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Beyond Sovereignty: The Political Theology of Friedrich Schleiermacher

Kuo, Enoch H.

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BEYOND SOVEREIGNTY:

THE POLITICAL THEOLOGY OF FRIEDRICH SCHLEIERMACHER

Enoch H. Kuo

A DISSERTATION

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OF PRINCETON UNIVERSITY

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Abstract

In the opening decades of the 19th century, the philosopher and theologian F.D.E. Schleiermacher stood at the head of an ultimately unsuccessful reform movement that sought to effect political transformation in Prussian society by focusing on the unification and democratization of the church. This dissertation supplements existing historical and biographical accounts of Schleiermacher's role in the Prussian Reform Movement by situating central concepts in his political philosophy alongside the arguments of some of his near contemporaries, especially Kant and Fichte. Schleiermacher's advocacy for a Presbyterian form of church government reflects a commitment to the ongoing relevance of post-Reformation ecclesiology for modern politics and undergirds his non-liberal account of the separation of church and state. His insistence on the positive and communal grounding of individual rights leads him to criticize liberal rights-discourse for inadequately appreciating the unique individuality of individuals and to develop a unique non-statist account of collective property sensitive to new political-economic arguments about the significance of the division of labor. When situated against the backdrop of post-Revolutionary democratic thought, Schleiermacher's continued commitment to a hereditary monarchy can be recognized as the product of a creative revisionist account of republican liberty grounded in a non-constitutionalist interpretation of the significance of the separation of powers for representative democracy that privileges the right of petition over the right to elect the chief executive. The centrality of the concept of the nation in Schleiermacher's account of state-formation is situated within a non-conventional account of race as a social-construction that allows for the relativization of the current bounds of nationhood. The way in which categories of identity and political economy intersect in Schleiermacher's vision of state-formation also allows him to envisage a creative way of overcoming inequality in modern states that he posits as necessarily "aristocratic" and transitional in character. In a context where the basic structures of liberal democracy are under increased pressure, Schleiermacher's political theological vision undermines fundamental assumptions about the concept of sovereignty in the modern state and provides a glimpse into the unrealized possibility of a non-liberal democratic future.

To DHK

Your turn.

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The completion of a dissertation, though certainly a task mostly borne by a singular individual, is nevertheless by no means an entirely solitary task. Within any such work hovers the influence of an almost innumerable number of interactions and conversations filled with advice, instruction, encouragement, objections, clarifications, distractions, and permutations of the same.

I am especially grateful for the Princeton Department of Religion, which has been my academic home now for almost a full decade (discounting a few years in-between). The opportunity to study and conduct research in such an environment with excellent teachers and colleagues has been an incredible privilege whose full effects I am still in the process of coming to realize. I have been fortunate enough to have had the opportunity to study with faculty and students from almost all of the various subfields and am all the better for it. Special thanks, however, have to be offered to the members of the "religion, ethics, and politics" and "philosophy and religion" subfields. From the moment that he joined the faculty, Gabriel Citron has been incredibly generous with his thoughts, time, and advice; Leora Batnitzky's open and forthright teaching has also made seminars and discussions always an intellectually stimulating experience. Though no longer at the department, Jeffrey Stout has also made an indelible impact: it was he who first encouraged me both to pick up Schleiermacher and to consider pursuing the academic life. But of the faculty, the most thanks must go to my two co-advisors Eric Gregory and Andrew Chignell, without whom this project would not have been possible at all. Andrew's eye for detail and specific questions about how the reasoning worked constantly pushed me to better understand and explain the material that I was working with; on the flip side, Eric's concern for the big-picture, the "so-what?", and incredible sensitivity to an incredible swath of interdisciplinary literatures and conversations constantly brought fresh new perspective on the subject. The ways in which both exemplify an impressive intellectual depth and breadth, and the ways in which they somehow manage to draw connections and navigate across

conversations with interlocutors that otherwise would have little to do with one another are a constant source of inspiration to me. I am thankful for their patience and willingness to bear with my own idiosyncrasies and their dedication to helping me to grow as a thinker and scholar.

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having a chance to work with and alongside other graduate students working on creative genre-bending projects was always a delight. Daniel Garber's various seminars and the amazing group that has gathered to study early-modern texts together have also been a key part of my formation. The focus on the close reading of primary texts with an eye to intertextual echoes has served as invaluable practice for being able to do the work that I am trying to do now.

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No project such as this is possible without the tireless help and energy of librarians and administrators. I am grateful to Wayne Bivens-Tatum for his help in getting access to resources over the course of the pandemic and its aftermath. Securing electronic access to some of the key texts allowed me to begin a lot of the reading and translating that would underlie this project when full library access had not yet been restored. Kerry Smith, Mary Kay Bodnar Lee Horinko, and Florian Fues (most of all) have also been the often-unnoticed background making sure that everything runs smoothly over the course of my studies.

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school years. I simply would not be who I am without the formation that I had growing up among the Great Lake churches and the impetus that it has given and still gives me to try to think about the possibility of the unity of the church beyond denominationalism. I am especially grateful for the support that I have received from brother Jonathan P'ng, though I cannot say that I have yet been able to offer a proper return for the investment. The issues have turned out to be far more complicated than I originally anticipated, though I have also not yet given up hope on trying to find some resolution to them. Manna Christian Fellowship and its community has also had big role in my time at Princeton. From giving me the theological imagination to pursue further academic study, to pushing me to think through how to work through some of the big controversies of the day, the friends and companions that I have had the privilege to work, teach, study, pray, and worship with along the way will not be forgotten. Finally, I am grateful to Stone Hill Church, Graceway Presbyterian Church, and Joy Christian Fellowship, not only for welcoming me into the community, but for providing spaces where I could grow as a teacher and educator (and being willing to listen to what I have to say). I am especially grateful to Charles and Boas Park, who went even to the extent of opening their home when I would occasionally need a place to crash.

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SDG.

Key Texts and Abbreviations

Schleiermacher

KGA	*Kritische Gesamtausgabe*, ed. Hans-Joachim Birkner et al. (Berlin/New York: de Gruyter, 1980-), cited by division and volume number followed by page number. For this project, the most important references will be to the 1814 lecture "On the Concepts of the different Forms of the State" in I/11 and Schleiermacher's manuscript for his 1829 and 1833 *Staatslehre* found in II/8. The former can be found in English translation in *The Political Thought of the German Romantics*, ed. H.S. Reiss (Oxford: Basil Blackwell, 1955), 173-202.
BE	*Brouillon zur Ethik / Notes on Ethics (1805/1806)* and *Notes on the Theory of Virtue (1804/1805)*, trans. John Wallhausser and Terrence N. Tice (Lewiston, NY: The Edwin Mellen Press). German citations will be from WA II and follow the English after a semicolon. See also *Brouillon zur Ethik (1805/06)*, ed. Hans-Joachim Birkner (Hamburg: Meiner, 1981).
CS	*Christliche Sittenlehre / Selections from Friedrich Schleiermacher's* Christian Ethics, trans. James M. Brandt (Louisville: Westminster John Knox Press, 2011). For the German text, see F.D.W. Schleiermacher, *Christliche Sittenlehre (Vorlesung im Wintersemester 1826/27): Nach größtenteils unveröffentlichten Hörennachschriften und nach teilweise unveröffentlichen Manuscripten Schleiermachers*, ed. Hermann Peiter (Berlin: LIT Verlag, 2010).
E	*Ethik / Lectures on Philosophical Ethics*, cited by English page number, then by doctrine (highest good = HG; virtue = DV; duty = DD), section number or header, and proposition number in parentheses, followed by the German page number. The English, unless otherwise noted, is drawn from Friedrich Schleiermacher, *Lectures on Philosophical Ethics*, ed. Robert B. Louden (Cambridge: Cambridge University Press, 2002) while the German, unless otherwise noted, is drawn from WA II. The choice of WA II is on account of the fact that this is the edition used by the most recent German critical editions of the text given that the KGA volume is still yet in the process of being produced. See also, Schleiermacher, *Ethik (1812/13),* ed. Hans-Joachim Birkner (Hamburg: Meiner, 1981).
GL	*Glaubenslehre / Christian Faith*, cited by proposition and paragraph number. Unless otherwise noted, English translations will be drawn from Friedrich Schleiermacher, *Christian Faith: A New Translation and Critical Edition*, trans. Terrence Tice, Catherine Kelsey, and Edwina Lawler (Louisville: Westminster John Knox Press, 2016). German text found in KGA I/7.
KD	*Kurz Darstellung / Brief Outline of Theology as a Field of Study, 3rd ed.*, trans. Terrence N. Tice (Louisville: Westminster John Knox Press, 2011).
OG	*On the Glaubenslehre: Two Letters to Dr. Lücke*, trans. James Duke and Francis Fiorenza (Chico, CA: Scholars Press, 1981).

R	*Über die Religion: Reden an die Gebildeten unter ihren Verächtern* (1799) / *On Religion: Speeches to its Cultured Despisers,* trans. and ed. Richard Crouter (Cambridge: Cambridge University Press, 1988). See also, KGA I/2, 185-326.
R3	*Über die Religion: Reden an die Gebildeten unter ihren Verächtern* (1821) / *On Religion: Speeches to its Cultured Despisers*, trans. John Oman (Louisville: Westminster John Knox Press, 1994). See also, KGA I/12.
WA	*Schleiermachers Werke: Auswahl in vier Bänden,* ed. Otto Braun (Leipzig: Felix Meiner, 1910-13). The most relevant volume is the second, which contains texts from Schleiermacher's manuscripts for the 1805/06, the 1812/13, and the 1816/17 lectures on philosophical ethics.

Kant

Works from Kant will be cited in by Akademie volume and pagination. Unless otherwise specified, English translations will be drawn from the Cambridge edition translation.

CF	*The Conflict of the Faculties* in *Religion and Rational Theology*, trans. and ed. Allen Wood (Cambridge: Cambridge University Press, 1996).
CPJ	*Critique of the Power of Judgment*, trans. and ed. Paul Guyer (Cambridge: Cambridge University Press, 2000).
MM	*The Metaphysics of Morals* in *Practical Philosophy*, trans. and ed. Mary J. Gregor (Cambridge: Cambridge University Press, 1996).
PP	*Toward Perpetual Peace* in *Practical Philosophy*, trans. and ed. Mary J. Gregor (Cambridge: Cambridge University Press, 1996).
TP	*On the common saying: That may be correct in theory, but it is of no use in practice* in *Practical Philosophy*, trans. and ed. Mary J. Gregor (Cambridge: Cambridge University Press, 1996).

A Note on the Use of English Translations

Where possible, I have made use of extant English translations in the citation of texts so as to allow the dissertation to be more readable for the non-German speaker. At the same time, however, the wide number of differing translators and the lack of a consistent terminology may sometimes lead to where translators may render words that are the same in the German in differing ways. For instance Terence Tice tends to render *Eigenthum* as *propria* and *Anerkennung* and its various cognates as acknowledgment; meanwhile, Robert B. Louden will adopt terms closer to those adopted by translators of Kant and the later German idealists in rendering the former as "property" and the latter as "recognition. Where this may lead to confusion, I have included the original German vocabulary in square brackets alongside the English translation. I have only chosen to completely retranslate the passage when I believe that the translation is misleading at a sentence- or paragraph-level rather than at the level of the individual word.

Introduction

I. Theologian of the Church or Political Radical?

Nine days after the death of F.D.E. Schleiermacher in 1834, an anonymous obituary published in the Augsburg *Allgemeinen Zeitung* would launch a fierce conflict over the proper way to appreciate Schleiermacher's legacy.[1] The author was the young writer and activist Karl Gutzkow, who, in 1829 had travelled to Berlin in order to study under Schleiermacher and Hegel before beginning his literary career. The Young Germany movement of which he was a key figure would promote a pro-democracy position against the perceived apoliticism of literary Romanticism, playing a key role in events leading up to the eventual (failed) revolution of 1848. In stark contrast to the growing number of glowing accounts of Schleiermacher's pious death as a crowning end to a life dedicated to the service of the public, Gutzkow would suggest that the Schleiermacher he had known had effectively already been dead. Something of Schleiermacher's spirit had died three years ago when he had laid his son Nathanael to rest.

The Schleiermacher that Gutzkow had remembered was not so much the image of the pious and obedient servant of the church and the king much-lauded in the days following his death as he was a tireless and uncompromising advocate and champion of radical political and ecclesiastical reform. With his obituary, Gutzkow protested the taming and sanitizing of Schleiermacher's life and legacy. Almost up until the end, the young writer insisted, the Schleiermacher who had begun his public career with revolutionary romantic writings and inspired the youth with his powerful dialectical skill "stood with an open profession against the [reactionary] tendencies of the day."[2] The

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[1] An in-depth account of this controversy and the literary productions that accompanied it can be found in Hermann Patsch, "Der 'unpfäffische Schleiermacher. Karl Gutzkow und das Schleiermacher-Bild des Jungen Deutschlands – Zur Konstruktion eines Gegenmythos" *Journal for the History of Modern Theology / Zeitschrift für Neuere Theologiegeschichte* 24:2 (2017): 240-299.

[2] Karl Gutzkow in *Außerordentliche Beilage zur Allgemeinen Zeitung. Nro. 77. 1834. (23. Februar.)*, 306. Transcribed in Patsch, "Der 'unpfäffische Schleiermacher," 293. Translation mine.

sudden rehabilitation of the man who had been seen as such a threat that he had to be removed from governmental positions, forced to resign an editorship of a political newsletter, banned from teaching on politics, and surveilled by the secret police was, for Gutzkow, incredibly misleading.[3] Schleiermacher's purported disavowal of a French newspaper's portrayal of him as one of the leading radicals of Prussia, Gutzkow insisted, was a red herring. Schleiermacher's "witty, but somewhat dull" response in a Prussian paper was a reflection of his desires not to be pinned down to a particular party rather than a repudiation of what he had stood for. The purported reconciliation with the king following Schleiermacher's public profession of loyalty that saw Schleiermacher awarded with the Order of the Red Eagle was, Gutzkow insisted, more a projection of conservative hopes than the result of any substantial change in Schleiermacher's convictions.

The exchange between Gutzkow and Schleiermacher's ecclesiastical defenders would come to an abrupt end after Gutzkow was imprisoned after the publication of his inflammatory second novel.[4] But it highlights a dynamic that has long characterized Schleiermacher's political reception ever since the publication of the 1799 *Reden* in a situation too often characterized in terms of an opposition between a secularizing liberalism and a religious conservatism, the characteristic contours of Schleiermacher's politics are all-too-often obscured due to his reputation as primarily a theological or religious thinker. To the extent that his contribution as a political theorist may be recognized at all, it is often only as a participant in the literary production of the early German Romantics, a movement which is often seen as coming to an end upon Novalis' mental breakdown

[3] For more details on Schleiermacher's political biography, see Kurt Nowak, *Schleiermacher: Leben, Werk, und Wirkung* (Göttingen: Vanderhoeck & Ruprecht, 2001) or Matthias Wolfes, *Öffentlichkeit und Bürgergesellschaft: Friedrich Schleiermachers politische Wirksamkeit* (Berlin: De Gruyter, 2004). Theodore Vial gives a brief English-language overview in "Schleiermacher and the State" in *The Cambridge Companion to Friedrich Schleiermacher*, ed. Jacqueline Mariña (Cambridge: Cambridge University Press, 2006), 269-286. See also ch.6 of Theodore Vial, *Schleiermacher: A Guide for the Perplexed* (London: Bloomsbury, 2013).

[4] A critical edition of the work can be found in KGA I/3.

and Schlegel's conversion to Catholicism in the opening years of the 19th century.[5] Dilthey's influential biographical approach to Schleiermacher has led to a healthy scholarly tradition that keeps the politically-salient dimensions of Schleiermacher's biography alive in the secondary literature, but attention to Schleiermacher's political philosophical arguments and vision remains for the most part scant.[6]

History, one could say, has not been kind to Schleiermacher as a political theorist. The existence of a third-wing between liberals and conservatives headed up by Schleiermacher and a few clerical colleagues may be hard to imagine now in a society dominated by a certain version of political liberalism. But, as Robert Bigler and other historians of the Prussian Reform movement have recognized, there was an era where one of the foremost movements for societal reform found its driving impetus in the leaders of the church, a movement that was just as much a struggle for a renewed ecclesiastical identity as it was interested in shaping the contours of the political.[7] Seen as too conservative by liberals and too liberal by conservatives, the failure of Schleiermacher's successors to adequately extract concessions from the king did much to contribute to the shift from reform to revolution, and the reactionary currents which dominated Prussian politics in the aftermath of 1848 gave little space for the movement to find a new iteration.[8] Wilhelm Dilthey's scholarship would lead to a revival of interest in Schleiermacher and the key role he played in

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[5] Frederick Beiser names Schleiermacher as one of three key theorists of the movement which developed a pro-revolutionary alternative to modern conservative and liberal politics alike, but focuses his attention only on the movement's Berlin and Jena years. Fredrick Beiser, *Enlightenment, revolution, and romanticism: The Genesis of Modern German Political Thought, 1790-1800* (Cambridge, MA: Harvard University Press, 1992).

[6] See Wilhelm Dilthey, *Lebens Schleiermacher* (Berlin: G. Reimer, 1870).

[7] For an account of Schleiermacher's place at the forefront of an influential political movement which saw active participation of the clergy in advocating for political and ecclesiastical reforms, see Robert M. Bigler, *The Politics of German Protestantism: The Rise of the Protestant Church Elite in Prussia, 1815-1848* (Berkeley: University of California Press, 1972).

[8] For an account of the roots of the conservative "throne-and-altar" politics which Schleiermacher provided an alternative to, but which would ultimately come to dominate the intersection of religion and politics in the aftermath of the 1848 Revolution, see David L. Ellis, *Politics and Piety: The Protestant Awakening in Prussia, 1816-1856* (Leiden: Brill, 2017) and Laura Claudia Achtelstetter, *Prussian Conservatism, 1815-1856: Ecclesiastical Origins and Political Strategies* (Cham: Springer, 2021).

developing a kind of German national consciousness before unification,[9] but the brief flurry of interest in Schleiermacher's politics in the era of the Weimar republic would just as quickly be eclipsed by the general distrust of any thinker thought to be associated with German nationalism in the post-Nazi era.[10] The second half of the 20th century would see a rehabilitation of interest in the politics of German Romanticism and Idealism, but the explosion of interest in Hegel and his contemporaries has not translated itself into a corresponding revival of interest in Hegel's greatest rival at the University of Berlin.[11] This is no doubt for reasons akin to those that structured the debate between Gutzkow and his interlocutors already in 1834. But in an increasingly post-secular age when the realities of public religion have come roaring back into focus and many basic assumptions about the nature of liberal democratic politics have come to be questioned anew, it may be a time to revisit Schleiermacher's political legacy.

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[9] Already in 1861, Wilhelm Dilthey would likewise find himself calling for a reconsideration of Schleiermacher's political significance from those who reach too quick a conclusion regarding his political irrelevance on the basis of a cursory reading of the *Reden*. Wilhelm Dilthey, "Schleiermachers Politische Gesinnung und Wirksamkeit" in *Gesammelte Schriften, XII. Band* (Stuttgart: B.G. Teubner Verlagsgesellschaft, 1960), 1-36. In a recent new work on Germany during the first world war, Robert E. Norton also highlights the influence that Schleiermacher had on Troeltsch's vision for a democratic Germany. Robert E. Norton, *The Crucible of German Democracy: Ernst Troeltsch and the First World War* (Tübingen: Mohr Siebeck, 2021). Schleiermacher's politics would also be the focus a number of monographs from the Weimar period. See Günther Holstein, *Die Staatsphilosophie Schleiermachers* (Bonn: Kurt Schroeder, 1923) and Ernst Müsebeck, *Schleiermacher in der Geschichte der Staatsidee und des Nationalbewußtseins* (Berlin: Verlag von Reimar Hobbing, 1927). In the aftermath of National Socialism, Hegel, and even some of Schleiermacher's early German Romantic colleagues have seen political rehabilitation, but Schleiermacher has yet to see reappropriation.

[10] Much can be traced back to Isaiah Berlin's decision to characterize Herder and many of those working in his wake as "counter-Enlightenment" thinkers, despite the ways that some – including Herder itself – could be better seen as critical of the Revolution in order to advance its goals. See esp. Isaiah Berlin, "The Counter Enlightenment" in *Dictionary of the History of Ideas: Studies of Selected Pivotal Ideas, vol 2.*, ed. Philip P. Wiener (New York: Charles Scribner's Sons, 1973), 100-112. See also Karl Popper, *The Open Society and Its Enemies* (Princeton: Princeton University Press, 2013 [1945]).

[11] There are a few exceptions. One mid-century biographical work in the vein of Dilthey's approach exists in the form of a study of Schleiermacher as a "nationalist". See Jerry F. Dawson, *Friedrich Schleiermacher: The Evolution of a Nationalist* (Austin: University of Texas Press, 1966). The "Schleiermacher revival" associated with Günther Meckenstock and the new *Kritische Gesamtausgabe* would also see the production of a number of articles and essays on Schleiermacher's politics. Kurt Nowak's work has done much to try to situate Schleiermacher's *Reden* within its more immediate post-Revolutionary context, and his student Matthias Wolfes has produced a detailed intellectual-biographical study of the development of Schleiermacher's political thought during the key years between 1806-1815. See Kurt Nowak, *Schleiermacher und die Frühromantik: Eine literaturgeschichtlcihe Studie zum romantischen Religionsverständnis und Menschenbild am Ende des 18. Jahrhunderts in Deutschland* (Berlin: de Gruyter, 1987) and *Schleiermacher: Leben, Werk und Wirkung* (Göttingen: Vandenhoeck & Ruprecht, 2002); Matthias Wolfes, *Öffentlichkeit und Bürgergeschellschaft: Friedrich Schleiermachers politische Wirksamkeit* (Berlin: de Gruyter, 2004). See also Miriam Rose, *Schleiermachers Staatslehre* (Tübingen: Mohr Siebeck, 2011). An in-depth, analytic treatment of his political philosophy, however, remains to be seen.

