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THE POLITICAL THEORY OF KANT, FICHTE AND HEGEL

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Modern political philosophy

The cloud of suspicion that hung over the political philosophy of German Idealism for much of the twentieth century has almost fully dissipated. The connections, real and imagined, to communism and to German nationalism no longer stand in the way of a sober assessment of the texts of these thinkers. I focus in this essay on the major works of the three most important idealists, Kant, Fichte and Hegel, and on the extent of their continuity with the classical liberal tradition. Their ideas are developed from the tradition of modern political philosophy, and each of them critiques and extends that tradition. In this introductory section I lay out four of the main themes of modern political philosophy. This will allow me in the rest of the essay to analyze the moves in the idealists' texts as appropriations and transformations of these themes.

One of the defining moves of modern political philosophy is to *separate political right from morality*. Machiavelli tried to separate the question of political freedom from a Christian morality that urges people to care more for their souls in the afterlife than their freedom in this life. In *The Prince* he wrote that politics should be oriented by how we actually live, and by the general unreliability of humans to do the right thing, rather than by philosophical theories or religious teachings of how we ought to live. This is not only advice to rulers who want to secure their power, but it is also an assumption Machiavelli thought necessary for securing republican freedom. He writes in the *Discourses on Livy*, "it is necessary to whoever disposes a republic and orders laws in it to presuppose that all men are bad, and that they always have to use the malignity of their spirit whenever they have a free opportunity for it" (Machiavelli 1996; 15). Rather than basing politics on trust and morality, a political order should instead be based on coercive laws and the motives of self-interest and fear of punishment. In Hobbes and Locke, the separation of political right from morality is less oriented by an antipathy to religion in general (though one can certainly detect that in Hobbes), and more from a concern that religious differences make orderly

political life impossible. Writing in the context of the English Civil War, Hobbes sought to build a political system on the basic human passions, with the idea that if the basis of political authority could be traced to the (amoral) desires common to all humans, there could be no grounds for civil discord based on scriptural interpretation or moral ideals. John Locke also had religious discord in the forefront of his thoughts in his "Letter Concerning Toleration," in which he sought to distinguish the purview of government from that of religion. On Locke's view the commonwealth has to do with securing the private property of each individual and with regulating trade and industry. It is not the business of the government to legislate matters of faith or private morality, but only to adjudicate the external conditions of freedom.

Two more themes come out quite clearly in the social contract theory of Hobbes's *Leviathan*. Hobbes's argument begins with an account of the human passions and of the pre-political "state of nature." This state is characterized by a war "of every man against every man," in which there is "continual fear and danger of violent death, and the life of man, solitary, poor, nasty, brutish, and short" (Hobbes 1994: 76). There is no justice, no right or wrong, and no morality in the state of nature. The first and second "laws of nature" are to seek peace and contract with others for peace. There is no moral basis for the move from the state of nature to civil society, but rather simply the strategic concern that one's life will be longer and better: "the motive and end for which this renouncing and transferring of right is introduced, is nothing else but the security of a man's person, in his life and in the means of so preserving life as not to be weary of it" (Hobbes 1994: 82). To gain this security one seeks agreement with others to constitute a coercive power that gives efficacy to the contract by instituting a system of punishments. This "motive and end" defines the *second* major theme of modern political philosophy, which I call *securing property through a common coercive force*.

The coercive force is administered by a sovereign political authority with the power to legislate and judge the legality of particular actions. The *third* main theme concerns how individual freedom is embodied or expressed in the action of the sovereign, especially in the action of making laws. I call this theme *personal freedom through the will of the sovereign*. According to Hobbes, once I have given my consent to the social contract, every action of the sovereign is by definition also my action, so in obeying the sovereign I am obeying myself. Hobbes relies on this claim in arguing against the right of resistance. He holds that the sovereign must be granted absolute power, for otherwise there would always be the possibility of war and a return to the state of nature. There can be no rightful rebellion or resistance to the sovereign, for there is no judge above the sovereign who could say whether a claim against the sovereign's authority is legitimate. We are to accept this result because of the absolute misery of the state of nature, which makes the relative misery of living under a bad sovereign tolerable.

The social contract theorist with the greatest impact on German Idealism is Jean-Jacques Rousseau. His influence on the idealists stems from the importance he places on freedom and his analysis of the social conditions that make freedom possible. The focus on freedom is evident in his basic formulation of the challenge

of political philosophy: "To find a form of association that will defend and protect the person and goods of each associate with the full common force, and by means of which each, uniting with all, nevertheless obeys only himself and remains as free as before" (Rousseau 1997: 49–50). Rousseau's formulation captures neatly the goals of *securing property through a common coercive force* and *personal freedom through the will of the sovereign*. Rousseau's answer to this challenge is a social contract in which each individual *completely* alienates his powers to the sovereign "general will." The general will has "full common force," and since the general will is also the universal will of the individual, obedience to the sovereign will of the united whole is a form of *self-obedience*. Though republican and egalitarian, Rousseau's theory shares many structural features with Hobbes' account of absolute sovereignty. Like Hobbes's sovereign, Rousseau's general will is infallible and has complete power over an individual's property and even over the individual's life. The general will has this power because it expresses the will of each individual considered as a *citizen*. Each person is subject to the law as a person, and each is *author* of the law as a citizen possessing a general will. Rousseau admits that these two perspectives can diverge, and he requires that "whoever refuses to obey the general will shall be compelled to do so by the whole body. This means nothing less than that he will be forced to be free" (Rousseau 1997: 53). One is free when the laws treat everyone equally and state action is oriented by the good of all. Rousseau's general will is an ideal standard of political legitimacy, and a government which did not follow the general will can for Rousseau (unlike for Hobbes) be legitimately resisted by the sovereign power of the people. Yet the statement that one can "be forced to be free" is worrisome for liberals because it puts personal freedom too much in the hands of the collective will. Rousseau gives some indications of how this will is determined, such as through democratic voting procedures, but for many liberal political theorists he does not do enough to secure the rights of individuals *against* the collective will. It seems that one exercises personal freedom only *in* willing the general will, which leaves the individual's particular attachments and projects in a precarious position under the authority of the whole.

Whereas the Hobbesian (and Lockean) model of a state that sets external boundaries between individuals left personal morality outside the purview of public power, Rousseau's conception of the general will and his requirements for a healthy polity pull him away from modern political philosophy's strict divide of morality and right. Rousseau moralizes about the selfishness and corruption of modern bourgeois agents, which he takes to be a major obstacle to the genuine political freedom available under the general will. In his "Discourse on the Origins of Inequality," he takes Hobbes to task for modeling natural man on the Englishmen of his day rather than on truly natural, primitive man. The most prominent feature of Rousseau's natural man, and of the young Emile in his book on education, is a *wholeness* and *integrity* that Rousseau thinks is missing in the bourgeois man. The bourgeois civilized man has a split personality because he cares primarily for himself and his own interests, while having to look to other agents in society for confirmation of who he is. But Rousseau does not give up on civilized man, and he argues for the malleability of human nature and the transformation of human nature within civil society. One of Rousseau's revolutionary ideas

is that individuals are *constituted* as free moral beings by entering the social contract and submitting themselves to the general will. This is our *fourth* major theme, which I call the *social constitution of free agency*. Individuals who enter the social contract do not remain the same as they were before, for entering “the civil state produces a very remarkable change in man, by substituting justice for instinct in his conduct” (Rousseau 1997: 53). Rousseau introduces an alternative strand in modern political philosophy in giving social conditions the role of constituting free agency. The main significance of this move is that it provides another motive, potentially even more important than securing property, for entering and remaining in society. He holds out the promise of a society in which one finds moral fulfillment in the public sphere because through public action one’s deepest values are realized in a way that is affirmed by others. This strand in Rousseau’s thought stands in obvious tension with our first two themes (separating morality from right), for it highlights the alienating and inegalitarian tendencies of a non-moral politics based exclusively on protecting private property.

The moral dimension of Rousseau’s view comes out most clearly in his claims about the need for a polity to have good customs if the general will is to actually be expressed in the community’s actions. To achieve this condition, Rousseau invokes the “lawgiver” as a mythic character, modeled on the great founders of peoples in ancient societies, who unites a people by instilling common customs. Rousseau was clear that only a small city-state or commonwealth with shared values could realize his ideal. Yet large-scale revolutionary movements, beginning with the French Revolution, have attempted to recreate society and citizens along Rousseauian lines. The German idealists were generally sympathetic to Rousseau and to the French Revolution’s ideals, but each in his own way attempted to correct for the deficiencies of Rousseau’s conceptions of freedom and self-determination. Kant and Fichte were truest to Rousseau’s ideas in their elevation of morality to the highest point in philosophy. In their mature political philosophies, however, they both returned to a Hobbesian line about the separation of morality and right, and both strongly emphasized securing property through a common coercive power. They are not oriented by a social condition of shared value, but rather they take right to be an “external” relationship of mutual constraint, a set of rules for restricting actions that is neutral to specific moral values. Hegel rejects Rousseau’s contract theory, but he is much closer to Rousseau in thinking of ethics (which for Hegel includes politics) as public action that expresses shared values. There are legitimate liberal concerns about Hegel’s rejection of the right/morality dichotomy, but his theory remains among the best resources for thinking through liberalism’s hopes and discontents.

The foundations of Kantian right

Kant’s political philosophy has long been overshadowed by his moral philosophy. His only systematic presentation of his political philosophy, in his “Doctrine of Right,” is embedded within the enigmatic *Metaphysics of Morals*, and to many readers it lacks the intuitive appeal of the *Groundwork*’s presentation of the moral philosophy. Yet Kant’s political philosophy is an important contribution to the liberal tradition, and deserves

the attention it has now begun to receive. The most accessible outline of the theory of right actually comes in the essay "On the Common Saying: That may be correct in theory, but it is of no use in practice," where Kant presents three *a priori* principles of the "rightful condition": the freedom of all as human beings, the equality of all as subjects, and the independence of all as citizens (UG: 8:291). Though independence introduces an illiberal element into his theory (only male property owners can vote because only they are truly independent), his main claims are oriented by equality and especially by freedom. The most pronounced liberal dimension of Kant's theory is his vehement rejection of *paternalism*. A paternalistic government would be one that takes its business to be determining the happiness of the individuals. He writes,

No one can coerce me to be happy in his way (as he thinks of the welfare of other human beings); instead, each may seek his happiness in the way that seems good to him, provided he does not infringe upon that freedom of others to strive for a like end which can coexist with the freedom of everyone in accordance with a possible universal law (i.e., does not infringe upon this right of another). (UG: 8:290)

One's action must leave sufficient room for the actions of others and not obstruct the exercise of their freedom. The good and happiness are left up to the individual, whereas right (and the coercion that it authorizes) is restricted only to regulating certain external conditions. Kant stands firmly in the liberal tradition of viewing the function of the law as primarily to limit individual freedom in the service of that freedom. A system of right defines the social space in which individuals may pursue their interests without interference by others. The universalization criterion for right is a test of whether it is possible for others to "strive for a like end." The criterion is whether the maxim of action could be a universal law governing actions that would allow for the freedom of action of all. My maxim to cheat on my taxes would violate the freedom of others because if everyone cheated on their taxes the government could not function.

