including state issued begging licenses²⁷) Hegel never, by the end of his writing days, managed to successfully decide what to do about poverty in *Sittlichkeit*.²⁸

There are various options one may eke out of Hegelian principle (making smaller community units responsible for their poor could be one interesting avenue of exploration) but I have no intention of attempting to amend the archaic elements of Hegel's economics. I bring this issue to light as preliminary

²⁷ This is amusingly reminiscent of the system devised by Terry Pratchett for his satirical *Discworld* books. The difference being, in Pratchett's world, the beggars in fact form a guild, very similar to the kind of structure Hegel lauds as the "corporation". In the spirit of true words often spoken in jest, a representative body for the poor is not an entirely un-Hegelian policy option.

²⁸ The closest he came to a solution is a hopelessly archaic conception that colonizing the undeveloped world in order to expand markets could resolve capitalist issues of overproduction. This is dismissed by Neuhauser for not only its dated sensibilities, but its blatant violation of the condition of *Sittlichkeit* as a self-sufficient social whole.

proof of an argument I will make at various levels in this enquiry: that we are best served in interpreting *Sittlichkeit*, for modern purposes, as a set of normative principles and standards to be worked towards, and which may never be universally achieved. If the Hegelian system, with all its complexity and coherence, can find no definitive rational mechanism for dealing with an issue as profoundly "of the real world" as poverty, then we must seriously reconsider its status as a description of the world "as it really is".

Hardimon (1994: 174) provides some key argumentative grounds for such an interpretation. In commenting on the Hegelian analysis of the modern institutional structure, Hardimon argues that Hegel's intention is neither pure description, nor setting up a purely normative set of standards by which to judge the social whole:

[Hegel] presents [his theory of the modern social world], on the one hand as an account of the essences of these institutions, insofar as their essences are realised in existing institutions and groups, and, on the other hand, as an account of existing institutions and groups, insofar as they realise their essences (Ibid.).

Hegel is thus, on Hardimon's reading, attempting what seems at first like an odd synthesis between articulating the structure of the social system as it stands, and setting up the normative standards such a structure should accede to. This seems a great deal less odd, though, if we recall the intentions inherent in the grander project of Hegelian social theory. If Hegel is indeed concerned with allowing individuals to be reconciled to the inherent rationality of their social context, to view their social order as, in Hardimon's (Ibid.) words "a home", then it makes sense for him to describe a system that is rational in its construction, but in present reality fails to meet the standards he sets out for it. This, as Hardimon (Ibid. 133) argues, makes reconciliation *more* viable, as one is less troubled by the defects of the institutional structure that surrounds one if it is seen as only an *imperfect realisation* of an inherently rational social blueprint.

The interpretation I argue for at various levels of this enquiry is that a viable modern Hegelian analysis sees the social order as a rationally assembled, if somewhat dysfunctional, machine. *The Philosophy of Right* is the technician's manual. Hegel, in laying out the rational interconnectedness of the structure of *Sittlichkeit*, I see as laying out the fundamental structure of the ethical, allowing the enlightened modern individual to feel reconciled to such a structure, and understanding herself as part of a community of rational agents that accede to the *framework* that oversees their lives as the best means of managing a common reality, even if there are profound disagreements as to the manner in which this management is carried out. As such, Hegel is not describing the interconnected structure of family, civil society and state *as they are* so much as *how they could be* if understood in the interlocking rational fashion that they essentially already exist in.²⁹ This reconciliation, as discussed, is foundational to social freedom.

The key issue that arises immediately is an intuitive concern as to what must be done when competing conceptions of the good *do* clash. Harmony is a useful concept in bad poetry or greeting cards, but it is a dishearteningly distant goal to apply to social reality. Even as we draw nearer the ideal and interconnected structure Hegel lays out, the kind of engagement he envisions is bound to be rather messy. Above and beyond this, if my interpretation holds, *no* social order will ever be entirely free of such conflict. Ethical and practical engagement is the ideal social orders *raison d'être*, a fundamental of its design. As such, it is critical to understand how Hegel would have us preserve the freedom of each citizen to seek out their own conception of the good. In more distinctively Hegelian terminology, we must understand how the freedom of Moral Subjectivity is included in *Sittlichkeit*.

²⁹ This is what underscores Hegel's famed contention that what is actual is rational and what is rational is actual. As Westphal (in Beiser (ed.), 1993: 234) points out, this declaration has often been mistakenly misinterpreted as "a blanket endorsement of the status quo".

4.2.4) Moral subjectivity in *Sittlichkeit*

The question of moral subjectivity in *Sittlichkeit* is a substrate of a broader question in all Hegel interpretation: how exactly are preceding elements of the dialectic *aufgehaben* into later parts. For our present purposes, how is the lower level freedom of moral subjectivity preserved in the overall rational social order?

The short answer is that moral subjectivity is catered for as a portion of the formal will's self-determination. The moral subject becomes reconciled to an objective harmony that she understands as a structural guarantor of her freedom. But, as with most "short" answers in Hegel, this remains too vague.

i. Background and Implications of a Reflective Unity

Neuhauser (2000: 252) holds that Hegel's key concern is whether and how *all* of the conditions he has set out can be compatible in a single social space. The central tension Hegel foresees is between the provision that conceptions of the good be individually endorseable, and that their "goodness" is derived from a "true" ethicality. This tension, Neuhauser (Ibid. 229-232) feels, arises out of what Hegel understood as a profoundly modern dilemma. His own understanding of the subjective disposition, as covered in Chapter 2, allows us to understand the mechanisms by which individuals may identify the social order as the craftsman of their identities and roles, and the guarantor of the space and freedom for their ends to be pursued.

But this alone does not, by Hegel's standards, guarantee the rationality of the social order. Hegel's analysis of ancient Greece illustrates how members can find their identities in their social order and *still* fall short of realizing the freedoms of personhood and moral subjectivity. This is because, as already covered in Hardimon's discussion of Hegelian social roles in Chapter 2, the

Greek social space was permeated by a sense of *immediate* unity with the social whole that resulted in an attitude of unreflectively accepting social practice. The criteria set by the subjective disposition are incomplete because they are, alone, *compatible* with such an unreflective immediacy. Moral subjects, for Hegel, must have the capacity to distance themselves from their social norms and assess them rationally.

This, Neuhauser (Ibid. 236-237) maintains, allows Hegel to overcome what he saw as one of the crucial shortcomings of historical social orders. Prior social orders located the source of moral authority in the communal whole, be it *polis* or church canon, and accorded communal leaders the final *imprimatur* on moral decisions. The mediaeval distinction between priests and laymen is a prime example. The system sketched out in *The Philosophy of Right* is partially a reaction to this. It democratises moral authority to each individual, regardless of communal station. In doing so, it essentially “universalises” moral authority, in that all have access to the “absolute” which governs the scope of human conduct. Since this “absolute”, as discussed, is an abstraction from particular perspectives, it is universal in a further, more abstract sense. The question here is how thorough this universalisation of moral authority actually is. As Neuhauser (Ibid.) frames it, can we make sense of ethical standards as something *internal* to every human being?

This is certainly, as Neuhauser (Ibid.) sees it, the Hegelian intention - to reveal participation in social order as rational by showing it to be necessary to the full self-determination of the will, and thus of fully realised freedom. This can be understood as *internal* because freedom is understood as the essence of the fully developed human being. Hegel saw such a process of reconciliation as realising the grand enlightenment ideal of rescuing ethical standards from the charge of mere externality.

The key contention that Neuhauser (Ibid.) draws out of this is that, even the self-determination in *The Philosophy of Right* extends beyond individuals to the social order as a whole, this does *not* mean the self-determination of the whole is more profound or valuable than the self-determination of the individuals that compose it. One cannot sacrifice the one in the name of the other, for the two are intrinsically linked. A key element of social freedom is that it secures the freedom of individuals. Moreover, the locus of said social freedom is not ultimately an obscure transcendental. It is intimately bound up in the flesh and blood world of human activity, and as such is inseparable, in concept and realisation, from the freedom of individuals.

Neuhauser (Ibid.) sees this as one of the key improvements of Hegel's account over Kant's duality between desire and duty. Hegel argues, rather compellingly, that humans as sensuous beings, could never fully endorse a morality that made no real provisions for their well-being, yet made supreme claim over their wills. Thus the construction of social morality in Hegel is not a question of abstract universality (as it was for Kant) but rather a question of what beings entering the social space with needs and inclinations could embrace as their highest principle without completely disregarding or countermanding their sensuous nature. The discussion above on the interplay of reason and nature in the construction of the social order in Hegel illustrates just such a reconciliation.

ii. True vs. Formal Conscience

This is indeed a difficult balance to strike, and in seeking to understand the possibility of such a reconciliation, we must address Hegel's concept of the moral conscience, or more precisely, Hegel's distinction between "true" and "formal" conscience. "True conscience" Hegel claims, "is the disposition to will what is good *in and for itself*" (PR §137). Wood (1990: 187) explains this as conscience which "relates to a system of objective principles and duties,

founded in ethical life” and that is “nothing but the awareness of them by the moral subject”. The formal conscience on the other hand is “nothing but the ‘infinite formal self-certainty of *this* subject’”. Wood (Ibid. 188) sees it operating “at the fringes of the system, where ethical standards are indeterminate, conflicting or disputable”. Appeals to conscience, to have binding validity for others in the social order, must refer to “true” and not merely formal conscience. This dual-vision of individual conscience helps explain why Hegel, in *The Philosophy of Right* separates out the “moral” from the “ethical” (PR §137). “The true conscience”, he claims, “is contained in the ethical disposition ... the religious conscience, however, lies completely outside this sphere” (Ibid.).

This is where I see Hegel marking out the boundaries of a value pluralism overseen by the objective rational framework of the social order. Subjective conceptions of the good are merely formal, whereas objective conceptions of the good are true. This is not to dispute the right to these individual conceptions, but rather to grant the power of sanction and control only to those conceptions that are *objectively* valid. This for Hegel is the framework of Ethical Life. As discussed in Chapter 2, the right to persona and belief is a sacrosanct area in the Hegelian structure. Ethical life is concerned with subjectivity made action, and this is to be concerned with what the social order can rationally demand of members in their dealings with each other. The demands of formal conscience alone, which would include religious moralities and what Wood (1990: 185) labels an “ethics of conviction” (roughly comparable to the intuitionist moralities that Mill so vehemently opposed), are not fit conditions for the rational social order to objectively ensure. It is only the true conscience, the rational structure acceded to by all, which is granted such broadscale institutional preservation.

iii. Conditions for the Development of True Conscience

What, then, informs the possibility of a "true", or rational conscience on the part of the citizenry? As Neuhauser (2000: 253-254) outlines the rational social order must be "capable of withstanding the rational scrutiny of its members". This criterion is met when social orders exhibit the features of objective freedom, as outlined above. A second criterion flows out of the requirement of individual endorsability. The rationality of the social order must not only *be* rational, but must make such rationality transparent to its members.³⁰ One of the key mechanisms of this rational transparency has already been discussed in reference to the structure of the legislative structure in *sittlichkeit* and its public, deliberative nature, as discussed above. But Hegel's ultimate requirements move beyond these mere understandings of the functions of various institutions. The citizen must, at the very least, have access to means of comprehending the inter-related nature of the entire system, and the interlocking function of the spheres of ethical life.³¹

As Neuhauser (2000: 227-229) contends, it is here that we find a key point of divergence between the Hegelian and mainstream liberal conception of the social order. The liberal tradition is concerned with the question of how to accommodate divergent conceptions of the good, with the most efficient and principled way of managing a value pluralism within the modern social order,

³⁰ It must be noted that Hegel does grant some credence to more limited forms of theoretical understanding that rationally comprehend portions of the social system, but are incomplete in that they do not make explicit their place in the overall freedom-fostering structure of the system of ethical life entire. Neuhauser takes theories of political economy, with their capacity to highlight the rational structure of the market, as a prime example here. In order for such approaches to function at a subordinate level within the Hegelian system, though, they must be continuous with the principles of the broader philosophical perspective, even if they lack its completeness. They can, upon reflection, function this way, if one considers the way conventional understandings of such social elements as the market and the system of managing private ends in a social framework are subsumed and preserved in the Hegelian state, as discussed above. This suggests that the Hegelian structure, understood *in toto*, represents a higher order understanding that other, less wide-ranging, theoretical lenses may rationally affirm, albeit incompletely.

³¹ This does seem to suggest that there should be some means of making the study of social philosophy open to all in some manner or another, or perhaps that discussion of such principles should be included in mainstream education and spheres of public deliberation, such as the media.

usually by limits to the state's coercive power. Hegel is more concerned with making the inherent rationality of the social order transparent to its members.³²

But the claim I aim to further over the remainder of this chapter is that this rationality in fact refers to an objective framework for the management of practical and ethical confrontation, and the fostering of increased awareness and tolerance. I do not believe what Hegel had in mind is a strictly value-laden body of communal precepts and positive moral notions. I see Hegel etching out a social vision in which the true conscience oversees the clashes and conflicts occasioned by the merely formal, and the rational of structure of ethical life as something to be acceded to on the basis that it negotiates such better than mere individuals can, and is thus more enduring and worthy of assent than any merely particularised notion of justifiable action.

But there is a way yet to go before I can make this claim concretely, and there are further issues that must be cleared up beforehand. This exposition of the structure of Hegel's principles has yet to answer certain questions central to this enquiry as a whole. We must understand how Hegel's idealised structure may function in human reality. We must establish to what extent Hegel's principles truly represent a structure that ensures freedom. We must understand just how deeply the "trust" he sees citizens bestowing must run, and we must understand the related and crucial question of when and how dissent to the social order is possible. Beyond all this, we must know what to make of Hegel's central claim that the social order is the realisation of the objective universal, the world spirit that is *Geist*. Only then will I be equipped to set out a modern Hegelian position.

³² The question of the possibility of value pluralism in Hegel is addressed below in Section 4.3.4.

4.3) Emergent dynamics and critical assessment of the Hegelian social order

What we find laid out in the first part of this chapter is certainly intriguing as a vision of the modern social order, but the grander, and far more difficult, question to be answered is whether it has any value or validity for our conception of the interplay of individuals and institutions in a modern democracy.

If we take this as a guiding project, we can see *Sittlichkeit* as a kind of owner's manual or study-guide to the ideal social order. But this is complexified by the grander Hegelian project of allowing individuals to see their world "as it really is". Individuals are, after all, to be reconciled to the social space surrounding them, not "some world beyond" (Patten, 1999: 176). What, ultimately *is* the objective dimension of *Sittlichkeit*? Is it a means of reconciling ourselves to at least the abstract principles that govern our modern social lives, or a set of normative standards institutions should continually strive towards, but perhaps never achieve completely? My interpretation lies with the latter (though elements of the former certainly must play a part).