II. Schleiermacher and Political Theology

This is a dissertation about F.D.E. Schleiermacher as a political theologian. That is to say, it is more than just a study of Schleiermacher as a political philosopher, but concerns itself with the way in which his life and thought sought to fundamentally reimagine the relationship between "religion" and the "political". It is thus not simply categorizable as a political or a theological project – though it will contain arguments that should be of interest to political theorists, scholars of religion, and theologians alike –, but seeks to chart out a trajectory that can map out a post-secular, post-liberal, and post-critical reorientation of the discourse. In short, it is the goal of this dissertation to make the case – or at least the beginnings of one – that Schleiermacher is among the most important political thinkers that many may have probably never heard of before.

The necessarily disruptive character of the project is not accidental, as Schleiermacher's relative obscurity as a political thinker is not merely a product of the difficulty of the source material,[12] but also the result of the way that the current structuring of political and theological discourse reflects the triumph of an academic and societal trajectory that departs significantly from Schleiermacher's own vision for the development of "modernity". His notoriety as a key theorist of religion and modern theology and his virtual obscurity as a political theorist are not entirely unconnected. They reflect the way in which Schleiermacher's thought has been appropriated through the lens of a broadly "liberal" political-theological arrangement which posits fundamental disjunctions between religion, knowledge, and power.[13] As a so-called "religious" thinker, his work

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[12] This, of course, does also play a role. For an excellent overview of the difficulties of studying Schleiermacher's broader ethical writings – of which his political philosophy is a subset –, see Brent Sockness, "The Forgotten Moralist: Friedrich Schleiermacher and the Science of Spirit" *Harvard Theological Review* 96:3 (July 2003): 317-348. The mixed genres, incomplete schedule of publication, and idiosyncratic philosophical vocabulary have made investigating Schleiermacher's broader ethical thought a very high investment – though also highly rewarding – endeavor.

[13] The term "liberal" is capable of taking on a wide swath of meanings. For the purposes of this dissertation, I take it to refer to a general political philosophical position characterized primarily by (1) a negative conception of the state that takes its primarily role in terms of the protection of individual liberties and (2) the separation of church and state. This is

has all-to-often been received and interpreted through a lens that often presents it as offering an essentially privatized account of religion. Indeed, the appropriation has been so complete that those seeking to strike out in different directions often make a critique of Schleiermacher's non-conceptual or asocial "liberal" view of religion a key part of their attempt to break from the past.[14] This has often left Schleiermacher scholars in the awkward position of pointing out how Schleiermacher has yet again been caricatured and how a closer study of Schleiermacher could very easily result in a picture that is far closer to the critic's own view than assumed.[15]

It is for this reason, however, that an attempt to rehabilitate Schleiermacher's political significance cannot settle for merely trying to correct misunderstandings about Schleiermacher as a political thinker, as doing so would leave the deeper reasons for the lack of attention unaddressed.[16] Allowing this would inevitably reflect a failure to adequately understand what is actually at stake in his politics. There is, for instance, a version of this project that merely seeks to revitalize Schleiermacher's politics as part of the ongoing revival of interest in the politics of German Idealism

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often, though not always, conjoined with a conception of knowledge or right that is thought to exist on a more universal level and separable from the dynamics of either perfectionism or religion (often associated with the deliverances of science). These are often conjoined with (3) an emphasis on the importance of constitutional checks and balances with an independent judiciary armed with the power of judicial review to maintain the rule of law. I have left the definition deliberately broad so as to accommodate the various trajectories that the philosophical tradition has taken – i.e. encompassing figures such as John Stuart Mills, Isaiah Berlin, and John Rawls – while picking up on the themes of classical theorists such as that of John Locke and Immanuel Kant. The definition is therefore compatible both with varying attitudes towards the role of the government in regulating markets – either minimalist or even interventionist – or to the recent attempt to distinguish the republican tradition from the liberal one.

[14] Without engaging in a comprehensive history of late 20th and early 21st c. scholarship, one can roughly identify three different streams in which this dynamic has manifested itself. The first singles out conversations arising out of Wayne Proudfoot's "conceptualist" criticism of Schleiermacher's account of religion in his 1987 *Religious Experience* and George Lindbeck's characterization of Schleiermacher as an "experiential-expressivist" in his influential *The Nature of Doctrine.* The second singles out theological critiques of Schleiermacher prominent in the aftermath of Barth and the dialectical theology; and the third represents a more recent trend among scholars of religion applying the tools of genealogy to raise meta-questions about the discipline of religious studies.

[15] Consider, for instance, Brian Gerrish, "*The Nature of Doctrine: Religion and Theology in a Postliberal Age.* George A. Lindbeck." *The Journal of Religion* 68:1 (Jan 1988): 87-92.

[16] The one precedent for this study, a monograph on Schleiermacher's political philosophy published during the Weimar Republic was able to remain with this more modest goal in a large part due to the ways in which many alternative political-theological options yet remained open at that moment. But even *this* monograph begins its discussion with a genealogy of post-Reformation political theology that would no doubt clash with the tenor of much political philosophy today. See Günther Holstein. *Die Staatsphilosophie Schleiermachers* (Bonn: Kurt Schroeder, 1923).

at the turn of the 21st century. One could point, for instance, to the rise of "communitarian" critics of liberalism in Anglo-American political philosophy and the revival of interest in Hegel among Marxists seeking to identify alternative socialist trajectories.[17] The works of Charles Taylor, Alasdair MacIntyre, Gillian Rose, and others have re-introduced the terminology of alienation, recognition, tradition, practice, and identity into the discourse.[18] The emphasis on Hegel has since led to renewed interest in many of his influences and contemporaries – beyond Kant, Fichte and Schelling have also seen increased attention – as well as spawned its own "political-theological" variations in the form of projects like that of John Milbank or, to some extent, that of Stanley Hauerwas.[19] Given this interest in Hegel, one could very easily attempt to justify a study of Schleiermacher simply by virtue of his being Hegel's main intellectual rival at the University of Berlin in the heyday of German Idealism, indeed, one who had started lecturing on political topics far earlier than Hegel himself did, and one who had been perceived by the king to be so much a threat that he had been forced to resign his editorship of a political newspaper and banned from lecturing on politics for the better part of a decade.

On this approach, Schleiermacher could be introduced as someone who picks up on a number of post-Kantian political themes, but in a slightly different way than do the more (relatively) well-known Fichte, Schelling, and Hegel.[20] As the one early German Romantic who remained an

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[17] It is probably no accident that Catholic and Marxist thinkers – those with ambivalent or antagonistic attitudes towards the dominant form of (Protestant) liberal modernity – have played a key role in this revival.

[18] See Charles Taylor, *Hegel and Modern Society* (Cambridge: Cambridge University Press, 1979); Alasdair MacIntyre, *After Virtue: A Study in Moral Theory* (Notre Dame: Notre Dame University Press, 1981); Gillian Rose, *Hegel Contra Sociology* (London: Athlone, 1981). See also, Alan Patten, *Hegel's Idea of Freedom* (Oxford: Oxford University Press, 1999); Robert R. Williams, ed. *Beyond Liberalism and Communitarianism: Studies in Hegel's Philosophy of Right* (Albany: SUNY Press, 2001).

[19] See John Milbank, *Theology and Social Theory: Beyond Secular Reason* (Malden, MA: Blackwell, 1990) and Stanley Hauerwas, *A Community of Character: Toward a Constructive Christian Social Ethic* (Notre Dame: Notre Dame University Press, 1981). See also, Jeffrey Stout, *Democracy and Tradition* (Princeton: Princeton University Press, 2004) and Thomas A. Lewis, *Freedom and Tradition in Hegel: Reconsidering Anthropology, Ethics, and Religion* (Notre Dame: Notre Dame University Press, 2005).

[20] Scholars who have begun to take this approach include C. Jeffrey Kinlaw and Christopher Adair-Toteff. See C. Jeffrey Kinlaw, "Individual rights in Schleiermacher's limited communitarian state" *British Journal for the History of Philosophy* 30:4 (2022): 687-706 and Christopher Adair-Toteff, "Schleiermacher and the State" *History of European Ideas* 46:3 (2020): 298-309.

active proponent of political reform and was able to bring what had only been early fragments and aphorisms into more systematic political-philosophical expression, Schleiermacher would offer a different vision for political renewal and transformation than the standard "liberal" efforts of the post-revolutionary era.[21] Decades before Marx, for instance, Schleiermacher can be said to have provided the contours of a political economic critique of liberalism; though unlike Marx, he develops the categories for a non-statist conception of collective property and focuses attention less on antagonistic class-relations and a possible revolution of the proletariat and more on the possibilities of forging new forms of national identity.[22] Like Fichte and Hegel, Schleiermacher would characterize rights as emerging out of relations of reciprocal recognition; but instead of being centered around abstract conceptions of personality or autonomy, rights are to be worked out in the context of coordinating the division of labor. Writing in the decades following the rise and fall of the French Revolution, Schleiermacher would argue for a formulation of the nature of republican liberty that would challenge the now-standard conception of the need for a separation of powers between differing governmental institutions (à la Montesquieu or Kant) with one that instead saw legislative and executive activity as characterizing the reciprocal relationship between a government and its people, leading him to call into question the usefulness of the notion of sovereignty as a political concept. Skeptical of the usefulness of paper constitutions and declarations of rights for the actual achievement of substantive social freedom, Schleiermacher saw most of the developing modern states of his day as "aristocratic transition states" that actually embedded inequality into their civic

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[21] In his exposition of early German Romanticism as a pro-reform movement politically distinct from both conservatism and liberalism alike, Frederick Beiser names Schleiermacher as among the three most important theorists alongside F. Schlegel and Novalis. Schlegel and Novalis then both receive chapter-length expositions, but Schleiermacher does not. See Fredrick Beiser, *Enlightenment, revolution, and romanticism: The Genesis of Modern German Political Thought, 1790-1800* (Cambridge, MA: Harvard University Press, 1992).

[22] Indeed, that materialist and identitarian arguments cohere in Schleiermacher in a way that they diverge in Marx and Hegel ought to be unsurprising given Schleiermacher's realist critique of Hegel's idealism and alternative epistemological vision for understanding the relationship between the real and the ideal.

relations, with the equality of peoples and the transition to a "state of highest order" something yet to be accomplished.

Such an approach could be oriented towards filling out a lacuna in the ever-increasing body of scholarship on classical German political philosophy and offers the opportunity to imagine a Romantic political possibility that was otherwise unactualized in Novalis or Friedrich Schlegel. In it, one gets a glimpse of a creative early critique of liberalism and an alternative vision of post-revolutionary reform that can yet offer interesting insights into contemporary political conversations. Restricting oneself to this angle, however, would too easily miss the most important aspect of Schleiermacher's political vision: the way in which his revisioning of central political philosophical concepts is situated within a broader attempt to re-imagine the intersection of religion and politics in the post-Reformation era. Any attempt to deal with the promises and perils of post-Revolutionary politics – especially in the so-called West, though colonialism has made it a global problem – simply cannot ignore the question of the ongoing political significance of the Christian church. On his part, one could say that Schleiermacher offers *both* a perfectionist theory of state (typically associated with classical theories) *and* a theological argument for the separation of church and state (typically associated with liberal theories). The result in a position that can emphasize the distinct "public" sociality of the church while nevertheless insisting on the need to differentiate its dynamics from the "publicity" of the state. By contrast, one could characterize liberal political philosophy as grounding the separation of church and state in a negative or limited theory of state, one which attempts to sidestep any attempt to engage with theological polemics of any kind.[23] On this basis, Schleiermacher can hold on to a vision of religion in the state that would seem to be compatible with the establishment of religion while simultaneously insisting on the possibility of

[23] Consider, for instance, Isaiah Berlin's attempt to distinguish between negative and positive liberty and John Rawl's formulation of political liberalism. See Isaiah Berlin, "Two Concepts of Liberty" in *Four Essays on Liberty* (London: Oxford University Press, 1969), 118-72 and John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993).

religious pluralism, positions that may seem contradictory from the perspectives of classical and liberal theories alike, who often see uniformity (with limited tolerance) and plurality as opposed to one another.

It can be hard for those so accustomed to the terms set by liberal politics to grasp the basic contours of Schleiermacher's alternative precisely because it fundamentally challenges the standard ways of relating reason, revelation, and power that tend to be taken for granted by both advocates and detractors of the liberal political compromise alike. Political liberalism, Schleiermacher suggests, is just *one* (deficient) strategy of responding to a problem generated by the dynamics of the Reformation that is just as much an ecclesiastical and theological one as it is a political one. From this perspective, debates over reason and revelation, the (il)legitimacy of modernity, and the nature of secularization can be seen as attempts to sidestep the ongoing significance of the debate between Protestantism and Catholicism that set the stage for the search for alternatives to the politics of confessionalism. Every post-Reformation political theory is thus also inextricably tied to ecclesiological questions, as are the latter to the former – without either being reduced the one to the other. Political theology and political ecclesiology are intimately connected.

III. An Overview of the Argument

This dissertation makes an effort to contribute to the recovery of Schleiermacher's political theological vision by attempting to offer an interpretation of his political arguments in the context of some of his influential political philosophical contemporaries. Instead of offering a comprehensive overview of aspects of his political thought, however, it aims to offer a basic framework for future work by focusing in on recovering the deep logic of a few core concepts in order to show how they may both intersect with and depart from other perhaps better-known arguments of his contemporaries. This is all the more necessary given how counter-intuitive some of Schleiermacher's

conclusions may be given the ways that many of today's political structures have been instituted with other political philosophical convictions in view. It is only by getting behind the initial shock that one might have in response to Schleiermacher's positions (for instance, his suggestion that a hereditary monarch is necessary for the perfection of republican liberty) and into the ways in which they are built on differing foundational assumptions that one can begin to appreciate the very different perspective that Schleiermacher offers for political thought today.

The first chapter highlights the significance of Schleiermacher's church-political writings for understanding his overall political project as well as how important it is to understand Schleiermacher's overall theological project in light of his politics. In particular, it attempts to highlight the ways in which many liberal theories of the state often take for granted a certain interpretation of the significance of the Reformation by showing the degree to which Schleiermacher's overall political-theological project is situated within a broader attempt to re-imagine the intersection of religion and politics in the post-Reformation era. Understanding how Schleiermacher engages with the dynamics of Protestant-Catholic divisions is important for making sense of why attempting to characterize him as an early German Romantic or a "communitarian" simply fails to do justice to his political vision. I argue that Schleiermacher ought to be recognized as a "Presbyterian" political theologian who makes a case for the necessity of including ecclesiological debates within modern political discourse.

The rest of the dissertation attempts to offer a more detailed and nuanced articulation of two concepts that are widely misunderstood in Schleiermacher: his theory of right and his concept of the nation. The second chapter turns to defend Schleiermacher's theory of right against a number of critics who have characterized it as unacceptably communitarian by showing how Schleiermacher's emphasis on community arises out of his engagements with the theories of Kant and Fichte. Rather than a rejection of the individual, Schleiermacher actually takes Kant and Fichte to task for having

too abstract a conception of the individual, such that their account of right – because negatively grounded – fails to adequately grasp the individual in their individuality and the kind of claims that may arise on that account. In this respect, Schleiermacher can be said to preempt later criticisms of the way that the abstract formality and one-size-fits-all approach to rights-discourse of liberal individualism can end up being quite exclusionary while also offering an account of right that is far more sensitive to the moral dynamics of economic activity within a complex division of labor.

The third chapter builds on the second by demonstrating how Schleiermacher develops upon his theory of right to offer an innovative account of individual and collective property. By showing the ways in which Schleiermacher's account both builds on and departs from Fichte's innovative "political economic" turn, I show how Schleiermacher's theory of property reflects a fundamentally different way of understanding the relationship between one's body and labor and the way that the appropriation of property necessarily changes within the context of a complex division of labor. In doing so, I show how attempts to understand Schleiermacher's account of free-sociality fail to adequately understand what is at stake if they do not appreciate the way in which its dynamics are linked to Schleiermacher's account of the morality of property. I also show how Schleiermacher's reflections on the possibility of collective action result in an innovative account of collective property that offers an alternative way of understanding what is so pernicious about a discourse of private property that seeks to solve disputes by means of tracing things back to individual acts of appropriation and voluntary acts of transfer.

The fourth chapter turns to a consideration of Schleiermacher's theory of state and the role that the concept of a nation plays in it. I push back against characterizations of Schleiermacher as preempting the "nationalism" of the National Socialist movement by arguing that Schleiermacher's arguments can be better understood when situated within the context of broader post-revolutionary developments in democratic theory that emphasize the importance of representation for the

recovery of the ancient republican ideal in a context where direct democracy is no longer possible. In particular, I highlight the significance of Kant's reconceptualization of republican government in terms of the separation of powers and how Schleiermacher's own approach to the state can be recognized as both building on and challenging Kant's definition. Rather than being a lead-up for organicist irrationalism, Schleiermacher's conception of the nation plays a key role in allowing Schleiermacher to offer a non-constitutionalist, non-sovereign, and non-liberal vision of modern democracy that challenges the way in which a particular account of checks and balances, judicial review, and a certain conception of sovereignty has been taken for granted as necessary for the preservation of republican liberty and the rule of law in the context of the modern state.

The fifth chapter develops upon this argument by addressing the way in which Schleiermacher's conception of nation is inextricably tied to his philosophy of race and account of human personality. I situate Schleiermacher's account of race alongside that of Kant's and argue that, to the degree that both develop sophisticated accounts of how race functions as a social construction, an adequate criticism of both will require more than insisting on an affirmation of human unity and equality in order to demonstrate the purported unreality of race. I will argue that, while Kant presents race as an *a priori* social construction necessary for theoretical scientific purposes of classification, Schleiermacher presents it as an *a posteriori* concept necessary for the making sense of the particularity of nations while relativizing their current boundaries so as to allow for the possibility of imagining ways that they could be otherwise than they are. While this can also be directed towards racist ends, Schleiermacher's conception of race also connects it to the concrete political task of imagining and re-imagining the concrete boundaries of the state, offering an alternative approach to understand what needs to be done to combat racism today.

The final chapter turns to Schleiermacher's theory of state-development and the way in which it sees racial-ethnic inequality as both a product of modern state-formation and attempts to

offer a theory for how it can be overcome. Schleiermacher would originally develop his theory in the context of attempting to understand how a united Germany could achieve a unity-in-diversity that provided an alternative to the universalizing and homogenizing effects of the Napoleonic Code. The way in which his political philosophy insists on the interplay between a people and its government and interweaves both identitarian and political economic concerns, however, ultimately allows him to offer a creative set of categories that can offer those interested in attempting to make sense of and interpret inequality in the modern state an alternative to Hegelian or Marxist narratives of transformation.

The remainder of the introduction will attempt to offer a brief biography of Schleiermacher and an introduction to the basic contours of his ethics for the sake of readers who may be less familiar with the unique approach and terminology that Schleiermacher develops. Those who are seasoned Schleiermacher scholars should therefore feel free to skip sections IV and V. In the final section, I will briefly address the sources that I will be drawing from in order to make the arguments.

IV. Schleiermacher: A Brief (Political) Biography[24]

Born on November 21st, 1768 as the son of a Reformed military chaplain, Friedrich Daniel Ernst Schleiermacher would spend his childhood at Herrnhut as a pious and precocious devotee among the Moravian Brethren. Immersed in studies of the Scriptures and the classics,

[24] The most complete biography of Schleiermacher remains Kurt Nowak, *Schleiermacher: Leben, Werk und Wirkung* (Göttingen: Vanderhoeck & Ruprecht, 2001). More recently, however, Andreas Arndt has published an overview of Schleiermacher's life and philosophy as it pertains to political themes. See Andreas Arndt, *Die Reformation der Revolution: Friedrich Schleiermacher in seiner Zeit* (Berlin: Matthes & Seitz, 2019). Matthias Wolfes two-volume study of Schleiermacher's political engagement remains the most comprehensive with regard to its focus on the key period between 1806 to 1818 where Schleiermacher would develop the foundational ideas of his political philosophy. See Matthias Wolfes, *Öffentlichkeit und Bürgergesellschaft: Friedrich Schleiermachers politische Wirksamkeit* (Berlin: de Gruyter, 2004). The most complete biography of Schleiermacher available in English remains John Wallhausser's translation of Martin Redeker's 1968 biography. Martin Redeker, *Schleiermacher: Life and Thought,* trans. John Wallhausser (Philadelphia: Fortress Press, 1973). On political matters, Theodore Vial includes a short overview of major engagements in ch. 6 of Theodore Vial, *Schleiermacher: A Guide for the Perplexed* (London: Bloomsbury T&T Clark, 2013).

Schleiermacher would eventually leave the community after exposure to Kant and other Enlightenment writers would cause a crisis of faith as he found himself unable to subscribe to many of the sects' more supernaturalistic beliefs. After finishing his studies with Johann Augustus Eberhard at the University of Halle, Schleiermacher would study for his ordination exams while staying with his uncle, then a professor of theology, reacting in excitement to the beginnings of the French Revolution. From 1790 to 1793, he would live in Schlobitten, where he would continue to develop his philosophy while serving as a private tutor for the children of the Dohna family. Differences over politics – Schleiermacher would remain an enthusiastic admirer of the ongoing revolution to which his employer was decidedly opposed – would eventually precipitate his departure, after which he would accept a call as a pastor in Landsberg before becoming, in 1796, the chaplain of the Charite Hospital in Berlin.

There, at the salon of Henrietta Herz, Schleiermacher would meet Friedrich and August Wilhelm Schlegel, a budding philosopher and a poet, with whom he would become deeply engaged as friends and collaborators in a philosophical and literary circle that would later be known as part of the early German Romantic movement. With the Schlegel brothers, Schleiermacher would contribute to the publication of the *Athenaeum,* a journal promoting a new philosophical vision that promoted a spiritual revolution that sought to achieve what the physical revolution of the French could not through the use of wit and poetry. Along with Friedrich Schlegel, Schleiermacher would begin work on a Plato translation project that would take him the better part of the next three decades of his life to finish.[25] And in response to questions about the compatibility of his philosophical and political commitments with his role as a clergyman, Schleiermacher would publish his *On Religion: Speeches to its Cultured Despisers*, setting forth a renewed vision for the place of religion in reform movements of the day.