The central issue in coming to terms with Kant's theory of right is understanding how, if at all, the foundations of right depend on Kant's much better known (and more fully developed) claims about pure practical reason and morality. This issue is so important because the dependence relation tracks Kant's thinking on the theme of the *separation of morality and right*. Kant exhibits tendencies in both directions – towards a strict separation and towards a unification of the two. Like the moral theory, the theory of right is oriented by the concept of a universal law (as in the passage above). But Kant explicitly rules out from the theory of right the source of moral worth, namely the good will that wills duty for its own sake. This leaves it unclear just where the value of right comes from, or whether it is a "value-neutral" conception of boundary-setting between individuals to secure their pursuit of happiness, whatever that may be. Kant is clear that *from the perspective of morality*, one's actions on the right are duties, and that they are therefore "indirectly ethical" (MS 6:221). But the *determination* of what is rightful is independent in some sense of the moral law.

Kant's various claims on the morality/right issue have in fact sparked a controversy about the independence of the theories of right and morality. The two main camps that have emerged in this debate are the "derivationists," who represent the widespread view that the theory of right is in fact derived from the basics of Kant's moral theory, and the "separationists," who hold that right is independent from the moral theory (for a summary of the debate, see Pippin 2006). After briefly presenting the main points on each side, I will suggest that the irresolvable nature of this debate indicates that there is a fundamental problem with Kant's thinking about right. I then discuss aspects of his view that could be the basis of a solution to this problem, but that Kant never brought to final fruition.

The *derivationist* case is largely based on Kant's general definitions and statements in the introduction to the *Metaphysics of Morals* and in the introduction to the "Doctrine of Right." He refers to all "laws of freedom" as "moral laws," before subdividing these laws into the "juridical" and "ethical" (MS: 6:214). He also includes under the concepts common to both the "Doctrine of Right" and the "Doctrine of Virtue" the concepts of obligation, categorical imperative, and duty; these concepts seem to require the arguments for transcendental freedom and all that entails in Kant's moral theory (MS: 6:222–3). The derivationist case is strengthened by Kant's claim later in the introduction that the moral imperative is an imperative "from which the capacity for putting others under obligation, that is, the concept of a right, can afterwards be explicated" (MS: 6:239). So too, the references to the universal law in the passage cited above and in Kant's "Universal Principle of Right" (MS: 6:231) make it seem that right is just a specific application of the moral law (Rosen 1993). Perhaps the most significant point in the derivationists' favor is that Kant claims that there is an obligation to enter the social contract, a categorical imperative of pure practical reason. Instead of mere fear of a violent death as a prudential motive, we enter the social state from an original obligation. Such an obligation must be grounded, it seems, in the freedom established in the moral philosophy. These claims run counter to the thrust of modern political philosophy because they presume moral capacities rather than just passions and desires as the basis for claims of political justification.

The starting point for the *separationist* case is Kant's distinction between two kinds of "lawgiving," an internal moral lawgiving and an external lawgiving of right (important statements of this position are Willaschek 1997 and 2002). Whereas morality essentially involves taking duty to be the "internal incentive of action," the external lawgiving of right can only have external incentives (MS: 6:219). The external incentive of right is "pathological," namely that provided by the fear of coercion. The authorization to use coercion is not derived from an obligation of right, but is analytically contained within the *concept* of right itself. This counts strongly in favor of right being separated from morality (see Wood 2002), for no authorization to coerce others can be derived from the moral law (Willaschek 2008). Some of Kant's descriptions of right seem to make right a purely external, mechanical affair of reciprocal coercion, of action and reaction, that is very far indeed from the internal freedom of the moral law. What Kant calls "strict right" does not regulate choice by any sort of appeal to self-legislation, but "rests instead on the principle of its being

possible to use external constraint that can coexist with the freedom of everyone in accordance with universal laws" (MS: 6:232). This idea of strict right is behind Kant's claim that the problem of establishing a rightful condition can be solved even for a "nation of devils" (EF: 8:366). It is a problem only of the "mechanism of nature," of self-interest and prudence, and therefore it does not require any assumptions about the disposition behind the actions (which we can assume are evil). To some (Pogge 2002) this reference to right among devils is decisive evidence that Kant's view of right can be detached from his theory of moral agency (see also Höffe 1992 on this issue).

The fundamental problem with Kant's political philosophy, and the reason why his claims cannot be rendered fully consistent, is that he does not have a way to think of the *expression* of the moral value of inner freedom in external, public actions (Kant's lack of a concept of expression was noted by Rawls 1971: 255). The source of the bindingness of right should be the same rational self-legislation that is the source of normativity in the moral domain. Yet Kant relegates this to an "internal freedom" distinct from the "external freedom" of strict right. The question that remains unanswered is how specific forms of external freedom express the subject's internal freedom. How is my nature as a moral being expressed in the laws and institutions of a state based on right? Because Kant lacks an answer to this question, it is hard to see how his *Rechtstaat* embodies substantive moral ideals. As the separationists argue, it looks much more like a minimal state designed primarily to protect property claims and keep the peace.

There is a third alternative, distinct from the derivationist and separationist readings, that suggests a Kantian answer to the expression problem. We can call this the *value* reading, since it takes the external freedom of right to have value based on the "supreme moral principle of the absolute value of freedom" (Guyer 2002: 64). This interpretation draws strength from Kant's reference at a crucial point in the "Doctrine of Right" to an innate right of freedom (MS: 6:237). The value interpretation gives us a way of thinking of morality and right in Kant as distinct and yet united in a single source. Though reading Kant as primarily concerned with realizing the value of freedom seems to run counter to the traditional stress on Kant as a deontologist, the value reading has become increasingly widespread. The reading captures a fundamental dimension of Kant's view, but the shift to value does not by itself solve the problem of expression. After all, the main slogan of value readings is the claim that only the good will has unconditional value, and it is just this internally free will that is not supposed to be at issue in strict right. The question of how the value of freedom is realized in right in more than a minimal sense remains unanswered.

Kant's argument for entry into civil society proceeds from a claim about the possession of things. The argument turns on treating each other in a way that enables individuals to own things. Insofar as ownership is an expression of the will in external actions, one could argue that the property relation is a mode of expressing value in a public way. Through property claims I make my will manifest for others, and the property relation could therefore be the missing link in Kant's argument (see Pippin 2006). Kant argues that it would be a practical contradiction if there were external

objects that could not become someone's property. It is a "postulate of practical reason with regard to rights" (MS: 6:246) to treat each other in a way that allows objects to become property (to be intelligibly possessed, in Kant's terminology). This postulate is the basis in practical reason of Kant's argument for an obligation to leave the state of nature to enter into a condition in which property rights are secured. Kant writes,

When I declare (by word or deed), I will that something external is to be mine, I thereby declare that everyone else is under obligation to refrain from using that object of my choice, an obligation no one would have were it not for this act of mine to establish a right. This claim involves, however, acknowledging that I in turn am under obligation to every other to refrain from using what is externally his; for the obligation here arises from a universal rule having to do with external rightful relations. I am therefore not under obligation to leave external objects belonging to others untouched unless everyone else provides me assurance that he will behave in accordance with the same principle with regard to what is mine. (MS: 6:255–6)

The universal rule is established *a priori* through the postulate of right. But the entitlement to property involves a reciprocal obligation and a mutual assurance that each will follow the same principle. Because *external* freedom is at stake, the obligation must have external conditions and the assurance must be given the form of external law with coercive force. Kant's argument for the civil condition employs a version of the *securing property through a common coercive power* strategy. Kant concludes, "So it is only a will putting everyone under obligation, hence only a collective general (common) and powerful will, that can provide everyone this assurance" (MS: 6:256). This is only possible in a civil condition. Only in such a condition do agents have a common assurance about the status of their property, and therefore a reciprocal obligation to respect each other's property. In the absence of such a condition, individuals do not have the obligation to respect each other's property.

Property claims are an expression of the will, and the agent's action in making such a claim produces a claim on another. Property thus points to a distinctive kind of intersubjectively generated obligation that could bridge the claims of internal and external freedom, of morality and right. But Kant's exposition of the acquisition of property shows that he thinks of property as valuable quite apart from moral considerations. Property does not really solve the problem of expression because there are no substantive moral claims implied by the property relation. Kant does not follow Rousseau in arguing that the individual completely alienates his property rights to the general will conceived as a collective moral authority. Rather, Kant argues for a "*provisionally rightful* possession" (MS: 6:257) that accords individuals claims with genuine normative force already in the state of nature. He writes that "if external objects were not even *provisionally* mine or yours in the state of nature, there would also be no duties of right with regard to them and therefore no command to leave the state of nature" (MS: 6:312–13). It is because the free will is capable of "intelligible possession" that we have an obligation to leave the state of nature. He writes that "a civil constitution

is just the rightful condition, by which what belongs to each is only secured, but not actually settled and determined" (MS: 6:256). This suggests a Lockean picture of inalienable pre-social rights that are merely protected and administered by the state. In entering the civil condition one is simply securing the possessions that had been determined provisionally under the pre-civil condition. Kant claims that "provisional acquisition is true acquisition" (MS: 6:264), and that one can provisionally acquire as much land as one is capable of defending. The picture that emerges is that right makes right in provisional acquisition, and that the civil condition simply secures the holdings that were already acquired. This shows that the will's expression in property acquisition does not generate moral claims, and that right is a matter of external freedom, minimally conceived. Property is certainly an expression of the value of freedom, but it remains a narrow expression that cannot generate substantive moral principles of justice. Kant does have resources for generating such claims, as we shall see in the next section, but they fall outside of strict right.