The issues that come to the fore here are those I have already raised in footnotes and sidelines to the above exposition. Families are by no means universally greenhouses for the independent and other-regarding self. Civil Society, as Hegel himself was forced to admit, has its citizen-forming capacity marred by the realistic fallout of poverty, and the modern state certainly does not, across the board, exhibit the features Hegel felt made it the locus of concretized freedom. It is both tempting, and seemingly sensible, to interpret *Sittlichkeit* as a set of interlocking normative standards.³³ This is, however, a

³³ We must be careful here, not to fall into the confusion outlined in Chapter 2. It could be argued that the modern social order fits into the historical dialectic of *all* social orders, and thus must be tolerated and

call I will only be in a position to make conclusively once I come to assess the broad sweep of a modern Hegelian position at the close of this chapter.

For now, there are more immediate questions to be answered. Whether its force is primarily normative or explanatory, we must assess to what extent we may endorse the architecture of principle in *Sittlichkeit* as rational and useful. A good means of doing this is to contrast it, as Patten does, with the more prevalent justification and set of guiding principles for the modern state, the contractarian perspective. We have already addressed in Chapter 2 the clashes and commonalties between Hegel and the contractarians as regards the elements of Methodological Atomism in their respective approaches. We are now in a far better position to evaluate the full scope of this long-standing philosophical standoff. In so doing, we may evaluate what issues, abstract and otherwise, the Hegelian structure resolves, and what problems it creates in doing so.

4.3.1) Critical assessment of the Hegelian conception of social freedom

As we move from the comfortable ether of abstract principle and nearer the realm of practicality, we gain a clearer sense of how the Hegelian doctrine of freedom stands in relation to both our common-sense notions of the word, and the context of practical implications that surround it. This is especially so when we contrast the Hegelian understanding of institutional principle and structure with that of the contractarians.

As Patten (1999: 106) illustrates (and as should be clear from the discussion thusfar), the central clash between the two approaches concerns the very

understood as a work in progress. This is, ultimately, at odds with Hegel's conviction that the modern social world is, in point of fact, the realisation of the *telos*, and if so the *caveat* against confusing Hegel's attempts to reconcile citizens to the past with his prescriptions for the present and future stand.

Even if we do reconfigure the Hegelian system, and set up the present as a stage of the incomplete dialectic of social orders, we must still know the nature of the *telos* to make sense of this position. Thus, I lay aside

conception of freedom itself. To a contractarian with a notion of pre-socially free beings, the state is an imposition at the first, and the preservation of individual freedom thus the guiding principle of state practice. Now it must be noted, as has been and will continue to be contended in this thesis, that provisions that safeguard individual freedom are by no means alien to the Hegelian social structure, but quite the opposite. Patten, in support of this, concedes that the requirement of affirmation by individual social members hints at a reconciliatory note in this crossfire.

i. Hegelian vs. Contractarian freedom

This is something that requires far more interpretation if we are to understand its practical implications. As Patten (1999: 106-114) highlights, for all the talk of freedom, actualisation and the intricate processes discussed at length so far that promote individual self-government, membership of the state is not, under Hegelian terms, consensual. It is here that the most vehement clash between the two approaches arises. Hegel criticises the contractarians for taking as their central analogue a system of mutually optional exchange relations - the contract - that ultimately reduce duty, obligation and state membership to a matter of choice.

While it is not true of the higher pantheon of contract theorists (notably Locke, Rousseau, and Fichte) that they place *no* rational constraints on the kind of state individuals must form to meet the criteria of a free society, Hegel's central claim that there remains, in each of them, the requirement of ultimate consent still stands.³⁴ This sets up the theoretical possibility that individuals may dissent from entering the state at all, or might form highly irrational and repressive states. This is considered highly unlikely, considering the highly

discussion of this admittedly complex dynamic until I am in a position to set out what I feel are valid modern interpretations of *Geist* and the Hegelian telos.

³⁴ Elements of the above exposition might well dispute Patten's claims on behalf of Rousseau, but this is not strictly relevant to the discussion at hand

adverse conditions of the state of nature and the experience of history, but is nonetheless present as a possibility, and thus sets up individual freedom as the highest principle of normative justice. For Hegel, membership of the state is not voluntary. Furthermore, as examined at length above, the Hegelian state is not understood as a limit to freedom, but rather its concrete source and guarantor.

The battle lines seem somewhat too clearly drawn here, until, Patten (Ibid. 114-119) reflects, we recall that Hegel puts forward a richer doctrine of institutional principle and structure that in fact *includes* and accounts for the contractarian position. Hegel does indeed "limit" individual freedom if freedom is confined purely to the concept of choice or *Willkur*.³⁵ The above exposition has borne ample witness to the manner in which citizenship is founded on the capacity to seek one's ends beyond mere caprice and contingent desire. This is an element of citizenship that the social contractarians have difficulty accounting for. As the state has no formative role in encouraging self-governance, these capacities must be found in the state of nature itself, as part of the impetus, one would presume, that leads to the formation of the social order in the first place.

But the very conditions of the state of nature as a realm of brute egoism, Patten (Ibid.) contends, make this unlikely. Certainly, it is the awareness of competition with others that leads to the formation of the state, but if the state itself simply manages egoistic ends, then all that can be objectively guaranteed is a society of constrained egoists. It is difficult to see how a radical, or even more balanced, contractarian could point to the objective mechanisms that develop citizens that are ever more aware of their context and the needs of others. If they cannot do so, then the contractarian state is, objectively at least, nothing more than a referee of whims and inclinations.

Thus Hegel's criticism is that contractarianism ignores certain key elements of the state - notably its freedom- and identity-forming elements.

ii. The Necessity of Self-Interested Behaviour

Wallace (1999: 419-434) adds force to this with his exposition of the Hegelian melding of private liberty and citizenship. He holds that insufficient attention is paid to Hegel's conception of the operation of civil society, with the common assumption being that he has simply appropriated the model directly from classical political economists. Wallace reminds us that, as per the discussion of civil society above, the operation of the mechanism may echo political economy, but its function in ethical life does not. If we examine the progression of concepts of ethical life, the sections on abstract right and morality (as discussed) see freedom as a move beyond, yet still including, self-interest, it makes no sense to suddenly have an entire dimension of the system that functions *purely* in the service of self interest. As we have discussed, it does not. Need and *Sittlichkeit* support each other at every step. Thus, the intersubjective awareness of freedom is driven forward by the actions of private liberty. It is the activity of serving our own ends in the sphere of civil society that allows us to comprehend the freedom-concretizing necessity of a rational and impartial structure that allows us to safeguard and foster our capacities for formal freedom. It is thus that Wallace concludes:

If Hegel is right, the choice between the activities of private liberty and those of citizenship is not between two incommensurable *sui generis* goods, between which only random "preference" can determine one's choice, but between one aspect and another aspect of the same good. To have the whole good (once we understand it), we will naturally seek to combine both aspects (Ibid.).

³⁵ And, as shall be seen shortly, even accounts for and includes the contractarian understanding of the state, the *Notstaat* of civil society.

The one interesting and possibly powerful objection from the contractarian side is Fichte's (cited in Patten, 1999: 120) – that surely once the capacities for self-governance have been established membership in the state should be voluntary. Patten's (Ibid. 120) response on Hegel's behalf is that there is a responsibility, if we are to maintain the conditions of freedom, to ensure these conditions for future generations.

I believe, however, there is a much more powerful response to this particular attack. If we consider the doctrine of Hegelian freedom that has emerged over the course of this discussion, I feel it is fair to conclude that a crucial part of the Hegelian conception of what it is to be free is the capacity for a balance of trust and rational distance towards the stabilising mechanisms of freedom, most notably the State. Thus, some kind of philosophical opt-out clause for fully formed citizens is both academic and unnecessary. One of the key things that makes citizens free is their capacity to trust in an objective structure that harmonizes diversity in an ongoing manner. A fully free person is, in Hegelian terms, thus also possessed of a remarkable rational attitude towards her social structure. She will not leave the state in some childish huff, but will endeavour to alter the policy elements she dislikes through, one would presume, either direct participation in the institutional structure or through the civil society associations that represent her interests. The objective, freedom-concretizing structure that surrounds her is an ongoing and crucial element of her freedom, not some developmental chrysalis that can be cast aside at a later stage.³⁶

iii. The State as the Locus for Mutual Recognition

Not surprisingly, it is mutual recognition that Patten (1999: 121-122) posits as Hegel's foundational alternative to contractarian justifications of the state.

³⁶ The exact nature of the Hegelian position on individuals making substantive changes to their social order will be examined shortly in the sections on strong vs. weak identification and dissent in *Sittlichkeit*.

This can be seen as following a Platonic/Aristotelian account, in that it sets up an account of justice in the *polis* as prior to an account of justice in its members. In other words, it is a position sensitive to the "social and political basis of the capacity for freedom".³⁷

I have already outlined in previous chapters the various levels at which mutual recognition functions in the Hegelian system. Chapter 2 examined the impact of recognition and negation of self on the dialectic of self-formation. In that same chapter we examined the doctrine of private property, and the recognition thereof, as a founding institution of practical social engagement and development of the capacity for self-rule. Furthermore, in our investigation of the subjective disposition, we noted the individually formative effects of recognition in fostering and stabilizing a sense of self-certainty necessary for full-blown freedom. The exposition of the objective social order above highlighted the various intricate mechanisms by which the institutional framework of *Sittlichkeit* can rationally nurture recognition relations.

The question that remains to be answered conclusively and explicitly is why *the state* is a necessary locus for all this. This is crucial to validating its status as the locus of ultimate freedom. Patten's (1999: 129-134) answer can be found in following through the thought behind a few of the dynamics just laid out. Consider the constant reminders throughout the Hegelian system that recognition must be *mediated* and *expressed*. At each stage of the dialectic of individual wills, a mediating mechanism and objective form of expression is present. Patten brings this out in reference to the violent combat that results

³⁷ This does include a certain *a priori*ism in Hegel's account that Patten sees as a weakness. Hegel does take his conception of freedom as a grounding for the nature of the institutions and practices that follow from it. This, once again, leads to questions concerning the nature of *Geist* since it is the doctrine of the world spirit that answers this objection to a large extent. If we can re-interpret *Geist* into something that does not make indefensible *a priori* assumptions, then this is not problematic. This is what I attempt in the closing pages of this chapter.

in the master-slave dynamic, which in turn results in the community of mutually recognising agents.³⁸

The state, in the final analysis, takes the place of these crude mechanisms of mediating and expressing recognition, through an objective system that accords respect and recognition to all citizens. The state can thus be understood as playing a vital role in mediating recognition relations, and it makes perfectly good sense, under this analysis, to accord it the status Hegel does. Once we pull all of these threads together, it becomes clear that *Sittlichkeit* represents for Hegel the minimum infrastructure that makes freedom possible. If we accept the concept of freedom as rational self-determination, and recognise Hegel's version of such an abstracting capacity to be free from the worries that plague Kant's (see Chapter 2), the Hegelian position seems both coherent and compelling.

iv. The "Common Mind" Recast

It is a position that certainly seems more sophisticated than the contractarian, and in certain sense more grounded in socio-political realities. What, then, could still be held against it by advocates of a more common understanding of freedom? The most prominent answer is the attack hurled at almost any approach that could be labelled "communitarian", and it is one that has haunted the entire scope of this enquiry.

This is the charge that systematic approaches that accord the social order priority over the individual engender an uncritical stance that renders society stagnant and unprogressive. One of the key attractions of the social contract model is that, for all its higher-order intellectual sins, it does offer an objective standpoint from which to criticise social orders and even justify

³⁸ The same dynamic could be said to apply, in a less dramatic sense, to the progression of individual wills through the various stages of *Sittlichkeit*.

active resistance. But I contend, with Patten (Ibid. 136-137), that this is by no means a capacity lacking in the Hegelian position. A social order, for instance, that trampled on the freedoms of personhood and moral subjectivity, but failed in fostering the inclusive mechanisms of civil society associations, could be quite severely held to account by Hegelian terms.³⁹

This is by no means an issue specific to Hegel. As Vincent (in Cullen (ed.), 1988: 50-53) points out, such issues are endemic to any account that links up individual wills with the common will, or individual good with the common good. Vincent clarifies that the use of the term "common" in the idealist account is a lot more mundane than is usually thought. It implies merely "that which is shared or characteristic of a group". This does not have to extend to definitive content at all, but can be quite harmlessly understood as the more obvious descriptive point that communities share common infrastructure and resources, allied to the normative point that the common structure in question must harmonise the conditions for individual self-development. The institutions of social life are not to be understood as a rigid and objectified code of behaviour. They are, rather, to be understood as the ongoing product of human activity and thus "embody substantively the same content as individual minds" (Ibid. 50). Such a conception sets up a seemingly tricky two-way feedback situation in which "[h]uman praxis has established the institutions, yet the rules form the substance of rational human praxis". The

³⁹ What remains unresolved at this stage is how this is affected by the teleology and the relativism of the historical dialectic in the Hegelian system, issues resolved in the concluding section of the chapter. What does remain true is that, as Patten (Patten, 1990: 136-137) concedes, Hegel did harbour a deep mistrust of a culture of dissent and criticism within the social order. But, one must remember this mistrust is directed at profoundly undemocratic excesses such as the Reign of Terror in revolutionary France. I feel this is one of the scores on which it is fair to disregard certain anachronistic attitudes that lurk within the Hegelian canon. Living at a time when dissent meant guillotines, it is understandable that a culture in a constant stance of criticism towards its social order would be worrying. But we have only to turn to the implications of Hegelian principle already brought out in this enquiry to see that a profound element of rational distance runs throughout his concept of free citizenship, as well as a variety of mechanisms for representing and stabilizing the interests of various social groups and enclaves. This, practically, puts the state in a fairly constant position of managing rational dissent.

"common" or "objective" mind in such a situation is simply an understanding of said institutions as (in Muirhead's terms) "objectified purpose" (Ibid. 52-53). This purpose, for the Idealist, is found in the "implicit teleology" of institutions as instrumental to the "self development of all individuals in the society". As such, Vincent clarifies, the Idealist conception of the social order sets up a complex but ultimately coherent picture of the way a rational institutional structure nurtures and safeguards the self-determination of its citizenry:

By maturing within institutions the individual rises from pupillage to critical participation. This creates a double function in institutional life and overcomes the potential charge of conservatism, since individuals do not simply accept the status quo, but also actually criticise it. When the individual is mature and self-reflective, he can then apply his powers to criticise the institutions and make them more adequate embodiments of ethical purpose. The fundamental norms *sustain* and are *sustained by* individual critical praxis (Ibid. 53).