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[25] See Julia Lamm, *Schleiermacher's Plao* (Berlin: de Gruyter, 2021).

Upon discovering that Schleiermacher had attempted to entice Eleonore Grunow, the wife of another Berlin clergyman, to leave her husband and abscond with him, church authorities would dismiss Schleiermacher from his position and reassign him to a pastorate in Stolp, where, isolated from his former friends, Schleiermacher would work on his *Outline of a Critique of All Earlier Ethics*, which would be published in 1803. In 1804, Schleiermacher would accept a call to serve as the university preacher and professor of theology at the University of Halle, though the university would be shut down upon Napoleon's entry into the town after the disastrous defeat of Prussia at the Battle of Jena-Auerstedt in 1806. While at Halle, however, Schleiermacher had the first opportunity to present his systematic ethical system through a series of lectures on philosophical ethics.

In 1807, Schleiermacher would leave Halle for Berlin, where he would be appointed pastor of the Trinity Church and become increasingly entangled with the activities of the Reform Movement. Advocating for Prussian resistance against French occupation, Schleiermacher would begin drilling with a local militia and become part of a conspiratorial scheme attempting to surreptitiously convince the king to declare a general mobilization, traveling to Königsberg as a secret messenger to attempt to make contact with the court. While there, he would be asked by the Minister of State, Heinrich Friedrich Karl vom und zum Stein to draft up a series of proposals for church reforms, which would inaugurate Schleiermacher's extended attempts to advocate for a unified and reorganized Prussian church. While in Berlin, Schleiermacher also held a series of private lectures as a way of supplementing his income, including, for the first time, a series on the doctrine of the state.

In 1808, Schleiermacher would become a member of the Department of Instruction of the Education Section within the Interior Ministry, headed up by Wilhelm von Humboldt. There, he would be in charge of an ultimately unsuccessful scheme to create a unified system of education that would provide examination regulations for students from the elementary level up to the university

level. At the same time, as a member of the Scientific Deputation, Schleiermacher would play a key role in the establishment of the University of Berlin and be commissioned with the task of populating its theology faculty, to which he would be appointed in 1810. He would also play a key role in securing J.G. Fichte for the philosophy faculty, as well as G.W.F. Hegel as the replacement after Fichte's death in 1814. In addition to lecturing on theological topics, he would continue to develop his ethical system, incorporating new insights from his study of political philosophy into his lectures on philosophical ethics.

By 1813, Schleiermacher would begin to increasingly sour on the direction of Prussian politics and the fortunes of the reform movement. In the summer of 1813, he would lecture again "on the doctrine of the philosophy of the republic", no longer as a private citizen, but now as a popular preacher, university professor, and member of the Interior Ministry. Having taken up the editorship of the political newspaper, the *Prussian Correspondent*, at the beginning of July Schleiermacher would become increasingly critical of the government's conduct of the war. By the end of 1813, after Napoleon's defeat at Leipzig and the victory of the allied forces, conservative advocates of the Restoration began to exercise increased sway and began acting to counter the influence of the Reform movement. Having run into the official censors multiple times over the course of his brief editorship, Schleiermacher would find himself under investigation for high treason for an article questioning the wisdom of the government's decision to agree to a ceasefire and would be forced to hand the reins of the publication to another editor by the start of October. The next year would also see him forced to step down from his governmental appointment, though supportive colleagues at the university would immediately elect him Secretary of the Berlin Academy of the Sciences even in the face of royal disapproval.

Having been forced to retire from public life, Schleiermacher would refocus his attention to the reform of the church and the academy. While an ardent supporter of the king's efforts to unite

the Reformed and Lutheran congregations of Prussia into one unified church organization, he would become a decided opponent of the king's attempts to impose a new liturgy on the church, becoming an increasingly vocal and explicit proponent of the need for independent church governance and a new church constitution. This conflict would rage for much of the next decade, only coming to an end once the king decreed that all churches adopt the new liturgy, though, in a personal concession to Schleiermacher, allowed him to deviate. Schleiermacher would also continue lecturing on political themes until 1817, after which he would be banned from lecturing on politics for a decade.

In 1819, the assassination of the conservative dramatist August von Kotzebue by a university student would see Schleiermacher and his university colleagues placed under further scrutiny. Schleiermacher led the faculty in opposing the government's inquiries regarding interactions between professors and the assassin under the banner of academic freedom, but Hegel would break ranks, leading to the dismissal of Schleiermacher's close friend and colleague Wilhelm de Wette for writing a letter of consolation to the mother of the assassin. During this time, Schleiermacher's lectures were regularly attended by government informants attempting to keep tabs on his activities.

The end of Schleiermacher's life would see a slow restoration of his relationship with the government. In 1929, the death of his son would have a great personal effect on him and contributed to his reevaluation of his stance towards reform. Recognizing that he would no longer have the time to see through any reforms he began, Schleiermacher began to soften his tone. In 1929, his ability to lecture on political topics was once again restored, and, in 1931, after Schleiermacher would respond to a radical French paper proclaiming him one of the leading reformers in Germany by professing his loyalty to the king, he would receive the Order of the Red Eagle in recognition for his services to the state. Schleiermacher would die of pneumonia on February 12th, 1834 at the age of 65.

V. An Introduction to Schleiermacherian Ethics

The long shadow of Wilhelm Dilthey's epoch-making *Lebens Schleiermachers* has long set Schleiermacher's personal biography at the center of attempts to make sense of his intellectual production. Indeed, one way to characterize much Schleiermacher scholarship in the 20th c. is to describe it as pushing back against Dilthey's over-biographizing and psychologizing tendencies in order to pay more attention to the systematic coherence of Schleiermacher's own ideas in their intellectual context. Particularly significant in this respect is the work of Hans-Joachim Birkner, whose 1964 *Schleiermachers Christliche Sittenlehre* would set a new direction in Schleiermacher-scholarship by highlighting the central importance of "ethics" to Schleiermacher's overall project. This is born out biographically as well as systematically. The young Schleiermacher, from his early college days on, was deeply preoccupied with central ethical questions, commenting on Aristotle's *Nicomachean Ethics*, and responding to Kant's practical philosophy and Fichte's attempt to develop upon it. Over the course of the 1780s and 90s, Schleiermacher would write on a number of ethical themes – in *On the Highest Good* (1789), *On Freedom* (1790-92), *On the Worth of Life* (1792/93), *Toward a Theory of Sociable Conduct* (1799)[26] – before finally publishing his popular works – *Reden* (1799) and the *Monologen* (1800).[27] In 1803, he would publish his *Groundwork for a Critique of All Earlier Ethics*, a dense and detailed attempt to reckon with the history of ethics, before setting off on pursuing the constructive and systematic formulation of his own ethical philosophy upon his appointment to an academic position in 1804. Beginning in the winter semesters of 1804-5 and 1805-06 at Halle, Schleiermacher would systematically lecture on ethics six other times over the course of his life at Berlin in summer 1808, in winter 1812-13, winter 1816-17, summer 1824, summer 1827, and summer 1832. Although always desirous of publishing his mature ethics, Schleiermacher never got

[26] A critical edition of these works can be found in KGA I.1 and I.2. Many have also been translated into English.
[27] See KGA I.2 and I.3.

around to doing so before he died. As a result, a reconstruction of Schleiermacher's ethics must rely on the *Brouillon* which served as the basis of the 1805-6 lectures, and the notes compiled in 1812-13 and around 1816-17 which would serve as the basis for lectures throughout the rest of his life.[28] In addition, Schleiermacher would give six lectures on ethical themes between 1819-1930 to the Berlin Academy of Sciences, which are – apart from the *Groundwork* – the only materials that would see publication, albeit limited in circulation.[29]

Systematically speaking, however, it is hard to overrate the importance of Schleiermacher's ethics within his overall intellectual project. The sheer scope of the ethics can be difficult to appreciate in an academic context which has for the most part seen "ethics" or "moral philosophy" condensed into a sub-conversation within philosophy, religion, and sometimes politics departments or appended to professional programs as a way to avoid professional scandal. As various commentators have noted, however, Schleiermacher's ethics is nothing less than an attempt at a comprehensive "theory of culture"[30] – or, in Schleiermacher's own terms, "the life of reason…acting upon nature."[31] Influenced by (while nevertheless remaining critical of) Schelling's 1803 *Lectures on the Method of University Study*, Schleiermacher would conceive of the academy as divided into two main divisions: ethics and physics.[32] Dividing each further into "speculative" and "empirical" sub-divisions which would address the basic concepts and categories by which to understand nature or

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[28] These texts have not yet been reprinted in the KGA, but can be found in the second volume of the *Werke. Auswahl in vier Bänden* (WA) edited by Otto Braun and Johannes Bauer (Leipzig: Felix Meiner, 1910-13). The *Brouillon* (1805/6) have been transited into English and can be found in Friedrich Schleiermacher, *Brouillon zur Ethik / Notes on Ethics (1805/1806) and Notes on the Theory of Virtue (1804/1805)*, trans. John Wallhausser, Terrence N. Tice, and Edwina Lawler (Lewiston, NY: The Edwin Mellen Press, 2003). The 1812-13 and 1816-17 notes with marginal additions have also been translated into English and can be found in Friedrich Schleiermacher, *Lectures on Philosophical Ethics*, ed. Robert B. Louden (Cambridge: Cambridge University Press, 2002).

[29] These are "On the Scientific Treatment of the Concept of Virtue" (1819), "Study on the Scientific Treatment on the Concept of Duty" (1824), "On the Difference between Natural Law and Moral Law" (1825), "On the Concept of the Permissible" (1826), and "On the Concept of the Highest Good" (1827/30) and can be found collected in KGA I.11.

[30] See ch.2 of Gunter Scholtz, *Ethik und Hermeneutik: Schleiermachers Grundlegung der Geisteswissenschaften* (Frankfurt am Main: Suhrkamp, 1995).

[31] E 4 (intro.I.16)

[32] Schleiermacher's critical review of the piece would be published in the *Athenaeum* in 1804. See KGA I.4.

reason and attempt to narrate natural or human history respectively, Schleiermacher would present his lectures on philosophical ethics as giving a broad overview over the total scope of human actions in the world. Further subdivided so as to offer a doctrine of the good, of virtue, and of duty, Schleiermacher sought to bring together the insights of both ancient ethics (and its focus on goods and virtues) with the concerns of modern ethics (and its focus on duty).

Under the doctrine of the good, Schleiermacher sets out a four-fold typology of human action depending on whether it has more to do with organizing the world (doing) or cognizing it (thinking) and whether this action more reflects the character of the community (universal) or one's own individuality (particular). Under these four categories, Schleiermacher will describe the societal institutions which arise to perfect these actions: the state (universal organizing), the academy (universal cognizing), free sociability (particular organizing), and the church (particular cognizing). It is at this point that the systematic significance of the ethics becomes clearer: almost all of Schleiermacher's other academic endeavors can be seen in some relation to the basic framework laid out in the ethics: the doctrine of the State develops further on the universal organizing function insofar as it manifests itself within a fixed opposition between authority and subject; the Aesthetics on the concept of art that Schleiermacher puts in close relation to that of religion;[33] Schleiermacher's theological works – the *Christian Faith* in particular – explicitly "borrow" the concept of church from the ethics;[34] as well as a whole host of "technical" disciplines that are not sciences proper, but have to deal with the perfection of various activities discussed within the ethics – Hermeneutics (the act of interpretation), Pedagogy (the act of teaching), Politics (the act of statecraft), practical theology (the act of church-governance), and so on.

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[33] Scholtz notes, however, that in Schleiermacher's later years, he seems to admit the independence of art from religion, resituating the Aesthetics somewhere in-between church and free sociability. See ch.2 of Scholtz, *Ethik und Hermeneutik*.
[34] It would be incorrect, however, to simply see Schleiermacher's *Christian Faith* and *Christian Ethics* as subordinate sub-disciplines of ethics in that they are also conceived as *positive* sciences specifically oriented towards the church-community. Indeed, Hans-Joachim Birkner attempts to address the ways in which using the same term "ethics" to describe the philosophical and Christian ethics can be somewhat misleading in Birkner, *Schleiermachers Christliche Sittenlehre*.

Indeed, in Schleiermacher's framework, the *Dialectic*, though taking up many of the epistemological and metaphysical issues that would have been perceived as central to philosophy in the post-Kantian idealist mode prominent among his contemporaries, would itself be conceived of as a technical discipline concerned with the perfection of the "art of conversation". Thus, instead of being taken as the meta-discipline that lays the first principles of knowledge out of which the rest of Schleiermacher's system can be deduced, the *Dialectic* attempts to set out first principles *on the assumption of the already-existing practice* of scientific work and conversations, namely, the disciplines of physics and ethics.

One way to understand the systematic coherence of the *Philosophical Ethics* in relation to the rest of Schleiermacher's philosophical work is to contrast it to the basic framework of the Kantian system. Like Schleiermacher, Kant's vision of the sciences distinguishes between a theoretical ("physics") and a practical ("ethics") and further sub-divides between empirical and transcendental, with the latter providing the basic categories and principles for the former.[35] Thus, alongside a conceived-of natural science are the *Metaphysical Foundations of Natural Science* (1786). On the practical philosophy side, one finds Kant's *Anthropology* (1798, 1800) alongside his *Metaphysics of Morals* (1797). Alongside these *actual* sciences are the three *Critiques* – of theoretical reason, practical reason, and judgment. Like Schleiermacher, Kant stresses the significance of empirical study, conceiving of the transcendental aspects of his philosophy as providing the necessary support for these empirical studies by providing their conditions of possibility.

Unlike Schleiermacher, however, Kant conceives of these conditions of possibility metaphysically and derivable *a priori*. Thus, though they only have application empirically, they ultimately do not have any essential empirical relation. By contrast, Schleiermacher's conception of the architectonic of the sciences leads him to view the empirical and speculative sides of theoretical

[35] A version of these divisions can be found in the introduction to Kant's *Metaphysics of Morals*.

and practical philosophy as *reciprocally* constructed. Kant's formal conception of the state is derived from *a priori* reasoning about what must be true if external freedom is not to be formally self-contradictory; Schleiermacher's material theory of the state is formed by abstracting from actual historical accounts of state-formation and represents an attempt to formulate a general account of state-hood that can both make sense of one's empirical examples but also map out the general space of non-actual but possible state-formations.

Kant and Schleiermacher alike *both* embrace the empirical sciences, but have a different conception of how the work of metaphysics relates to them. For Kant, there is still a place for an *a priori* metaphysics, albeit transcendental (providing the concepts of objects-in-general), and on the basis of this one can ground a few foundational principles for physics and ethics respectively. For Schleiermacher, empirical and speculative work are co-constituting and mutually presuppose and inform one another. Empirical work presupposes the categories and distinctions provided to it from the speculative side and the speculative side arrives at its conclusions from engagement with the empirical work. New empirical work can lead to a clarification or reconceptualization of the categories of the speculative work while new speculative work can give empiricists new categories to apply or new forms to look for.[36] For Kant and Schleiermacher alike, transcendental reflection upon the conditions of possibility of knowing are ultimately grounded on the actual presupposition of knowledge in the sciences. By contrast, the idealists Fichte, Schelling, and Hegel would instead seek to proceed from an entirely *a priori* and transcendental perspective and, from there, work out *both* ethics and physics.

[36] This dynamic is best described in the second "technical part" of Schleiermacher's *Dialectic*, where he describes heuristic and architectonic.

VI. A Quick Note on Sources

Brent Sockness has done a good job outlining one of the main reasons why Schleiermacher's ethical and political philosophy has not received greater attention: rarely any of it made it into published form during his lifetime. While Schleiermacher would make efforts to prepare his lectures for publication throughout his life, in the end he was content with suggesting that a perusal of his various Akademie lectures and the 1803 *Outline of a Critique of All Earlier Ethics* would be a sufficient introduction to his system and allow readers to work off of the various notes and transcripts of the many times he had lectured on the subject over the years. Studies of Schleiermacher are thus forced to grapple with the challenge of navigating a number of differing manuscripts and transcripts with varying degrees of detail and depth in order to reconstruct arguments that, even if intriguing, are not always the clearest. To add to the difficulty, Schleiermacher remained a dynamic thinker throughout his life and so was constantly revisiting and revising his opinion, sometimes even adding commentary on his own manuscripts or crossing out and rehashing concepts.

In such a context, some degree of clarification on how this dissertation will approach the relevant sources will be required in order to make explicit how I plan to navigate these technical challenges. Firstly, my reconstructions of Schleiermacher's political philosophical arguments will focus in on what he took to be the center of his philosophical system: the *Ethik*. Beginning in the winter semesters of 1804-5 and 1805-06 at Halle, Schleiermacher would systematically lecture on ethics six other times over the course of his life at Berlin: in summer 1808, in winter 1812-13, winter 1816-17, summer 1824, summer 1827, and summer 1832. Of these, we have manuscripts of the 1805/06 *Brouillon*, the 1812/13 *Ethik*, and the 1816/17 *Ethik*. Within these manuscripts, the sections most relevant to a reconstruction of Schleiermacher's political philosophy are his reflections on the "organizing" function, which would be discussed twice – first in a more general way in an overview of his treatment of the composite character of the highest good, and secondly in a more detailed

look at each of the various functions in their character of identity or particularity. Apart from these sections, I will occasionally draw from other parts of the lectures – Schleiermacher's discussion of duty, and his discussion of the state in particular – when the occasion requires.

As the 1812/13 *Ethik* represents the most complete treatment of the entire system as a whole, I will tend to privilege Schleiermacher's claims from this text while drawing from the earlier 1805/06 *Brouillon* and the later 1816/17 *Lectures* to supplement the points. The 1805/06 *Brouillon* are occasionally more helpful for identifying Schleiermacher's implicit interlocutors, as, in the first pass through his system, he will pause to consider alternative perspectives more than he will in the later versions where he focuses on setting out his views in ordered propositions. The 1816/17 *Lectures*, although incomplete, often offer a more in-depth discussion of Schleiermacher's various propositions than the 1812/13, as much of the material has been reworked into a cleaner form in the process of preparing for a publication that never materialized.

As the planned KGA volume of Schleiermacher's ethics has not yet been completed, I will draw from the edition that remains the source material for both the most recent critical editions of the 1812/13 and 1816/17 *Ethik* of Birkner and the English translation of the same by Andrew B. Louden, volume II of the edition of *Schleiermachers Werke* edited and published by Otto Bruan in 1913 (for more on translations, citations, and editions, refer to the Abbreviations Page).

Secondly, when arguing for Schleiermacher's views with regard to state and nationhood, I will mainly be drawing from the views set forth in Schleiermacher's 1814 Academy lecture "On the Concepts of the different Forms of the State". Because it represents the clearest systematic presentation of Schleiermacher's views on the matter and also stands in close temporal proximity to the heyday of Schleiermacher's work in the *Philosophical Ethics,* working from this text allows us to best get a snapshot of the mature Schleiermacher's ethical and political system in the era when he was also the most politically engaged.

I will supplement this by drawing from corresponding sections in Schleiermacher's *Staatslehre* when they shed light on the arguments in the *Philosophical Ethics* or the Academy lecture. Beginning in 1808/09, Schleiermacher would lecture on the subject under the heading of "politics", the "philosophy of the republic", or, most commonly, the "doctrine of the state" a total of six times, in 1813, 1817, 1817/18, 1829, and finally in 1833. In addition to the various manuscripts and notes that Schleiermacher would use to lecture from, we possess a number of student transcripts from the 1817 (Nachschrift Varnhagen), 1817/18 (Nachschrift Goetsch), 1829 (Nachschriften Heß and Willich), and 1833 (Nachschrift Waitz) lectures. As most of the notes prior to the 1829 and 1833 lectures are fragmentary, when I refer to Schleiermacher's *Staatslehre*, I will be primarily referring to Schleiermacher's manuscript for these lectures, drawing occasionally from the student transcripts when they can help shed light on the arguments made. Almost all of the relevant texts have been made available and collected in KGA II/8 by Walter Jaeschke. As I will be primarily using references from the *Staatslehre* to supplement or highlight arguments made in the previous decade, one will need to be sensitive to the ways that Schleiermacher may have modified his views in light of the changed political circumstances.

Thirdly, I will occasionally supplement Schleiermacher's arguments in these lectures by appealing to other notes, fragments, and other writings – published and unpublished – that may turn out to be relevant to the subject matter. Over the course of his life, Schleiermacher would produce various manuscripts of notes in preparation for a writing project that may or may not have finally materialized. The ones most relevant for this project are the "Draft of an Outline on the Theory of the Contract" that Schleiermacher will work on sometime around 1796/7 and the "Early Aphorisms" (dating uncertain, but likely before 1814). The former can be found in KGA I/2 and the latter in KGA II/8. In addition to these, I will occasionally draw from letters and sermons, though this will primarily be in support of points already made from the various lectures.

On the whole, I have placed particular importance on the 1812/13 *Ethik* and the 1814 "On the Concepts of the different Forms of State" because, in addition to presenting the most complete reflections on the subject, they represent Schleiermacher at the pinnacle of his political engagement and at his boldest. In this regard, I am merely following Matthias Wolfes in his claim that the years between 1808 and 1818 would be the most significant for Schleiermacher's political philosophical development.[37] The earlier and later editions of Schleiermacher's various lectures are often mostly useful for the way that they shed light on the basic contours of the argument already laid out in these lectures.

[37] Matthias Wolfes, *Öffentlichkeit und Bürgergesellschaft*.

Chapter 1: Beyond the Turn to Religion: Schleiermacher as Presbyterian Political Theologian

"An ignorant, uneducated man… said he wished… that all the great men in the world and all the nobility could be hanged, and strangled with the guts of priests."