Kantian political freedom

Kant's lack of a clear account of the public expression of the moral will is reflected in his treatment of our third theme, *personal freedom through the sovereign will*. Kant's arguments invoke the *rational consent* of individuals. The state's actions are legitimate because one *could have* rationally consented to them according to a universal law. Kant also claims that any government must be obeyed simply because it secures the conditions of choice in general by keeping the peace, regardless of the further characterization of its actions (as the possible objects of rational consent). There is thus a marked tension between Kant's aim of providing a moral criterion for political legitimacy through the idea of moral freedom, and his aim of securing the minimal conditions of personal freedom under a state that demands absolute obedience.

On the one hand, Kant clearly supports rational consent in endorsing a version of Rousseau's general will, according to which political authority is legitimate for each individual because each individual can see himself as the author of the law. Like Rousseau, Kant thinks of the general will as an ideal of sovereign legislative action that is a standard for the legitimacy of state action. Kant does not think that this authorship claim entails that each person must be given a direct vote about each law, or even that there be an actual assembly to first form society through an act of all joining the social contract. Kant writes of the original contract that it need not "be presupposed as a *fact*," because it is "*only an idea* of reason, which, however, has its undoubted practical reality, namely to bind every legislator to give his laws in such a way that they *could* have arisen from the united will of a whole people and to regard each subject, insofar as he wants to be a citizen, as if he has joined in voting for such a will" (UG: 8:297). To be a citizen means to want to be governed by the laws of the general will. He also writes, "Properly speaking, the original contract is only the idea of this act, in terms of which alone we can think of the legitimacy of a state" (MS: 6:315). The contract is ideal and hypothetical. It is supposed to provide a critical standard by which to judge the legitimacy of legislation. Indeed, because of Kant's lack of emphasis on *voluntary*

consent, some commentators have questioned whether Kant should be classified as a social contract theorist at all (Kersting 1992; Pippin 2006). Kant writes of one's freedom in one's dependence on the laws in the civil condition that "this dependence arises from his own lawgiving will" (MS: 6:316). Right flows from the nature of the rational will rather than from the sheer voluntary choice to enter into the contract.

When it comes to the actual functioning of the sovereign legislative will, however, Kant holds with Hobbes that the actions of the sovereign who is in power are by definition the actions of individuals living under that sovereign. In making these claims, Kant assumes a mere voluntary consent (actual or tacit) to whatever the actual sovereign does. By continuing to live under the government, one has consented to obey the laws and commands of the sovereign, whether they meet the standards of the general will or not.

The tension between the rational and voluntary models of consent is apparent in his rather confusing discussion of the sovereign. Kant sets out requirements on the sovereign legislator that seem to be thoroughly republican, but in his elaborations on how the sovereign authority functions in practice, Kant makes it clear that his claims for the general will and for the legislative authority as the sovereign authority of the state are compatible with any number of forms of legislative authority. So though he claims that "only the general united will of the people can be legislative" (MS: 6:313–14), he then describes cases in which the people and the legislative authority are opposed. He writes that "the presently existing legislative authority ought to be obeyed, whatever its origin" (MS: 6:319), and "a people cannot offer any resistance to the legislative head of a state" (MS: 6:320). Is Kant simply contradicting himself here?

To make sense of Kant's claims about the sovereign, it is necessary to think of Kant as distinguishing between *de jure* and *de facto* sovereignty (Rosen 1993). The people have sovereign legislative authority *de jure* (by right) since the general will is best expressed through the people's representative assemblies. Yet even if the sovereign is not in fact the people and is not in fact just, one must obey because one has consented to this condition by living under the sovereign. Because security under the law is the minimal condition of personal freedom, the *de facto* sovereign is legitimate even if one's rational freedom is not expressed in the sovereign's acts.

Kant's split between the *de facto* and *de jure*, between voluntary and rational consent, is part of a complicated dance to accommodate the real conditions of political authority and the ideal claims of justice. This dance is quite evident in the Theory/Practice essay, where Kant distances himself from Hobbes's view that the sovereign has no obligation to the people. He writes that "the people too has its inalienable rights against the head of state, although these cannot be coercive rights" (UG: 8:303). The rights of the people are not *reducible* to the positive laws and existing institutions, yet the ideal "inalienable rights" also cannot justify any coercive action against the existing authorities.

The question of whether there is a *moral* basis in the rational will from which to resist existing political institutions has different answers depending on the perspective that one takes. From within the perspective of strict right, Kant is very clear that no resistance can be justified. In "Perpetual Peace" he argues against a right of resistance

based on a practical contradiction that arises with the principle of *publicity*. Kant puts it in characteristic terms of a practical contradiction: “the maxim of rebellion, if one *publicly acknowledged it as one’s maxim*, would make one’s own purpose impossible” (EF: 8:382). There would be a practical contradiction in setting up as a public law a proviso undermining the authority of the state (see Holtman 2002 on the nature of these contradictions). It has long been a matter of dispute whether Kant is thereby inconsistent in his attitude towards revolution (see Seebohm 1981). Kant consistently rejects the right of resistance in the most forceful terms, yet he also praises the ideals of the French Revolution and the reaction of those who sympathized with the revolution. In a much-discussed passage from Kant’s 1798 *Conflict of the Faculties*, he highlights the morality of the observers of the Revolution:

It is simply the mode of thinking [*Denkungsart*] of the spectators which reveals itself *publicly* in this game of great revolutions, and manifests such a universal yet disinterested sympathy for the players on one side against those on the other, even at the risk that this partiality could become very disadvantageous for them if discovered. Owing to its universality, this mode of thinking demonstrates a character of the human race at large and all at once; owing to its disinterestedness, a moral character of humanity, at least in its predisposition . . . this revolution, I say, nonetheless finds in the hearts of all spectators (who are not engaged in this game themselves) a wishful participation that borders closely on enthusiasm, the very expression of which is fraught with danger; this sympathy, therefore, can have no other cause than a moral predisposition in the human race. (SF: 7:85)

Kant takes heart from the response by the onlookers, not from the actions of the revolutionaries themselves. Of course Kant had to believe that the ideals of the French Revolution were genuine ideals, but his excitement about the reaction to these events does not really touch on the question of whether the actions of the revolutionaries are justified (see Nicholson 1992).

His differing claims are made from two different *perspectives* and thus are not simply inconsistent. The passage above comes as part of a positive answer to the question, “Is the Human Race Continually Improving?,” which is a question posed from the perspective of moral anthropology. Moral anthropology studies how moral ideals are expressed in practice and whether we can hope for the more adequate realization of these ideals in the future. This mode of inquiry does address the expression problem, though it does so only by moving to a perspective outside that of the agents themselves. By moving to the level of the onlookers, Kant is shifting the question away from the agent’s own perspective on the rightness of resistance. From *within* the civil condition and the principles of right established therein, no resistance is rightful even if one’s ideals are moral and the existing government is despicable. Yet when the question is whether the moral vocation of humanity can be realized, Kant holds that in the progress of history we can look at revolutionary events and the reaction to them for signs that such a realization is in fact possible. In the case of the French Revolution,

the decisive sign for Kant was that, unlike in all other revolutions, the goals were not defined by party interests but by the universal ideals of freedom (see Seebohm 1981). It tells us something about the human species, Kant thinks, that people would respond in such a disinterested way to the struggle to achieve these ideals. Though we are limited in what we can say and do from within a state about how it ought to change, philosophy can use the idea of morality to interpret history as developing towards political goals of justice.

The bearing of Kant's moral anthropology on political questions is also evident in "Perpetual Peace," where he investigates the evidence *within nature* that humans and the world have been created so as to bring about peace within and between nations, and eventually morality within individuals. In the section "On the guarantee of perpetual peace" (EF: 8:360), Kant discusses "providence," the idea of a creating God behind the operation of nature and history and the evidence we can find in nature and history gives us hope that peace is possible. It is in this discussion that Kant invokes the "nation of devils" in order to show the resources even with non-moral nature for instituting right and thereby peace, and thus ultimately for the development of morality.

It is through this anthropological and historical lens that Kant addresses the fourth theme, Rousseau's theme of the *social constitution of free agency*. Kant makes little of this theme from within the perspective of right, where he assumes that individuals can possess property and relate to each other on the basis of an inherent freedom and equality. But within the teleological lens of moral anthropology, Kant is concerned with how moral agency develops through political institutions. He thus writes in "Perpetual Peace" that "the good moral education of a people is to be expected from a good state constitution" (EF: 8:366). Kant imagines a productive interplay between the reformation of states and the development of morality, such that the more that peace and freedom are secured by a constitution, the better are the conditions for morality to develop. In turn, the development of morality cannot help but lead to more peace and external freedom (see Kleingeld 2006). Agents under existing circumstances (in Kant's time) cannot will the republican constitution or perpetual peace *directly*, but they do have reason to hope that these will come about gradually through rightful reform.

Kant's split perspective view can be seen as a sensible compromise on the role of moral ideals in practical politics. But the deferral to history, and the lack of any definite sense (beyond the procedural claim of legislative sovereignty) of the morality expressed in the rightful condition, do not put enough pressure on the institutions themselves to realize moral ends rather than just to secure the existing conditions (and inequalities) of external freedom. It is not enough to say that philosophers can simply watch and hope, without granting any authority to agents themselves to challenge unjust political conditions.

Fichte's argument for right as mutual recognition

Fichte's most lasting contribution to political philosophy is the theory of mutual recognition that he developed in his 1796 *Foundations of Natural Right*. His derivation

of right as a relation of mutual recognition was a pivotal spur for Hegel's development, and continues to be an important type of argument in political philosophy and in ethics (see especially Darwall 2006). Fichte's mutual recognition argument foregrounds the *social constitution of free agency* by showing that individual free agency is conditioned by interaction with other free agents. This move promises to solve the expression problem by making the legitimacy of determinate social and political institutions a function of their ability to foster and secure free agency. Laws and institutions express free agency in so far as they allow individuals to interact in just those ways that lead to the development and exercise of free agency itself. The generality of the recognition argument for mutual dependence makes it a very powerful tool for social and political theory. But as we shall see in the following section, Fichte does not capitalize on this generality, giving recognition a restricted negative role in his theory of public right, which thus suffers from some of the same shortcomings as Kant's theory.