The idea of institutions as an ongoing product of individual mental activity, but still something beyond the individual is in no way implausible. It is, as I see it, precisely what we often forget when addressing modern social problems. An avowed dedication to "the way things are done" can be dangerous, as equally can be a blanket disregard for rational common practice. It is the Idealists in general (and Hegel in particular) that serve as a compelling reminder that institutions live and breathe not in their rule-books and procedures, but in the participation of the individual wills that make them up. Wills that are capable of rational and critical insight that can, through rational channels re-configure institutional structures to be better suited to the demands of progress. To forget this is to open oneself up to the "value rigidity" I see Mill castigating in conservative social orders. (See Chapter 3.) This is where I see my reading of Hegel as having modern significance. A social realm designed as an infrastructure dedicated to rational engagement ensures that individuals perform both of the functions Davis sets out. They ensure the coherence of a

common life, but do so by marking out a space of clashing and mingling diversity, within which rational self-development is furthered. These, as I understand it, are the very aims we find in Mill.

v. Positive Freedom Reconsidered

This all plays into a more general standoff between hard-line liberals and communitarians. Hegel often stands accused, with all other defenders of conceptions of positive freedom, of opening up the floodgates to totalitarianism. As Wood (1990: 41-42) points out, much of this is drawn from Isaiah Berlin's proclamation that the link between an ethics of positive freedom and totalitarian conclusions, while logically dubious, is nonetheless "psychologically and historically intelligible". Wood goes on to highlight that the qualities that Berlin believes render positive freedom advocates fanatics tend to be somewhat divorced from whether they hold an ethics of positive freedom, or not. Parochialism, blind paternalism and the conviction that there is only one rational answer to any given social question, not to mention the further conviction that such an answer will be reached only under the firm guiding hand of those doing the said assuming, are disastrous qualities for the formers of any social order to possess.

The fact that such people might espouse an ethics of positive freedom might well provide them with a covering excuse for their behaviour (one they might well believe), but it does not condemn positive freedom *per se*. "Hence", Wood (Ibid.) jibes, "Berlin has to make his positive freedom fanatics extremely absent minded as well as paranoid. They see no advantage in education over coercion except that education is an easier way of controlling people". These fanatics of positive freedom would have to be so misdirected in pursuit of their creed that they are willing to completely undermine it through their own action. Wood (Ibid.) feels Berlin's only useful point is a sadly incontestable one: That often-good doctrines fall into bad hands. This, however, is as

historically true of liberalism as it is of more positive ethics of state. America's McCarthyism was a prime example of the kind of misdirected and self-undermining madness Berlin describes, in that it represented blatant violations of rights and heavy-handed state practice undertaken in the name of combating "totalitarianism". History will, I feel, judge certain elements of U.S. domestic policy and practice in the wake of the September 11th attacks the same way.⁴⁰

What we have yet to understand, though, is how appropriate the modern *state* is to the role of providing this positive freedom. As attractive as the argument for a framework of rational engagement might seem, it remains unclear that the state fulfils such a role. This is, ultimately, a clarification issue in Hegel. The state as a political entity is conceptually distinct, by modern terms, from the broad sweep of social institutions Hegel seems to be describing, and terms such as "political community" leave the boundary lines far too vague to be really useful. What is thus necessary, at this point, is a more conclusive clarification and assessment of the role of the state in the Hegelian system.

4.3.2) Critical assessment of the Hegelian conception of The State

As Pelczynski (1971: 26) points out, many of the traditional misconceptions of Hegel stem from the fact that he does use the term "state" in a manner not conventional either in common usage or political theory. The state is for Hegel, not merely a political entity, but a form of ethical community. This is why, for example, he clarifies that he does not understand patriotism merely

⁴⁰ This attack on Berlin's suppositions is by no means included to clear Hegel of all charges of fostering totalitarianism. That has been, and will be done well enough by the detailed analysis of his principles and their implications. It is simply to clear the discourse of any prejudiced readings of a positive ethics that I have brought Wood's arguments on this to light at all. The issue of rational dissent in the Hegelian structure remains, however, one of the final stumbling blocks to understanding the Hegelian space as a space of *practical* as well as theoretical self-determination.

as the performance of “extraordinary sacrifices and actions”, but rather as “that disposition which, in the normal conditions and circumstance of life, habitually knows that the community is the substantial basis and end” (PR §268). Given the above discussion of the heuristic functions of *Sittlichkeit* as simultaneously descriptive *and* prescriptive, it is not too difficult to understand how Hegel could comprehend, simultaneously, the state as an actual political entity, and the state as it *should* ideally function.

i. The *Rechstaat* and the *Notstaat*

Patten (1999: 167-169), in his final meditations upon the Hegelian state, brings to light the oft undiscussed Hegelian distinction between the *Rechstaat* and the *Notstaat*. The former is the legitimate, freedom concretizing form of the state that has been discussed as the pinnacle of *Sittlichkeit*. The latter is one of several other kinds of state structure discussed by Hegel, peculiar because it in fact is sublimated at the lower levels of ethical life. The *Notstaat* or “state of need” is, in structure and principle, remarkably similar to what contractarians would class as the state proper - a set of institutions designed to oversee and regulate the egoistic ends of citizens. Thus Hegel in fact refers to the institutional structure of civil society as the *Notstaat*.

This leads to further complications in what is already a controversial Hegelian terrain: the division between the functions of state and civil society. By 20th century conceptions, the divisions already discussed seem recognisable. Civil society is the differentiated and egoistically driven structure of voluntary groups and associations, the state is the involuntary stabilizing system that oversees it. But, Patten (Ibid. 170) maintains, this fails to explain at least two fundamental peculiarities in Hegel’s account: why Hegel feels that civil society can be easily confused with the state, and why the public authority and administration of justice (conventionally state functions) appear in civil society (and then, confoundingly, once more in the state).

What this highlights is that our exposition thusfar of the relationship between civil society and the state is incomplete. Patten (Ibid. 170-171) begins by examining Hegel's primary distinctions between the two spheres. Firstly, civil society, as noted above, has the particular as object, and the universal as an unconscious consequence. The state, on the other hand, is designated as a conscious universal. It is universal both "in itself" (it is the consequence of the actions of all) and "for itself" (the universal is its object of reflection, and the intended consequence of its actions). One way Patten feels this could be interpreted is to see civil society as a realm of partiality (driven by centres of decision making organised around particulars) and the state as impartial (decisions made with the interest of the whole in mind). This, he feels, heads towards a resolution, but it is not enough. It does not fully explain the confusing elements highlighted above.

There are, Patten (Ibid. 171-172) believes, two further distinctions that make sense of Hegel's claims. The first is the distinction between the kinds of goods that direct each sphere. Civil society is concerned with particular goods - those grounded in the need and welfare of particular individuals and groups. The State is concerned with universal goods - notions of what is good for rational agents in general. The second concerns the kind of actions undertaken in and by each sphere. Civil society is marked by what could be referred to as self-regarding action, actions that serve individual or particular interests. The state, on the other hand, is concerned with other-regarding actions, actions that promote the welfare of the community at large. These two distinctions ultimately converge, in that self-regarding actions are liable to be driven by particular goods and other-regarding actions by universal ones.

What Patten (Ibid. 172-175) deduces from this, is that the distribution in functions between the state and civil society in the Hegelian structure is decided according to the nature of the relationships specific functions or

institutions facilitate and oversee. If the relationships are concerned with particular ends and particular utility maximizing, then the functions are assigned to civil society. If the relationships to be overseen are concerned with promoting the general freedom of individuals, as opposed to their welfare, this becomes a function assigned to the state. In running this line of analysis, Patten clears up the confusions alluded to earlier. It is now possible, for one thing, to understand how the public authority (whose jurisdiction encompasses both the types of relationships described above) can appear in the structure of both civil society and the state. It also explains how the state and civil society might be confused, for the *Notstaat* is almost an exact analogue to the contractarian conception of state. It is only when social orders exhibit the freedom concretizing features of Hegelian statehood, including provision for the *bildung* of citizens, that the social order may claim to be a *Rechtsstaat*, an ethically sound and legitimate state. This, I feel, clinches the status of *Sittlichkeit* as a set of normative standards which the standard issue modern democracy must work towards.

ii. The Hegelian State as a Civic Humanist Conception

A further element leading on from this is Patten's (Ibid. 176-180) contention that the Hegelian state represents a "civic humanist" understanding of freedom.⁴¹ He sees the Hegelian state as making a crucial improvement on the contractarian position in remedying a key defect therein. It includes the contractarian defences of property and abstract right, but goes on to show how other-regarding action as a social ethos commensurate with freedom arises out of this, and forms a higher institutional level where self-interest is eradicated. As shown already, a community based on contract and property relations alone does not qualify as self-sufficient and sustainable in the long term. It is marred by severe internal contradictions, in that agents pursue highly egoistic ends,

⁴¹ This can be broadly understood as a position that understands citizens' engagement as crucial to the social order, and understands policy as a publicly threshed out, commonly constituted pursuit.

but are still expected to abide by the dictates of a system that must eventually demand some form of sacrifice from them. Thus, the culture of independent subjectivity that defines a sphere of exchange relations, such as the market, can have severely destabilizing consequences at a state level. The quest is not for some individual-crushing Platonic measure, but rather for a means of stabilizing this subjectivity in community of mutually recognizing agents.

Hegel's *Moralitat*, the sense of wider social context and other-regarding sense of the good it engenders as traced above, is certainly one answer to this problem. But the idea of a socially produced sense of conscience does not go far enough. There is still no guarantee that individuals will obey this, as opposed to the dictates of their desires, as a guiding principle of action. Thus, Patten (Ibid. 185-186) echoes Neuhauser's contention that the state, the third phase of *Sittlichkeit*, arises as a necessary stabilizing and harmonizing framework that oversees an institutional landscape in which citizens can develop the capacities for personhood and moral subjectivity:

Hegel's response to the ancients' worries about the destabilizing effects of subjectivity is thus to argue that the social order *can* tolerate a high degree of independent personality and subjectivity, but *only* if a crucial condition is met. Its citizens must be members of ethical institutions that imbue them with goals, values, convictions, and so forth, such that, when they consult their own opinions and consciences about what to do, the answers they arrive at reinforce that order, rather than ripping it apart, as happened (in Hegel's view) in the ancient world and as recently as the French Revolution (Ibid. 185-186).

Thus, Patten (1999: 186-192) echoes the framework of analysis provided by Neuhauser above. What *Sittlichkeit* essentially achieves through this is the eradication of brute self-interest at the highest institutional level, such that the state is understood as a legitimate and substantial system that oversees distinct and intermingling subjectivities. The "universal interest" becomes the

interest all have in living in a mutually recognizing, self-reproducing community. The state is thus, in *Sittlichkeit*, recognised as the locus of substantial general *and* particular interest. The individual's subjectivity is gained and re-affirmed through participation in the objective. This reverses the common conception of the state as a domain of coercion and force, and sees it rather as a sphere of "other regarding virtue and disposition". The extent to which it falls short of this requirement, is the extent to which it remains a *Notstaat*, rather than a *Rechtsstaat*.

Hardimon (1994: 208-209) echoes this line of argument in his analysis of the Hegelian state, having identified a similar problem to Patten in discerning where the institutional line between civil society and the (strictly political) state is drawn. He argues that "Hegel holds that the institutional overlap exhibited by the administration of justice and the public authority is one of the crucial points of *connection* between the political state and civil society". Hardimon further clarifies (once again, in agreement with Patten) that the spheres of civil society and the state can be separately understood inasmuch as "their respective determinations are distinct" (Ibid.). Civil society can be understood as the social stratum wherein particularity is allowed "the right to develop and express itself in all directions" (PR §182), and as such as concerned with private ends, the state with the "common good of the community" (Ibid. 209). By this, Hardimon (Ibid.) claims Hegel means "a good that is separate from the separate and particular ends of its members".

iii. The State as Objectively Rational

The question that remains is why the state is an *objectively* rational locus of freedom. Patten (Ibid. 194) here is concerned with Hegel's claim, alluded to earlier, that there is an intrinsic reasonableness in being a citizen of a modern state. If we abstract from the identity forming nature of membership in the

social order⁴², what precisely is *rational* in the idea of citizenship? To what end is membership in the state prescribed by objective reason?

It is here that Patten (ibid.) recalls and builds on the arguments I have already cited in Chapter 2 concerning rational self-government and the reciprocity thesis. Objective freedom must have its basis in abstraction from contingent desire and circumstance. But most of the ends we pursue and choices we make in day-to-day situations are not "endorseable all the way down" in the manner described. We do not choose our life partners or our careers by the criteria of preserving and promoting our own freedom, but by the criteria of our contingent passions and desires. A life of citizenship, on the other hand, meets the latter criteria admirably. It is citizenship that partially constitutes our capacity to deliberate about freedom in the first place.

Why and how is this so? The answer, Patten (ibid. 195 - 198) believes, lies in the civic humanist take on the conditions of liberty, as just discussed. An agent can only develop these capacities in a community of mutually recognising agents. If such a community is to be safeguarded in a sustainable institutional framework, then some variant of the Hegelian state is the only valid way forward. An individual can thus endorse citizenship as fulfilling the end of establishing and maintaining her own freedom. The organic structure of citizen and state prevails as a two-way flow of dependence: the individuals' interest in freedom maintains the whole, which in turn maintains their freedom. Thus, we find once more the confluence of objective and subjective freedom in the state. Citizens are ultimately and objectively free in engaging in an activity (state membership) that, unlike their private ends, has the objectively rational imprimatur of being "endorseable all the way down".

⁴² Which is, after all, a means of reconciling citizens to the objective reason that is meant to guide both them and their institutions

What remains unclear is precisely how strongly a citizen must identify with the social order in question in order for this sophisticated but rather abstract interlocking of individual and social ends to be viable. Such a compatibility is, after all, seems a very far cry from the institutional realities of modern political life. If what Hegel ultimately asks of us is that we knuckle down and trust the social order as merely superior to going it alone in terms of furthering our freedom (despite its manifest and numerous shortcomings) then the Hegelian system becomes merely a more abstract version of social contract theory. Moreover, a less desirable version in that it hinges on the possibility of an actualised rational framework that seems incredibly distant from present possibility. The next two sections thus examine how far, abstractly and practically, the right of rational dissent stretches in the Hegelian thought structure.