Jean Meslier, *Testament* (ed. R. Charles, 1864), vol. 1, ch.2[1]

"Probably you are right in wishing that the hem of a priestly garment had never touched the floor of a royal chamber: but let us wish that the purple had never kissed the dust on the altar, for had this not happened the other would not have followed."

F. D. E. Schleiermacher, *On Religion: Speeches to its Cultured Despisers*, 3rd ed.[2]

I. Introduction: Before Liberalism and Confessionalism

The separation of church and state has long been a central principle of liberal political philosophy. It often plays a key role in differentiating a liberal state from a perfectionist one. The distinction can be framed in a number of ways – a difference between negative and positive liberty,[3] a difference between the universal accessibility of public reason and the particularity of religious belief,[4] a difference between the possibility of demanding external obedience as opposed to internal conviction and motivation[5] – but the basic effect is the same: a careful attempt to delimit the boundaries of politics and religion so that purported disagreements in the latter would not disrupt the order of the former. The distinction is often accompanied with a story, a narrative about the West's transition from political theology to political theory and of the overcoming of conflicts occasioned by the violence of religious politics towards the peace and justice made possible by the establishment of a secular state.[6] The result? The confessional distinctives which had characterized

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[1] The popular version of the quotation is often attributed to Denis Diderot, whose 1772 variation on the quote was published in a French republican magazine in the height of the Revolution in 1796: "Man will never be free until the last king is strangled with the entrails of the last priest." For a transcription and discussion of the various competing versions of the text, see Herbert Dieckmann, "Three Diderot Letters and 'Les Eleuthéromanes'" *Harvard Library Bulletin* 6:1 (Winter 1952): 69-91.

[2] R3 167.

[3] Isaiah Berlin, "Two Concepts of Liberty" in *Four Essays on Liberty* (London: Oxford University Press, 1969), 118-72.

[4] John Rawls, *Political Liberalism* (New York: Columbia University Press, 1994).

[5] A version of this distinction is appealed to by a number of classical social contract theorists, including Hobbes, Locke, and Kant, among others.

[6] See, for example, Mark Lilla, *The Stillborn God: Religion, Politics, and the Modern West* (New York: Vintage Books, 2007).

post-Reformation disagreement were either rendered no longer politically relevant or were reinterpreted into terms more amenable to the new liberal synthesis, judged according to whether or not they seem to resist or advance liberal ideals.

The difficulty of characterizing Schleiermacher's political theory lies in the fact that it is ultimately situated within a broader political-theological vision that attempts to map out the contours of a different non-liberal trajectory for modern politics. Neither simply a reactionary defense of the *ancien regime* nor a defense of the compatibility of liberal values with religious commitment, it seeks instead to reframe the issue by suggesting that liberal critics of religion and conservative defenders of religion have fundamentally misdiagnosed the relationship of religion and politics, an argument that Schleiermacher will first make in his famous *Über die Religion: Reden an die Gebildeten unter ihren Verächtern* (*On Religion: Speeches to its Cultured Despisers*, henceforth, *Reden*), but which he will continue to develop throughout the rest of his life. Indeed, when properly situated, Schleiermacher is perhaps best characterized as a "Presbyterian" political theologian (as opposed to an advocate of an episcopacy or a consistorial form of church government). That is to say, like many thinkers of his time, his advocacy for the separation of church and state is not so much motivated by a commitment to liberalism as by a particular articulation of post-Reformation Christianity that takes the question of the internal organization of the church and its relation to the state just as seriously as the supposed divide between the Right and the Left.[7]

If liberalism seeks to separate church and state in order to free politics from the destabilizing effects of religion, Schleiermacher can be seen as seeking the separation of church and state for the sake of the freedom of religion. The difference may seem subtle, but it actually has a substantial

[7] Christian political discourse over the past half century has seen an explosion of "political theologies" with varying attitudes towards the place of religion in the state, ranging from Anabaptist skepticism (i.e. John Howard Yoder and Stanley Hauerwas), to certain brands of accomodation with liberal democracy (i.e. Nicholas Wolterstorff), to new defenses of the importance of church establishment (i.e. Oliver and Joan O'Donovan). This is not to mention the varieties of Christian nationalism, Catholic integralism, or Pentecostal dominionism that have sprung up alongside the political Augustinians or two kingdoms positions that have had perennial advocates.

impact on how one understands the task of modern politics. The "religion" that conservatives seek to defend and that liberals seek to separate from the state, Schleiermacher argues, is not actually religion at all, but a corrupted version that has resulted from the way in which the state and the church have become improperly entangled in European history. A proper understanding of the nature of the church and the state can thus offer a *different* way of dealing with post-Reformation political dynamics that does not focus its political attention solely on the state and whether or not it is adequately secular. Liberalism may be correct in recognizing the dynamics of the wars of religion as being a significant political problem to be resolved; yet seeks a solution that often avoids confronting the central issues which underlay the supposed religious dynamics at play, choosing instead to assume that they are irresolvable and necessarily carry potential for ongoing violence.[8] By contrast, the theological disputes of the Reformation and the political transformations of the Revolution needed to be dealt with hand-in-hand.

A proper understanding of Schleiermacher's political theology must then concern itself, not only with his political philosophy and account of the state, but also with his innovative ecclesiology. As historians have noted, the development of the institutions of modern liberalism was as often as not a kind of functional compromise as much as an explicitly aimed-for arrangement.[9] The adoption of the First Amendment of the Constitution forbidding the establishment of religion at a federal level, for instance, did not automatically end the establishment of churches at the state level. The transition away from state establishments was often less the result of a conscious adoption of a

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[8] This has made liberalism the subject of many a religious critique. Consider, for instance, William T. Cavanaugh, *The Myth of Religious Violence: Secular Ideology and the Roots of Modern Conflict* (Oxford: Oxford University Press, 2009). For a push-back against the pushback that recenters the way in which political and ecclesiological questions are interrelated, see Ephraim Radner, *A Brutal Unity: The Spiritual Politics of the Christian Church* (Waco, TX: Baylor University Press, 2012).

[9] Colin Kidd makes a similar point with regard to revolutionary American politics, but uses the term "civil theology". See Colin Kidd, "Civil Theology and Church Establishment in Revolutionary America" *The Historical Journal* 42:4 (1999): 1007-1026. Nathan Hatch has traced the ongoing significance of these identities even as they increasingly "democratized" in the American context. See Nathan Hatch, *The Democratization of American Christianity* (New Haven: Yale University Press, 1989).

secular polity as the practical result of on-going inter-Christian tensions and their adaptations to new environments: Presbyterians mistrusting Episcopalians, Baptists and Congregationalists wary of Presbyterians, and orthodox Congregationalists concerned with state support of Unitarians.[10] Situated in a very different socio-political context – the Prussia of Frederick Wilhelm III –, Schleiermacher would nevertheless strive in what he saw to be a very similar direction as the developments he observed in post-Revolutionary America, though with less success.[11] In so doing, however, he would offer a revisionary vision of the possibilities of a federal German state and of a form of Presbyterian polity that did not easily conform to either conservative or liberal visions of church or state.

In designating Schleiermacher as a "Presbyterian" political theologian, I am attempting to single out a trans-national ecclesial tradition that has emphasized the preeminent role of leaders' assemblies (often referred to as presbyteries or synods) for the collective governance of the church.[12] Often taking inspiration from Calvin's Geneva and the way in which it attempted to coordinate spiritual and temporal authority, it has manifested itself variably most prominently in Scottish Presbyterianism and among the Dutch Reformed, though it also had its advocates – with less success – among some English Puritans and French Huguenots. Opposed to both the episcopacy of the Anglican and Catholic traditions (as well as some forms of Lutheranism) and the congregationalism of Baptists, Anabaptists, and other Independent traditions, the Presbyterian tradition marks out a distinct trajectory in Reformed ecclesiology.[13] Schleiermacher's Prussia

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[10] Consider, for instance, John D. Cushing, "Notes on Disestablishment in Massachusetts, 1780-1833" *The William and Mary Quarterly* 26:2 (1969): 170-190 and Kelly Olds, "Privatizing the Church: Disestablishment in Connecticut and Massachusetts" *Journal of Political Economy* 102:2 (1994): 277-297.

[11] Schleiermacher would explicitly lift up the American context as exemplary in the later annotations to the 3rd edition of the *Reden*, though not without some caveats.

[12] For an attempt to give an overview of the position within the context of the broader Reformed tradition, see Philip Benedict, *Christ's Churches Purely Reformed: A Social History of Calvinism* (New Haven: Yale University Press, 2002).

[13] It may be tempting to map the differences between these traditions simply upon the classical forms of state, identifying episcopal traditions with a commitment to monarchy, presbyterians with a commitment to a variety of aristocracy, and congregationalism with democracy, doing so would be as mistake both because arguments for the

provides, like England and France, an example in which the striven-for synodal form did not successfully emerge, but this fact ought not to lead one to overlook the distinctive contours of the version of Presbyterianism for which Schleiermacher energetically advocated over the course of the last two decades of his life.

I say "version" of Presbyterianism because while the mature Schleiermacher self-consciously identified himself as a defender of the presbyterian form of government, his approach to the question of church authority and its relation to the state departed in various non-trivial ways from other forms of Presbyterianism.[14] Shaped by his distinctive approach to the nature of religion and reflections on the character of republican freedom, Schleiermacher would advocate for a version of the separation of church and state that could seem to pick up on themes of Independency save that it continued to offer a defense of the magisterial Reformation and the key role political leaders played in the process. In this regard, one could perhaps situate Schleiermacher alongside figures such as John Witherspoon and Abraham Kuyper, figures who would likewise lead portions of American Presbyterianism and Dutch Reformed Christians in reconceiving received confessional commitments about the role of the magistrate in preserving true religion, previously a key aspect of Reformed resistance theory.[15] It is important not to reduce differences between Reformed thinkers

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various positions often did not hinge on these reasons (i.e. Presbyterians often looked to the Council of Jerusalem in the Acts of the Apostles as a key precedent) and, as we shall see in chapter 4, this would overlook the ways in which various figures – Schleiermacher among them – could be committed to mixed constitutions by virtue of a deeper concern that government is republican in character rather than taking a particular form.

[14] In what follows, I will focus primarily on the way in which Schleiermacher's account of the role of the magistrate allows him to articulate a different account of the relationship between church and state than typically countenanced in the Presbyterian tradition. This will, as we shall see in ch.4, also lead him to have a very different attitude towards the permissibility of resisting magistrates who "fail" to adequately protect true religion by eliminating superstition. But there exist other significant differences between Schleiermacher's vision and, say, that of John Knox or Thomas Cartwright's. Schleiermacher does not, for instance, insist on a biblical derivation of Presbyterian church government as the one divinely ordained form *de juro divino*. Indeed, he is even willing to consider the viability and necessity of a corresponding "Catholic" form alongside. And even if Schleiermacher does stress the importance of church discipline, it is with a far different attitude towards the act of excommunication.

[15] Witherspoon would lead American Presbyterians in adopting a revised version of the Westminster Confession which contained a modified version of article 23, and Kuyper would raise questions about the nature of subscription to article 36 of the Belgic Confession. On Witherspoon, see esp. James Foster, "Of the civil magistrate: John Witherspoon's doubly religious toleration" *Global Intellectual History* 5:2 (2020): 264-278; see also Mark Noll, *Princeton and the Republic, 1768-1822: The Search for a Christian Enlightenment in the Era of Samuel Stanhope Smith* (Vancouver, BC: Regent College

merely to their differing national contexts, as doing so risks offering too Erastian an interpretation of various ecclesial trajectories. At the same time, however, one should also be wary of assuming that advocates of a particular ecclesiology or theological vision would uniformly advocate for one or another political position. Recognizing the connected but also relative autonomy of ecclesiological and political positions is precisely part of what is at stake in Schleiermacher's political theological vision; one should neither reduce nor subordinate theology to politics or vice-versa.

Thus, before delving into topics more familiar to political philosophers today – i.e. Schleiermacher's theory of property and right and his account of the state – this first chapter will dedicate itself to highlighting the very different motivations that Schleiermacher brings to the subject.[16] Namely, if one very prominent strain of liberal political philosophy is intent on establishing social order on non-religious grounds in order to eliminate the influence of religion on politics as much as possible, Schleiermacher's aim in emphasizing the separation of church and state is to better foster their mutual cooperation and development. Schleiermacher does not separate church and state by offering a negative or limited account of the latter that attempts to abstract away from the comprehensive or perfectionist qualities of the former, but attempts to offer a positive account of both.

Publishing, 1989) and Jeffry H. Morrison, *John Witherspoon and the Founding of the American Republic* (South Bend, IN: University of Notre Dame Press, 2003). On Kuyper, see James D. Bratt, *Abraham Kuyper: Modern Calvinist, Christian Democrat* (Grand Rapids, MI: Eerdmans, 2013); John Halsey Wood, *Going Dutch in the Modern Age: Abraham Kuyper's Struggle for a Free Church in the Netherlands* (New York: Oxford University Press, 2013); Arie L. Molendijk, *Protestant Theology and Modernity in the Nineteenth-Century Netherlands* (New York: Oxford University Press, 2022). The revisionist character of Schleiermacher's version of Presbyterianism, however, could also set him in odd proximity to the Catholic thinkers working in the lead-up to and in the wake of Vatican II.

[16] In this respect, this dissertation roughly echoes the structure of Günther Holstein's 1923 monograph on Schleiermacher's political philosophy, as it begins what is otherwise a straightforward attempt to summarize the political philosophical themes in Schleiermacher's various writings and sermons an observation of the significance of a "Lutheran" element in Schleiermacher's political thought that set it in opposition to both the quietism of "enthusiasm" and the theocratic tendencies of Catholicism. Yet, it also takes a very different tack than Holstein, whose attempt to characterize Schleiermacher as the first systematic expositor of the "organic" conception of state situates him among the German Idealists Fichte, Schelling, and Hegel. In so doing, Holstein falls precisely into the temptation that I have identified, failing to recognize how fundamentally different Schleiermacher's approach to church and state is from that of the Idealists. Instead, they are all lumped under the one category of being influenced by "Lutheran" political theology. Günther Holstein, *Die Staatsphilosophie Schleiermachers* (Bonn: Kurt Schroeder, 1923).

This is a point that is too easily missed if one attempts to approach Schleiermacher's political theology from just an attempt to situate him amidst his political or ecclesial precedents. While it is certainly true that Schleiermacher was heavily involved with the Berlin circle of early German Romanticism and was deeply influenced by his time among the Moravian Brethren, simply describing Schleiermacher as a Romantic theorist or a "Moravian of a higher order" does not quite do justice to the way in which Schleiermacher's ecclesiological vision informs his political philosophy and vice-versa.[17]

What makes Schleiermacher's political-theological project complicated is that it must tackle both political and ecclesiological questions simultaneously without reducing one to or subsuming it within the other. The result is a complex hybrid: on the one hand, it is the positive account of post-Reformation ecclesiology that allows Schleiermacher to frame the political problem in a different way than most liberal and even (often Hegel-inspired) communitarian thinkers alike; on the other hand, Schleiermacher will also draw from his political philosophy in order to articulate this ecclesiology: the account of the priest-lay relation in Schleiermacher's version of Presbyterianism runs parallel to Schleiermacher's innovative account of republican liberty. The two are mutually supporting, and it is hard to fully understand either his politics or his theology without adequate attention to the other. That they have often been treated separately (or neglected) is no doubt in no small part due to the ways in which the dominance of the liberal synthesis has shaped the way in which Schleiermacher has been appropriated in the past.

The goal of this chapter is to provide a framework for understanding the basic contours of Schleiermacher's political-theological strategy and how it offers a distinctively different trajectory for

[17] This is why it is important to be able to move beyond attempting to characterize Schleiermacher's politics as presenting a "limited communitarianism". See, for instance, Jeffrey Hoover, "Friedrich Schleiermacher's Theory of the Limited Communitarian State" *Canadian Journal of Philosophy* 20:2 (Jun 1990): 241-260 and C. Jeffrey Kinlaw, "Individual rights in Schleiermacher's limited communitarian state" *British Journal for the History of Philosophy* 30:4 (2022): 687-706. Cf. Robert R. Williams, ed. *Beyond Liberalism and Communitarianism: Studies in Hegel's Philosophy of Right* (Albany, NY: SUNY Press, 2001).

understanding the task of modern politics. Namely, it attempts to make a preliminary case for the benefits of considering Schleiermacher as not just a Protestant political theologian, but a Presbyterian thinker in particular: it highlights the ecclesiological dimension in a way that merely situating Schleiermacher politically amidst the early German Romantics or the Prussian Reform movement does not quite capture. The content of Schleiermacher's being a "Moravian of a higher order" is not merely found in his embrace of a conception of religion as feeling, but in his attempt to give expression to its non-confessional vision of ecclesial authority and unity. In his later years, this would take the form of a principled defense of a version of Presbyterianism informed in part by concepts adopted from his reflections on political philosophy.[18] By paying closer attention to the ways in which Schleiermacher's political vision is tied up with his innovative ecclesiology, I hope to inspire others to pick up on Richard Crouter's suggestion that scholars look "at familiar texts with a heightened political consciousness" so as to be "forced to rethink fundamental positions of Schleiermacher's thought and to weigh perspectives that often reach into the fabric and aspirations of our own society."[19]

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[18] Much has been written of Schleiermacher's church-political engagements, and in what follows, I have benefited greatly from this body of literature, especially as pertains the historical and biographical elements. See esp. Matthias Wolfes, *Öffentlichkeit und Bürgergesellschaft: Friedrich Schleiermachers politische Wirksamkeit* (Berlin: de Gruyter, 2004); Andreas Arndt, *Die Reformation der Revolution: Friedrich Schleiermacher in seiner Zeit* (Berlin: Matthes & Seitz, 2019); Albrecht Geck, *Schleiermacher als Kirchenpolitiker: die Auseinandersetzungen um der Reform der Kirchenverfassung in Preussen (1799-1823)* (Bielefeld: Luther-Verlag 1997); Robert M. Bigler, *The Politics of German Protestantism: The Rise of the Protestant Church Elite in Prussia, 1815-1848* (Berkeley: University of California Press, 1972); and Kurt Nowak, *Schleiermacher: Leben, Werk und Wirkung* (Göttingen: Vanderhoeck & Ruprecht, 2002). See also Christoph Dinkel, *Kirche gestalten – Schleiermachers Theorie des Kirchenregiments* (Berlin: de Gruyter, 1995).

[19] Crouter himself was responding to a series of criticisms of Schleiermacher which sought to assimilate him to the purported bourgeois culture of the time period. Richard Crouter, "Schleiermacher and the Theology of Bourgeois Society: A Critique of the Critics" *The Journal of Religion* 66:3 (1986), 302.

II. Between Religious and Secular: Schleiermacher as "Presbyterian" Thinker

Ecclesiological questions have always been quite central to the development of Western politics.[20] Emerging out of the background of jurisdictional conflicts between kings, bishops, councils and popes, even classical liberal thinkers had to engage ecclesiological arguments even as they sought to reenvisage post-Reformation Euro-American society on non-theological terms. Indeed, central to the development of the concept of sovereignty that would dominate early modern political theory was the negation of other claims to political authority, most notably the notion of ecclesiastical power. Hobbes took on Cardinal Bellarmine's arguments on behalf of spiritual power in Book IV of his *Leviathan*, and placed much of the blame for the unrest of the civil war on the preaching of the Presbyterians in his *Behemoth*.[21] Locke's *Letter on Toleration* similarly attacked Catholicism and attempted to offer the basic outlines of an alternative ecclesiology by defining the church as a "free and voluntary society" into which no one is born and within whose bounds the use of coercive force is wholly inappropriate.[22] Before and alongside the advent of the so-called theorists of social contract were a host of confessional and anti-confessional thinkers seeking political-theological solutions to the problems of social order which confronted European society as one of its key institutions – that of the church – underwent controversies about reform and revival. Examples can be multiplied almost endlessly. Richard Hooker defended the Anglican establishment against Thomas Cartwright's *de juro divino* advocacy of Presbyterian government;[23] Johannes

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[20] Consider, for instance, the work of Ernst H. Kantorowitz, Brian Tierney, or Oliver O'Donovan. See esp. Ernst H. Kantorowitz, *The King's Two Bodies: A Study in Mediaeval Political Theology* (Princeton: Princeton University Press, 1957); Brian Tierney, *Religion, Law, and the Growth of Constitutional Thought 1150-1650* (Cambridge: Cambridge University Press, 1982); and Oliver O'Donovan, *The Desire of the Nations: Rediscovering the Roots of Political Theology* (Cambridge: Cambridge University Press, 1999).

[21] Consider, for instance, Matthew Rose, "Hobbes contra Bellarmine" *Journal of Moral Theology* 4:2 (2015): 43-62.

[22] There has been increasing work attempting to recover Locke's theological endeavors alongside the philosophical contributions for which he was better known. See, for instance, ch. 7 and 8 of Victor Nuovo, *John Locke: The Philosopher as Christian Virtuoso* (Oxford: Oxford University Press, 2017); ch. 6 of Diego Lucci, *John Locke's Christianity* (Cambridge: Cambridge University Press, 2021); and Jonathan S. Marko, *John Locke's Theology: An Ecumenical, Irenic, and Controversial Project* (New York: Oxford University Press, 2023).

[23] For a contemporary defense of the classical Anglican church establishment, see Joan Lockwood O'Donovan, *English Public Theology: A Reformation Response to the Crisis of Natural Rights* (London: T&T Clark, 2024).

Althusius and Hugo Grotius presented differing justifications of the Dutch Revolt;[24] Thomas White and Sir Kenelm Digby sought an alternative approach to English Catholicism in the years of the English Civil War.[25] Debates were fierce and canvassed a wide gamut of theological and political positions. Indeed, in this light, the move by figures such as Locke, Rousseau, and Kant to place less emphasis on soteriological and ecclesiological issues and instead focus on the purportedly morally necessary subjects of the existence of God, the soul's immortality, and divine providence represent just one theo-political strategy among many options, some of which remain living traditions of thought which, even if more marginal in the past century, continue to debate and negotiate their relationship to the liberal political project.