Since the basics of Fichte's conceptions of philosophy and of freedom have been laid out in earlier chapters (Chapters 1, 2, and 4), I will proceed here straight to Fichte's argument in the *Foundations*. Fichte sets out his argument of right as an argument for the conditions of finite rational willing, and in doing so attempts to generate the relevant features of the political subject and of claims of *right* from the ground up. Fichte derives from self-consciousness the finite subject's capacities, the world in which subjects interact, and the nature of the relationship of right that holds between subjects. Fichte sets up the argument for recognition through an initial argument for a "summons" to freedom. The argument is an excellent example of his transcendental form of deductive argument. The first *theorem* states "A *finite rational being cannot posit itself without ascribing a free efficacy to itself*" (GNR: 3:17). The first constructive step in Fichte's argument is to state that free activity is only possible as *limited* activity in a world that is opposed to that activity. He then notes that there is a contradiction here between the individual's free activity and the requirement that the activity be limited by an *object* in the sensible world. To overcome this contradiction, the subject must find an object and his own efficacy united "in one and the same undivided moment" (GNR: 3:30). The only way for this to occur is if the object is the subject's efficacy itself, and if this objective version of the subject's efficacy determines or constrains the subject in an external manner. The solution is that we must think of "a *being-determined of the subject to self-determination, a summons [Aufforderung] of the subject to resolve (himself) to an efficacy*" (GNR: 3:32–3).

Fichte's formulation is purposely paradoxical. In setting and resolving an apparent contradiction of being determined to self-determination, Fichte generates further conditions for the individual's efficacy. The next step is to show that the source of this summons must be something that can take the agent's free efficacy as the purpose of its activity. Such a purposive entity cannot be in nature, but can only be another rational being (GNR: 3:38–9) in the sensible world who summons the self to free activity. Fichte has thus derived another free agent as the condition of the possibility of self-consciousness. The role of this argument in first *constituting* the free agent is clear when Fichte writes that "The human being (like all finite beings in general) becomes a human being only among human beings" (GNR: 3:39), and "Only free,

reciprocal interaction by means of concepts and in accordance with concepts, only the giving and receiving of knowledge, is the distinctive character of humanity, by virtue of which alone each person undeniably confirms himself as a human being" (GNR: 3:40). With this basic summoning relationship established, Fichte is ready to derive the relation of right as the mutual recognition of two subjects.

A crucial move in Fichte's argument is to distinguish universal self-consciousness or free agency from individual free agency, or the capacities for freedom of a determinate embodied individual. An agent can only be an individual if the agent is compared to and distinguished from other individuals. Fichte calls the relationship at issue a "*process of distinguishing through opposition*" (GNR: 3:42), which refers to the process of taking another subject to be a constraint on one's activity (opposed to it) by distinguishing one's own sphere of activity from that of another subject. The distinguishing action must determine the individual's concept of himself as free and must also take account of the other as a free being. I must set an end for myself while at the same time reserving a sphere for the action of another. The relationship of recognition, which is the relation between the spheres of action of two individuals, depends on a shared knowledge of *practical self-limitation*. The knowledge in question takes the form of an *expectation* of how others will behave towards me. My recognition of others is the condition of my *entitlement* to holding that expectation.

With the recognition relationship in hand, Fichte presents the argument for the concept of right through a three-part syllogism. The first premise states the dependence of my expectation of recognition on my treatment of the other:

- (I) *I can expect from a determinate rational being that he recognize me as a rational being only in so far as I myself treat him as a rational being.* (GNR: 3:44)

Fichte stresses that recognition is irreducible to the ordinary ways of thinking of other agents in a moral or political community. He writes of the first half ("the conditioned," separated from "the condition" by "only") that the other's act should be understood neither as a recognition of me in his conscience nor as a recognition of me in front of others. Rather, I expect another to recognize me according to our "common consciousness." Recognition is thus not a moral relationship (conscience), nor is it a relationship through a third-party authority (other subjects or the state). The realm of recognition is that of the second person, of the "Thou," which serves as a bridge from first-person moral autonomy to third-person public power. Fichte qualifies the second half of the proposition, the condition, in writing that the I must treat the other as free in a definite *practical* way. I do not merely *form a concept* of the other subject as a generic rational being. Rather, I have to actually act to come into contact with him, for my mere thoughts can never be anything *for him*. It cannot be that I merely refrain from violating the concept of him as a rational being, but I actually have to act in a way that impinges on the activity of the other individual.

The second premise in the argument affirms the condition in (I) as a necessary condition of individuality. Fichte writes, "(II) *But in every possible case, I must expect that all rational beings outside me recognize me as a rational being*" (GNR: 3:45). Only

with that expectation "in every possible case" can I be an individual, for only with that recognition by others is my distinct sphere of activity secured. Notice in (II) that Fichte has switched to "all rational beings" from "a determinate rational being." He is not thereby abandoning his claim that this relationship is between two definite individuals, but he is arguing that the relationship must hold between *any* two individuals who come into contact. To establish that point, Fichte argues for a rational constraint that governs the *thinking* of all subjects. His argument for this constraint, which he calls the "law of thought," follows a pattern familiar from the social contract tradition. He imagines a conflict between agents akin to the mutual antagonism in the state of nature, and he then attempts to determine a common basis of appeal for restoring a condition of right. To avoid a mere reciprocation of the action (an act of force to which I would be entitled), I must raise myself out of my individuality and refer to a law that is valid for both of us. I posit myself as the judge above him, but I invite him to judge along with me according to the shared "law of thought," that is, according to the demand of logical consistency. Fichte uses the law of thought as a shared external conception of normativity, of rational bindingness, based on the two subjects' common consciousness. He is very explicit that this is not a matter of *moral obligation*, but that the law of thought does place a normative *demand* on others. To be *consistent*, an agent cannot claim a sphere of free activity for himself (for his own individuality) while denying it to others (more on the nature of this demand below).

In the final step in the argument for the principle of right, Fichte infers the temporal persistence of recognition as a condition of the subject's *efficacy* in carrying out his intentions. The recognition relationship of right must extend beyond this immediate point in time into the future. I must be able to expect that others will leave a sphere open for my freedom in the future so that I can rely on stable conditions for implementing my intentions. Fichte thus arrives at the statement of the principle of right: "(III) ... *I must in all cases recognize the free being outside me as a free being, i.e. I must limit my freedom through the concept of the possibility of his freedom*" (GNR: 3:52). With this principle, Fichte provides the basis for an account of political institutions that are legitimate because they are stable contexts for inherently equal subjects who strive to develop their individuality through distinct projects and interests. It is the mutual determination of individuals as both the same and as opposed that sets the dynamics of equality and difference that are the basis of the discourse of recognition today.

From recognition to a politics of mistrust

Although it is natural to think of mutual recognition as a moral relationship, Fichte advocates a strict *separation of right and morality*. He maintains in no uncertain terms that the right based on recognition has to do only with external relations between individuals, and nothing at all to do with the realm of morality. These two branches of practical philosophy are not merely separable, but they "are, already originally and without our involvement, separated through reason, and are completely opposed" (GNR: 3:55). Fichte in effect radicalizes the split in Kant between internal and

external lawgiving. Just as Kant emphasized the difference in the “incentives” in the two domains, Fichte too claims that right can be determined without referring to the moral disposition. He puts the point succinctly: “The good will has nothing to do with the sphere of Natural Right. Right must be able to be enforced, even when no person has a good will ... Physical power, and that alone, is what sanctions right in this sphere” (GNR: 3:54). When moral considerations are categorically excluded from politics, there is nothing left but the threat of force to provide motivation. In one sense Fichte’s theory is a return to Hobbes’ strict line on the separation of morality and right from Rousseau’s attempt to bring the two domains back together (see Neuhouser 1994 for an account of Fichte’s earlier Rousseauian views). This return is rather surprising given the appeal to the “common consciousness” in the argument for recognition. While in Hegel’s hands recognition will be a tool to remoralize the political, for Fichte it is a theoretical tool for the construction of right as a domain fully distinct from morality. In actual practice, according to Fichte, we do not rely on mutual recognition, which has an implicit moral aspect that cannot be relied upon in the actual system of right.

The cardinal distinction that underwrites Fichte’s morality/right split is the distinction between universality and individuality. Though Fichte’s theory of right and his theory of ethics contain arguments for the importance of both universal and individual dimensions of human activity, universality is clearly the basis and goal of the moral theory while individuality is the basis and goal of right. Fichte’s philosophical system begins with the non-individual I of original self-consciousness, and its completed goal is the achieved overcoming of individuality in a world in which all individuals agree and there are no obstacles, in nature or reason, to pure universality. He thus writes in the *Sittenlehre*, “Each [subject] becomes the pure depiction [*Darstellung*] of the ethical law in the sensible world precisely through his entire individuality disappearing and being destroyed; actual pure I through free choice and self-determination” (SL 4:256). At such an endpoint there is no need for a state, since the state’s job is to adjudicate the differences between our individual ends. While in morality we strive to free ourselves from all dependence on anything outside of Reason, in relations of right individual finitude and limitation are assumed as given, and the goal is to work out the maximum “freedom” of individual action compatible with the freedom of other individuals. Though individuality is the ground and purpose of right, it is not at all clear that Fichte takes individuality itself to be intrinsically valuable. Frederick Neuhouser (1994) has argued that we should see Fichte’s theory of right as demarcating a domain, based on the concept of the person, in which individuality and personal freedom are given a distinct value. But although we can see Fichte staking out here a conception of personal freedom distinct from moral freedom, he simply does not give a defense of individuality that accords it value comparable to the universal value of morality. So in the above passage Fichte claims that morality is directed towards the disappearance of individuality, which implies that individuality itself cannot positively express moral agency.