4.3.3) Strong vs. weak identification

This discussion has played into the midst of an ongoing drama between liberals and communitarians, in which Hegel is a star player. This concerns the communitarian call for "strong" identification as a grounding factor of social systems, and the related assault on deontological liberalism. Alexander Kaufman thrashes out this debate in reference to the foundational principles of ethical life in Hegelian theory.

First, let us review the terms of the crossfire, as Kaufman (1997: 807) lays it out. Communitarians claim that a proper basis for the shared sacrifice and co-operative mechanisms that social orders require can only be found through members' identification with the social order. They draw the distinction between identifying "convergently" and identifying "immediately". Convergent identification refers merely to a system of co-operation for a collective good, whilst immediate identification is present when members regard the process itself as joint venture. A mere instrumental rationality,

such as liberalism puts forward, cannot, by the communitarians' terms, provide the shared sense of identity found in a society that is understood by its members as a shared conception of the self. This is the source of the long-standing communitarian claim that liberalism, with its methodology of abstraction, ignores the fundamental link between identification and social cohesion, thus providing an impoverished and incomplete account of ethical life. This, Kaufman argues, is an objection based on the assumption that only strong identification can achieve this, and uses Hegel's approach and structure to argue that a weaker form of identification, one that commits to an abstract set of normative principles, can achieve this end more coherently.

i. Questioning the Role of Background Moral Norms

Kaufman (Ibid. 808) finds a key practical locus of all this in modern US jurisprudence, most notably the entrenched stand off between Hart, and one of Mill's most famed nemeses, Devlin.⁴³ This clash highlights a long-standing divide in legal theory concerning the enforcement of moral norms in legislation. This is particularly evident in the various landmark cases concerning the legal status of homosexual marriages. Kaufman (Ibid.) brings out the example of a US Supreme Court decision in the mid 80's that held that homosexual couples did not enjoy the same privacy rights as heterosexuals, and appealed to the immediacy of majority moral norms as justification. Kaufman points out that communitarians are bound by their edicts to support the principle if not the substance of this decision. It comes down, he feels, to Sandel's call for the recognition of "the essential role of background moral norms in generating and sustaining the legitimacy of law and policy".⁴⁴ This Kaufman sees as a profound threat to the capacities of positive law to enshrine

⁴³ The key texts that outline this clash are:

Devlin, Patrick, 1965 *On the enforcement of Morals*, Oxford: Oxford University Press, and Hart, H.L.A., 1963 *Law, Liberty and Morality*, Stanford University Press.

⁴⁴ See Sandel, Michael J., 1996, *Democracy's Discontent: America in Search of a Public Philosophy*, Cambridge, Mass.: Harvard University Press.

the rights of smaller ethnic and cultural enclaves against the coercive application of majority norms to their lives.

It is Kaufman's (Ibid.) contention that strong identification of this kind is neither necessary within, nor entirely consistent with, the ends of an ethical community. He brings out the increasingly recurring contention that contemporary communitarians profoundly misinterpret Hegel; yet claim him as their intellectual ancestor. As he points out, if one can understand Hegel's ethics in terms of the ontological standoff just highlighted, and these prove to require merely weak identification, then we are presented with a far more viable remedy to the concerns of modern communitarians in this regard.

ii. Hegel's Ontology as a Model for Weak Identification

Kaufman (Ibid. 809-811) begins with an analysis of Hegel's own ontology. Hegel, as he sees it, grounds ontological inquiry in terms not of discovering the nature of what exists, but in terms of which "forms of thought" have the capacity for describing truth. "Thought", Hegel claims, "is the constitutive structure of external things" (as cited in Kaufman, 1997: 810). This amounts to the claim that objective thought literally determines the reality around it through dialectical movement. This describes thought as establishing and re-establishing determinate boundaries through the process of negation, as already discussed in Chapter 2. Through answering some of Taylor's⁴⁵ interpretive objections to what he sees as an "equivocation" between the qualitative and quantitative sense of "negation", Kaufman demonstrates that Hegel's frame of reference here is indeed qualitative.⁴⁶ Thus, he concludes, Hegel intends to limit his ontological querying to "the relationship between spontaneous human thought and objectivity".

⁴⁵ See Taylor C., 1975, *Hegel*, Cambridge: Cambridge University Press.

Hegel is thus not claiming that our thought makes the existence of the objective world possible, but allows us to understand the external world in a determinate fashion. In Hegel's own words: "Take a way from the dog its animality, and it becomes *impossible to say what it is*" (as cited in Kaufman, 1997: 810). If we follow Hegel's reasoning here, then we see that determinate objects are always the extensions of some subject. This, Kaufman (Ibid.) argues, is the heart of Hegel's claim to have dissolved the ordinary division between subjective and objective thought, a claim that features centrally in his account of the interplay between individuals and their community. Individual desire and objective moral obligation have to be part of the same determinate structure.

Kaufman (Ibid. 811) thus brings out Hegel's famed position, by now familiar to us, that a community that must "express rather than constrain the identities of the individuals who are the subject of ethics". Objective thought is ultimately the tool by which the divisions between citizen and community must be dissolved, just as the divisions between subjective and objective were in the above dynamic from the *Encyclopaedia*. Objective thought is not directly responsible for this identification. Rather the objective scientific methodology it instantiates is. The ambitious project of *The Philosophy of Right* is to construct a scientific approach, a social theory, which can make such identification possible.

iii. On the possibility and implications of a rational ethics

Kaufman (Ibid. 812), in assessing Hegel's position, echoes arguments already brought forward above. The ethics of a community must be a rational ethics, if the needs and desires of its members are to be satisfied. Moreover, each

⁴⁶ I have not included Kaufman's full analysis of Taylor's arguments, and his rebuttals, for reasons of space.

individual is mandated, and in fact required, to evaluate the rationality of her social institutions.⁴⁷

This cuts to the quick of the debate over strong identification in the social system. If identification must be grounded in reflective choice, then it seems that the communitarian ideal of strong identification (consistent, I believe, with what Hegel terms "immediate unity") between citizen and community is not the answer. This form of identification is grounded in unreflective, affective unity between self and environment. For reasons, spelled out at length already, this countermands Hegel's requirement of rational freedom as "mediated unity" i.e. a unity which is reflectively affirmed.⁴⁸

Kaufman (Ibid. 812-813) contends that strong identification as a source of social ethics is ultimately incompatible with some of the key provisions of Hegel's system (the provision of preserving particularity as an objection to this interpretation of Hegelian thinking is already familiar to us). But Kaufman makes his strongest case by examining the possible mechanisms for the fostering of strong identification, and assessing how Hegel might respond to these.

iv. The inapplicability of Strong Identification

There are roughly two distinct ways in which strong identification might arise:

⁴⁷ Kaufman (1997: 813-813) maintains this is not a case of testing against an abstract set of principles. Hegel, he argues, rejects the capacity of abstract reasoning to undermine a communally held legal tradition. This amounts to rejection of abstractions such as Kant's fixed universal rule of the categorical imperative. It is not, Kaufman feels, an assault on the role of principles *per se* as the grounding of an ethical tradition, provided such principles "embody objective thought and further the realisation of rational freedom". What is rejected here is the privilege of abstract reason as a standard for evaluating the content of a community's ethics. Yet, members are still called upon to discover their identities in communities through a process of *reflection* that requires them to *evaluate it* in terms of broader social fundamentals. Kaufman holds that this is a paradox which Hegel's doctrine of patriotic trust resolves, but does so through a form of weak identification.

⁴⁸ This, to large extent, echoes the clash between Mill and the intuitionists concerning the appeals to ethical standards that are merely emotively endorsed and not rationally grounded or proven.

Individuals might identify unreflectively with the "jointly constituted ethical tradition of their community" or they may reflectively identify with said tradition *because* it is jointly constituted and communal. Hegel's rejection of the first mechanism, by this stage, requires no further explanation. So we are left with reflective strong identification. Here again, Kaufman (Ibid.) feels there are two possible mechanisms that apply. The first possibility is that process of joint constitution eradicates particular differences, generating a unified perspective with which all may identify. The second is that the process may instantiate some form of imposed solidarity, a collective identification with the end product, despite the continued presence of particular differences.

Hegel, Kaufman (Ibid.) argues, would straightforwardly dismiss the first mechanism, as it fails in one of the key tasks of *Sittlichkeit*, the preservation of the particular within the universal. The second suggests a common communitarian contention - that a people induced into a state of solidarity will as a result gain a more universal perspective and thus identify with the legislative norms that govern them. This holds with certain dynamics in Hegel's theoretical structure, but, in its failure to assert the value of citizen's particularity, stands profoundly at variance with what Kaufman (Ibid.) holds to be Hegel's most explicit (and most valuable) depiction of the citizen's ideal disposition towards the state - that of trust.

As discussed in reference to the ethical disposition in Chapter 2, "trust" in the Hegelian system is a product of both sentiment and reflection. It thus, by Kaufman's (Ibid. 814) interpretation, resolves the tension between the requirements for identification and reflection. It is here that Kaufman sees Hegel playing into a highly promising modern discourse that sees trust as a highly valuable form of social capital.

Hegelian trust is, as discussed in the section on the subjective disposition of social members, grounded in a recognition by members that their own

particular desires, and own capacity for freedom, are best realised in unity through the state. In straightforward terms, citizens find their interests represented and bound up in the state. Kaufman cycles through the various forms this might take: citizens might understand the interests of the state as identical to theirs, they might find the two sets of interests fully consistent and mutually reinforcing, or regard the two as distinct but hold that their interests are best realised when the state's are. Kaufman feels the first two are ruled out by "Hegel's concession that conflict over the specific nature of right is intrinsic to the nature of right in the state" (Ibid.). In other words, Kaufman sees Hegel as maintaining that there shall always be some conflict between individual and collective interest - the two will never be seamlessly commensurate. He therefore takes the third alternative as the viable one: that the individual understands her ends as distinct from the state, but still feels that said ends are best realised, and even only possible, within the state.

As such, Kaufman (Ibid. 814-815) contends, Hegelian trust is not a product of spontaneous affinity, nor does it result from some kind of "induced solidarity" based straightforwardly on the notion that the ethical consensus is jointly constituted. It includes the capacity for reflection and is thus at odds with the communitarian demand for strong identification. But to what extent, Kaufman asks, is this trust truly reflective?

Hegel himself draws an analogue with interpersonal trust. I trust another in that "I believe he has sufficient insight to treat my cause as if it were his own, and deal with it in light of his own best knowledge and conscience" (PR §309). Kaufman (1997: 816) holds that the relationship between the state and individuals follows a similar pattern. The state is accorded the role of representative of the individual's interests, not through direct consultation with every citizen, but through the understanding that their interests are borne in mind and considered at every stage. Thus the fact that this relationship is never made explicit is not the point, it is that it *could* be justified should the

citizen ever have the occasion to ask. Thus, the reflective capacity is always there *in potentia*, even if it is never expressed. It remains forever possible in that the ends of citizens remain essentially their own, even though they place their faith in the state to represent and manage said ends.

It is on this more realistic basis of "unarticulated but potentially specifiable" justification that Kaufman (Ibid. 814-815) believes trust between the citizen and the state is based. We trust the state to be committed to the best possible means of realising the ends of each individual within the community, with the understanding that it is committed to a more general set of rational norms. Here again the distinction between contingent and rational willing comes to light. The individual's undeveloped will may locate her interests in her brute desires, but her fully developed will locates them in a set of rational and fundamental principles that manage and maintain the political order, in which the interests of all are considered. This, ultimately, represents a form of "weak" as opposed to "strong" identification.

v. Reflective Trust as Modern Social Capital

As Kaufman (Ibid. 816-817) extends, the idea of trust as a crucial form of social capital is by no means limited to Hegel, and now finds expression in a variety of modern theories. Kaufman contrasts a few of these to Hegel's: Fukiyama's understanding of trust as arising from habituation and convention falls short in that it does not include the reflective capacity just discussed. Hardin's concept of trust as a kind of enlightened rational self-interest, based on the expectations of others' behaviour, seems to fall into the Kantian dualism between abstract principle and subjective desire. Kaufman rather sees Hegel standing with Dunn (1990: 26) in describing trust as an emotive undertaking that is nonetheless chosen "more or less consciously". Under this account, the social conditions that foster trust are many that we have already seen Hegel (along with every theorist of a modern democracy) advocating - freedoms of

speech and association, the right to choose representatives, and political parties dedicated to the fostering, stabilising and maintenance of "structures of well founded mutual trust" (Ibid. 42).

Thus, Kaufman's contention indeed stands. Hegelian principle seems to support a form of weak identification, in the form of commitment to principles of universal welfare that benefit all and with which all may identify. This, as a vision of a state inclined to social integration, is far less dangerous a brew than the communitarian notion of unreflective background cultural or moral norms as the basis of legislation. What Kaufman, using Hegel, has basically proven against Devlin and his legacy is that it is not necessary to cater to every conservative majority moral instinct for the possibility of an integrated and coherent society with which citizens can identify to exist. But this has been to merely resolve the issue at an abstract theoretical level. It remains to be clarified what practical space of rational dissent exists in *Sittlichkeit*.

4.3.4) The Issue of Rational Dissent in *Sittlichkeit*

As Pelczynski (1971: 27) highlights, one of the more common critiques of Hegel, is the "misconception that Hegel's view of the state involves an unconditional duty to do whatever the government demands". Pelczynski rejects this, but in a fairly short-shrift fashion. He simply reminds us that "Hegel frequently stresses that the rationality of positive laws should not be taken for granted and may in fact often be lacking" (Ibid.). This has been highlighted and re-affirmed at various levels in the discussion thusfar, but it does not deflect a critical stance that Hegel's theory does not allow for this at a deeper structural level.

The key charge levelled by such critics is that individual conscience is entirely negated in *Sittlichkeit*. One such analysis is that of Ernst Tugendhat⁴⁹, who maintains that by Hegelian principle laws have absolute moral authority and there is no philosophical or political possibility of an individual critical standpoint. Much of this is drawn from a famed discussion in *The Philosophy of Right* that individual consciousness disappears in *Sittlichkeit*. These worries are seemingly compounded by Hegel's assertion that "trust", not strictly reflection, is the hallmark of the subjective disposition of citizens. Kaufman's arguments in the above section go some way to resolving this, but not conclusively. Trust in a general framework of principles, even in a weak, reflective sense, does not tell us what can be *done* by those who either dissent from standardised moral norms, rationally reject the entirety of the social order's institutional structure, or feel it requires reworking at a deeper structural level.

i. Rights of Conscience in *Sittlichkeit*

The only way these queries can be answered is through a final and thorough analysis of the role that moral subjectivity, or, in more modern terms, rights of conscience, plays in *Sittlichkeit*. Neuhauser (2000: 241-242) maintains that positions such as Tugendhat's represent a critical misinterpretation. His first concern is the issue of reflection. Hegel continually asserts that an attitude of rational distance and reflective evaluation of the state plays a crucial role in the ideal social order, and must be preserved. A significant number of arguments have been put forward thusfar in exposition and support of this feature of Hegelian thought. If the sanctity of reflection is so broadly documented in his system, why is Hegel so often accused of holding the opposite view?