The separation and interrelationship of church and state is clear in Schleiermacher's mature dogmatics. "Christianity," Schleiermacher would write in his treatment of the kingly office of Christ, "is neither a political religion nor a religious state nor a theocracy."[26] The first two present religion as essentially a political phenomenon, interpreting it as just a function of the civil union. The latter attempts to subordinate politics to religion, interpreting the former as something stemming out of the dynamics of the latter. By contrast, however, "The more firmly established and extended his [Christ's] reign is… the more definitely are church and state sundered from each other."[27] This is, however, no wall of separation between the two: "in the proper external separation of the two, which can indeed subsist in very different forms, harmony between the two will develop ever more completely."[28]

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[24] See, for instance, David P Henreckson, *The Immortal Commonwealth: Covenant, Community, and Political Resistance in Early Reformed Thought* (Cambridge: Cambridge University Press, 2019).
[25] See Stefania Tutino, *Thomas White and the Blackloists: Between Politics and Theology during the English Civil War* (London: Routledge, 2008).
[26] GL §105.3, 678.
[27] Ibid., 679.
[28] Ibid.

The view dovetails with the account that Schleiermacher had long been developing in his mature ethical system, which sought to identify the pursuit of the highest good as divisible into four distinct, but overlapping spheres of human activity.[29] But the basic lineaments of the position are already discernable in his *Reden*, though one can indeed recognize ways in which Schleiermacher adjusts his view as he develops his ethical and political philosophy more deeply and systematically. Changing circumstances also had a key effect on Schleiermacher's attitude towards the text, and later editions would attempt to make appropriate adjustments while attempting to retain something akin to the original spirit of the work. Thus, if the specifically Protestant – and within that, Presbyterian – character of Schleiermacher's argument can be difficult to discern in the first edition of the work, it is increasingly apparent by the second and third.

1. The Reden *as Protestant Political Theology*

The Anglo-American reception of the *Reden* can be characterized in terms of the two translations that have been produced: John Oman's 1893 translation of the 1821 third edition with its explanatory addendum and Richard Crouter's 1988 translation of the first 1799 edition.[30] Scholarly attention to the text has tended to track with the occasion upon which Schleiermacher issued the edition. The original, written at the instigation of then-roommate Friedrich Schlegel upon Schleiermacher's thirtieth birthday sought to effect a "turn to religion" among the early German Romantics; the third edition, revised and reissued in light of the impending publication of Schleiermacher's dogmatics, would serve as a kind of introduction to the system. Thus, for most of the 20th century, Anglo-American interpretation of the *Reden* has tended to focus on its value as a

[29] See esp. Hans-Joachim Birkner, *Schleiermachers Christliche Sittenlehre in Zusammenhang seines philosophisch-theologischen Systems* (Berlin: Alfred Töpelmann, 1964) and Gunter Scholz, *Die Phlosophie Schleiermachers* (Darmstadt: Wissenschaftliche Buchgesellschaft, 1984).
[30] Friedrich Schleiermacher, *On Religion: Speeches to its Cultured Despisers*, trans. Richard Crouter (Cambridge: Cambridge University Press, 1988).

methodological treatise for the academic study of religion,[31] often with something akin to Rudolf Otto's interpretation of the text as licensing the study of religion as a kind of mystical experience implicitly in the background.[32] Schleiermacher's contention in the second speech that "Religion's essence is neither thinking nor acting, but intuition and feeling"[33] has thus become a standard touchpoint in religious studies and theology, purportedly laying the foundation for a distinctive approach towards the analysis of religion. Schleiermacher, it is often said, plays a role in inventing the modern idea of religion, positing a singular "essence" underlying its multiple phenomena and finding it in non-cognitive "feeling" or individualistic mystical experience. The plausibility and viability of these claims are still a regular subject of debate for theologians and scholars of religion.

Crouter's translation would accompany a reemphasis on the text's original context and Schleiermacher's place among the Romantics.[34] Almost in parallel, Frederick Beiser has attempted to recover the distinctive politics of the early German Romantics, correcting the assumptions that move from the enormous influence that Romanticism would have on the conservative movement over the course of the 19th century to the mistaken conclusion that Schleiermacher and his fellow

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[31] Debates in theology were often shaped by George A. Lindbeck's characterization of Schleiermacher as offering an "experiential-expressivist" conception of religious doctrine in George A. Lindbeck, *The Nature of Doctrine: Religion and Theology in a Postliberal Age* (Louisville, KY: Westminster John Knox Press, 1984) while scholars of religion grappled with the conceptualist critique found in Wayne Proudfoot, *Religious Experience* (Berkeley: University of California Press, 1987). Both would identify Schleiermacher with viewing religion as a fundamentally non-cognitive phenomena and criticize him on that basis. Schleiermacher scholars have pushed strongly back against such characterizations. For a response to Lindbeck, see Brian Gerrish, "Review of *The Nature of Doctrine*, by George A. Lindbeck" *The Journal of Religion* 68:1 (1988): 87-92. For responses to Proudfoot, consider the collection of essays found in Brent Sockness and Wilhelm Gräb (eds.), *Schleiermacher, the Study of Religion, and the Future of Theology: A Transatlantic Dialogue* (Berlin: Walter de Gruyter, 2010).

[32] This is by no means accidental. Rudolf Otto himself would republish a new German edition of Schleiermacher's original 1799 *Reden* in 1899, and his introduction to the text would often be included in English editions of the work. For an analysis of Otto's relationship to Schleiermacher, see Andrew Dole, "Schleiermacher and Otto on Religion" *Religious Studies* 40:4 (Dec 2004): 389-413.

[33] R 22.

[34] In line with Crouter, Brent Sockness and Ted Vial have also sought to emphasize Schleiermacher's place as a Romantic thinker in light of Charles Taylor's emphasis on the importance of Romantic subjectivity in his studies of Hegel and modernity. See Brent Sockness, "Schleiermacher and the Ethics of Authenticity: The 'Monologen' of 1800" *The Journal of Religious Ethics* 32:3 (Winter 2004): 477-517 and Ted Vial, "Anschauung and Intuition, Again (Or, 'We Remain Bound to the Earth')" in *Schleiermacher, The Study of Religion, and the Future of Theology: A Transatlantic Dialogue,* ed. Brent Sockness and Wilhelm Gräb (Berlin: Walter de Gruyter, 2010), 39-50.

early German Romantics should thereby be identified as a "conservative".[35] By contrast, Beiser characterizes Friedrich Schlegel, Novalis, and Schleiermacher as making a bold attempt to chart a third-way between post-Revolutionary conservatism and liberalism in the final decade of the 18th century.[36] For Beiser, Schleiermacher's distinctive contribution was to effect a "turn to religion" in the final years of the movement by means of the influence that his *Reden* would have within the circle.

The effect of this reception, however, has meant that attention to the political significance of the *Reden* has tended to limit itself to the original 1799 edition of the text, despite the fact that Schleiermacher actively continued to remain a non-conservative and non-liberal advocate for reform throughout the rest of his career.[37] There are some understandable reasons for this neglect: the political circumstances after Prussian defeat at Jena-Auerstedt in 1806 and the unfavorable Peace of Tilsit in the following year as well as those after the final defeat of Napoleon and the Congress of

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[35] Consider, for instance, H.S. Reiss, *The Political Thought of the German Romantics, 1793-1815* (Oxford: Basil Blackwell, 1955). For Reiss, Romanticism constituted an "irrationalist" reaction to the Enlightenment which insists on the subsumption of the individual into the communal. Despite praising Schleiermacher for acute sociological insight, Reiss's ultimate complaint about Schleiermacher's political theory for being "highly arbitrary and subjective" and "masking under a cloak of detached scientific objectivity a definite point of view", ultimately more satisfying when judged by "aesthetic standards" than "rational" ones (p.37). While Schleiermacher's version of Romanticism is certainly critical of a particular conception of Enlightenment reason, it would be a fundamental mistake to characterize this lover of Plato as an irrationalist. Frederick Beiser, for instance, cites the overweening *rationalism* of the early German Romantics as a justification for the movement's ongoing association with the German Idealists. See esp. Part III of Frederick Beiser, *German Idealism: The Struggle Against Subjectivism, 1781-1801* (Cambridge, MA: Harvard University Press, 2008).

[36] See esp. ch. 9 of Frederick Beiser, *Enlightenment, Revolution, and Romanticism: The Genesis of Modern German Political Thought, 1790-1800* (Cambridge, MA: Harvard University Press, 1992) and Frederick Beiser (ed.), *The Early Political Writings of the German Romantics* (Cambridge: Cambridge University Press, 1996). Beiser's work on Schleiermacher must be situated within the context of the increased realization of a significant difference between the early German Romantics (F. Schlegel, Novalis, Schleiermacher) and the path traced by Fichte, Schelling, and Hegel which can too easily be overlooked when lumped together under the label of "German Idealism". Beiser would defend the ongoing inclusion of the early German Romantics within the overall German Idealist movement, while Manfred Frank would suggest that it represents an alternative trajectory in modern philosophy. See Frederick Beiser, *German Idealism: The Struggle Against Subjectivism, 1781-1801* (Cambridge, MA: Harvard University Press, 2008) and Manfred Frank, *Auswege aus dem deutschen Idealismus* (Frankfurt am Main: Suhrkamp, 2007). See also, Manfred Frank, "What is Early German Romantic Philosophy?" in *The relevance of Romanticism: Essays on German Romantic Philosophy,* ed. Dalia Nassar (New York: Oxford University Press, 2014), 15-29 and Frederick Beiser, "Romanticism and Idealism" in ibid., 30-44.

[37] Beiser suggests that the early German Romantic movement effectively ends in the opening decade of the 19th c. by suggesting that its main figures – naming F. Schlegel and Schleiermacher in particular – "became more conservative" in their later years, with "some convert[ing] to Catholicism." But while this may accurately describe F. Schlegel, it certainly does not accurately characterize Schleiermacher, who remains actively involved in the Reform movement until the premature death of his son Nathanael in 1829.

Vienna in 1814-1815 were significantly different from those when Schleiermacher first wrote the text in 1799. Indeed, Schleiermacher would allude to these and other changed circumstances in both the new epilogue added to the second edition and the annotations added to the third. Yet Schleiermacher would never repudiate the text, and many of his additions can actually be read as filling out the political-theological insights of the original with the benefit of additional hindsight.

The second edition epilogue, for instance, would respond directly to the turn towards Catholicism that both Novalis and F. Schlegel made in the years following the original publication, clarifying his original intention to demonstrate the degree to which their aesthetic visions continued to be shaped by Christianity and castigating them for turning, not to the vision of religion that Schleiermacher had attempted to promote, but to a superstitious version of Catholicism.[38] Not the division between religious and secular, but "Protestant and Catholic are the dominant antithesis in Western Christendom" and while the opposition between the two may have "reached the turn of the tide," it "has not appreciably diminished or disappeared."[39] If the first edition of the *Reden* could seem to speak of religions in general, the decisively Christian character of Schleiermacher's aims are made apparent in the second: "Let no one, therefore, be indifferent, but let every man consider to what side he and his Christianity belong."[40]

Schleiermacher's understanding of this antithesis is clarified even further in the third edition, where Schleiermacher chose to forego making significant edits to the body of the second edition text in favor of adding an explanatory commentary in light of the changed circumstances. In these notes, Schleiermacher's distinctive approach to understanding the nature of both Protestantism and Catholicism comes more to the fore. Of particular interest is Schleiermacher's note on the passage

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[38] "At present there are some who appear to rescue themselves from the Protestant into the Catholic Church. … What they are really in search of is idolatry…. The highest they seek is this superstition in church and priesthood, sacrament, absolution, and salvation. But they will accomplish nothing thereby, for it is a perverse state of things and will show itself in them through increased perversity." R3, 268-269.
[39] Ibid., 268.
[40] Ibid.

rejecting "all that has even a semblance to rigid union of priest and laity, whether among themselves or with each other!"[41] Noting that "Since I wrote this I have shown myself a zealous defender of synodal government which is manifestly included in this rejection," Schleiermacher offers an explanation for the apparent change of heart, presenting a vision for proper church governmental authority in place of his earlier rejection of any structure that may fix what is supposed to be the free-flowing attractive dynamics of religious sociality. Schleiermacher distinguishes between two variations: an "Evangelical"[42] or Protestant account in which "the distinction between priests and laity is only to serve the occasion and cannot be permanent" and grounded in the ultimate equality between the two and a Catholic account grounded in "the higher personal religious worth of the priests" in which "the laity, only by their [priestly] mediation, enjoy their share in the blessings of the church."[43]

These developments aside, however, the basic political-theological thrust of the *Reden* remains essentially the same across all the editions: a fundamental shift in the relationship between church and state by virtue of a reconceptualization of the essence of religion as grounded, not in "knowing" or "doing", but in "feeling". Far more than just a methodological proposal, Schleiermacher's reflections on the philosophy of religion are in service of offering a political-theological alternative to the existing ways in which religion was tied to the state and to the academy. Indeed, that his defense of religion would *not* ultimately end along these existing lines is one of the assurances that Schleiermacher attempts to give his audience in the First Speech:

> Only do not worry that I still might, in the end, resort after all to those common measures of demonstrating to you how necessary religion is for maintaining right and order in the world and for coming to the aid of the shortsightedness of human perspective and the narrow limits of human power with the reminder of an all-seeing and infinite power. Nor shall I say that religion would be a true friend and a saving support of morality, since its holy feelings and its brilliant prospects make the struggle with the self and the accomplishment of good

[41] R3, 174.
[42] "Evangelical" is the name that was selected for the united Reformed-Lutheran Prussia Union of Churches after 1821.
[43] Ibid., 206.

> very much easier for a weak humanity. Thus indeed do those speak who pretend to be the best friends and most zealous defenders of religion. [44]

Before Schleiermacher redefines religion in the Second Speech, he is already attempting to distance it from the *political* motivations – "maintaining right and order" – attempting to assimilate it to thinking – "aid of the shortsightedness of human perspective" – and doing – "a saving support of morality". In the crosshairs are the confessionalist and natural theological groundings of state and civil religion that have characterized European politics after the Reformation.[45]

Thus, while Schleiermacher's attempt to demarcate religion's distinctive character as "intuition of the infinite" in the Second Speech certainly has theoretical implications in the context of an ongoing debate over the implications of the critical philosophy, his concerns have as much to do with the kind of societal order that sees adherence to confessions and the success of natural theological arguments as important. The theoretical arguments serve a particular practical end. Indeed, the desirability of these practical ends seems to be a part of Schleiermacher's argument, hardly an effective way of making a theoretical argument. Thus, Schleiermacher contrasts the "friendly inviting tolerance [that] springs from the concept of religion" with the fact that "men have argued, taken sides, and ignited wars… sometimes over morals and always over metaphysics."[46] Indeed, this kind of attempt to distinguish between the political effects of metaphysics, morals, and religion does not even work unless one clearly has the *politics* of confessionalism and natural theology in view. "Religion," Schleiermacher writes, "does not strive to bring those who believe and feel under a single belief and a single feeling."[47] The striving for confessional unity via the instruments of

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[44] R 15.
[45] Consider, for instance, Joachim Whaley's characterization of the Holy Roman empire between the Peace of Westphalia and the dissolution of the *Reich* in 1806 as first characterized by first an explicitly confessional conception of religion and then a more rational conception stemming from the influence of the Enlightenment. Joachim Whaley, *Germany and the Holy Roman Empire, Vol II: The Peace of Westphalia to the Dissolution of the Reich, 1648-1806* (Oxford: Oxford University Press, 2012).
[46] R 27-28.
[47] R 28.

state is rejected as improper to religion. Indeed, Schleiermacher will hope for a time when "Everything that was held together by the unholy bonds of [creedal and confessional] symbols will be scattered and dispersed. The only means of finally ending this nonsense is for there to be no more point of union of this sort."[48]

The rejection of religion's association with either knowing or doing represents a significant departure from both emerging conservative and liberal strategies alike. Take, for instance, the critical project of Immanual Kant, whose influence on Schleiermacher has long been well established. The political significance of the first critique lies in a large part in the fact that Kant denied the capacity of theoretical reason to attain to the proof of the natural theological doctrines – the existence of God and the immortality of the soul – on which the moral stability needed for a state was thought to depend. Kant did not, however, challenge the overall stability of the natural-theological arrangement, but merely sought to reestablish it on different grounds. What could not be established on the basis of theoretical reason, Kant would attempt to establish on the basis of practical reason.[49] Fichte would follow in Kant's wake with a practico-dogmatic argument for God and providence, famously losing his position at Jena when the adequacy of his position was called into question.[50] Hegel would, against Kant's criticisms, then reassert the viability of theoretical arguments for the existence of God, suggesting that the philosophy of religion can actually also go beyond merely the natural theological doctrines to even offer a rational interpretation of the truth of the revealed confessional doctrines as well.[51]

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[48] R 91.

[49] Kant would offer a number of different versions of his "moral argument" for the existence of God in the first, second, and third Critiques. For a reconstruction of the various arguments, see Andrew Chignell, "Demoralization and Hope: A Psychological Reading of Kant's Moral Argument" *The Monist* 106:1 (Jan 2023): 46-60.

[50] For a collection of the relevant texts, see *J.G. Fichte and the Atheism Dispute (1798-1800),* ed. Yolanda Estes and Curtis Bowman (Farnham, UK: Ashgate, 2010).

[51] Thus, Hegel's science of logic would be an attempt to vindicate the status of the ontological argument that Kant would dismiss in the First Critique. See G.W.F. Hegel, *The Science of Logic*, trans. George di Giovanni (Cambridge: Cambridge University Press, 2010) and G.W.F. Hegel, *Lectures on the Philosophy of Religion, 3 vol.,* ed. and trans. Peter C. Hodgson (Oxford: Oxford University Press, 2006-2008).

By contrast, Schleiermacher rejects the relevance of either arguments about the existence of God or the immortality of the soul to religion. Noting that he had mentioned nothing whatsoever of these two topics, Schleiermacher would insist that "From the beginning, I have declared myself against these [immortality and the existence of God] being considered the hinge and chief articles of religion."[52] Cognizant of the political significance of the conception of God, Schleiermacher insists that his hesitancy to address the question is not "because it would be dangerous to speak about it before a judicially valid definition of God and existence had been brought to light and sanctioned in the German empire" – no doubt with reference to the controversy over Fichte's purported atheism.[53] Rather, Schleiermacher insists that

> Among truly religious persons there have never been zealots, enthusiasts, or fanatics for the existence of God…. Religion has nothing to do with the existing and commanding God just as its God is of no use to the physicist or moralist whose sad misunderstandings these are and always will be.[54]

Religion having to do with feeling and not knowing and doing means that religion does not intrinsically have anything to do with the existence or non-existence of a personal deity. *A fortiori*, proofs for the existence of God cannot play the social role that defenders of the status quo in the state attribute to it. "This acting God of religion cannot guarantee our happiness" and "cannot incite us to ethical life."[55] The *Reden* thus explicitly rejects the *politics* of natural theology with which many post-Kantian thinkers continued to be engaged.

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[52] R 51.
[53] Ibid. For more references in the *Reden* to Fichte and the *Atheismusstreit*, see Folkart Wittekind, "Der Vision der Gesellschaft und die Bedeutung religiöser Kommunikation. Schleiermachers Kritik am Atheismusstreit als Leitmotiv der 'Reden'" in *200 Jahre „Reden Uber die Religion" - Acten des 1. International Kongresses der Schleiermacher-Gesellschaft Halle 14.17.März 1999*, ed. Ulrich Barth and Claus-Dieter Osthövener (Berlin: Walter de Gruyter, 2000), 397-415.
[54] R 53.
[55] Ibid.

2. *The* Reden *and the Early German Romantic "Turn to Religion"*

The rejection of the politics of confessionalism and natural theology alike inherent in Schleiermacher's *Reden* means that built into the project was a fundamental rejection of the then-existing relation of church and state which conservatives would seek to defend and liberals seek to disrupt. This is an important dimension that is entirely lost if Schleiermacher is simply read as mounting an epistemological response to Kant's critical project.[56] That is, while Schleiermacher does accept Kant's critique of traditional theoretical arguments for the existence of God, he also rejects Kant's attempts to salvage the natural theological project by appeal to a corresponding moral argument.[57] This means, regardless of Schleiermacher's relationship to Kant, Schleiermacher is already on a fundamentally different political-theological trajectory.

Frederick Beiser's study of early German Romantic politics does much to highlight ways in which Schleiermacher and his fellow Romantics offered early critiques of the developing liberal movement. The contribution of F. Schlegel, Novalis, and the early Schleiermacher to modern political theory, Beiser notes, includes a critique of the effects of modern forms of production and exchange on *Bildung*, a new organic conception of society contrasted to the mechanistic model, a critique of social contract theory and the conception of the individual which undergirded it, and a new sexual politics.[58] Inspired by Schiller's insistence on the importance of aesthetic education, the early German Romantics had evaluated the failure of the French Revolution to actually achieve the freedom it purportedly promoted as due to the attempt to mechanically force political changes upon

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[56] Consider, for instance, Eilert Herms, *Herkunft, Entfaltung und erste Gestalt des Systems der Wissenschaften bei Schleiermacher* (Gütersloh: Gerd Mohn, 1974), Günter Meckenstock, *Deterministische Ethik und kritische Theologie: Die Auseinandersetzung des frühen Schleiermacher mit Kant und Spinoza, 1789-1794* (Berlin: Walter de Gruyter, 1988), or Julia Lamm, *The Living God: Schleiermacher's Theological Appropriation of Spinoza* (University Park, PA: The Pennsylvania State University Press, 1996).
[57] This is evidently clear in Schleiermacher's earlier, unpublished ethical treatises. In *On the Highest Good*, for instance, Schleiermacher criticizes Kant's attempts to establish the postulates of the existence of God and immortality by suggesting that the Kant of the second Critique ought to have recognized that there existed a kind of "antinomy of practical reason" parallel to the antinomies that Kant had identified in the first Critique. See Friedrich Schleiermacher, *On the Highest Good*, trans. H. Victor Froese (Lewiston, NY: The Edwin Mellen Press, 1992) or KGA I/1, 81-125.
[58] Beiser, *Enlightenment, Revolution, and Romanticism*, 222-223.

people who had not cultivated the proper character for it.[59] Pace Kant and Fichte, the genuinely free society could not merely be the result of a set of laws which would enforce an external justice without reference to inner morality. The unity of society cannot be found in a contract, but in shared love, which it was the work of art to cultivate.