Fichte takes the split between right and morality to be obvious from the difference between the nature of rights and duties. While duties command one to act in certain

ways, rights are merely *permissive*. A duty says what you *must* do while a right only says what you *may* do. This point comes up already in the Introduction to the *Foundations*, where Fichte compares his approach to Kant's claims in "Perpetual Peace" (Kant's "Doctrine of Right" had not yet been published). Echoing commentators to this very day, Fichte writes that "it is not possible to see clearly whether Kant derives the law of right from the moral law" (GNR: 3:13). Fichte takes as evidence that Kant did not derive right from the moral law the claims in "Perpetual Peace" about permissive laws (EF: 8:348). Such laws do not command or prohibit, but simply give one a claim on others, a right against others, that one may or may not exercise. Fichte sharpens the contrast between right and duty in the following passage:

The moral law commands duty categorically: the law of right only permits, but never commands, that one exercise one's right. Indeed, the moral law very often forbids a person to exercise his right, and yet – as all the world acknowledges – that right does not thereby cease to be a right. In such a case one judges that the person may well have had a right to something but that he ought not to have exercised it in this situation. In that case, then, is not the moral law (which is one and the same principle) at odds with itself, simultaneously granting and denying the same right in the same situation? (GNR: 3:54)

Fichte's question is rhetorical. The idea of the moral law standing in conflict with itself in this way is unthinkable for him. Yet rather than actually proving Fichte's point, this passage shows that the strict separation of right and morality depends more on Fichte's own conception of morality than it does on the nature of the normative claims themselves. Most moral theories acknowledge the possibility of conflicting moral claims. The argument is only compelling if one accepts Fichte's controversial argument that the moral law commands a single action categorically in every case, so that it can never be "at odds with itself."

Fichte's other main argument for separating morality and right stems from his claim that rights, as opposed to duties, govern only *actual* relations between individual rational agents. While as an individual I may have moral qualms about certain actions, and may indeed have obligations to act in certain ways in my conscience, the concept of right is inappropriate for describing the nature of these obligations. Fichte writes, "The concept of right is the concept of a relation between rational beings. Thus, it arises only under the condition that rational beings are thought in relation to one another. It is nonsense to talk about a right to nature, to land, to animals, etc., considered only on their own or in direct relation to a human being" (GNR: 3:55). This claim is a consequence of the recognition relation that defines the concept of right. Only free beings can recognize each other, and therefore only free beings can make claims of right. Within a *moral* perspective we may have obligations to the planet and to animals, but talk of animal rights is completely out of order on Fichte's picture. This aspect of Fichte's view also limits the kinds of rights that individuals can claim from each other and from the state. He writes,

Rational beings enter into reciprocal interaction with one another only through actions, expressions of their freedom, in the sensible world: thus the concept of right concerns only what is expressed in the sensible world: whatever has no causality in the sensible world – but remains inside the mind instead – belongs before another tribunal, the tribunal of morality. Thus it is nonsense to speak of a right to the freedom of thought, freedom of conscience, and so forth. There is a capability for these inner actions, and there are duties, but no rights, with respect to them. (GNR: 3:55)

Fichte's claims here would be reasonable enough if freedom of thought were just the freedom to think and to believe in one's mind, cut off from every expression in the sensible world. The problem is that it is completely unreasonable to treat freedom of thought and freedom of conscience as thus separated from expression (as separated, for instance, from the rights of freedom of speech and freedom of worship). This unwillingness to link such "internal" capacities to expressions in external actions highlights that Fichte has an untenably sharp divide between the internal freedom of morality, which has supreme value, and a circumscribed realm of right as the domain of those actions that can be subjected to coercion.

Because he claims that rights only apply to actual relationships between individuals, Fichte sometimes comes close to denying that a theory of individual right can provide ideal standards for assessing actual political institutions. That is, he comes close to saying that there are no "original" individual rights that a political system must respect. Fichte insists that "there is no condition in which original rights exist; and no original rights of human beings" (GNR: 3:112). According to Fichte the "original right" of persons simply as such is a necessary theoretical fiction that we theorize by *abstracting from* the conditions of the rights of agents within a commonwealth. This position seems to bring Fichte closer to Hobbes and to distance him from the Kantian position of the real status of provisional rights in the state of nature. Yet Fichte does use original right as the (fictional) basis for theorizing right within the state. Fichtean original right is "the absolute right of the person to be *only a cause* in the sensible world (and purely and simply never something caused)" (GNR: 3:113). Original right therefore guarantees bodily integrity and the integrity of the relationship of one's intentions to the physical world. Though Fichte asserts the fictional character of these rights, he does use them to make arguments about the rights of individuals within the social contract. Thus he claims that the state secures not only whatever the person brings to the contract, but also a minimal ability of individuals to support themselves through their work (GNR: 3:213).

On the basis of original right, Fichte uses the *securing property through common coercive power* strategy to move from the principle of right to the commonwealth in which that right is secured. Fichte's argument for a "right of coercion" against someone who has violated one's original right closely resembles the arguments in other social contract theorists about what happens in situations of conflict in the state of nature. One is entitled to exercise a right of coercion over someone who has violated one's original right, though the mere fact that one is entitled to coerce another does not

entail that this right can be successfully employed in practice to restore a condition of mutual recognition. The failure of mutual recognition in practice leads to the introduction of new means to secure personal freedom. One can only be satisfied in one's assertion of one's right of coercion if one is convinced of "the other person's sincere subjection to the law of right," but "his attestation of regret, his promise of better behavior in the future, his voluntary subjection to authority, his offer of compensation, etc." (GNR: 3:98) do not suffice as grounds for thinking he has now adopted the law. There is no "mutual restoration of freedom" (GNR: 3:99) unless the other has actually proven over time that he would never violate one's right, which would just assume what the argument is supposed to prove (i.e. how such future behavior could be guaranteed). Fichte uses this conflict over property claims to show that no argument merely from mutual recognition between two agents is sufficient to establish secure property claims. After demonstrating that two agents can at best declare their property claims with words and physical signs, Fichte writes that "this agreement presupposes that each trusts that the other will keep his word ... it presupposes that each will trust that the other has made keeping his word an inviolable law for himself" (GNR: 3:138). Since honesty and trust are moral factors that rely on the good will of each to remain committed to the law, this is an inadequate basis for the mutual security required for personal freedom.

While mutuality is the hallmark of recognition as characteristic of non-moral right in theory, Fichte argues that in practice mutual recognition is implicitly moral and therefore incapable on its own of sustaining secure relationships of right. Fichte introduces the *law* of coercion, a law that operates with "mechanical necessity" to return coercive punishment for violations of right, as the only route to guarantee security when "honesty and trust have been lost" (GNR: 3:139). The importance of this moment and its solution for Fichte's overall theory becomes clear later when he writes that the state "is constructed on the premise of universal mistrust" (GNR: 3:244). This move has been the source of criticism of Fichte's political philosophy because with it he seems to *replace* the relationship of recognition with the law of coercion (Williams 2002). Recognition may be the basis of *natural* right, but positive right in a commonwealth is based on the *failure* of recognition, and coercive laws are needed to do the work in ensuring rightful action that the good will would otherwise accomplish. Fichte concludes that "there is no *natural* right at all in the sense often given to that term" (GNR: 3:148) because a rightful relation only exists in a commonwealth under positive coercive laws. Mutual recognition is a fictional basis for theorizing right, but it cannot be relied upon in practice.

If the mutual regard for each other's freedom is not the source of the bindingness of right in the commonwealth, how does Fichte think of *personal freedom through the will of the sovereign*? Clarifying an ambiguity in Kant's conception of right, Fichte insists that the bindingness of right stems not from a necessary obligation constitutive of rationality itself, but rather solely from the individual's voluntary consent. He thus departs from Kant's view that there is a categorical imperative of *right*, an obligation, to leave the state of nature, writing, "I live in community specifically with them as a result of my free decision, not through any obligation" (GNR: 3:14). Fichte takes

pains to highlight this voluntary aspect of the political in contrast to the original obligation of morality:

I am in conscience, through my knowledge of how things ought to be, bound to limit my freedom. But this moral obligation is not at issue in the doctrine of right; each is only bound through the voluntary decision to live in society with others, and if someone does not at all want to limit his free choice, then within the field of the doctrine of right, one can say nothing further against him, other than that he must then remove himself from all human community. (GNR: 3:10–11)

The doctrine of right does not contain grounds for obligating individuals to remain in human community, but only grounds for saying how they must act *if* they have decided to live with others. The law of right thus has “hypothetical validity” (GNR: 3:89), commanding how you must act *if* you will human community, for such a community is possible only under the conditions of right. This hypothetical rather than categorical validity is closely related to the claim in the recognition argument that *theoretical consistency* is the basis of appeal in the pre-civil condition. The hypothetical law demands that *if* you act in a certain way you must also act in another way (if you expect recognition from others you must recognize others in turn). Though within the recognition argument Fichte presents the law of thought as a constitutive condition of individuality, in practice this law is not inherently binding on the will. As Fichte puts it, “consistency here depends on the freedom of the will, and it is not clear why someone should be consistent, when he *need* not be; it is just as unclear why he should *not* be consistent” (GNR: 3:86). A theoretical rule does carry obligation with it, so the theoretical consistency of recognition and right depends for its practical validity on the free decision of individuals to remain in relations with one another.

Given his claims that one enters the state from mutual distrust and through a purely voluntary act, it is surprising (and often overlooked) that Fichte presents an argument that the commonwealth should be considered an *organic whole*. After taking what looks to be a highly individualistic turn, Fichte endorses a strong individual–whole unity, though again this is a unity that does not have a moral basis. Fichte writes that “the real bond that unites the different individuals” is the “uncertainty as to which individual will first be transgressed against” (GNR: 3:203). Since each individual does not know if his property will be the first to be violated, or if he will be the first to need protective assistance in defending his property, and since all individuals are in the same boat, they are unified by the common contingency of their property and thus come to a mutual understanding of their dependence on the whole. This is the basis of what Fichte calls the “*unification contract*,” through which “the individual becomes a part of an organized whole, and thus melts into one with the whole” (GNR: 3:204). It is striking, given Hegel’s attack on Fichte as a prototypical individualist, that Fichte contrasts his own account of an organic unity with an account “of an ideal aggregation of individuals” (GNR: 3:207). In the organic whole, each part has its particular function through which it helps maintain the whole, and each part is

dependent on the whole for its continued existence. The problem with this argument is that the strong unity claim in this organic relation does not accord well with Fichte's voluntarism or with his emphasis on coercion as the only motivation for individuals to follow the laws of right. Most importantly, Fichte does not provide a convincing account of *personal freedom under the sovereign will* because the obligations within the state are a function of the pure freedom of voluntary choice. One's individuality is realized within the state, to be sure, but it remains obscure how that determinate individuality expresses one's universal freedom and the value of one's humanity.