⁴⁹ Tugendhat, *Self-consciousness and Self-determination*, 311, 315-316 as cited in Neuhauser, 2000: 327 n 25.

What Neuhauser (Ibid. 247-248) sees as the source of such claims is a passage often used as proof by commentators such as Tugendhat. This is a claim in the *Encyclopaedia*⁵⁰ that citizens perform their duty without reflection or free choice, and the claim in *The Philosophy of Right* that independent consciousness disappears from *Sittlichkeit*⁵¹. This, as Neuhauser points out, represents an incomplete reading. The free choice referred to there is the "reflecting will" which is equated with *Wille*. The reflection of free choice is reflection amongst arbitrary ends concerning which one to choose. The point being made is one about the everyday experience of ethical action. It is not experienced as a choice, but so bound up with identity that it seems a necessity. This does not preclude the capacity to step back and rationally assess whether social institutions are worthy of allegiance. Thus, Hegel is elevating moral choices beyond the realm of arbitrary deliberation over inclinations, but by no means advocating mindless compliance.

What, then, Neuhauser (Ibid. 248-249) asks, disappears from *Sittlichkeit* with the "independent conscience of the individual" (PR §152)? The full text of the passage in question does not attack individual conscience *per se*, but rather something Hegel describes as "wilfulness" – striving to be self-sufficient in opposition to ethical substantiality. This refers to a will that naively assumes that its own conception of the good is always superior to others, and grants insufficient credence to the moral authority of other individuals and the ethics of the society in which one lives. This Hegel describes as a kind of moral arrogance, "the subject taking *itself*, in its *singularity*, to be deciding on the good" (E §511 as cited in Neuhauser, 2000: 248) thus setting one's own conception of the good up as immune to possible revision in light of the conceptions of others and the collective. In so doing, the particular

⁵⁰ E § 514 as cited in Neuhauser, 2000: 246.

⁵¹ PR §152.

consciousness also voids any claims to rational insight, as it has shut out any competing notions of the good.⁵²

But how, then, is the individual “sovereign” over their own moral affairs? “Sovereign” here, Neuhauser (Ibid.) argues, makes perfect sense if it is understood in a Rousseauian rather than Hobbesian sense. It does not represent the capacity to make one’s arbitrary moral edicts into general law, but rather to participate in the collective formation of principle and recognise the inherent rationality therein that arises from the just and civically overseen exchange of reasoned insight. On this view, each citizen is accountable to herself in her conception of the good, in that she agrees to allow herself to participate in an exchange of reasoning with others over the collective principles they all must abide by. “Thinking for oneself” is by no means the same as “thinking *by* oneself”. To insist one’s private assertions are true, regardless of reaction and reasoned argument against them from one’s fellow citizens is not to have true freedom of conscience at all, but to stand in opposition to the factors that make said freedom possible for all.

ii. *Sittlichkeit* as an ordered zone of Ethical Engagement

It is, in point of fact, precisely this understanding of the Hegelian social order as an ordered zone of ethical engagement that Engelhardt (in Engelhardt and Pinkard (eds.), 1994: 211) sees in Hegel. He sees Hegel allowing for an “escape from the cacophony of competing moral visions though a categorically account of objective moral volition in the state”. Engelhardt holds that Hegel recognised that the *content* of secular morality is *not* universal. Specific moral content derives from particular communal structures, which, as modern life diversifies cannot be universalised. Thus Engelhardt (Ibid.) contends Hegel holds “one must not seek secular moral content in an ever more encompassing

⁵² This can, as I see it, be likened to Mill’s discourse-driven model of ethical engagement. (See chapter 3.)

moral community, but in a moral structure that compasses diversity without itself being yet one more community". The interpretation of "true" vs. "formal" conscience in section 4.2.4 would indeed seem to support this, if we amend Engelhardt's analysis to locate the basis of moral authority in the individual conscience, as I feel Hegel would. The communal moralities Engelhardt describes could, as I see it, be understood in Hegelian terms as merely common moral particularities.

This, I believe, is a strong Hegelian answer to the key liberal concern that his theory instantiates a blind faith in existing social norms by casting any resistance to the moral norms social order as "moral self-conceit". But it does not remedy the issue of deeper level criticism of the social order itself. What of those that would reject parts of, or the entirety of the framework that "true" conscience qualifies as sacrosanct?

iii. Possibilities of Active Dissent

Neuhauser (2000: 256-259) puts forward that a crucial dimension of the grand Hegelian project is indeed to reconcile individuals to the world as it is, but this is not to be confused with the world *as it stands*. This becomes clear if we consider that nowhere in the historical or present social reality is there a social system that completely fulfils the criteria of *Sittlichkeit*.

As Hardimon (1994: 254) points out, this project is born of the sense of modern alienation from the very structures that Hegel praises so highly in the structure of ethical life. It is Hegel's contention that this is a failure to understand how the modern social structure contains the possibility of individuals actualising themselves as both particularised persons and members of the social order.

The system of ethical life is thus, I believe, correctly interpreted by Neuhauser (2000: 256-259) as reflecting the ideal form of a set of structures already in

place in the modern social context. He and Hardimon thus join me in my contention that *Sittlichkeit* ultimately represents a set of normative standards by which we may evaluate where and how our already existing institutional structure does or does not measure up to ideal rational functionality. It is, as I described earlier, as if the social order is an assembled, but dysfunctional machine, and *The Philosophy of Right* is the technician's manual.

Under this interpretation, there is a profound philosophical space for criticism of the social order, according to the principles and practices inherent, if not fully realised, in existing structures. As Neuhauser (Ibid.) describes it, members participate in a system which they affirm not as it is, but as it "aspires to be". Under this analysis, the stagnating implications of this section of Hegel's doctrine disappear.⁵³

This is, however, a little too neat. What happens, we may ask, when the dictates of these diverse moralities clash (as they inevitably must) with the framework itself? The broader question this raises is how the rational social order may deal with those whose individual conscience, wilful or not, will not allow them to affirm the laws and norms that *Sittlichkeit* interprets as fully justified. Across the board Neuhauser (Ibid. 262) argues, Hegel seems to allow no real space for the exercise of formal conscience against the state. But a more interesting and complete sense of the Hegelian stance on this issue emerges when we consider Hegel's own provision for religious minorities that dissent from certain widespread social practices:

A state that is strong because its organisation is fully developed can adopt a more liberal attitude ... and can completely overlook particular matters that might affect it, or even tolerate communities whose religion does not recognize even their direct duties to the state ... The state does this by entrusting members of such communities to

⁵³ A question that remains to be answered is that of what occurs once the *telos* itself is actualised completely, a point Hegel was convinced social orders would eventually reach. This is an element only considered in the closing sections of this chapter.

civil society and its laws, and is satisfied if they fulfil their direct duties to the state passively, by example through commutation, or substitution [of an alternate service] (PR §270A).

Without getting into the minutiae of what this may entail, let us examine the principle that underpins this: the state may tolerate conscientious dissent in particular circumstances and for various reasons, but this is not enshrined as an *unconditioned* right. This amounts, in Neuhauser's (2000: 263-264) view, to affording the formal conscience the same provisional and cautious respect that another incomplete form of self-determination, personhood, is afforded in the social order. Both of these are respected as, to some extent, freely chosen, but are trumped when they come into conflict with a higher order right, such as the continued existence of the social order. Thus Hegel does in effect, support the conscientious objectors right to moral dignity, but not to the point of social disintegration. This, Neuhauser (Ibid.) contends, is not to be understood as merely a pragmatic set of considerations, but rather a contention that the state may indeed tolerate a certain degree of particular moral dissent, but not to the extent that formal conscience is an unconditional justification for disavowing the duties imposed by the social order.

iv. The Issue of Radical Social Criticism

This does indeed find breathing room in Hegelian social philosophy for some degree of social dissent, but the theoretical structure is still resistant to what Neuhauser (Ibid. 260) terms "radical social criticism". This, he feels, can take two broad forms: either an outright rejection of the values the present social order embodies, or an acceptance of said values marred by a conviction that the current institutional structure is, at a fundamental level, incapable of realizing them. Thus, the question still at hand is what philosophical space is there in Hegel for those who outrightly reject the values modern institutions embody (radical socialist critiques of privatized civil society are one key

example here) or feel that they cannot attain their aims as they stand (radical feminist critiques of the structure of “enslaving” structure of the nuclear family are Neuhauser’s example).

Part of this has already been answered in Chapter 2, in reference to individual’s right to resist an inherently irrational social structure. If the rot is at the institutional level, the ethical (i.e. rational) process of reconciliation to it is doomed to failure, and the concomitant obligation to obey the social orders’ laws falls away. Thus, Hegel is not asking the modern citizen to humbly reconcile herself to living under tyranny.⁵⁴ I believe I also sufficiently established in that discussion that rational dissent from the structural demands of social roles is indeed a possibility that is secured, and even encouraged, in the Hegelian system.

What we are left with is the final bulwark of radical social criticism that Neuhauser has identified - those who would disavow Hegel’s contention that the institutional structure of the modern social world is, in principle, inherently rational. Can we honestly share Hegel’s conviction that the architecture of principle we find embryonically in the modern social space is rational beyond need of revision?

It does seem rather ridiculous to speak of a unified conception of the “good” in a 21st century democracy, until we consider that the “good” Hegel has in mind is, by exhaustive definition, a non-particularised one, as discussed above. The theory of *Sittlichkeit*, as discussed on several levels throughout this thesis, allows for a broad diversity in the nature of lifestyles and life commitments. The only real boundaries it ultimately sets are “broadly drawn” ones, and even those are not impermeable. It merely lays out the minimum institutional

⁵⁴ The question of what Hegel would actually have individuals *do* in such cases is an ambiguous one. As Gregoire (Gregoire in Stewart (ed.), 1996: 108) interprets, his praise of the civil disobedience of Socrates and Antigone would seem to suggest individual and social insurrection is rationally justifiable in such cases, but this issue in Hegel remains somewhat unclear.

framework that most social members should embrace as constitutive of themselves if the social order is to have the capacities for self-reproduction and fostering/stabilizing practical freedom. There is nothing in the Hegelian principle structure that would, for example, set down marriage and child rearing as legal requirements for every citizen.

It is true, Neuhauser (2000: 265-269) argues, that Hegel would see those who choose not to participate in the structure of the family as somewhat impoverished in their self-development, but this rams home the point. In the ideal, rationally healthy social order, people *want* to participate in the institutions that make them free (think of the lengthy exposition above of neediness as reason's help-mate).

Encouragement and provision for these institutions should indeed be built into the policy framework of the ideal state (tax incentives for married couples and parental leave laws are just two examples of such measures). Beyond this, one can fully endorse the value of the family as an institution whilst choosing the single life for themselves. As Neuhauser (Ibid. 265-269) concludes, all that Hegel really requires is that the values of these institutions *in general* be recognised, not that every person be legally forced to fit some generalised social mould.

v. *Sittlichkeit* and the Full Demands of Reason

Neuhauser (Ibid.) does concede that there still remains a sense in which the Hegelian conception of the good seems strikingly at odds with both social reality and rational practice. It does, after all, propose an objective metaphysics as it's backing that is difficult to defend as some form of ultimate social truth. My contention in the final pages of this chapter is that Hegel's theodicy can be coherently re-interpreted in terms that make much more sense

to modern sensibilities, and leave him far closer to liberal conceptions than is usually thought.

For the moment, though we must consider that Hegel's contention that the system of ethical life satisfies the full demands of reasonableness seems difficult to accept. The simple objection to this is that we exist now at a further stage of historical progress from Hegel, and his "final" formulation of the ideal social order includes elements that to us seem archaic and reactionary, especially in terms of elements such as economic class division and gender politics. It seems dubious that any social order could claim for itself the kind of finality of reasonableness that Hegel claims for his. This certainly holds true against the minutiae of the system described in *The Philosophy of Right*, but at no stage in this entire inquiry have I made any attempts to defend Hegel that embracingly. The question at hand, for my analysis, is whether a more open-ended conception of his *principles* is possible.

As Hardimon (1994: 254) points out, at a broad level, the architecture of Hegelian principles is difficult to argue with. Hegel, ultimately, is asserting that the ideal social order includes certain key inter-related components, the resources and structure of which are already laid out in modern social life: A domestic sphere of affective emotional attachment providing emotional recognition, a private sphere of civil relations in which the capacity and right to pursue private ends is recognised and "a political sphere of republican relations within which citizens can collectively pursue their common good and recognise one another as members of a politically organised community" (Ibid.). From that broad and vague framework this chapter has etched out I believe the details of a normatively functional modern social schema, from which Hegel's more archaic *minutiae* can be safely purged.

Neuhauser (2000: 271-278) proves the viability of such an approach admirably in the closing pages of his text. He takes what he sees as the most powerful

set of criticisms levelled at Hegel, the feminist critique of the inequality in the relationships of the nuclear family. This seems, at first sight, to be the kind of radical critique that Hegel discourages. Were this so, it would be fair to class his system as archaic in principle. But Neuhauser proves rather convincingly that it is more a case of *imminent* critique. Feminist "revisions" of the nuclear family structure do not advocate that the roles of parent and spouse be completely abandoned, but rather that the nature of what those roles entail be re-examined and purged of its freedom-crushing and alienating consequences for women. If we cast our eyes back to the role the family is to play in the framework of *Sittlichkeit*, we recall that its value has to do with sublimating the sexual need in a freedom enhancing structure, helping to shape the other-regarding capacities that make moral subjectivity possible, and engendering in children a respect for their own particularity. None of these is logically pegged to skewed gender relations. Even "re-interpretations" of the traditional family structures, such as gay and lesbian family setups, can amply fulfil these requirements. These can be highly attractive in Hegelian terms, in respect to their harmonizing a broader diversity of social members into the socially crucial task the family performs.