Described from this angle, the content of the "turn to religion" that Schleiermacher would effect among the early German Romantics was to replace art with religion as the key to the cultural revival necessary to overcome the egoism, materialism, and anarchism that resulted out of the French pursuit of liberty, equality, and fraternity.[60] What Beiser has described is indeed an important thrust of the *Reden*. If the first two speeches sought to eliminate misconceptions about the nature of religion, the third speech – on religion's *Bildung* – levels a criticism at the ways in which the "extreme of practicality" that characterizes bourgeois civil society represents the great evil which opposes religion even as it does poetry and art.[61] Yet to leave it at that would miss out on the climax of the *Reden's* argument: the account of religion's sociality – the nature of the church – in the fourth speech and Schleiermacher's promotion of Christianity among the religions in the fifth. Goethe's reaction to the *Reden* – as relayed to Schleiermacher by F. Schlegel – supports the contention that Schleiermacher is concerned with something more than just a supplementation of the aesthetic with

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[59] For a recent attempt to recover the importance of the "Bildung" tradition for religious ethics, though with Schleiermacher curiously absent, see Jennifer A. Herdt, *Forming Humanity: Redeeming the German Bildung Tradition* (Chicago: The University of Chicago Press, 2019).

[60] Beiser, *Enlightenment, Revolution, and Romanticism,* 240.

[61] "But in the present condition of the world prudent and practical people are the counterbalance to religion, and their great preponderance is the reason why it plays such a scant and insignificant role. From tenderest childhood on, they mistreat human beings and suppress their striving for something higher." R 59. "They and all that is in them must be restricted within the bounds of bourgeois life. All action is supposed to refer to bourgeois life, and thus they believe that even the exalted inner harmony of man consists in nothing else than his having everything again relate to his action. …Therefore, all sentiments that have nothing to do with bourgeois life are, as it were, useless expenditures by which one exhausts oneself and from which the mind must be restrained as much as possible through purposeful activity." R 61. "That is the extreme of practicality to which the age has rushed with rapid steps from the useless scholastic quibbling about words; it is a new barbarism as a worthy counterpart of the old; it is the lovely fruit of the paternalistic, eudaimonistic politics that has taken the place of crude despotism." R 63.

the religious: Goethe would eagerly praise the first three speeches while finding the latter two distasteful "the more Christian was the religion."[62]

In 1799, the *Reden* does still carries something of the opposition between art and politics that was a cornerstone of early Romanticism and its politics of *Bildung*. The "privacy" of the priest's task is contrasted with the "publicity" of the "virtuosos and artists of politics";[63] and the flexible and non-binding character of religious assembly is contrasted with the legally binding character of coercive law.[64] Thus, even as Schleiermacher advocates for religion's distinctive non-statist sociality, he seems to characterize it in a way that is more concerned with opposing the Kantian and Fichtean attempts to set up a distinction between the legal and the moral, the external and the internal than changing the conversation entirely. Indeed, as many have noted, the account of religion in the 1799 *Reden* remains tinged with the echoes of Schleiermacher's reflections on the nature and importance of free sociability.[65]

But already in 1799, Novalis' response to the *Reden* – his "Christianity or Europe" – shows a better appreciation of the ecclesiological issues that Schleiermacher had brought to the fore. More than just a "third way" between conservatism and liberalism in response to the events of the French Revolution, the revolution was now situated within a broader political-theological context that set the ongoing dynamics of the Reformation at center stage. The "Christianity or Europe" offered a "post-Catholic" vision for a post-revolutionary Europe exhausted by conflict between the "old" and the "new" order. Longing for a "state of states" and "a new political theory of science" Novalis insisted that this would only be possible given "a third element, that is worldly and supernatural at

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[62] F. Schlegel to Schleiermacher c. October 10th, 1799 in KGA V/3, 212-215.
[63] R 85 and 90.
[64] i.e. "Away with everything that even looks like a closed union of laity and priests under or with one another! …let there be an assembly before him [the priest] and not a congregation; let him be a speaker for all who will hear, but not a shepherd for a particular flock." R 90.
[65] See esp. Matthew Ryan Robinson, *Redeeming Relationship, Relationships that Redeem: Free Sociability and the Completion of Humanity in the Thought of Friedrich Schleiermacher* (Berlin: de Gruyter, 2019). We shall have more to say about this in chapter 3.

the same time."[66] Adopting Schleiermacher's proposal in the *Reden*, Novalis' dream for the establishment of universal political freedom and the end of all war took a decisively ecclesiological turn: "Christianity must again become alive and active, and again form a visible church without regard to national boundaries…. It will and must come, the sacred age of eternal peace, where the new Jerusalem will be the capital."[67] If the debt to Schleiermacher were not clear enough, Novalis explicitly holds forth Schleiermacher as a portent of things to come: "This brother is the pulse of the new age. …He has made the Holy Virgin a new veil [translation mine – *einen neuen Schleier für die Heilige gemacht*]."[68]

The treatise offered a broad sweeping narrative, starting from a Europe at peace under "*one* Christianity" and where "without great worldly possessions *one* sovereign" – the pope – "governed and unified the great political forces."[69] Novalis described its stagnation and corruption, the doomed efforts of the Protestants to reform, the valiant, but failed, efforts of the Jesuit order to revive something of the older spirit, the rise of absolute monarchies, the intensification of a conflict between intellectuals and clerics for authority, the rise of philosophy, and the rise of a "worldly Protestantism" in France. Dismissing hopes for renewal from corresponding "worldly Jesuits," Novalis' survey would highlight the flourishing of German arts and sciences in hopes of a renewal of a Christianity beyond Protestantism and Catholicism which would resolve the conflict between the old and the new.

As we have already seen from the epilogue that Schleiermacher added in the second edition of the *Reden*, he would by no means approve of Novalis' turn to Catholicism, least of all a version of

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[66] Novalis, "Christianity or Europe" in *The Early Political Writings of the German Romantics*, ed. Frederick Beiser, 76-77.
[67] Ibid., 79.
[68] Ibid., 75. Here, I have modified the translation based on John H. Smith's recognition that Novalis is likely making a reference to the Virgin Mary rather than, as Beiser has translated, the "saints". Novalis makes a play on Schleiermacher's – "the veil-maker" – name. John H. Smith, "Living Religion as Vanishing Mediator: Schleiermacher, Early Romanticism, and Idealism" *German Quarterly* 84:2 (Spring 2011): 137-158.
[69] Ibid., 61.

Catholicism that saw the pope as a kind of sovereign-of-sovereigns exercising political authority. Stark as this difference of opinion may be, however, Novalis nevertheless does pick up on the ecclesiological focus at the center of Schleiermacher's concern. If Kant had placed the hope for perpetual peace in the establishment of republican governments and the formation of a federation of free states, Novalis – in the aftermath of Schleiermacher's influence – saw it in the revival of Christianity.[70] The French Revolution is praised first and foremost for its positive effects on religion, even as it was faulted for its secularity (being a form of "worldly Protestantism"): "In France much has been done for religion, in not only one of its forms but in all its countless forms, by depriving it of its civil rights and by granting it merely the right of asylum."[71] Indeed, even the Reign of Terror could have a silver lining: "The attempt of that great iron mask, which went by the name of Robespierre, to make religion the middle point and heart of the republic remains historically remarkable."[72]

Novalis' "Christianity or Europe" was very much a product of its moment. At the time of its writing in the final months of 1799, the rise of Napoleon was very quickly calling into question the very foundations of the European order. Only months earlier, the pope had died in French captivity and yet remained unburied at Napoleon's behest as the future of the Catholic church seemed to hang in the balance. A year later, the Concordat of 1801 would reaffirm the status of the Roman Catholic church in France (on terms favorable to the state) and bring Novalis' hopes for a European peace brokered by a renewed and re-envisioned Catholic church to an end. But the decisive focus on post-Reformational ecclesiology represents the influence of Schleiermacher's alternative approach to the question of religion and the state. The Reformation is viewed as part of a decisive theo-political

[70] For more commentary on Novalis' relation to Kantian cosmopolitanism, see Pauline Kleingeld, "Romantic Cosmopolitanism: Novalis's 'Christianity or Europe'" *Journal of the History of Philosophy* 46:2 (2008): 269-84.
[71] Ibid., 73.
[72] Ibid.

shift in the history of Europe, wherein the disruption to the unity of the church alongside the attempts of princes who sought to consolidate their power resulted in "religion [being] sacrilegiously enclosed within the boundaries of the state," thus undermining the "religious cosmopolitan interest" and causing religion to lose "its great political influence as a peacemaker."[73]

If liberal political philosophy would identify religion as exercising a corrupting influence on politics, Novalis, following Schleiermacher, would identify the subordination of the church to the state in the aftermath of the Reformation as the source of woe to the church and state alike. The solution is neither to use the state to shore up religion nor to keep religion as far away from the state as possible, but to free the church from the state so as to allow both to more harmoniously develop and interact. Schleiermacher's – and Novalis' – political theological vision remains distinct from conservative or liberal trajectories of their time by attempting to situate the dynamics of the Revolution within a broader post-Reformation context.

3. Beyond the Reden*: Schleiermacher and the Synodal Form*

It is the fourth speech, "On the Social Element in Religion; or, On Church and Priesthood", that is at the center of Schleiermacher's *Reden* and his political-theological vision as a whole. Indeed, one could say that it marks an entirely different departure point for the early Romantic movement precisely because it presents a fundamentally different political-philosophical trajectory by virtue of its ecclesiological reframing of the political-theological problem. The Kantian philosophy, with its emphasis on "freedom" has often been styled as a philosophical counterpart to the political revolution of the French. The oft-traced "idealist" trajectory from Fichte, to Schelling, to Hegel has thus clothed epistemological reflections on the nature of subjectivity with the aura of revolutionary

[73] Ibid., 66.

politics while, as Marx has accused, remaining for the most part politically inert.[74] Early German Romanticism has come under similar criticism: for all its purported radicality, its focus on art and the forming of a new kind of consciousness did not seem to have much concrete political efficacy.[75]

Manfred Frank and Frederick Beiser have pushed back in their own respective ways, but until the appearance of the *Reden,* there is a genuine sense in which the project of the Romantics remains closely connected to that of post-Kantian philosophy.[76] Novalis and the Schlegels may have recoiled from Kant's – and Fichte's after him – dream of a mechanical state in which justice could be accomplished by loveless devils simply by external means, but they nevertheless often shared similar goals even as they insisted that art, education, and the celebration of individuality and national particularity – not the operations of the cunning of reason – were the means to the desired ends. Novalis, for instance, could insist on the importance of the king and the queen as concrete sensible symbols of the expression of the values of the state over and against the abstract metaphysical arguments of Kant and Fichte;[77] F. Schlegel would insist upon the importance of wit and partial perspective as he and the other contributors to the *Athanaeum* embraced the aphoristic

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[74] See Karl Marx and Engels, *The German Ideology*. Marx's evaluation, however, has found ongoing uptake in the interpretation of German post-revolutionary thought, where pro-revolutionary sentiment was – especially after the 1793 execution of the king – decisively non-revolutionary, but reformist in character. For a discussion of the abstract character of early Romantic and idealist references to the revolution vis-à-vis Schleiermacher in particular, see Kurt Nowak, *Schleiermacher und die Frühromantik: Eine literaturgeschichtliche Studie zum romantischen Religionsverständnis und Menschenbild am Ende des 18. Jahrhunderts in Deutschland* (Berlin: de Gruyter, 1986). We shall have more opportunity to consider the appropriateness of this charge in ch.4.

[75] The criticism was most famously leveled by Carl Schmitt in his evaluation of F. Schlegel, but one can hear echoes of it in the ongoing polemic leveled by more orthodox Marxists against the "cultural turn" in Marxist thought that adopts the Frankfurt School's focus on aesthetic criticism and renewal. See Carl Schmitt, *Political Romanticism,* trans. Guy Oakes (Cambridge, MA: The MIT Press, 1986 [1919]).

[76] Manfred Frank has sought to characterize early German Romanticism as presenting an entirely different trajectory by virtue of its anti-foundationalist rejection of the Fichtean project. ;[76] Frederick Beiser has pushed back by insisting that, anti-foundationalism aside, the early German Romantics nevertheless share with the rest of the German Idealists an embrace of the ultimate rationality of the world. See Manfred Frank, *The Philosophical Foundations of Early German Romanticism,* trans. Elizabeth Millán-Zaibert (Albany, NY: SUNY Press, 2004) and Elizabeth Millán-Zaibert, *Friedrich Schlegel and the Emergence of Romantic Philosophy* (Albany, NY: SUNY Press, 2007). Manfred Frank, "What is Early German Romantic Philosophy?" in *The relevance of Romanticism: Essays on German Romantic Philosophy,* ed. Dalia Nassar (New York: Oxford University Press, 2014), 15-29 and Frederick Beiser, "Romanticism and Idealism" in ibid., 30-44.

[77] See Novalis, "Faith and Love" in *The Early Political Writings of the German Romantics*, ed. Frederick C. Beiser (Cambridge: Cambridge University Press, 1996), 33-49.

form.[78] From the *Reden* on, however, Schleiermacher presents the outlines of a very different way of framing the political task: instead of engaging in epistemological reflections on the nature of subjectivity in order to provide a non-confessional perspective on the natural theological grounding of the state, identify the ways in which a reenvisaged ecclesiology can open up new possibilities for church and state alike.[79]

The concrete political efficacy of Schleiermacher's new approach would quickly manifest itself as he became increasingly embroiled in an active debate over the shape of the Prussian church, taking up a position that would often put him at odds with the king.[80] What started off as a demand for the absolute freedom of assembly in 1799 would evolve into an increasingly sophisticated argument for a reorganization of the church around a presbyterian system as Schleiermacher's experiences as a pastor and interactions with the king's interest in reforming the church stimulated a life-long church-political struggle. As Schleiermacher began to systematize his ethics and to delve deeper into the study of political philosophy, so also his church-political writings would grow in philosophical sophistication, culminating in an account of church authority and power that, even if departing in details from the vision set forth in the *Reden*, would nevertheless continue in its spirit.

Ascending to the throne in 1798, Frederick William III was deeply interested in matters of the church from the onset, influenced in part by his desire to be able to take communion with his Lutheran spouse, Queen Louise. Already in 1799, he would appoint a commission to prepare a new

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[78] See F. Schlegel, "Athenaeum Fragments" in ibid., 113-121 and Novalis, "Political Aphorisms" in ibid., 51-57.

[79] This is not to say that epistemological issues of critique and subjectivity do not remain important to Schleiermacher, just that they begin to take on a secondary importance compared to the ethico-political vision which is more fundamental. Thus, even as Manfred Frank traces the early Romantic trajectory from Novalis and Schlegel's early rejection of Fichte to Schleiermacher's *Lectures on Dialectic*, Sarah Schmidt notes the way in which Schleiermacher's *Lectures on Dialectic* ultimately make reference to his philosophical ethics. See Sarah Schmidt, *Die Konstruktion des Endlichen: Schleiermachers Philosophie der Wechselwirkung* (Berlin: de Gruyter, 2005). Indeed, if Kant and his followers would insist on the importance of engaging in transcendental philosophy before then engaging in the task of formulating a metaphysics of nature or morals, Schleiermacher would begin first with the question of ethics before then adding on reflections on transcendental philosophy and the nature of critique.

[80] For a more in-depth account of these struggles, see Albrecht Geck, *Schleiermacher als Kirchenpolitiker: Die Auseinandersetzungen um die Reform der Kirchenverfassung in Preußen (1799-1823)* (Bielefeld: Luther-Verlag, 1997).

common liturgy to be used uniformly in Lutheran and Reformed churches alike, a project that Frederick William III saw as lying within his rights as *summus episcopus* and which he would pursue for the next decades of his reign. Schleiermacher would share the king's vision for a union of the two confessions, but on a very different basis. Frederick William III and his various ministers would see the unification of the church as an ongoing part of the centralizing movement of enlightened absolutism; Schleiermacher, on the other hand, sought the church's unity as an expression of its own sociality apart from the state. This would set him directly at odds with the king, even as both would see themselves opposed by conservative defenders of confessional unity.

In 1804, Schleiermacher would publish his "Two Impartial Judgments on Protestant Ecclesiastical Affairs" advocating for a union of the Reformed and Lutheran churches on a non-confessional basis and their independence from the Prussian state. [81] Having described religion as not about "knowing", but "feeling" in the *Reden*, confessional differences between the Reformed and the Lutheran were for Schleiermacher no obstacle to church union. The defeat of Prussia at the hands of French armies at Jena-Auerstedt in 1806 would usher in a new wave of reforms under the direction of Karl Freiherr von Stein and Karl August von Hardenberg. In 1808, the various Lutheran and Reformed consistories would be abolished and their administrative tasks taken up by the *Sektion für den Kultus und öffentlichen Unterricht*, which would also oversee Catholic churches within Prussian borders.

In that same year, Schleiermacher would also write up a "Proposal for a New Constitution of the Protestant Church", extending his call for a unified Protestantism by proposing a multi-tiered governmental structure which would lead to a renewal of the church by attempting to reverse the subordination to the state that had been its fate in the aftermath of the Reformation.[82] The vision

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[81] See "Zwei unvorgreifliche Gutachten in Sachen des protestantischen Kirchenwesens zunächst in Bezeihung auf den Preußischen Staat (1804)" in KGA I/4, 359-460.
[82] Friedrich Schleiermacher, "Vorschlag zu einer neuen Verfaßung der protestantischen Kirche" in KGA I/9, 1-18.

could be described as "episcopal with presbyterian-synodal elements" and reflected an attempt to grapple with Stein's concern for state oversight over the church while advocating for a significant degree of ecclesial self-administration.[83] Congregations were to regularly elect elders who would form presbyteries which governed their internal affairs and given the deciding vote in the selection of their pastors; congregants were to be allowed the freedom to switch between different congregations in their locale – or not to attend at all. Bishops were to be heavily constrained in their authority by their chapters, which were to be occupied by ecclesially-minded theologians of the church.

The next decade would see Schleiermacher continuously working on behalf of his vision while becoming increasingly pessimistic about the direction of Prussian politics.[84] From his position under Humboldt in the education ministry, Schleiermacher would be personally engaged in the erection of a new education system – including the institution of the University of Berlin – while continuing to remain active in the politics of church and state. The defeat of Napoleon in 1814 would signal the beginning of the end for the reform-movement as restorationist forces gained momentum across the continent. Under scrutiny from the censure for his editorship of the political paper *The Prussian Correspondent* in the second half of 1813, Schleiermacher would also find himself at odds with the king upon the establishment of a Liturgical Commission which sought to enact a reform of the church "from above" in precisely the way that Schleiermacher was opposed.[85] Relieved of his editorship and of his role in the education ministry, Schleiermacher would attempt to maintain the careful balancing act of defending the church's independence from governmental influence while also advocating for its transformation into a united bi-confessional synodical order.

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[83] See Geck, *Schleiermacher als Kirchen-Politiker*, 66-74.
[84] See esp. parts 5, 6, and 7 of Wolfes, *Öffentlichkeit und Bürgergeschellschaft*.
[85] Schleiermacher would draw criticism for his anonymously published "Congratulations" to the commission. See "Glückwünschungsschreiben an die Hochwürdigen Mitglieder der von Sr. Majestät dem König von Preußen zur Aufstellung neuer liturgischer Formen ernannten Commission (1814)" in KGA I/9, 51-78.

The year 1817 would see a decisive shift. The former consistories would be dissolved and reorganized, and the king would push to see Reformed and Lutheran congregations communing together with a shared liturgy on the 300th anniversary of the Reformation. Elected moderator of a Berlin Synod which contained both Reformed and Lutheran congregations, Schleiermacher would simultaneously advocate for the union against critics concerned about confessional integrity while resisting the king's attempts to maintain a consistorial form of church government and introduce liturgical changes into the worship of the congregations.[86] In a series of publications, Schleiermacher would continue to advocate for an interpretation of the proper governance of the church which highly emphasized its presbyterian or synodal character and its independence from the state.[87] Explicitly affirming that giving church members a greater degree of self-governance in ecclesiastical affairs was preparatory for the adoption of legislative assemblies in the political sphere, Schleiermacher would be accused by the Interior Minister as advocating for a "purely-spiritual republican constitution".[88] Continuing the basic thrust of the early Romantic critique of liberalism, Schleiermacher would present religious *Bildung* in the church as playing a role in generating the cultural conditions necessary for the political reforms liberalism sought to achieve by means of the adoption of a new civil constitution.

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[86] Schleiermacher is very keen to insist, for instance, that the impetus for sharing communion together had originally begun among the churches (as opposed to the king) and was celebrated in accordance with the liturgy of the churches (as opposed to the king's) even if the king had pushed more congregations into participating into the act. See "Official Declaration of the Synod of Berlin Concerning the Celebration of Holy Communion which it will hold on 30 Oct 1817" and "Sermon on the Second Day of the Reformation Jubilee Festival, 1817" in *Friedrich Schleiermacher on Creeds, Confessions and Church Union: That They May Be One*, trans. Iain G. Nicol (Lewiston, NY: The Edwin Mellen Press, 2004), 1-44; KGA I/9, 173-188 and KGA III/5, 241-259.

[87] Especially important would be his 1817 "On the synodal constitution", found in KGA I/9.

[88] "Indeed, our assemblies will then be worthy and instructive forerunners and, in some respects at least, role models of those civil assemblies in the individual provinces and for the whole kingdom which are already promised and which will be in charge of the general civil affairs of the people as we advise the ecclesiastical and participate in legislation." Friedrich Schleiermacher, "Über die einzurichtende Synodalverfassung" in KGA I/9, 146. Translation mine. The accusation of republicanism would come from Kaspar Friedrich von Schuckmann, then the Minister of the Interior in which the Liturgical Commission had formerly been based. The original quote can be found in Erich Foerster, *Die Entstehung der Preußischen Landeskirche, Band I*, 403-423; quoted in Wolfes, *Öffentlichkeit und Bürgergeschellschaft, Teil II*, 9.