Hegel's critique of social contract theory

For Hegel, Fichte's theory of right crystallized much of what had gone wrong with modern political philosophy. The extreme voluntarism of Fichte's contract theory and the assumption that no trust exists are two main symptoms for Hegel of the modern tendency to presume an atomistic individualism and thereby to render genuine freedom impossible. Hegel's criticisms of modern political philosophy derive from his conception of the unity of self-consciousness. While Kant and Fichte also oriented their philosophies by the unity of self-consciousness, Hegel reconceives this unity – which he describes as “being with oneself in otherness” – in order to establish an identity of the subject and the world. For our purposes, the essential move is to establish a unity of subject and world in action such that there is no sharp divide between internal and external freedom. Kant and Fichte fail to capture this unity in their political theories in failing to conceptualize the outer *expression* of inner moral freedom. Hegel's theory of objective Spirit (*Geist*) builds on Fichte's concept of recognition, but goes beyond Fichte in conceiving of Spirit as a context of successful recognition of freedom in action. Before examining that theory more closely, I first present the motivation of Hegel's views in his critique of social contract theory.

We can approach the criticism of social contract theory through Hegel's conception of the disrupted condition of the individual that he calls *alienation*. An individual is alienated when he cannot identify with his desires or actions as expressions of himself, of whom he takes himself to be. Alienation is a pervasive problem under modern social conditions because social relations are less fixed than in pre-modern times. Individuals are free to choose their own course in life, and social contract theory is on the surface quite attractive because it places an act of individual choice at the center of political legitimacy. For Hegel this consent masks rather than overcomes the alienation of modern individuals. Hegel thinks there is a constructive role of alienation as a liberation from the “immediacy” of mere convention and natural inclination (see Moyer 2008), but he also thinks that modern political philosophy threatens to entrench alienation in public life and to undermine those public values that are crucial to overcoming alienation. On all four of the themes of modern political philosophy, Hegel critiques social contract theory for failing to show how, in the public sphere of right, actions are valued as expressions of the deepest concerns of individuals.

Hegel criticized the sharp separation in modern political philosophy between right and morality from the beginning of his engagement with political philosophy. In

action on ethical norms properly conceived, the individual's ethical will is not simply private or inner, and the public bindingness of right is not primarily a function of the physical force of coercive laws. He writes in the early "Natural Law" essay of Fichte's separation of right and morality, "neither legality nor morality is absolutely positive or genuinely ethical. And since each of them is just as positive as the other, both are absolutely necessary; and the possibility that the pure concept and the subject of right and duty are *not* one must be posited unalterably and without qualification" (W: 2.470; N: 442). In Hegel's language at this time, the "positive" is what is binding on the will. The "pure concept" is the activity of self-consciousness that he takes to be the ground of all freedom and normativity. If there are two separate domains that each bind the will in different and irreconcilable ways, then the subject as a whole can never completely express the concept of freedom in her action. The "genuinely ethical" is binding on the will without remainder, such that the individual can express free subjectivity completely in action.

The possibility of a non-alienating unity of the individual and social is foreclosed, according to Hegel, when *securing property through common coercive power* is the basis of the political system and fear of coercion is the fundamental motivational force in the lives of individuals. Hegel objects to Fichte's assumption of universal mistrust because it makes a social order based on shared value impossible. In the "Natural Law" essay Hegel writes,

Fichte expresses the matter in a more popular way as the presupposition that "honesty and trust have been lost." On this presupposition a system is built whereby both the concept and the individual subject of ethical life are supposed to be united despite their separation, though the unity is on this account only formal and external, and this relation between them is called "coercion." In this way the external character of oneness is utterly fixed and posited as something with absolute being-in-itself; and thereby the inner life, the rebuilding of the lost honesty and trust, the union of universal and individual freedom, and ethical life itself, are made impossible. (W: 2.471; N: 442-3)

When Hegel writes of "the concept and the individual subject of ethical life," he is referring to the universal ground of normativity (the concept, self-consciousness) and the subjectivity of particular individuals. They are supposed to be united in Fichte's system because self-consciousness is supposed to be the ground of norms binding on the individual subject. But for Fichte coercion is what in fact binds the will to act on right. Further, it is the threat of punishment by the state that holds society together, and the union of different individuals is external in the sense that only an outside force binds different individuals together. What Hegel calls "the union of universal and individual freedom" is the leading characteristic of Hegel's own conception of Ethical Life. It is the non-alienated condition in which individuals act on particular purposes that are simultaneously realizations of the universal. A state based on universal mistrust, as Fichte's is, can never hope to overcome the mistrust both between individuals and between the individuals and the state.

Hegel's critique of social contract theories for basing authority on the individual will is largely a critique of the model's failure to adequately capture the *freedom through the will of the sovereign*. He finds fault with the contract view of the state for making the sheer decision of the individual the entire basis of allegiance to the state. In the *Philosophy of Right* Hegel singles out Rousseau and Fichte for criticism:

[They] regarded the universal will not as the will's rationality in and for itself, but only as the *common element* arising out of this individual will *as a conscious will*. The union of individuals within the state thus becomes a *contract*, which is accordingly based on their arbitrary will and opinions, and on their express consent given at their own discretion; and the further consequences which follow from this, and which relate merely to the understanding, destroy the divine [element] which has being in and for itself and its absolute authority and majesty. (PR: §258)

Basing political legitimacy on "the conscious will" rather than on the "will's rationality in and for itself" means leaving it up to the arbitrary will of the individual to decide whether or not he owes any allegiance to the state. Hegel's argument here does not really do justice to the resources of social contract theory (see Neuhaus 2000), which can account for the rationality of the will as stemming from universal goods secured by the state. Yet even if a more robust rationality is available to social contract theory, Hegel's main charge, which is that the contract model cannot capture the objective value that undergirds social relations, still holds.

On the last of our four themes, the *social constitution of free agency*, Hegel is very emphatic that individuals only come to be who they are within society. He differs from Rousseau and Fichte because he takes this fact to count decisively *against* the social contract model. There is no question for Hegel of individuals choosing to enter society from a state of nature outside of the actual state, and this lack of choice makes the entire idea of a social contract unintelligible. Hegel writes against thinking of the state as a contract, "But in the case of the state, this is different from the outset, for the arbitrary will of individuals is not in a position to break away from the state, because the individual is already by nature a citizen of it" (PR: §75A). In a business contract one can think of opting out of the agreement, but this is not the case with the state, because "the individual is already by nature a citizen" of the state. One might respond to this objection that the social contract is only hypothetical, and serves as a standard for judging laws regardless of whether an actual act of contract did take place or could have taken place. Hegel would say that this move to the hypothetical is just a further symptom of the tendency to look past the existing norms within the state to a formal model of rationality that abstracts from the way citizens actually live and the values that enable societies to flourish.

Property and ethical value in Hegel's *Philosophy of Right*

Expositions of Hegel's practical philosophy often set out from his conception of Spirit, and take as a central task unpacking the claims about the self-realization of Spirit in history. While I do not want to deny the importance of Spirit for Hegel's account, I want to emphasize that Hegel's theory involves the realization of ethical *value*. The overarching value for Hegel is freedom, and he holds that free agents realize a multiplicity of values in ethical action. The concepts of individuality and recognition drive the dialectical development of right in Hegel, just as they did in Fichte, yet in Hegel's hands these concepts are put in the service of a conception of value and of the expression of value in action. Though Hegel preserves many of Fichte's key distinctions, including that between right and morality, the distinctions are relativized and ultimately overcome in the account of *Sittlichkeit* or ethical life.

Central to Hegel's *Philosophy of Right* is the idea of the "free will" (see also Wood's account in the previous chapter), which he analyzes in terms of the three logical moments of universality, particularity, and the comprehensive moment of individuality. Hegel identifies the first moment with the French Revolution: it is the moment of abstract universality, which Hegel calls the "absolute freedom" of abstracting from all given determinations of the will. The second moment of the will is its particularity, the willing of something *determinate*, the capacity to commit oneself to a definite action with a definite goal. The third, integrative moment is that of individuality, the "self-referring negativity" (PR: §7) that incorporates the other two moments and represents the full concept of the free will. The will's individuality, is the capacity to identify with determinate actions *as expressions of universal freedom*. Hegel's example is friendship (PR: §7A), a commitment to a specific person that limits one's willing while realizing a common, universal relationship. One remains "with oneself" in the relationship because friendship is mutual recognition in which one sees oneself reflected in the other. Hegel does not base his political theory on the model of friendship, which remains at the level of "feeling," but he does think of the reciprocity of friendship as continuous with the more concrete institutionalized reciprocity of family and citizenship. In the latter case our relationships are mediated through universal laws, but the idea that we are *expressing* our individuality in acting within the state remains the same.

A major challenge in reading the *Philosophy of Right* is that, by contrast to Hobbes's *Leviathan* or even Fichte's *Foundations*, the underlying account of the human subject is assumed rather than given in the text. The account is nothing less than the "Philosophy of Subjective Spirit" that forms the first part of the *Philosophy of Spirit* (including anthropology, phenomenology, and psychology). For our purposes the most important dimension missing from the *Philosophy of Right* is the phenomenological account of the generation of "universal self-consciousness" and personhood through the struggle for recognition. Hegel sums up this account in writing of the person as "his own property" (PR: §57),

The point of view of the free will, with which right and the science of right

begins, is already beyond that untrue point of view whereby the human being exists as a natural being and as a concept which has being only in itself, and is therefore capable of enslavement. This earlier and false appearance is associated with the spirit which has not yet gone beyond the point of view of its consciousness; the dialectic of the concept and of the as yet only immediate consciousness of freedom gives rise at this stage to the *struggle for recognition* and the relationship of *lordship and servitude*. (PR: §57)

In the *Philosophy of Right* Hegel assumes the concept of the person that he first developed in the *Phenomenology of Spirit's* account of the struggle to the death over recognition and the master-servant relationship (see Wood 1990 on the systematic place of that struggle in Hegel's ethics). The struggle for recognition is the social constitution of the *person* as a being capable of expressing his will in the external world, and thus as a being capable of owning property.