The same methodology, as I see it, can be applied to any of the institutional aspects discussed above, thus to my mind, freeing a modern Hegelian position of the charge of archaism at a fundamental level. If the principles of an early 19th century conservative philosopher can be harnessed to justify gay marriage, I believe that a claim can be made for the modern relevance of Hegelian doctrine.

There lingers in this interpretation one last grand concern. This harks back to the very foundations of Hegelian thought, and represents an issue *any* modern interpretation of Hegel must contend with, even if it does so by avoidance. What do we make of the great concrete universal, the world spirit that Hegel sees as concretised and objectified in the system we have been discussing? To

fully etch out a viable modern Hegelian position, we must make a definite call on what to do with *Geist*.

4.3.5) So, what do we do with *Geist*?

I have, by a necessarily slow and careful route, finally reached the threshold of perhaps one of the more problematic and controversial areas of modern Hegel scholarship. The question, as Neuhauser phrases it, of how Hegel's theodicy affects his social theory. In interpreting Hegel usefully for the modern age, one must decide how crucial the conception of *Geist* is to his theories, how much or how far the inclusion of it damns Hegel to misdirected antiquity.

This is not, as it might seem, a mere side-point of Hegel scholarship. The concept of *Geist* as an objective universal which reason ultimately reveals, as the substantial *telos* towards which all history drives is the lynch-pin of Hegel's objective idealism. It is what allows Hegel to set a finite standard towards which the human race drives, and what allows the ideal social order to in fact qualify as ideal.

i. The Difficulties of Discounting *Geist* from Hegel's Principles

To clarify, let us examine what becomes of Hegel's system if we conceptually amputate *Geist* in its entirety. In both principle and application, things become very messy. Hegel's system is complex, but it *is* remarkably consistent. Without an objective universal that structures the rational world, both the Idea and the Concept are rendered entirely subjective. The entire notion of making the world more rational and hospitable becomes severely problematic, as we have no final guarantor of its rationality. The interpenetrating unity of particular and universal falls to pieces: multiple possible universals spawn and abound, to the point where we are only reconciling particular individuals with particular social spaces. The necessity

of historically relative societies and their actions becomes far more difficult to discern, as they are no longer to be seen as works in progress of the larger historical dialectic, but rather by their own terms. With no objective *telos* which underpins human progress, we are left in a position when any set of widely distributed norms must be ascribed to as elements of some transitory "universal", and we would be thus forced to accord even racist and repressive social norms status as embodiments of the collective will. Individuals would have to be reconciled to such laws and thus learn to embrace them as their own. Hegel's position, in other words, is cast into a void of contradiction, confusion and impossibility, spinning in a hopeless gyre of non-proscriptive and toothless subjectivity.

But what, then, may we replace *Geist* with, such that it fulfils both the spirit and practicality of Hegel's principles? I have already, in previous chapters, laid out Neuhauser's attempts to render Hegel's language more recognisable to modern sensibilities. It serves us to reconsider, in more detail, those claims here.

ii. Essential Properties of *Geist*

Neuhauser (2000: 221) traces Hegel's notion of the state as divine (as embodiment of *Geist*, as "G-d's march on the world"⁵⁵) to the pantheistic metaphysics of Spinoza. In according *Geist* the status as a "substance", Hegel is drawing on Spinoza's definitions. What is substantial to the Spinozist is that which possesses the qualities of self-sufficiency. What is divine, ultimately, is "that which is in itself and conceived through itself i.e. that whose concept does not require the concept of another thing, from which it must be formed" (Allison, 1987: 46). The divine, by these terms, is that which stands conceptually and ontologically distinct from anything other than itself. It is the first cause and ultimate result of itself. It is perfect in that it needs no other

context to be, or to be explained. The state, as an interlocked organic unity of elements (including both individuals and institutions of all forms) is divine in that it is the highest embodiment of this kind of explanatory perfection, aside from the organic interlocking and development that is the entire scope of human history itself. Thus, both the state (as well as the historical dialectic that allows for its idealized final formation) are higher embodiments of this self-sufficiency, and thus deserving of being esteemed higher than mere individuals as singular entities.

This explains the genesis of Hegel's conception of the state as divine, but it still leaves us somewhat stranded in terms of the modern applicability of Hegelian principle. Are individuals honestly to revere the state with the awe that Hegel requires simply because it meets an obscure ontological standard of self-sufficiency? Neuhauser (2000: 221) believes this can be resolved by carefully thinking through the application of the divine within the system of *Sittlichkeit*, and realising that it brings us to the more recognisable condition that the state be a rationally organised system, one that balances and coordinates the elements that make it an organic, self-perpetuating whole. This goes some way to making the Hegelian position more elegant and attractive, but it has not given us enough yet.

iii. Dangers of abstracting to vagary

Repressive systems that express themselves through force can be self-perpetuating, and even receive the conscious affirmation of their members if they undertake violent political education and propagandist tactics. By the above standards, do the dystopian monsters of Orwell's *1984*⁵⁶ not qualify as a rational social order? Their society is indeed self-perpetuating, and is organised according to a most rigid rationality.

⁵⁵ PR §258 Z.

⁵⁶ Orwell, G., 1948, *Nineteen Eighty Four*

Certainly, we can throw in some of the *caveats* we have eked out of Hegel's principles over the previous chapters. We could claim that personhood must be respected, moral subjectivity catered for, individual wills taken into account, and institutions of political representation must reflect and represent the wills of those who compose them. Brute coercion, as we have discovered, is profoundly un-Hegelian. So Orwell's O'Brien and his masters don't quite make the cut. But still, by the proposed standard of organic self-sufficiency and capacity for self-reproduction, they came close. In order to understand if there is anything in the currently explicated version of the Hegelian position that allows us to hold repressive orders to account, let me bring forth another, more ambiguous dystopia - Huxley's *Brave New World*⁵⁷ - and subject that to Hegelian analysis.

We have, in this case, a society birthed by the very worst excesses of human violence and hatred. The worst of history has taught the human race valuable lessons and a superbly rational society has been constructed from the ashes. The social order is profoundly organic in its organization - the various social caste groups interact seamlessly. Beyond this, they are carefully conditioned and reconciled to the order as a whole. The lowly working castes are taught from birth that they are lucky in that they do not have to expend as much effort as the higher castes, who are in turn taught that they are superior and more important in their efforts than the lower castes. Citizens are conditioned from birth to the social role they will occupy. Any impulsive or emotive reaction is controlled in a hyper-rational manner, with the administration of *soma*, a hallucinogenic wonder drug that acts as a corrective to feelings of angst and displacement. People interact in a social order that is profoundly rational and self-perpetuating, where even consumerism and the economy are managed in a meticulously balanced and coldly reasonable manner by the

⁵⁷ Huxley, A. 1932 *Brave New World*

controllers. Indeed, it might be claimed, there is no individual will in the picture. But this is never consciously brought out, except by those who seek to question and alter the social order, who are dismissed as volatile historical throwbacks and sequestered with fellow iconoclasts on an island colony far from the mainstream of society. The majority of the citizens act according to what they consciously believe is their free will. The sexual and physical needs of the citizens are amply and broadly catered for, and the broad masses of society affirm and willingly participate in a social order which they understand as intrinsically rational and hospitable to them.

Questions as to whether classical liberal ideas of individual freedom are catered for become irrelevant, as there is no direct coercion in the broad social sense. Certainly the citizens are not, in the larger sense, self-determined, but the social whole they belong to amply fulfils the current criteria for being self-perpetuating.

So, the question arises, what *precisely* is wrong with this picture under the current analysis? Let us forego for a moment the obvious objection that some of the key structures of *Sittlichkeit*, such as the family and civil society are missing. They are, after all, necessitated by the objective universal we are questing after. If the conditions of *Geist*'s highest embodiment were merely those laid out above, i.e. the rationally organised, individually affirmed, organically integrated state designed to strike a balance between consciously free individual action and social welfare, then there is nothing specific by which we may hold the *Brave New World* to account.

The gut instinct is to see it as alien and offensive to Hegelian sensibilities, not to mention those of just about all modern social movements. It seems to offend the guiding spirit of Hegelian thinking, and if we are to effectively re-interpret *Geist* we must establish precisely what this guiding spirit, this

objective universal is. I believe that the conceptual resources to do this have, to a large extent, already been laid out in the earlier chapters of this thesis.

iii. *Geist* revisited

Let us hark back first to the speculative metaphysics covered in the earlier sections on Hegelian individualism. If we recall Wallace's exposition of the metaphysical nature of will development as found in the *Logic*, as well as the preceding sections on *Bildung* and the developmental nature of the self, we can discern certain key patterns that the dialectical processes of the individual reflect. Human thought and will exhibit a constant tendency to overthrow themselves, as the constant stages of negation and re-definition highlight. Each higher phase of development exhibits two recurring elements - a sense that the current phase of understanding is limited (revealed through the tension of contraries) and the inclusion of a wider sense of awareness that sublimates new information within a broader understanding of reality. The rational development of the will is marked by coming to terms with factors once considered alien. This cannot therefore be a process with a finite end. This would be possible only in a world where all circumstances were static and finite. The constant flux of contingent factors that the will must apprehend dictate that there is *always* something new to be reconciled to.

But, the objection might run, how then is there any real progressive development at all? If it is only a matter of coming to terms with new conditions, then are we not continuously finding ourselves at a newly constituted square one? This might be so, were it not for the element of *Aufhebung*. Foundational elements of the previous phase are not forgotten or discarded, merely sublimated and re-configured within the higher phase. Thus there is perpetual forward motion with ever-increased awareness. I feel it is fair to interpret the progress of the will as setting up an *attitude*. A pattern of

apprehension that becomes more capable of both flexibility and authenticity as it develops and refines itself.

This, I feel, is best described as *an attitude of tolerance and respect for co-existing diversity that welcomes and seeks out progress*. This is what I would enthrone in place of conventional interpretations of *Geist* in Hegel's system. As an organising principle, a guiding spirit, it fits remarkably well into the remainder of his system, informing and underpinning the elements more classically Hegelian *Geist* is meant to. Allow me to demonstrate.

Let us take one of *Geist's* key components, the Concept, and briefly re-examine its key structure and foundational elements in this light. The three "moments" of the Concept - immediate unity, difference and mediated unity represent for Hegel a scientific approach to understanding the way individuals integrate with society and its institutions, i.e. the way the Idea is made actual. So, what pattern of dealing with reality do the moments of the concept prescribe in plain language? We begin in a state of unreflective emotional attachment, as in the family. We progress to a point where we recognise the multiplicity of ends, ideas and projects, as in civil society. We eventually become harmonised to these as necessarily different elements of an organic whole, as in the state. All the way through, the central feature that allows for such progression is an ever more open and tolerant mind. After all, the diversities of the moment of difference, when we first become aware of them, must, as discussed earlier, seem at first alien to us, even if we respect their right to exist. Considering the constant flux of circumstance once more, this is something that will constantly recur. If we are to fulfil Hegel's project, if the concept is to indeed reconcile us to a rational reality, it must do so through allowing us to become more tolerant of the diverse and more open to the necessities of progress. Thus, the point we are ever progressing to is a point of *non-stagnant* mediated unity, the point at which we are at home in a diversified world, and comfortable with the rational provisions of freedom that

allow us to exist peaceably and progressively within it. The highest phase of the concept ultimately comes to represent an attitude of reflective tolerance.

This idea of free-flowing thought as a founding principle is echoed in certain distinctive corners of Hegel's writing. Consider the following statements from his introduction to the *Lectures on the History of Philosophy*:

If we say that the consciousness of freedom is connected with the appearance of philosophy, this principle must be a fundamental one with those with whom philosophy begins ... Connected with this on the practical side is the fact that actual freedom develops political freedom, and this only begins where the individual knows himself as an independent individual to be universal and real ... Free philosophic thought has this direct connection with practical freedom: that as the former supplies thought about the absolute, universal and real object, the latter, because it thinks itself, gives itself the character of universality (IHP: 299).

I feel these references to the relation between the free-flow of ideas and the "absolute" or universal, make sounder modern sense if we consider this universal as a co-operative zone of rational engagement.

And so too with the rational mechanisms of the state that we are to place our trust in as citizens. I have already brought out the elements of Kaufman's argument that Hegelian "trust" is ultimately founded on a "weak" identification with general principles. I feel that this makes even more sense in light of the position I present here. We grow to trust the developed state because it guarantees the structural freedoms examined at length in the preceding discussion. In so doing, it provides a means of organising the chaos, and allows us to be open to new ideas, new ways of life, and new ways of dealing with circumstance. It guarantees that the worst excesses of history will not be repeated, provides a framework for rational engagement on difficult questions, and thus allows the citizenry to feel secure in facing new and complex conditions of existence with an open mind. Thus, the "weak"

identification Kaufman speaks of can be understood as identification with the founding ideal of a liberal democratic space.

The structures of rational engagement in question have already been laid out above when we discussed the objective conditions of social freedom in the Hegelian system. The mechanisms of representation, which perhaps should extend to a wider range of political organisations that Hegel originally allowed, provide channels of rational dissent that make the social space more rational and bearable, precisely because policies and ideas are *changeable*. This ultimately, makes perfect sense as a means of reconciling increasingly rational individuals to their social space. As we know more, we feel ever more at home in a society that has defined structures that allow it to grow and change rationally. In other words, a society that, in a world of shifting circumstance, more perfectly meets Neuhauser's interpretation of Hegel's conception of the divine - self-sufficient, and self-perpetuating as a structure.

If we apply this framework of analysis to the broad range of structures and principle implications of *The Philosophy of Right* already discussed, I feel it slots in rather neatly with the remainder of the Hegelian system. It is not necessary for me to recount every mechanism of social integration discussed for one to see that an attitude of progressive tolerance can consistently vitiate the structure of *Sittlichkeit*.

This interpretation is, I feel, backed up even further by the lead on elements examined above, particularly Patten's argument that an ongoing state of combating unfreedom lies at the very heart of Hegel's principles. An attitude of stagnation and intolerance in the face of shifting circumstance is often the most violent threat to freedoms of any form, individual as well as collective. Hegel's conviction, quoted in reference to this, that the very nature of objective spirit is to ever-increasingly limit the conditions that allow for unfreedom is, I feel, testament to the validity of my conclusion here.

But what, it may be asked, are the implications herein for Hegel's teleology and dialectic of history? I have already addressed segments and elements of the answer to this, specifically in terms of Neuhauser's discussion of the interpretations of moral subjectivity. The key problem that arises is that this seems to nullify the distinction drawn between the necessary historical relativity of social orders and the objective validity of the present.