If Schleiermacher had previously been willing to incorporate episcopal and consistorial elements into the church's constitution, he now explicitly described these elements as products of the contingent way in which religion and politics had been intermixed in the Reformation. Places where the Protestant church had developed without the influence of princes or regents, Schleiermacher argued, adopted a presbyterian and not an episcopal form of government.[89] The latter was preserved in lands where bishops and rulers quickly supported the Reformation and no radical transformation of the church constitution took place; the former arose where there was little official support – ecclesiastical or political – for Protestantism. It is this former, found in places like France where Protestants were persecuted, Schleiermacher suggests, that is more obviously the proper Protestant form, the expression and product of the Protestant spirit.

Yet at the same time, Schleiermacher did not interpret the role of the state in the Reformation as improper interference. What went wrong in the magisterial Reformation was not the influence of the state – which was necessary and salutary – but the consequent misunderstanding about how to interpret the state's role. The princes, Schleiermacher insists, were able to act for the sake of the church *by virtue of their participation in its communal life as co-equal members of the church*, not by virtue of their political authority.[90] Thus, while political rulers possess a negative right to oversee the church insofar as it pertains to questions of political and social order, they do not possess a positive right to unilaterally order the internal matters of the church and dictate its liturgy. When they

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[89] "We find two constitutions aside from that of the evangelical church: the episcopal constitution and the presbyterian constitution; the first predominantly where greater empires almost at once accepted the Reformation so that the bishops also took part in it or had to adjust their functions; the others predominantly where the evangelical church formed itself without the entry of the regents. Already this simple observation shows that only the latter can be looked upon as an actual product of the Reformation, but the first only remains where no determinate need enters to remove the already existing relations." Friedrich Schleiermacher, "On the Liturgical Right of the Evangelical Prince" in KGA I/9, 46. Translation mine.

[90] "Where, however, the authority declared himself for the evangelical cause, there was it natural that, to him as one member of the church who belonged in a certain relation to all individual communities of the territory in the same way and is moreover more knowledgable regarding common orders and administrations to undertake the care for the association and also for the common institution of worship. Whether this now happened thus that the authority is asked by several individuals or communities or whether they undertake the common affairs also unbidden and community consent tacitly in it, that changes nothing in the matter." Ibid., 248.

involved themselves in the liturgical and governmental matters of the church during the Reformation, it was by virtue of a kind of representative authority that they possessed qua members of the church, not by virtue of the sovereign rights of a ruler.[91] Once exercised – i.e. in the handing over the Augsburg Confession – the influence need not be seen as final and decisive; nor ought it to be seen as giving rise to a permanent right to oversee the church's affairs. Rather, they are a contingent moment in an ongoing story of ecclesiastical reform and development. Thus, the proper trajectory of Protestant churches in places where princes did play a key role in the Reformation is to transition from episcopal and consistorial governments into more and more presbyterian arrangements. As with the *Reden*, Schleiermacher defends an account of the separation of church and state that is keen to emphasize the uniqueness and independence of the church's own dynamics; but if the *Reden* had spoken mostly of the integrity of the "true church" and its freely sociable character, Schleiermacher was now concerned with the synodal form.

4. Protestant and Presbyterian

At the center of Schleiermacher's political-theological vision is thus a commitment to and interpretation of the ecclesiastical and theological significance of the Protestant Reformation. The first edition of the *Reden* had not been as historically explicit as Novalis' "Christianity or Europe" had been, but the additions of the later editions and Schleiermacher's various church-political writings over the following decades would make the Protestant – and specifically, Presbyterian – commitments increasingly clear. Yet at the same time, there is a certain sense in which

[91] "So there yet remains a very essential difference between the two derivations, the one out of the higher rights and the one out of transmission of the representative authority…. The distinction is obvious. In the first case is the regent only pointed to his own conscience, and it is only his business how much or how little he wants to do in order to explain it properly. In the second case, however, he is the plenipotentiary [Bevollmächtige] of the church, and as such he must feel himself obligated to act in its spirit, and so that its goal will be achieved in the highest possible perfection; and it must be his duty of conscience to be able to prove not only before himself but also before them that he has not left unused any means standing at this command." Ibid., 245-246.

Schleiermacher's interpretation of Protestantism (and Presbyterianism) is "revisionist" in character. By insisting that religion is grounded in feeling rather than knowing or doing, Schleiermacher attempts to sidestep the ongoing debates between confessionalist defenders of the Westphalian compromise and Enlightenment attempts to refocus societal order on a purported universal morality to forge a new vision of an Evangelical church consisting of congregations which had formerly belonged to two distinct confessional traditions.

And by insisting that the role that princes and magistrates played in the Reformation ought to be understood as an exercise of the authority that they possessed as lay members of the Protestant church rather than an expression of their power as political authorities, Schleiermacher was making a claim about what was at stake in confessional commitments about the responsibility of the magistrate. Against attempts to suggest that political rulers – by virtue of being the head of the political community – possessed the positive right to regulate religion within their realm, Schleiermacher would point to the Gallican, the Helvetic, the Belgic, and even the Augsburg confession as supporting his view.[92] These may have acknowledged the *ius circa sacra* that rulers have over external affairs in general as they pertain to the church, but by no means attributed a *ius liturgicum* which gave them authority over the internal matters of the church apart from the church's internal decision-making activities. Prior confusions over this point, Schleiermacher suggests, were the product of the fact that the question of the basis on which the princes had acted to order the affairs of the church during the age of Reformation had simply not been asked.[93]

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[92] Schleiermacher focuses on articles XXIX, XXX, and XXXIX of the Gallic Confession (1559), article XXVI of the (first) Helvetic Confession (1536), articles XXX-XXXII and XXXVI of the Belgic Confession (1561), and the article de potestate eccles. in the Augsburg Confession in particular. See "On the Liturgical Right" in KGA I/9, 239.

[93] "Namely, if we had first seen how badly this acceptance [of the liturgical right of the princes out of the higher rights of sovereignty] is grounded both historically as well as in the nature of the matter, and how detrimental and ruinous to the evangelical church it has been in its consequences, one can hardly grasp how it would be possible to advise this hypothesis. This last observation shows us how easily it could come – if things had kept to their natural course that the prince exercised the liturgical right only as the church itself had been able to exercise it – that no one was very concerned to find out what the exercise of this and other churchly rights from the side of the prince actually was grounded." Ibid., 236.

There is, however, yet another sense in which Schleiermacher's account of Protestant Presbyterianism would be revisionary: his account of church government would borrow significantly from categories developed in the context of his political philosophy. Rather than defending Presbyterian polity as a matter of divine law, Schleiermacher's articulation of the position would be heavily influenced by his own reflection on different ways to understand the distribution of power in the church. Indeed, these reflections would allow him to offer, alongside his interpretation of Protestantism, an alternative non-papalist interpretation of Catholicism, which would not simply be dismissed as non-Biblical.

In keeping with his insistence that religion is not "knowing" but "feeling", Schleiermacher offers in his *Glaubenslehre* an ecclesiological, rather than a doctrinal interpretation of the fundamental difference between Protestantism and Catholicism. Rather than two competing interpretations of the same religion, one correct and the other incorrect, Schleiermacher would suggest that the two represented two legitimate, but competing expressions of the same Christian religion, each engaging in a "very different process in construction of a set of faith-doctrines"[94] While suggesting that the proper understanding of the difference between the two may not have yet been discovered, Schleiermacher would offer a preliminary characterization: Protestantism makes an individual's relationship to the church dependent on their relationship to Christ, while Catholicism makes an individual's relationship to Christ dependent on their relationship to the church.[95] Both, Schleiermacher argues, have a point: every relationship to Christ *is* also a relationship to the Christian community, and every Christian community is only as Christian as it maintains a relationship to Christ. Protestants thus worry that the overly ecclesial focus of Catholicism may

[94] GL §23.2, 151. Schleiermacher's relativization of the role of confessional or doctrinal knowledge in distinguishing between Protestant and Catholic does by no means imply that there are no doctrinal differences. Rather, it is that doctrinal differences are reflective of an even more fundamental difference in orientation which may persist even in areas were questions of doctrine or morals may even be ostensibly in agreement. The ongoing task of coming to greater doctrinal awareness of this difference is, for Schleiermacher, part of the doctrinal task itself.
[95] GL §24, 153.

ultimately end up losing the connection to Christ while Catholics worry that Protestantism's individualistic tendencies make it incapable of rebuilding a firm and sustainable ecclesial community.

Schleiermacher's ecclesiologically-oriented interpretation thus accepts the legitimacy of the two different forms of Christianity, insisting that even if many of the doctrinal differences currently separating the two communities were resolved, no reconciliation would thereby result.[96] A fortiori, attempting to effect greater conformity by resort to political coercion would likewise be a futile enterprise. Rather, for Schleiermacher, the ideal situation is that the two communions co-exist alongside one another, spurring one another on to eliminate corruption in their midst and to maximally bring to expression their distinctive character.[97] "The highest [outward unity] we can wish to see", as Schleiermacher would write in his explanatory notes to the *Reden*, "is just such a peaceful union of its various types… a cosmopolitan union."[98]

This was no idle assertion. The rest of the *Glaubenslehre* would be filled with Schleiermacher's attempts to offer an account of the teaching of the Evangelical church which is both in line with the new ecclesiological vision that he has set forth and in conversation with traditional ecumenical and Protestant confessional statements.[99] If the fourth speech of the *Reden* sets out the rudiments of an account of a non-statist religious sociality that would serve as

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[96] "[I]t will surely be just as vividly clear to us that even though the Catholic church were to lean toward our definitions in all those doctrines that have been in dispute, still no reunion would ensue therefore. This phenomenon could be explained only in terms of a spirit existing there that is alien to our own and that would be repulsive to us." GL §24.1, 154.

[97] "Between both churches there should be a living influence, even though it should not be direct. Quiet contemplation should stir up a keen rivalry in whatever in the other section is acknowledged to be good. The contrast in the character of both churches involves at least that one is receptive of the imperfections that the other more suppresses. May the Catholics be edified by seeing that the more any return to any kind of barbarity is hindered. And if they would not deceive themselves as though there were no difference in this respect between us, let them see how far they can advance in the demand for individual freedom. And we should, as passionlessly as possible, observe the secure position which in all outward matters the Catholic Church knows how to secure by strong organization. Let us then try how far we can attain to unity and coherence, yet it must be done in our own spirit and not by setting the spiritual order over against the laity in a way quite opposed to this spirit." R3 272.

[98] R3 192.

[99] Schleiermacher, for instance, was especially keen to receive feedback on the way in which he had reformulated the doctrine of Scripture along these lines, anxious that his attempts to take the ecclesiological dimension of Christian teaching seriously would lead his fellow Protestant theologians to see him as having adopted "too Catholic" a view. See

Schleiermacher's alternative to the politics of confessionalism and natural theology alike, the account of "The Variable Characteristic of the Church by Virtue of its Coexistence with the World" in *The Christian Faith* provides a more developed theology of Christian unity and schism that attempts to articulate a form of distinctively Christian sociality that neither sees the unity of the church as fundamentally found in the unity of the state nor reduces it to merely individual voluntaristic activity.

The revisionist character of Schleiermacher's version of Presbyterianism is also found in the ways in which he draws from his political philosophy in order to articulate the account of clerical authority active in the Protestant church. Namely, the distinction between lay and clergy is to be an *internal* differentiation between persons who share a common ground.[100] As we shall see in chapter four, this is one of the distinctive aspects of Schleiermacher's approach to the question of representative authority vis-à-vis conversations about the nature of republican liberty in the context of the modern state. One of the clearest places where Schleiermacher's reflections on the nature of republican government enter into his theological work is found in his account of the powers of the keys in §§144-145 of the *Glaubenslehre*: "On account of its coexistence with the world, there exists in the church a legislative and administrative power that flows as an essential element from the kingly office of Christ."[101] Following Kant's redefinition of republicanism in *Perpetual Peace*, but with Schleiermacher's characteristic modifications – again, which will be discussed in greater detail in chapter 4 –, Schleiermacher's account of power in the church as divided between executive and

[100] "But according to my view the sole warrant for such closer combinations is that the participators are members of the true church, in which the distinction between priests and laity is only to serve the occasion and cannot be permanent. Wherefore, I could only defend a constitution that rested on this equality and any other in the Evangelical Church there could never be. …A constitutional priestly government becomes only the Catholic Church. The foundation stone of that church is the higher personal religious worth of the priests, and its first principle that the laity, only by their mediation, enjoy their share in the blessings of the church." R3 206.
[101] GL §144, 917.

legislative activity roughly parallels his account of power in the state.[102] That this would be the case ought not to be too surprising given that Schleiermacher's account of the office of the keys grounds itself in the kingly office of Christ. This, as we have seen, Schleiermacher has already described as neither theocratic nor an expression of a political religion. That the church should – "by virtue of its coexistence with the world" – thereby participate in the nature of external legislative and executive authority yet in accordance with its own nature is precisely Schleiermacher's way of dealing with the ways in which the dynamics of the church and the politics of the state can interpenetrate and overlap without being reduced one to the other.[103]

Indeed, the question of church government ends up being a key part of Schleiermacher's vision for the theological discipline of "practical theology", which, in 1811, Schleiermacher would refer to as the "crown of theological study."[104] In keeping with the shift in understanding the character of republicanism as linked more with the principle of representative government rather than a particular form of government to be opposed to aristocracy and monarchy, Schleiermacher's discussion of Evangelical church government is cognizant of the need to identify the underlying unity in principle (clerical-lay equality and functional differentiation) behind the plural forms of

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[102] Schleiermacher, conscious of the similarities, is keen to note the difference between the two. Rather than arising out of a shared nationality, it is the sharing in a common spirit that is the ground of relation to church law: "This response [in the form of the exercise of executive power] arises not in any sort of external manner after the pattern of civil power, for an external feature lacking in an internal counterpart from which it sprang has not even the slightest value for the church. Rather, it happens by virtue of the natural ascendancy of the common spirit over merely personal existence, just as those who belong to a community have a sense of such a common spirit, viewing it as something which everyone has freely acknowledged." GL §144.1, 917. One should be careful not to read Schleiermacher's rejection of the response being "after the pattern of civil power" as a suggestion that the distinction between executive and legislative power here differs in a radical way from the way Schleiermacher thinks it operates in the state. Rather, Schleiermacher is merely pointing out where the parallel stops: church law is not accompanied by coercive sanction in the way that state law is. The different character of religion thus does make a difference – Schleiermacher's account includes a discussion of "free power" as well as "church power" – but the basic distinction between executive and legislative remains valid. "The term 'legislation' must remain inexact, inasmuch as the ecclesial authority likewise dispenses with all external sanction," (KD §317) but Schleiermacher's account of republican liberty still does much to illuminate the picture.

[103] Another place where the evidence of Schleiermacher's political-philosophical reflections are present is Schleiermacher's account of the priestly office of Christ, wherein he rejects a retributive theory of punishment, in keeping with his political philosophical convictions. See esp. GL §104.4, LCE

[104] KD 1811 §26 in KGA I/6, 253.

polity.[105] It is in Schleiermacher's *Lectures on Practical Theology* that he will most systematically attempt to set out his evaluation of the variously existing forms of Evangelical Church government: the episcopal, the consistorial, and the presbyterian, again signaling his preference for the presbyterian on the basis that it best gives expression to Evangelical piety's conception of the fundamental equality between priests and laypersons and reflects a situation in which the church has been extricated from the control of the state.[106] If the first two represent authority coming "from above", the former mimicking states which invest monarchical power at the top and the latter investing authority in a minister of state or council which derives authority from their relationship to the political authority, the third represents authority as coming "from below", out of the clerical relationship to the laity.[107]

III. Between Liberal and Conservative: The End of the Movement

Schleiermacher's hopes for the church to transition to a fully presbyterian form of church government would remain ultimately unfulfilled. Continuing to advocate for more ecclesial self-governance and sustaining resistance against the king's attempt to interpose a new liturgy on the church, Schleiermacher would be viewed with suspicion from within the government and even banned from lecturing on political subjects for the better part of the 1820s after a set of letters highly critical of the Carlsbad Decrees were discovered by the authorities in 1822. Praised by a radical French periodical for being one of the leaders of leftist political opposition in Prussia, Schleiermacher would in 1831 repudiate the suggestion that he was anything other than a loyal

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[105] For an in-depth study and discussion of Schleiermacher's account of church government within his practical theology, though without sufficient attention to the political-philosophical elements to it, see Christoph Dinkel, *Kirche gestalten – Schleiermachers Theorie des Kirchenregiments* (Berlin: Walter de Gruyter, 1996).
[106] As we have already seen, Schleiermacher will also discuss his views on the various forms in his 1824 "On the Liturgical Right". See *Practische Theologie* in SW I/13, 534-565.
[107] Ibid., 539. See also ch.5 of Dinkel, *Kirche gestalten*.

subject of the king – yet, as Gutzkow would note in his obituary for Schleiermacher, also without explicitly repudiating his political and ecclesial advocacy –,[108] leading to a reconciliation with the monarch which saw him decorated with the Order of the Red Eagle and his teaching rights reinstated. Stunned by the early death of his son in 1829 and plagued by medical problems,[109] Schleiermacher would, however, tone down his explicit criticism of the government's policy as he became increasingly pessimistic about the possibilities of successful reform in his lifetime and wary of starting something he would not be able to bring to completion.[110]

Pressed by aristocratic and pietist advocates of the Awakening movement on the right and the anti-religious Young Hegelians on the left, Schleiermacher's academic and clerical colleagues Karl Immanuel Nitzsch, Karl Heinrich Sack, and other advocates of an ecclesiastical "middle way" continued to fight for a presbyterian reorganization of the church for over a decade after Schleiermacher's death. Bolstered by a 1835 agreement to allow Rhenish churches in newly acquired Western territories to join the state church while retaining their presbyterian and synodal organization, their efforts would culminate in a proposal for a simplified confession of faith and the reorganization of the church along presbyterian lines in a long-awaited General Synod of 1846. When the new king decided not even to consider the proposals, the failure of even these "moderate" attempts for reform would foreshadow the increasing polarization of tensions which would eventually explode in the Revolution of 1848. The dominance of the conservative government in its aftermath left no room for liberal advocates or even an ecclesial third way. By the time of the

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[108] In the days immediately following Schleiermacher's death in 1834, Karl Gutkow and the Young Germany movement would champion Schleiermacher – focusing in particular on the early "romantic" works – as one of the leading lights of the reform movement in Prussia until only a few years before his death. For an account of the literary battle between Gutzkow and Schleiermacher's more ecclesiastically-oriented friends and family over Schleiermacher's legacy spurred by Gutzkow's anonymous obituary, see Hermann Patsch, "Der 'unpfäffische Schleiermacher. Karl Gutzkow und das Schleiermacher-Bild des Jungen Deutschlands – Zur Konstruktion eines Gegenmythos" *Journal for the History of Modern Theology / Zeitschrift für Neuere Theologiegeschichte* 24:2 (2017): 240-299.

[109] See, for instance, Albert L. Blackwell, "Schleiermacher's Sermon at Nathanael's Grave" *The Journal of Religion* 57:1 (Jan 1977): 64-75.

[110] See esp. Part 7 of Wolfes, *Öffentlichkeit und Bürgergesellschaft*.

"Schleiermacher revival" in the late-19th and early-20th century, the church and theology faculty would remain decisively integrated with the state apparatus, and Schleiermacher would be appropriated in a significantly different political-theological context.[111]

The failure of the movement aside, one can recognize a significant continuity between the political-theological vision of the 1799 *Reden* and Schleiermacher's ecclesiastical advocacy over the course of his life. From the immediate post-revolutionary period to the years of the Reform Movement to the post-Vienna era of reaction, Schleiermacher may have refined and adapted his strategy and formulations, but retained the hopes that a renewal of the church and an appreciation of its unique sociality could set the stage for the transformation of the state that liberals had sought to achieve in the French Revolution but failed to accomplish. When the Pietist revivals of the Awakening movement resulted, not in renewed energies for reform, but in a new conservative alliance between clerical advocates of conventicles and the aristocratic elite,[112] Schleiermacher would write in the new introduction of the 3rd edition of the *Reden* that he had considered addressing a new version of the speeches, not to the "cultured despisers of religion", but to the newly awakened "pious" and "slaves of the letter [Buchstabenknechte]".[113]

Contrary to Frederick Beiser's suggestion that the early German Romantic movement's third way between liberalism and conservatism effectively came to an end not long after the "turn to religion" effected at the turn of the 19th c., one could see Schleiermacher as continuing to advocate – both theoretically and in practice – an ecclesially-centered vision of reform that demands that one understand advocacy for political transformation within the broader horizon of post-Reformation

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111 See esp. ch. 5 of Thomas Albert Howard, *Protestant Theology and the Making of the Modern German University* (New York: Oxford University Press, 2006).

112 For a new account of the rise and development of the Awakening movement, see David L. Ellis, *Politics and Piety: The Protestant 'Awakening' in Prussia (1816-1856)* (Leiden: Brill, 2017) and Laura Claudia Achtelstetter, *Prussian Conservatism, 1815-1856: Ecclesiastical Origins and Political Strategies* (Cham: Springer, 2021). See also ch.4 of Bigler, *The Politics of German Protestantism*.

113 KGA I/12, 10.

political theology. Instead of abstracting away from the distinctives of the Protestant-Catholic divide, Schleiermacher would seek to offer a new interpretation of the character of the split that would be compatible with a different version of the separation of church and state – and correspondingly, a different vision of what a positive philosophy of the state can accomplish – than the liberal theories which would become increasingly dominant in modern politics. It is with this Protestant and "Presbyterian" reframing in mind that one has to understand the account of "positive liberty" that Schleiermacher will develop in his political philosophy.