In Hegel's terminology, the capacity of personhood is the distinctive moment of the *universality* of the free will. Persons distinguish themselves from each other through their property-claims, but these claims say nothing distinctive about the *individual* person, who has a title to property sheerly by virtue of the capacity of personhood that is identical for all. Recognition is implicit throughout the *Philosophy of Right*, and explicit at certain key junctures, such as in the transition from property to contract within "Abstract Right." Hegel makes the transition from property to contract in writing "This relation of will to will is the true distinctive ground in which freedom has its *existence*" (PR: §71). It is important for Hegel, and for understanding his take on the theme of *securing property through coercion*, that contract and the recognition relationship are developed independently of coercion. It is not through coercion that we first can claim a right, but rather we claim a right on the basis of the capacity of the will to relate to other agents as free. Hegel notes that his view differs from others that define right in terms of coercion: "To define abstract right – or right in the strict sense – from the start as a *right* which justifies the use of coercion is to interpret it in the light of a consequence which arises only indirectly by way of wrong" (PR: §94). The right for Hegel is "the *existence* of the *free will*" (PR: §29), and the coercive element of right is just one (very important) determination of right. To think it is part of the concept of right itself is to misconstrue the freedom and recognition that define right.

Some of the most important conceptual moves in Hegel's *political* theory come in "Morality," the second major sphere of right presented in the *Philosophy of Right*. He introduces the concept of the *subject* as a *particular* agent with rights defined in terms of his own particular perspective (for a full account of the opening description of "Morality," see Quante 2004). Though there is an inner dimension to the moral capacities, Hegel's conception of morality is aimed at overcoming the merely interior character of morality by developing an account of action on intersubjectively available values. The intention of an individual in action includes a description that captures the value the individual aims to realize in that action. In the section "Intention and Welfare," Hegel emphasizes that modern freedom includes valuing individuals in their particularity and respecting their particular choices. The "right of the subject's

particularity to find satisfaction" (§124) is a right to realize ethical value in one's own particular way.

Hegel's most dramatic move in uniting the claims of morality and right is his endorsement of the *right of necessity*, which is the right to take someone else's property if that is the only way to stay alive. One has a legitimate claim to take another's property when one's life is at stake. Hegel defends the right of necessity on the grounds that to deny someone's right to live is to deny someone's right completely (PR: §127). Recognizing every individual's right to exist is the fundamental imperative of right, so that even a property claim cannot be upheld at the expense of an individual's right as a person. The right of necessity reveals the "contingency of both right and welfare, of the abstract definite existence of freedom as distinct from the existence of the particular person, and of the sphere of the particular will as distinct from the universality of right" (PR: §128). This "right of necessity" relation between the two agents cannot be sustained, however, and requires that right be determined so that such justified breaches of mutual recognition do not occur. The contrast of this conflict with the conflict over property claims in the state of nature account reveals the fundamental difference between Hegel and the social contract tradition. Hegel's conflict is between two clearly justifiable rights rather than between a malevolent usurper and the rightful property owner. The goals of the two accounts are also clearly different. Rather than mere security as the goal of the new determination of right, the resolution of the conflict between two legitimate rights is a comprehensive conception of value that can underwrite a shared conception of justice.

From the need to overcome the right of necessity Hegel develops an overarching moral purpose that he calls "the Good." Although the immediate context of Hegel's introduction of the Good is to define a moral purpose for the individual moral agent, as "*the absolute final purpose of the world*" (PR: §129) the Good is also the abstract purpose of political institutions. Hegel's political institutions are oriented towards achieving value rather than simply securing rights-claims. This emphasis on value brings him closer to utilitarian conceptions of ethics and politics, though the idea of a simple maximization rule is quite foreign to his conception of right. The Good actually formulates *as a purpose* all the previous claims of right, so that no real dichotomy holds between the deontological rights-claims and consequentialist value-maximization. Hegel is also emphatic that he will not sanction violations of individual right for the good of the many.

Hegel's reliance on this Good as the basis of his ethical institutions, including the state, might seem (and has seemed to many) to place Hegel outside of the liberal trajectory of modern political thought, for he seems to reinstate the picture of a paternalistic state that decides what is best (i.e. what conforms to the Good) in the lives of individuals. But this is not Hegel's aim. The state does not legislate a specific morality or institute a specific religion. Hegel's Good is a version of what Rawls has called a "thin theory of the good" (Rawls 1971: 92–3; see also Neuhaus 2000: 266–9, for a discussion of Hegel's conception of the Good as a "thin theory"). It is also the case that Hegel gives no set of essential ends that all individuals must pursue. The requirement that Hegel most often invokes when discussing the state's authority over individuals

is the requirement of military service in wars of self-defense. This duty to the state does not depend on specific morality, but rather on the defense of a basic condition of freedom (it is significant in this regard that he is willing to grant exceptions for religious objections to military service).

The abstract idea of the Good does not determine actions directly, but is only "actual" through individuals and their actions on specific purposes. In the *Philosophy of Right* Hegel identifies conscience with the moment of *particularity* (PR: §136) because it is the specific practical judgment of individuals about what is right and good in particular cases. It is crucial for understanding Hegel's use of conscience to understand that it is a concept of *action*, rather than simply a matter of *belief*. The objection to conscience as a source of public authority, an objection canonized by Hobbes (1994: 212), is that conscience undermines all public laws because it allows the individual to set up his own authority in competition with the authority of the laws. Hegel distinguishes between the "formal" conscience of the individual's own claim to authority, and "true" conscience as the willing of what is actually good (PR: §137), which might lead one to think that he agrees with Hobbes that the laws define what has public authority and conscience is good only to the extent that it agrees with those laws. But for Hegel the direction of authority-conferral runs both from the individual to the social as well as from the social to the individual. Hegel holds that the laws, and the public institutions generally, are indirectly determined through the practice of conscience. Individuals cannot directly claim authority over a public norm because their conscience objects to it. But those norms are modern norms because they enable individuals to act in specific situations on their conscience, and do not systematically undermine the self-identification of individuals with their actions. Individuals have an indirect claim over public norms because they are free to realize those norms in particular ways, through particular actions that are recognized as valuable.

Hegel's institutionalism and holism

Hegel's abstract descriptions of Ethical Life and the state seem to place all the authority in the hands of the institutional powers. His claims that individuals are "accidents" of the institutional "substance" (§145A) that has "an absolute authority and power" (§146), seem at first sight simply opposed to the emphasis on the rights of individuals in liberal political theory. Yet Hegel's claims about the institutional powers are balanced with claims about the authority of individuals within those institutions. Hegel views Ethical Life primarily as a system of value, but within that system individuals are themselves valuable and are sources of transformation of existing values. For every claim that the social substance must be conceived as prior to the individual there is a corresponding claim that the individual must be able to affirm institutional values as his own.

The key to a proper appreciation of Hegel's view is to understand how the subject-oriented rights laid out in "Morality" do real work in determining the institutions of Ethical Life. These rights include the right of self-consciousness, of intention, of subjective freedom, of particularity, and of insight into the good. Hegel writes

of individuals as “ruled” by institutional powers (PR: §145) because the meaningfulness of individuals’ lives is sustained by the institutional system of value. But it is not accidental to the institutions that there are individuals who are self-conscious, who identify with particular actions, and who develop particular interests and projects. Hegel takes Fichte’s point about the generation of individuality through social relations to its logical conclusion, yet Hegel also is able, because of his more expansive conceptions of right and recognition, to think of the claims of individuals as expressions of value rather than as coercive rights against other agents. His account of civil society, and especially his account of the state, have the goal of overcoming Fichte’s divide of morality and right, and thus of restoring the idea of a public morality expressed in institutions.

In his treatment of the legal system (which, according to his division of spheres of institutional authority, is part of civil society) Hegel brings moral and legal considerations together while respecting the distinctive claims of the moral subject. He dismisses with astonishing brevity the right of positive law over an individual’s morality. He writes, “Since morality and moral precepts concern the will in its most personal [*eigensten*] subjectivity and particularity, they cannot be the object [*Gegenstand*] of positive legislation” (PR: §213). This restriction reflects the right to conscience that Hegel claims the State must respect – “conscience is a sanctuary which it would be *sacrilege* to violate” (PR: §137). Hegel’s bark about the restrictions on conscience’s authority is thus worse than his bite, for he explicitly bars legislation that would require moral action or that would make one’s moral disposition the court’s business.

On the side of integrating morality and right, Hegel endorses a legal institution, a “court of arbitration” or a “court of equity,” that brings moral considerations to bear on legal cases in a way that overcomes the sharp split of morality and right. He writes, “Equity involves a departure from formal right in the light of moral or other considerations, and relates primarily to the *content* of the legal action” (PR: §223). While the legal system is primarily a realm of procedural justice, here Hegel acknowledges that there may be other (moral) factors that warrant departing from strict procedure. The point of such a court is to take account of circumstances in which there are claims that should override the strict claim of a certain law.

A more striking departure from Fichte’s separation of morality and right comes in Hegel’s thesis of the close interrelationship of rights and duties. Fichte had set up a sharp opposition between the two, mainly relying on the prescriptive character of duty and the permissive character of right. Hegel departs from this conception when he writes that in Ethical Life “*duty* and *right* coincide in this identity of the universal and the particular will, and in the ethical realm, a human being has rights in so far as he has duties, and duties in so far as he has rights” (PR: §155). As opposed to the realm of “Abstract Right,” where the individual has a right and other individuals have the duty to respect that right, in the institutional contexts of Ethical Life one’s right, the existence of one’s freedom, is always connected to a duty. So one has the rights of a father over one’s children in so far as one also has the duty to raise them to live independent lives.

The claim that duty and right coincide is worrisome in the context of political rights because it seems to imply that an individual's rights within the state are coextensive with his duties towards the state. This would seem to mean that one only has the right to do one's duty to the state. But the unity that Hegel espouses is not so far from liberal conceptions as it may seem. The complexity of Hegel's position comes out in his discussion of the individual's relationship to the state. After writing that individuals "have *duties* towards the State to the same extent as they also have rights," he continues,

in the process of fulfilling his duty, the individual must somehow attain his own interest and satisfaction or settle his own account, and from his situation within the State, a right must accrue to him whereby the universal cause becomes *his own particular* cause. Particular interests should certainly not be set aside, let alone suppressed; on the contrary, they should be harmonized with the universal, so that both they themselves and the universal are preserved. The individual, whose duties give him the status of a subject, 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)

The rights and duties are not strictly identical, but rather one does one's duties to the state (which can be as little as paying one's taxes) with the awareness that one's rights ("protection for his person and property . . .") are secured through the state. The decisive strength of the modern state comes from the harmonization of these elements (see also Wood's analysis in the previous chapter). In this harmonization one's freedom is indirectly expressed through public authority, because one's obligation to the state is motivated and justified by the relation of the state to one's own individuality.