Neuhauser deals with this by, essentially, jettisoning Hegel's notion of a definitive *telos* and examining the rationality of his normative principles in isolation from it. This, I feel, is an amputation that is both unnecessary and distant from Hegel's theoretical intentions. This is not a reason, on its own, to rally desperately to its defence, but if there is a way to include the *telos* in a framework useful to modern thought, this way should be taken.

The essential problem we are dealing with is that, by the terms of my analysis, the dialectical timeline is now infinite. The *telos* is open-ended, and there is no definitive point that the broad progression of social orders works towards. We are thus in theoretical danger of being forced, by Hegelian principle, into affirming *any* existent social order as a work in progress towards the normative standards, as Hegel did with the often horrific social orders of times preceding his own. Setting up the *telos* as open-ended seems to collapse together two dynamics in Hegel's theory that were originally distinct: the reconciliation to the excesses of the past with the reconciliation of citizens to the ideal present.

We can however, avoid this if we remember that the dialectic does not move *backwards*. By the terms of my interpretation of *Geist*, the institutions of the modern world have, at least in structure, realised the objective conditions for a tolerant and progressive social order. We may indeed judge institutional aberrations that run counter to this from an objective standpoint: that they run counter to the ongoing move towards a social space avowed to tolerance and ever more capable of dealing with the diversity and space for re-interpretation

that progress requires in a world of shifting circumstances. Thus we are not bound to recognise repressive orders as works in progress, as they run counter to progress already achieved.

This I feel is faithful to Hegel's intentions. The objective structuring of the modern world is such that the objective ideals of tolerance and progressive diversity can be realised in an ongoing fashion, with the fundamentals of ethical life guiding them as an objective framework. This framework meets Hegel's requirements for objective rationality precisely because it is flexible and integrative - these factors render it eminently suited to the reproduction of itself "as the kind of being it essentially is". My contention is simply that I have improved on this position by allowing that the being's specifics - in terms of institutional practice - will be forever changing as new challenges arise for it to deal with.

4.4) A Modern Hegelian position

Through the broad sweep of the above discussion, this process of interpreting and assessing the modern implications of Hegelian principle has led us to a set of conclusions many might find surprising, considering Hegel's long standing reputation as a vindicator of conservatism.

The picture of the Hegelian social order we have now is not one of intricately conditioned positive content so much as it is one of intricately conditioned rational tolerance. *Sittlichkeit*, if the above exposition and discussion stands, amounts to a set of normative standards that the present social order must live up to if it is to fulfil the aims inherent in its very construction, namely the realisation of a rational and integrated social space of diversity and co-existing particularity in which any citizen can trust and find her identity constituted and confirmed. Through this set of social ethics, the objective and universal

good of a tolerant and progressive society is made ever more actual, and ever more resilient to the nature of changing circumstance.

In its profound divergence from the highly individualistic principles of normative justice that mark social contract theory, it does vindicate certain policies and principles that classical liberalism might find offensive. Most notably, it extends the political space to the entire social landscape, encompassing the family and civil society. In doing so it does not, as has been proven at some length, trample on individual particularity or moral dignity, but rather treats society as an interconnected system. This, ultimately, makes a great deal of sense. The interconnected nature of family dynamics, crime and poverty is by now almost a foregone sociological conclusion. The gang culture in the ghettos of the US is just one notable proof of how skewed familial and economic dynamics create communal forms of social identification that are in fact harmful to the social order. This is a prime example of how negative elements in all spheres of social life supplement each other, and the same thus applies to the positive elements.

Hegelian principle thus supports the state's mandate in rationally legislating towards healthier family and social environments. Social contract theory, with its egoistic caveats, shies away from this, purporting that the state oversteps its boundaries in attempting to secure general social welfare, instead of merely managing the clashing conditions of freedom. It is Hegel's profound contribution to this discourse that the two are rationally interlinked, and must both be catered for. The way of doing it is, as he sets out, to trust, reflect upon and, if necessary, redirect an institutional structure that understands itself as part of an organic and mutually affecting network of social relations.

Conclusion

Hegel & Mill - revisited

This thesis evolved out of a crucial dilemma for the modern social theorist. Both liberalism and communitarianism, in all their contemporary incarnations and variations, seem somehow incomplete as tools of assessment and social proscription. Liberalism, in its modern configurations, seems to fall prey to the criticism of being a callous and abstract cult of hyper-individualists that pay mere lip-service to notions such as compassion and the social basis of self and identity. Bell sets out what could be considered (in as much as it is possible) the distilled communitarian position:

The deepest problem, as I see it, is that liberal theory continues to pay homage to the enlightenment ideal of the autonomous subject that successfully extricates herself from the immediate entanglements of history and the characteristics and values that come with that entanglement (Bell, 1993: 29).

Modern liberalism can indeed stand accused of such social disembodiment of the individual, of leaving citizens alienated from the background moral norms that thread together social orders, and to a large extent provide the content of individual character in the first place.

But things are no less messy on the other side of the line. As Holmes (1993: 178) argues, communitarian rhetorical vagaries such as "shared self understanding" can apply with equal intellectual legitimacy to the Ku-Klux-Klan as they can to more supposedly healthy forms of communal association. The bigotries and prejudices that loom large and dangerous in modern society will not be resolved by "swapping a vocabulary of rights for a vocabulary of community" (ibid.). If we allow background communal norms full access to the

hallways of legislation, we may often stand guilty of institutionalising such narrow and bigoted thinking.

Whichever way one turns in this debate the issue of the individual vs. the community as the prime locus of political concern seems an insuperable clash point. It would be one thing if this were merely an abstract, if passionate, dispute confined to the hallways of academia. But these concerns, and their lack of resolution, are present at a fundamental level in many of the most virulent contemporary policy debates. Wherever background moral norms of a significant communal group butt heads with the liberal provision for freedom of individual action, the liberal-communitarian dispute has, at some level, found its way off the library shelves and into our social reality.

So it often seems (at some ultimate principled level) that the modern theorist participating in the two broad schools of thought that vie for headspace in contemporary political and social theory is in the vice grip of a dichotomy. She must negotiate the treacherous waters between a callous, hyper-individualistic Scylla and a community-orientated proto-totalitarian Charybdis. It is insufficient to claim that concessions can be made to either side when the very structure of the principles at work seems so very different.

Now, such debates are highly pertinent but they are by no means new. The high enlightenment stand-off between liberalism and Romanticism dealt with the same set of concerns in, to my mind, a far richer philosophical sense. It is on two inheritors of this discourse, on supposedly opposing sides, that this thesis has focused. In so doing, I have provided what I see as a compelling investigation of what underpins many of the hallmark conceptions in the liberal-communitarian discourse, and goes some way to showing that the above dichotomy is a false one. What I aimed to unearth is that at multiple levels, from the broader aims of the social order, through to the architecture of institutional provisions, there is a profound affinity between the Millian and

Hegelian social visions. In so doing, we may discern a commonality of consequence between the principles of a system that is commonly understood to emphasise liberal individualism, and one that is commonly understood to emphasise the individual as socially embedded and intersubjectively obligated. If I have been successful then, unlike Ulysses, we need not necessarily sacrifice anything to either the monster or the whirlpool.

5.1) Confluences and affinities in the Hegelian and Millian social visions

As a first point of confluence, both theorists put forward social visions that deal with the *disposition*, i.e. mental state of citizens, not merely the external conditions of freedom. The mainstream social contract or natural rights theorists that modern mainstream liberalism draws upon all follow an empiricist enlightenment tradition. The observed interactions of social beings are their proof, and the final *imprimatur* for the social order is given via a traded off set of external conditions that allow for the balanced co-existence of a pre-social freedom. Mill and Hegel both accede to a vision of society more influenced by the Romantics - the state as having the duty to provide for the ongoing self-education of its citizenship, and by extension and embodiment, itself.

This breed of social vision does not stop at external conditions - it attempts to investigate what makes for the most progressive and authentic mental life of its citizenry. The locus of freedom is not merely in the non-interference of state, but in the encouragement of tolerance and diversity within the citizenry, which, aside from being a good in itself, works instrumentally towards a more progressive, fair and liveable social order (not to mention a diverse and progressive one). This is a politics of engagement as opposed to a politics of avoidance. Rights are not mechanisms set in place to safeguard an assumed pre-social autonomy, but *post-social* measures designed to safeguard the vital interests of individuals as harmonised within the social order. It can thus be

argued that both understood the institutional and rights strictures of the state as performing a similar function - providing an objective framework for social engagement worthy of the trust of its citizenry. To oppose or violate the provisions of such a framework is to work against the very measures that make freedom possible for all.

Both sets of principles, as I have argued them, also point to this social framework being a zone of ethical engagement. Ethical conflict plays a significant role in both, as does conflict between particular individual ends. These confrontations need not be threats to the social order if they are seen as inevitabilities to be managed, rather than standing threats to be glossed over or repressed. It is in fact the social order's capacity for such management that makes it crucial in maintaining individual freedom, and thus worthy of individual obligation.

Within this framework, both theorists can be understood as opposed to non-rational conceptions of the good ("intuitionist" moralities for Mill, "ethics of conviction" for Hegel) being institutionalised as social practice. The sphere of secular morality in both is a fairly content-neutral one, more of a structural management of competing conceptions of the good than a set of positive edicts governing individual and social action. Individual citizens, by both Millian and Hegelian standards, can (and should) rationally understand such a framework as worthy of their affirmation. Hegel's distinction between true and formal conscience captures this, a profoundly Millian conception of a rational and non-sectarian institutional ethos, with particular clarity.

Both sets of principles also understand such conflict and coalescence of moralities and ideas, in constant public view, as in fact *necessary* to social progress. The ideal scenario proposed in Mill is one of constant debate from vigorous proponents of both sides, forcing the social intellect to remain vital, and the unconvinced bystander to have the benefit of full truth, tested by

passion made to counter passion, insight made to counter insight. As I argued in Chapters 2 and 4, Hegel's notion of societal and interpersonal development through the resolution of contraries suggests a similar notion of progress through adversarial intellectual confrontation, with other viewpoints and reality (and thus, in Hegelian terms, rationality) itself. More visibly in his theory is his view of the beneficial effect on the public of the spectacle of a policy forum "where one brilliant idea consumes another", as, in principle, a direct analogue to Mill. Ultimately both theorists believed that false and (especially self-righteous) beliefs were, in Mill's words "natural victims" to such a discourse between the individual, her social reality, and the insights of others as shared in a common discursive framework.

The idea of interlinked individual and social progress is indeed, yet another point of confluence between the two sets of principles. Both theorists saw humanity driven towards ever more rational ways of handling the realities of human needs and ends, in the process refining both individual consciousness, and the social order itself. As Skorupski (1989: 323) interprets Mill's historicism: "Societies, like organisms, evolve historically, through a complex holism or 'consensus' of functions ... by way of adapting, albeit imperfectly, to human needs". This is, in essence, a simplified version of the Hegelian understanding of historical progress. As societies develop, driven to higher levels of complexity by need as reason's help-mate, their deficiencies become apparent and their social orders fall away to be superseded by more rational ones (which nonetheless institutionalise the valid elements of their predecessors).

One of the upshots of this that I have identified in both Mill and Hegel (if we can accept my re-wiring of Hegel's teleology) is the position that *no* social order ever stands at the end point of all history, thus demanding that the right to question and scrutinise the practices of one's social order from a rational standpoint be enshrined at an institutional level. This confluence is of course

dependent on my re-interpretation of *Geist*. If the "spirit" in question is an attitude of progressive and inclusive tolerance inherent to the ideal of a liberal democracy, then the *telos* cannot be a definitive one - the positive content of the ideal social order ends at the institutional structure which composes it, thus setting Hegel and Mill firmly on common ground. History is, to both of them, the process of humanity's ongoing self-education. And history, if my interpretation of Hegel stands, is never at an end for either theorist.

Related to this is another confluence at more abstract level. Both theorists understood freedom as more than simply the capacity to do as one chooses, as the developed capacity of rational self-determination. They both understood the free individual as she that can make herself into more than simply a link in the causal chain between her inclinations and her actions. Hegel's version is certainly a richer and more complex configuration, but they both see the highest level of freedom in the individual's capacity to, in Hegelian terms, make herself into her own end. They both quest after a melding of what can be understood as the respectively classical and Judaeo-Christian ideas of individual perfectibility - virtue (including a significant element of mental courage) and restraint. As a rider to this, both held that the results of such a process of individual self-development could not, if they were to have any value, be institutionally forced upon the population. This capacity must be fostered, and nourished, never dictated. The external appearance of a rationally structured social order is completely insufficient if it is not pegged to the internal rational recognition of it as such by the citizenry. The state has neither the mandate (nor ultimately, the true capacity) to mould citizens into better people by mere edict. It is charged rather with providing the correct *conditions* for this development to happen.

Both also, significantly, understood the individual's consciousness is to a large extent formed by her experience and environment, and were thus both sensitive to the impact of socio-political realities on individual perspectives.

This, I believe, can be understood as underpinning both of their demands for diversity within the social whole. Without the clashing of perspectives derived from differentiated particular experience, individuals are never fully able to escape the mentally stagnating effect of their own particularity.

Out of this flows a common respect between the two theorists for the breed of individual mindset that can stand against the tide of orthodoxy (Mill's 'genius', Hegel's 'great man') armed only with reasoned insight and a liberated mind. Both theorists laud this kind of intellectual revolutionary as one of the key forces for progress and social good. They both look to the likes of Socrates, a visionary mistaken for a heretic, and locate the first fount of true progress in the great mind that stands apart from the mass.

On the balance of the above confluences, I feel both theorists would accede to Patten's interpretation of the grounding interest that halts the abstraction inherent in self-determination - freedom as an ongoing state of combating unfreedom. I believe I have shown that they both understood the truly free mind rationally seeking out a truly free society - one institutionally avowed to the necessity of tolerance, and constantly seeking to expose individuals as harmoniously as possible to an ever wider and more diverse social context overseen by a system rationally designed to manage such diversity.

5.2) The Von Humboldt connection

An interesting factor that points to a possible point of actual historical confluence between the two theorists is Von Humboldt's influence on Mill, as discussed in Chapter 1. Von Humboldt, as Beiser (1992: 111) reminds us, was not only a direct influence upon Millian ideals, but on the full scope of continental liberalism. This being said, as Beiser points out:

There are some remarkable affinities between Humboldt's ideals and those of the young romantic circle in Berlin: an ethic of community claiming that individuals realise themselves only through a free and open exchange with others; an emphasis on *Bildung*, the all-around development of the personality; an insistence on the value of individuality and the right of the individual to resist the pressures of social conformity ... a recognition of the role of art in educating the whole personality ... and an ardent devotion to beauty and truth (Ibid. 113).

While sympathies with Romanticism are certainly not a direct analogue with Hegel, certain elements of Romantic thought do indeed play a strong role in the Hegelian structure. As Taylor (1979: 12) points out, the Romantic "ambition of combining the fullest rational autonomy with the greatest expressive unity" is perhaps the most distinct internal goal of the Hegelian thought structure.¹

Thus it is not surprising that we can recognise several hallmark Hegelian concepts amongst Beiser's list of Humboldtian conceptual goals. As an overall canon of social ideals, Humboldt's philosophy is not too far from where I left the Hegelian position at the close of Chapter 4. There do seem to be significant differences between Von Humboldt and Hegel. Most notably, as Beiser (Ibid., 131) explains, Von Humboldt viewed the state as a threat to individual self-perfection, as opposed to formative of it, and so laid out his treatise as argument for the limitation of state power. But the two theorists can be reconciled admirably if one notes Beiser's (Ibid.) further clarification that what Von Humboldt was reacting against was not the *ideal* state, but the paternalistic monarchy of 18th century Germany. Von Humboldt in fact sought to reform the state into "a *Bildungsanstalt*, an institution for the development of humanity" (Ibid.). As such, like Hegel he sought to make the state responsible for engendering the capacity for self-perfectibility in its citizenry,

¹ Hegel, Taylor (1979: 12) reminds us, falls foul of Romanticism in that he insisted this unity be transparent to reason, thus according what the romantics would consider the cold and inhumane capacity of rational assessment a role far too strong for their philosophical sentiments to allow (the romantic strains of Mill's broadly empiricist project stand in similar opposition).

and, like Mill, as Beiser (*ibid.*) notes, he felt the central ingredient of such development was liberty. This Humboldt defined in terms of freedom of choice, or availability of options. As Beiser (*ibid.* 133) clarifies further on, Humboldt never advocated withering away of the state completely on the grounds that the framework and security the state provided, in terms of objective and universal rights structures, were necessary conditions of the kind of development he saw individuals undertaking. As Taylor argues, Humboldt's influence itself builds something of a bridge between contemporary communitarian and liberal notions:

Humboldt was one of the important sources for Mill's doctrine of liberty. In the face of this, it is astonishing that anyone should read a defense (*sic.*) of holism as entailing an advocacy of collectivism. But the rich tradition that Humboldt represents seems to have been forgotten by Mill's heirs in the English speaking world (Taylor in Rosenbaum (ed.), 1989).

As such, this brief analysis shows us that Humboldt forms an intriguing historical connection point between Hegelian and Millian ideas, in that he possessed both the Romantics' zest for human perfectibility and the libertarians' concern for freedom from coercion, understanding the state as central to securing both². Bearing this in mind, it is time to consider to what extent the two positions Von Humboldt stands between are, in fact, compatible.

² If we reach back even further into their intellectual lineage, one of the key points of commonality we can identify between all three of the theorists under discussion is that they owe some debt to Aristotle. Mill, Hegel, and Humboldt all conceive the full development of freedom as socially constituted. This draws upon the Aristotelian conception that "society is the minimum self-sufficient human reality" (Taylor, 1979: 84).

5.3) The Millian and Hegelian projects - divergent or complimentary?

There are many levels at which Mill and Hegel do indeed clash. Idealists and empiricists, for one thing, seldom keep pleasant theoretical company (even though Mill is not quite your typical empiricist, nor is Hegel anyone's standard idealist). The clashes between dialectical logic epitomised by Hegel, and the analytic school epitomised by Mill are also fairly substantial. But such divergence is, I believe, not relevant to the discussion in this thesis. I have set out to prove that both theorists ultimately present a similar architecture of social principle, not that they took similar theoretical routes to get there.

This being said, the Hegelian and Millian social projects themselves still seem profoundly dissimilar. Mill was attempting to set out a rights structure that could guarantee individual autonomy and social progress, Hegel was attempting to reconcile the modern citizen to the modern social space by highlighting that the embryonic form of such a structure already existed in outline. Under the interpretation presented in this thesis, I believe that where key differences present themselves, the two sets of principles are not conflicting, but complementary. Each presents something that the other lacks, or failed to articulate sufficiently. Mill's theory lacks the enriched understanding of the interconnected nature of the social whole that Hegel's identifies, and does not include a sufficient sensitivity to the relationship between social roles and individual identity. Such understandings can indeed be spliced into Mill's theory without significant contradiction, if we bear in mind his conviction that perspective is formed by experience. Hegelian conceptions simply take such an analysis a few steps further, and examine how the interlinked institutions of modern social life, if rationally functional, allow for the fuller development of the capacities for self-development that Mill so lauded. If we understand the harm principle as general harm prevention, as argued in Chapter 3, then there is no real Millian objection to the social order deploying its resources to

facilitate a more interconnected sense of social functionality, so as to reduce the circumstances in which welfare is diminished by breakdown in the social system. As such, I would argue that the Hegelian project stands outside the Millian cannon, but by no means opposed to it.³

Hegel, on the other hand, displays an insufficient regard for the dangers that Mill saw lurking in the tyranny of the majority and the moralistically empowered social order. I believe, based on the interpretation of Hegel I have offered, that such provisions in no way stand against Hegelian principle. If we recall the distinction between formal and true conscience, the idea of freedom of rational autonomy and the social order as its guarantor, the idea of the social order as a zone of harmonised diversity and demarcated pluralism – all these point to the possibility of a Hegelian position in sympathy with the Millian *caveats*. It seems perfectly consistent that such measures could form part of a social order worthy of rational trust, and could in fact contribute to the basis of said reconciliation between individual mind and social space. I would thus conclude that the Hegelian and Millian positions I present here are, if not conducive to seamless synthesis, still very much compatible.

But where, the final question lingers does this leave us in terms of the liberal-communitarian debate? It suggests that a “vocabulary of community” can ultimately be compatible with a “vocabulary of rights”. It suggests that liberalism can retain its (justifiably) cherished freedoms within a structure more sensitive to the socially integrated nature of individuals and the interlinked structure of the social space. It suggests that a theory can begin with considering the ends and needs of individuals and end with outlining a rational structure of social obligation. Furthermore, it suggests that such frameworks, though they attempt to influence and improve individuals, need

³ An interesting discussion on the possibility of a civic virtue-framed liberalism is found in an essay by Stephen Macedo entitled “Community Diversity and Civic Education: toward a liberal political science of group life” in *The Communitarian Challenge to Liberalism*, Paul, F., Miller, F.D. et al. (eds.), 1996, Cambridge: Cambridge University Press.

not appeal to some final and ultimate conception of individual good in doing so. It suggests, ultimately, that the key clash-points between liberalism and communitarianism are excesses of modern versions of these schools of thought that have forgotten the far richer conceptual frameworks of their early modern ancestry.

This thesis has not carried such suggestions further. To outline the kind of value-pluralism that could validly fulfil both Hegel and Mill's conditions at a strictly practical level could indeed be a tricky and intricate process. All I have done here, I believe, is strike a preliminary, though important path. That, I feel both Hegel and Mill would agree, is the progressive mind's first duty.

Bibliography

- | | | |
|--|------|---|
| Anderson, Elizabeth S. | 1991 | 'John Stuart Mill and Experiments in Living',
<i>Ethics</i> , Vol. 102, pp 4-26. |
| Allison, Henry | 1987 | <i>Benedict de Spinoza : An introduction</i> ,
New Haven and London: Yale University Press. |
| Bain, Alexander | 1882 | <i>John Stuart Mill</i> ,
London: Longmans, Green & Co. |
| Beiser, Frederick C. | 1992 | <i>Enlightenment, Revolution and Romanticism</i> ,
Cambridge, Mass.: Harvard University Press |
| Beiser, Frederick C. (ed.) | 1993 | <i>The Cambridge Companion to Hegel</i> ,
Cambridge: Cambridge University Press |
| Bell, Daniel | 1993 | <i>Communitarianism and its critics</i> ,
Oxford: Clarendon Press. |
| Berger, F.R. | 1979 | 'John Stuart Mill on Justice and Fairness',
<i>Canadian Journal of Philosophy</i> , Supplementary
Vol. 5, pp 115-136. |
| Brink, David .O | 1992 | 'Mill's Deliberative Utilitarianism',
<i>Philosophy and Public Affairs</i> , Vol. 21, pp 67-
103. |
| Brod, Harry | 1992 | <i>Hegel's Philosophy of Politics</i> ,
San Francisco: Westview Press. |
| Brown, D.G. | 1972 | 'Mill on Liberty and Morality',
<i>The Philosophical Review</i> , Vol. 81, pp 133-158. |
| Brown, L.S. | 1993 | <i>The Politics of Individualism</i> ,
Montreal: Black Rose Books. |
| Crisp, Roger | 1997 | <i>Mill on Utilitarianism</i> ,
London: Routledge. |
| Cullen, B (ed.) | 1988 | <i>Hegel Today</i> ,
Aldershot: Avebury Books. |
| Dallmayr, Fred R. | 1993 | <i>G.W.F Hegel - Modernity and Politics</i> ,
Newbury Park: Sage Publications |
| Dunn, John | 1990 | <i>Interpreting Political Responsibility</i> ,
Princeton, New Jersey : Princeton University
Press. |
| Engelhardt, Jr., H. Tristram/
Pinkard, Terry (eds.) | 1994 | <i>Hegel Reconsidered</i> ,
Dordrecht: Kluwer Academic Publishers. |

- | | | |
|-------------------------|------|--|
| Gray, John | 1989 | <i>Liberalisms: Essays in Political Philosophy</i> ,
New York and London: Routledge. |
| Hardimon, Michael O. | 1994 | <i>Hegel's Social Philosophy: The Project of Reconciliation</i> ,
Cambridge: Cambridge University Press. |
| Hart, H.L.A | 1963 | <i>Law, Liberty and Morality</i> ,
Oxford: Oxford University Press. |
| Hoag, Robert W. | 1987 | 'Mill's Conception of Happiness as an Inclusive End', <i>Journal of the History of Philosophy</i> , Vol. 25, pp 417-431. |
| Holmes, Stephen | 1993 | <i>The Anatomy of Anti-Liberalism</i> ,
Cambridge, Mass.: Harvard University Press. |
| Honderich, Ted | 1982 | '"On Liberty" and Morality-Dependent Harms',
<i>Political Studies</i> , Vol. 30, pp 504-514. |
| Inwood, M.J. | 1983 | <i>Hegel</i> ,
New York: Routledge, Chapman & Hall. |
| Kainz, Howard P. | 1996 | <i>G.W.F Hegel - The Philosophical System</i> ,
Athens, Ohio: Ohio University Press. |
| Kaufman, Alexander | 1997 | 'Hegel and the Ontological Critique of Liberalism', <i>American Political Science Review</i> , Vol. 91, Issue 4, pp 807-817. |
| Kaufman, Walter (ed.) | 1970 | <i>Hegel's Political Philosophy</i> ,
New York: Atherton Press. |
| Kelly, George Armstrong | 1969 | <i>Idealism, Politics and History</i> ,
Cambridge: Cambridge University Press. |
| Lyons, David | 1976 | 'Mill's theory of Morality',
<i>Noûs</i> , Vol. 10, pp 101-120. |
| Lyons, David | 1979 | 'Liberty and Harm to others',
<i>Canadian Journal of Philosophy</i> ,
Supplementary Vol. 5, pp 1-19. |
| Mandelbaum, Maurice | 1968 | 'On interpreting Mill's Utilitarianism',
<i>Journal of the History of Philosophy</i> ,
Vol. 6, pp 35-46. |
| Neuhauser, Frederick | 2000 | <i>Foundations of Hegel's Social Theory</i> ,
Cambridge, Mass.: Harvard University Press. |
| Oakeshott, Michael | 1962 | <i>Rationalism in Politics</i> ,
London: Methuen & Co. |

Patten, Alan	1999	<i>Hegel's idea of Freedom</i> , Oxford: Oxford University Press.
Plant, Raymond	1983	<i>Hegel: An Introduction</i> , Oxford: Basil Blackwell.
Pelczynski, Z.A. (ed.)	1971	<i>Hegel's Political Philosophy: Problems and Perspectives</i> , Cambridge: Cambridge University Press.
Pelczynski, Z.A. (ed.)	1984	<i>The State and Civil Society</i> , Cambridge: Cambridge University Press.
Reese, J.C.	1960	'A Re-reading of Mill on Liberty', <i>Political Studies</i> , Vol. 8, pp 113-129.
Reyburn, Hugh	1921	<i>The Ethical theory of Hegel</i> , Oxford: Clarendon Press.
Riley, Jonathan	1991	'Individuality, Custom and Progress', <i>Utilitas</i> , Vol. 3, pp. 217-244.
Rosenbaum, Nancy L. (ed.)	1989	<i>Liberalism and the moral life</i> , Cambridge, Mass.: Harvard University Press.
Ryan, Alan	1987	<i>The Philosophy of John Stuart Mill (2nd ed.)</i> , Basingstoke, Hampshire: Macmillan Press.
Skorupski, John	1989	<i>John Stuart Mill</i> , London: Routledge.
Skorupski, John (ed.)	1998	<i>The Cambridge Companion to Mill</i> , Cambridge: Cambridge University Press.
Stewart, John (ed.)	1996	<i>The Hegel myths and legends</i> , Evanston, Illinois: Northwestern University Press.
Taylor, Charles	1979	<i>Hegel and Modern Society</i> , Cambridge: Cambridge University Press.
Taylor, Charles	1985	<i>Philosophy and the Human Sciences</i> , Cambridge: Cambridge University Press.
Ten, C.L.	1980	<i>Mill on Liberty</i> , Oxford: Clarendon Press.
Waldron, Jeremy	1987	'Mill and the Value of Moral Distress', <i>Political Studies</i> , Vol. 35, pp 410-423.
Wallace, Robert	1999	'How Hegel Reconciles Private Freedom with Citizenship', <i>Journal of Political Philosophy</i> , Vol. 7, Issue 4, pp 419-434.
Wallace, Robert	2001	'Rational Autonomy in Kant & Hegel',

		Unpublished Manuscript.
Wolff, Jonothan	1998	'Mill, Indecency and the Liberty Principle', <i>Utilitas</i> , Vol. 10, pp 1-16.
Wollheim, Richard	1973	'John Stuart Mill and the Limits of State Action', <i>Social Research</i> , Vol. 40, pp 1-30.
Wood, Alan	1990	<i>Hegel's Ethical Thought</i> , Cambridge: Cambridge University Press.