In Hegel's conception one achieves *personal freedom through the will of the sovereign* not only through the particular right achieved through the state (outlined in the passage above), but through the operation of the state powers as well. The separate powers in the constitution of the Hegelian state are the sovereign monarch, the executive government ministers, and the legislative representative assemblies. These correspond to the three logical moments of individuality (monarch), particularity (executive), and universality (legislative). In so far as this structure reproduces the structure of the agent's own will, the agent can recognize his own authority in the authority of the state. The most obvious sense in which the concept of individuality informs Hegel's views on the state is in his theory of sovereignty and constitutional monarchy. Though the theory of monarchy may seem not fully modern to us today, Hegel took it to be the clearest expression of the distinctive modernity of his view. The sovereign monarch himself is the power of ultimate decision, the "I will," which expresses the modern achievement of self-determining subjectivity. Hegel contrasts the modern sovereign monarch with the governments of ancient cities that made major decisions based on omens or the signs of birds (PR: §279). We moderns take

our fate to be in our own hands, and we thus take the authority over decisions to lie within the self-conscious individual.

The trouble with Hegel's view of monarchy is that he infers from the principle of individual authority a monarch who is not accountable for his decisions, who *cannot* be held accountable because he stands at the apex of the state. There is reason to doubt, however, that Hegel invests much actual authority in the monarch. Despite his elevated rhetoric about the sovereign in the published text of the *Philosophy of Right*, in the lecture notes published after his death we find many statements to the effect that the monarch usually just signs his name to the decision determined by his ministers and advisors. In a "fully organized state" (PR: §280A) the rationality of state action is secured through the laws and the technical expertise of a well-trained bureaucracy (the executive).

Hegel also has a role for representative bodies within his fully organized state, though it is a lesser role than citizens of democracy would like. One of their main functions is their role in securing the accountability of those officials, namely, "the expectation of criticism, indeed of public criticism" (PR: §301). It is as a force of *publicity* and transparency in the operation of the executive that the representative assemblies serve their most important function. This publicity ensures that their deliberation is more thorough and more explicit. For the everyday operations of the state, however, Hegel is much more confident in the professional civil servants than in the people or their representatives.

The final way that Hegel takes personal freedom to be expressed in public activity is "public opinion," which is the most democratic activity in the Hegelian state. Hegel is skeptical that the marketplace of opinion can play a role in governing, but he does think of it as a bearer of ethical rationality. He writes,

Public opinion therefore embodies not only the eternal and substantial principles of justice – the true content and product of the entire constitution and legislation and of the universal condition in general – in the form of *common sense* (the ethical foundation which is present in everyone in the shape of prejudices), but also the true needs and legitimate tendencies of actuality. (PR: §317)

In other words, ethical content and justice arise through the collective interaction of concretely situated individuals acting on and debating the issues of the day. Hegel's reference here to "the true needs and legitimate tendencies of actuality" indicates his dynamic conception of truth and actuality.

This dynamic conception is at the root of Hegel's philosophy of world history, which is often taken to be a quasi-theological conception of the unfolding of cosmic spirit. But Hegel's philosophy of history, and its relation to his politics, is not so different from Kant's speculations in moral anthropology about the progress of the human race. Hegel too finds an inner telos in human action, leading to the progressive development of human freedom, where freedom involves progressively greater particularization and differentiation. By concluding his *Philosophy of Right* (and the section

of the *Encyclopedia* called "Objective Spirit") with "World History," Hegel in effect brings Kant's speculations about the human species into a more concrete form. World history has the highest right in Hegel's system because it captures, retrospectively, the actual existence of states in their rise and fall. The trajectory of history is towards the greater self-consciousness of freedom. Hegel does not think that world peace is a possibility or even an ideal, for he is a realist about the pervasiveness of conflict among nation-states. Within those states the realization of moral values is essential, but Hegel thinks that the concern for one's own state and its moral well-being does not flow continuously into regard for other states and their citizens.

An open-ended legacy

The political philosophy of German Idealism had an immediate impact in Europe, especially in the 1830s and 40s (see Quante essay below), and in so far as Marx is an outgrowth of Fichte's and Hegel's dialectical philosophy, the influence on actual events over the last two centuries has been massive indeed (see Smith essay below). The influence of their ideas has been more prominent in the last forty years than at any time since 1848, for they have been a central resource in the renewed push to find a philosophical grounding for liberalism. They have been a major influence on the most prominent recent German democratic political philosophers, Jürgen Habermas and Karl-Otto Apel, who define their work in dialogue with the idealists. In the English-language literature, the main line of influence has come through the work of Rawls, on the one hand, and those Hegelian thinkers, such as Alasdair MacIntyre and Charles Taylor, who argue for a communitarian counterposition to Rawls. I close this essay with a brief exposition of the influence on Rawls and a few words on his critics.

There are both Kantian and Hegelian themes in Rawls's masterwork, *A Theory of Justice*. The Kantian aspects draw more from Kant's moral philosophy than from the specific elements of the "Doctrine of Right." In the section entitled "The Kantian Interpretation of Justice as Fairness," Rawls presents his conception of "the original position" as an interpretation of Kant's idea of moral legislation for an ethical commonwealth (Rawls 1971: 251–7). The leading feature of Rawls's original position is the "veil of ignorance," which restricts the knowledge of the agents within the hypothetical contract situation of rational choice. Rawls conceives of this restriction as guaranteeing the *autonomy* of the choice, claiming that a choice based on the knowledge of one's own specific circumstances would be *heteronomous*. Rawls understands his two principles of justice as categorical imperatives in Kant's sense, for they apply "to a person in virtue of his nature as a free and equal rational being" (Rawls 1971: 253). In this interpretation of his theory of justice as fairness, Rawls combines into a single conception the moral, political, and anthropological elements of Kant's view. He is in effect molding together Kant's different levels, and Kant's ambiguities over the separation of morality and right, into a single whole that is suitable for a public *expression* of justice. Though this moralized politics is a departure from Kant's theory in the "Doctrine of Right," it certainly captures the spirit and complexity of Kant's practical philosophy as a whole.

The original position is focused on the rational choice of the single moral individual, yet Rawls also advocates a strongly social conception of justice that draws on elements from Hegel. The “subject” of social and political justice is the *basic structure* of society. This structure includes the major social and political institutions, including the family, and thus resembles the system of institutions that Hegel calls “Ethical Life.” Rawls’ normative goal is not simply to secure principles of justice, but rather to present a picture of a “well-ordered society” that is structured by those principles. One of the “primary goods” in such a society is the “social bases of self-respect” (Rawls 1971: 440–6), which ties the justness of institutions to the recognition that individuals achieve therein. His theory thus presents institutions as forms of intersubjectivity akin to Hegel’s configurations of the free will in contexts of mutual recognition. Finally, in his late “Restatement” of his position, Rawls specifically mentions Hegel’s theme of reconciliation as a goal of political philosophy (Rawls 2001: 3–4). The task for Rawls is to illuminate the rational within modern social organization, to show why we should accept the political order in roughly the form that it has taken even though it does not live up to anyone’s ideal of justice.

Despite the Hegelian elements in Rawls, the communitarian attack on Rawlsian liberalism has drawn a good deal of ammunition and inspiration from Hegel’s conception of Ethical Life. The main point of contention is the *priority* relationship between the individual and the social “substance.” Hegel is very clear that he parts company with social contract theories in thinking of the social substance as prior to the individual will. The communitarian charge is that the abstract detached conception of the individual contractor is a fiction that is positively harmful in that it asks individuals to distance themselves from the very sources of meaning that make life worth living. The charge is that the idea of a value-neutral or value-free procedure that generates determinate answers to real political questions is an illusion. Either no such answers are generated, or certain liberal values are illicitly given precedence over all others. To the extent that Rawls does endorse substantive values (such as autonomy), he is committing himself to elements that are bound to be unacceptable to some citizens. The costs of adopting the self-image of liberal individualism, according to this line of attack, include alienation, social fragmentation and loss of meaning. In its extreme form, communitarianism eschews the language of rights altogether, a move that would certainly not have found favor with Hegel. Most communitarians today are not willing to part company with liberalism on the question of certain inalienable individual rights, and like Hegel they seek instead to reorient our thinking about those rights to emphasize their dependence on forms of sociality.

Partly in response to worries that his conception of the Good was too restrictive, in his *Political Liberalism* Rawls (1993) abandoned the strong Kantian interpretation of justice as fairness in favor of a narrow *political* interpretation. A theory is comprehensive for Rawls if it “applies to all subjects and covers all values” (Rawls 2001: 14), while it is political if it is limited to the context of political cooperation. Rawls came to this position as a way to deal with what he calls “the fact of reasonable pluralism,” the idea that there are many reasonable and yet mutually incompatible moral, religious and philosophical views, and that the political order should not impose one such a

view on all citizens. Rawls's distinction in his later work between a political and a comprehensive theory of justice draws him closer to Kant's specifically political theory of external freedom. Recently Thomas Pogge (2002) has mapped Rawls' distinction onto Kant's "Doctrine of Right" and claimed that Kant's distinction between the moral and the right makes Kant's view "political," or non-comprehensive. If the question of right can be solved even for a nation of devils, in Kant's phrase, then right does not presume any allegiance to a moral view and it can therefore be considered purely political.

Though Fichte's work has received the least attention in English-speaking countries, his concept of recognition is the most promising conceptual tool for the development of modern liberalism. The communitarian reaction was largely a worry about forms of human relatedness, and to counter this attack liberals have been stressing the compatibility of liberal rights with thick forms of community. Liberals have rightly insisted that they do not need to deny Fichte's claim that humans only become humans with other humans, nor to deny that we should foster institutional structures that make mutual recognition possible. The liberal defense of basic rights is a defense of the basic efficacy that Fichte referred to as "original right," which is secured through the mutual recognition of one another's claims to a sphere of activity and to the capability to act within it. Hegel already showed in his transformation of Fichtean recognition how we can think of individual freedom and ethical community as two complementary aspects of a single conception of public action. The challenge then for theorizing further forms of mutual recognition is to understand which social conditions are necessary to sustain our efficacy as agents living lives that are both meaningful and open to the claims of others.

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