1. *Beyond "Liberal Communitarianism"*

Schleiermacher's emphasis on ecclesiology alongside politics sets him in a stark contrast with a figure that he might otherwise be closely associated, the idealist philosopher G.W.F. Hegel. Like Schleiermacher, one might say, Hegel had an ambivalent relationship to liberal political philosophy. Both were caught up in the excitement of post-revolutionary political reform and heavily influenced by the thought of liberal intellectuals such as Fichte and Kant; but both were also heavily engaged with the romantic critique of liberalism and its inadequate and dualistic approach to freedom and community. The similarities between the two thinkers have led many advocates of Schleiermacher to introduce the political and ethical contributions of Schleiermacher by highlighting the ways it may be both similar to and different from that of his often-better-known colleague at the University of Berlin.[114] Taking such a strategy, one situates Schleiermacher as a thinker who ought to be interesting

[114] This is the strategy that has been adopted by a past generation of Schleiermacher scholars who have attempted to wrest Schleiermacher out of the orbit of critiques (such as that of Wayne Proudfoot or George Lindbeck) by resituating him as engaged in the kind of post-Kantian "romantic" project of securing a sense of subjectivity described by Charles Taylor. Thus, Schleiermacher is to be dislodged from being read through the lens of Mircea Eliade or Rudolf Otto's phenomenological account of religion and placed closer to the proximity of Hegel. See, for instance, Brent Sockness, "Schleiermacher and the Ethics of Authenticity: The 'Monologen' of 1800" *The Journal of Religious Ethics* 32:3 (Winter 2004): 477-517 and Theodore Vial, "Anschauung and Intuition, Again (Or, 'We Remain Bound to the Earth')" in *Schleiermacher, the Study of Religion, and the Future of Theology: A Transatlantic Dialogue*, ed. Brent W. Sockness and Wilhelm Gräb (Berlin: de Gruyter, 2010), 39-50.

to those who have, over the past half-century, found Hegel-inspired critiques of classical liberalism or Marxism attractive,[115] taking care to identify places where the two did not see eye to eye so as to highlight the distinctive angles that Schleiermacher thus makes possible.

Thus, Schleiermacher and Hegel could both be recognized as "liberal communitarians" of sorts, who pick up on liberal ideals while criticizing its individualism and formalism.[116] Both pick up on the Romantic emphasis on love as a binding force in politics; both reject liberalism's separation of civil society from the political and questions of individual property from the way in which it is situated in relation to the whole; both develop an account of right as tied up with relations of reciprocal recognition; and both view the process of state formation teleologically and see reform as compatible with a monarch (or unitary executive). From the perspective of a liberal theorist, Hegel and Schleiermacher may even seem to be making similar points and saddled with similar tensions. But taking such an approach elides the way in which Schleiermacher's emphasis on post-Reformation ecclesiology presents a radical challenge to the way in which liberalism frames the question of religion and politics.

Schleiermacher's status as a "presbyterian" thinker is too easily missed if Schleiermacher is read through the lends of a Romantic or Hegelian critique of liberalism. For although there are superficially many similarities between Hegel and Schleiermacher, the former remains essentially committed to a conception of religion (as a deficient form of knowing) that the latter fundamentally challenges. The resulting difference is by no means trivial. Contrary to liberal political philosophy,

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[115] Hegel plays a key role, for instance, in the "communitarianism" of Alasdair McIntyre and Charles Taylor, as well as in the humanist Marxisms of figures such as Gillian Rose and Slajov Zizek. In the realm of analytic political philosophy, the work of Robert R. Williams and Alan Patton have sought to raise Hegel's profile. Each of these can be said to have likewise inspired a further generation of Hegel-inspired scholarship. John Milbank's *Theology and Social Theory* purports to bring together MacIntyre and Rose. The works of Stanley Hauerwas and Jeffrey Stout offer differing ways to respond to McIntyre's critique of liberalism.

[116] Consider, for instance, Jeffrey Hoover, "Friedrich Schleiermacher's Theory of the Limited Communitarian State" *Canadian Journal of Philosophy* 20:2 (Jun 1990): 241-260 and C. Jeffrey Kinlaw, "Individual rights in Schleiermacher's limited communitarian state" *British Journal for the History of Philosophy* 30:4 (2022): 687-706. Cf. Robert R. Williams, ed. *Beyond Liberalism and Communitarianism: Studies in Hegel's Philosophy of Right* (Albany, NY: SUNY Press, 2001).

both embrace perfectionist polities (typically a feature of classical political philosophy), but Schleiermacher, unlike Hegel, nevertheless retains an insistence on a separation between church and state (akin to, but different from that of liberal political philosophy). Hegel famously sought to maintain a synthesis of the classical and the modern in which the organic wholeness of the classical era was achieved again in the unity of the modern state, a state that would be distinctively Christian and would encompass the church within itself.[117] At stake is not just political philosophy, but also their interpretations of the significance of the Reformation.[118]

Schleiermacher, as we have seen, does indeed develop his conception of the state with Christianity in view, but in such a way that allows for Christian influence in public life without necessarily making the state specifically Christian. Thus, while Christian commitments may influence the way in which Christians – whether ordinary citizens or in positions of civil authority – may wish to exercise political authority, Schleiermacher will be quite insistent that they exercise their influence in ways consonant with how any citizen or magistrate, whether or not they are Christian or not, do: by attempting to influence public opinion or by exercising discretion.[119] Just as the intervention of

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[117] Hegel famously characterizes the state as the divine will – spirit – unfolding itself to shape and organize the world in §270 of the *Philosophy of Right*. The church is identified as among one of the fixed determinate characteristics of the state through which the state knows and wills itself (though prior to Hegel's philosophy, only in the form of religious "picture-language". The church and the state thus may be different in form, but are not opposed in content, maintaining a unity in differentiation that leads to the insistence that "gives religious credentials to the state itself." As Pinkard notes in his biography, Hegel was insistent from his early days about the importance of Christianity as a civil religion for liberalism's ultimate success. See Terry Pinkard, *Hegel: A Biography* (Cambridge: Cambridge University Press, 2000).

[118] Indeed, in §270, Hegel even goes so far to suggest that it is the very disunity of the church in the face of the Reformation that has led the state to "reach its appointed end as a self-consciously rational and ethical organization". If liberalism saw Christian division as giving rise to the need for a negative conception of liberty or limited state, Hegel would see it as giving rise to a *positive* vision.

[119] This approach is evidently clear in Schleiermacher's *Lectures on Christian Ethics*, where he will discuss a number of ways in which Christian action intersects with the activity of the state. For example, Schleiermacher is quite insistent that the death penalty is inconsistent with the Christian faith and that, as such, Christians should strive for its abolishment in whatever state that they are in. Schleiermacher's conviction is grounded in his interpretation of political history and the way his restorative vision of justice and punishment shapes the account of atonement that he offers in his dogmatic treatment of Christ's passion and death. Practically speaking, however, the political tasks are differentiated depending on one's political standing: as a citizen, the "Christian must strive resolutely for the death penalty to be abolished" through the changing of public opinion; as a government official, the Christian ought to approve "no more death sentences and always substitute another penalty for the death penalty, in order to abolish it legally," acting within the scope of their allotted discretion. The "Christianization of the state," Schleiermacher insists, must come along with the growing consciousness that "the death penalty is not only superfluous and unnecessary, but also immoral." CS 86-87.

princes into the churches in the era of the Reformation are to be understood as acting by virtue of their authority as laypersons within the church, Christians engaged in politics are to do so in ways appropriate to their status within the polity, whether as ordinary citizens or as members of the government.

Hegel and Schleiermacher – and their followers – would clash over the course of their lives. Karl vom Stein zum Altenstein, the Prussian interior minister who opposed Schleiermacher's attempts at ecclesiastical reform in the key final years of the Reform era, was for a time quite influenced by the Right Hegelian Philip Marheineke. It was *these* and other related views which supported the consistorial form of the church which would seek to govern it as an arm of the state.[120] The Right Hegelians would lose favor (and be replaced by the Awakened) when the rise of the anti-religious Left Hegelians seemed to suggest that Hegel's philosophy may not be as profitable for religion and the state as originally suggested.

Hegel and Schleiermacher would also clash over the aftermath of the murder which would precipitate the Carlsbad Decrees which would introduce even more strict limits on press and academic freedoms. When pressed to release the name of the professor with whom the assassin had been associated during his time at the University of Berlin, Schleiermacher would lead the rest of the faculty in refusing to divulge the relevant information to the governmental officials on grounds of academic freedom. Schleiermacher's vision of education saw teaching authority – parallel to religious authority – as also constituting its own non-statist social dynamics which ought to be respected. Hegel would be the professor who broke ranks, leading to the dismissal of Schleiermacher's friend Wilhelm Martin de Wette from his position. The incident would go a long way in hurting Hegel's reputation as a liberal reformer, but remains broadly consistent with his political-philosophical vision

[120] See esp. ch. 4 of Thomas Albert Howard, *Protestant Theology and the Making of the Modern German University*.

which refused to see any aspect of social life as escaping the ultimate bounds of the state.[121] At the end of the day, Hegel shared with liberal political philosophers the conviction that the authority of the state would be the solution to the problems raised by religion in society, merely disagreeing that the state could abstract away from religion and instead advocating it to embody its truth. While this would also set him very much at odds with both conservative defenders of the *ancien regime* and liberal advocates for the separation of church and state, it remains far closer to the liberal conception of religion than Schleiermacher's radical revisioning.

2. *Beyond "Political Theology": Schleiermacher Contra Schmitt*

Schleiermacher's focus on ecclesiology also sets him fundamentally at odds with another prominent critic of liberalism whose vision of political theology has garnered significant attention today, the German jurist Carl Schmitt. The last decades have seen interest in Schmitt's critique of liberal politics among the Right and Left alike, with significant attention being paid to Schmitt's rehabilitation of the concept of sovereignty and the state of exception, as well as to his vision of a sociology of concepts that sought to identify parallels between theological and political ideas.[122] Mediated through Jacob Taubes, Schmitt's opposition to legal positivism and liberal jurisprudence has even led to a resurgence of interest in reading the Pauline Epistles as a resource for continental philosophy.[123]

What has gathered less attention, however, is the explicitly "Catholic" contour of Schmitt's political-theological project.[124] Schmitt famously parallels Protestant theology and political liberalism

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[121] For an account of this and other tensions between Schleiermacher and Hegel, see Richard Crouter, "Hegel and Schleiermacher at Berlin: A Many-Sided Debate" *Journal of the American Academy of Religion* 48:1 (Mar 1980): 19-43.
[122] Both are set forth in Carl Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty,* trans. George Schwab (Chicago: The University of Chicago Press, 2006).
[123] See Jacob Taubes, *The Political Theology of Paul*, trans. Dana Hollander (Stanford: Stanford University Press, 2003).
[124] "Catholic" remains in quotes because, despite the significance of the Catholic church for Schmitt, he also offers a creative reinterpretation of its significance that rejects the Bellarminian conception of "indirect power" that retains many defenders in the church. For an overview of Schmitt's Catholic reception, see Michael Hollerich, "Carl Schmitt" in *The*

in the new preface of the 1934 edition of *Political Theology*: "To be sure, Protestant theology presents a different, supposedly unpolitical doctrine, conceiving of God as the 'wholly other,' just as in political liberalism the state and politics are conceived of as 'the wholly other.'"[125] Indeed, he had followed up the original 1922 essays with the 1924 *Roman Catholicism and Political Form*, in which he attempts to characterize Catholicism as "based on a strict realization of the principle of representation" which stands "in its antithesis to the economic-technical thinking dominant today."[126] Catholicism is presented as possessing a political vision that transcends the opposition between capitalism and communism (because it is juristic rather than economic) and the increasing privatization of life and religion in the name of technical-economic thinking that can increase its dominance by virtue of an increasing vision of privatization that has its origins in Protestant religion. The interconnection between politics and ecclesiology is expressed in an ecclesiological appendix in which Schmitt argues that a commitment to the incarnation of Christ requires a rejection of the Protestant distinction between the visible and invisible church.[127]

It is important to note, however, that Schmitt's conception of "Catholicism" is – like Schleiermacher's – a "revisionist" one. In identifying it with the concept of representation, Schmitt attempts to pick up on what he takes to be the central political insight of the Catholic tradition while simultaneously rejecting the Roman church's defense of the relationship between the temporal and spiritual powers. Indeed, it is precisely Hobbes' defense of "the natural unity of spiritual and secular power" and restoration of "the old and eternal relationships between protection and obedience,

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Blackwell Companion to Political Theology, ed. Peter Scott and William T. Cavanaugh (Malden, MA: Blackwell Publishing Ltd, 2004), 107-122.

[125] Schmitt, *Political Theology*, 2.

[126] Carl Schmitt, *Roman Catholicism and Political Form,* trans. G.L. Ulmen (Westport, CT: Greenwood Press, 1996 [1924]), 8.

[127] "Every religious sect which has transposed the concept of the Church from the visible community of believing Christians into a *corpus mere mysticum* basically has doubts about the humanity of the Son of God." Ibid., 52. The distinction between the visible and the invisible church, for instance, is discussed in John Calvin, *Institutes of the Christian Religion*, IV.I.4, 7-9.

command and the assumption of emergency action, power and responsibility against distinctions and pseudoconcepts of a *potestas indirecta* that demands obedience without being able to protect" that defines his significance for Schmitt.[128] It is not a simple reassertion of the positions staked out by the dueling sides in the Reformation to which Hobbes responded, but a creative reinterpretation of one side of that debate in such a way so as to seek the resolution that the Counter-Reformation was unable to achieve. Hobbes, Schmitt would write at the end of his life, "brought the Reformation to a conclusion by recognizing the state as a clear alternative to the Roman Catholic church's monopoly on decision-making."[129] Indeed, Schmitt's decisionism and his insistence on the parallelism between the political and the theological emerge quite naturally from his "Hobbesian-Catholic" way of reading the Reformation and the Revolution. Against a writer who wished to emphasize how the eschatological nature of the church leads to the necessary rejection of any such parallel, Schmitt would reiterate the significance of Hobbes:

> It is quite surprising that he [Ernst Feil] mentions, in his historical overview, the name of Thomas Hobbes without alluding to the specific politico-theological nature of the Protestant Reformation and of every confessional revolution and counter-revolution of the sixteenth and seventeenth centuries. He does not realise the extent to which the *ius revolutionis* of the French Revolution is a logical de-theologised continuation of the *ius reformandi* of the Protestant Reformation. …Moreover, he does not realise, either, that he cannot escape Hobbes' all-deciding questions: *Quis judicabit? Quis interpretabitur?*[130]

The question of the right to interpret Scripture is the theological precursor of the political right to interpret and judge the law. If Protestantism and liberalism shared a rejection of representation in favor of a private opinion which became increasingly mechanized and technical-economic, Schmitt's "Catholicism" would set in place the notion of a sovereign representative.

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[128] Carl Schmitt, *The Leviathan in the State Theory of Thomas Hobbes: Meaning and Failure of a Political Symbol*, trans George Schwab and Erna Hilfstein (Chicago: The University of Chicago Press, 2008 [1938]), 83.
[129] Carl Schmitt, *Political Theology II: The Myth of the Closure of Any Political Theology*, trans. Michael Hoelzl and Graham Ward (Cambridge: Polity Press, 2008 [1970]), 101.
[130] Ibid., 44-45.

As should be clear, Schleiermacher's "Protestant" political theology is by no means merely an inversion of Schmitt's "Catholicism". But both thinkers engage in an attempt to think the ecclesiological and political issues of the post-Reformation era together. Where Schleiermacher offers a creative "republican" reinterpretation of the significance of presbyterian governance for Protestantism as a key aspect of bringing to an end the political-theological problem of interconfessional strife, Schmitt offers a creative, Hobbes-inspired reinterpretation of Catholicism. That is to say, in addition to coming on different sides of the split, the two offer contesting conceptions of what makes the Catholic position Catholic and the Protestant one Protestant. This has decisive implications for how the two treat the relationship between church and state as well as whether or not one recognizes a secularizing parallel between theological and political concepts.

To put the contrast most strongly, Schleiermacher rejects one of the fundamental assumptions that underlies the Schmittian project: the claim that a genuine distinction between temporal and spiritual power is not viable. At the same time, however, Schleiermacher does not adopt the liberal privatization of religion or the dialectical theology's eschatological rejection of political theology in order to maintain this position.[131] Instead, he develops an alternative conception of representation in conversation with post-Revolutionary theories of republican liberty and adapts it for ecclesiological purposes to give expression to what he takes to be the key insight of the Protestant Reformation: a conception of clerical authority that is only "occasional" in character.[132] What characterizes Protestantism's distinctive opposition to Catholicism, for Schleiermacher, is not the complete rejection of the distinction between priests and laypersons, but a very different way of working out the authority-relation that holds between the two. As we shall see in chapter 4, the

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[131] One could say that the former is the primary object of critique in Schmitt's *Political Theology* while the latter is what is primarily at issue in *Political Theology II*.

[132] "But according to my view the sole warrant for such closer combinations is that the participators are members of the true church, in which the distinction between priests and laity is only to serve the occasion and cannot be permanent. Wherefore, I could only defend a constitution that rested on this equality and any other in the Evangelical Church there could never be." R3 206.

distinction is *internal* rather than *external*. For Schleiermacher, the opposition between Protestant and Catholic is not, as in Schmitt, a distinction between a political theology that rejects the principle of representation and one that embraces it, but two differing ways of working out representative authority, one which emphasizes the individuals' relations to Christ and another which emphasizes how this relation is mediated through a community. Neither necessarily implies a need for a single unitary executive who exercises sovereign authority by virtue of their decisions.[133] Indeed, Schleiermacher will even consider the institution of the pope as ultimately extraneous to Catholicism as he understands its essence, which undergirds his criticism of his former ex-Romantics' conversion to Catholicism.[134]

Schleiermacher's non-liberal (and non-classical and non-medieval) account of the separation of church and state that also allows for their interpenetration thus undermines Schmitt's attempt to set up a fundamental contrast between liberalism and political theology. Schleiermacher can insist on the possibility of an "obedience without being able to protect" precisely because the obedience owed to magistrates by citizens of the state and that which is owed to clergy by laypersons in the church are grounded in two differing – but necessarily overlapping – ways: the former by virtue of shared participation in the division of labor in a way that expresses a particular national identity and the latter by virtue of participation in a shared religious feeling. If liberalism's version of separation of church and state attempts to resolve inter-religious strife by developing a negative conception of liberty, Schleiermacher's account of their separation is grounded in their mutual positivity. What Schmitt seeks to identify as a parallelism between theology and politics by means of a narrative of

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[133] Indeed, that Schleiermacher's conception of Catholicism represents a creative re-interpretation of what is essentially at play in the Reformation can be discerned in his conviction that the embrace of a papal monarchy is by no means essential to what makes Catholicism Catholic. Indeed, insofar as Schleiermacher perceives of the institution of the papacy as a *corruption* of the Catholic principle, his view of the matter certainly reflects a version of Catholicism that would have significantly acquitted itself from a number of key Reformation polemics. See the Epilogue to the 2nd edition of the *Reden*.

[134] See the epilogue to the 2nd edition of the *Reden*.

secularization, Schleiermacher seeks to identify as a parallelism by virtue of their interpenetration. The church participates in the political even as the political also participates in the ecclesial.

One of the reasons that it can be so hard to appreciate Schleiermacher as a thinker is the ways in which he completely defies conceptions of secularization that revolve around the development or subversion of a sharp distinction between reason and revelation. As a theological project, Schleiermacher's *The Christian Faith* nevertheless insists that a number of its central concepts – including the very notion of a "church" – are "borrowed from philosophical ethics".[135] And, as we have seen in his account of the office of the keys, it is by virtue of the church's "coexistence with the world" that "there exists in the church a legislative and administrative [executive] power that flows as an essential element from the kingly office of Christ."[136] In other words, the church has a legal-juridical dimension to it not merely on account of its religious identity, but by virtue of the way in which its specific ecclesial identity intersects with the political. The political participates in the ecclesial.

On the flip side, the ecclesial also participates in the political. Apart from Schleiermacher's political philosophy proper, Schleiermacher will also develop an account of how Christian faith expresses itself politically in his account of Christian ethics. Here, Schleiermacher discusses how it is that Christians engaging in a political sphere which may not be made up of Christians alone can express their Christian commitments. The Christian, Schleiermacher suggests, ought to be engaged in reform of the criminal justice system, namely, in the striving to eliminate the death penalty.[137] The tasks are differentiated depending on one's political standing: as a citizen, the "Christian must strive resolutely for the death penalty to be abolished" through the changing of public opinion; as a

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[135] See GL §4.
[136] GL §144.
[137] Schleiermacher's conviction is grounded in his interpretation of political history and the way his restorative vision of justice and punishment shapes the account of atonement that he offers in his dogmatic treatment of Christ's passion and death.

government official, the Christian ought to approve "no more death sentences and always substitute another penalty for the death penalty, in order to abolish it legally," acting within the scope of their allotted discretion.[138] The "Christianization of the state," Schleiermacher insists, must come along with the growing consciousness that "the death penalty is not only superfluous and unnecessary, but also immoral."[139] Setting aside questions of whether or not Schleiermacher is correct to think of the death penalty as un-Christian and whether or not *only* Christians can advocate for its abolition in the public sphere, what ought to be clear is that Schleiermacher's conception of the separation of church and state does imply the possibility of a state's undergoing "Christianization".

This interpenetration of theology and political philosophy can exist because the theological also participates in the philosophical and vice-versa. Far from being the expression of a somehow *neutral* reason, Schleiermacher will note that the philosophical ethics from which he drew to frame the project of dogmatics, although not developed on a religious ground, is nevertheless an expression of philosophy done on a Christian basis.[140] Similarly, Schleiermacher identifies one of the reasons that political philosophy struggles with some of the questions that it does is that "political theory itself is still contaminated today with pagan vestiges and holds fast to pagan models."[141] For

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[138] CS 86-87.

[139] Ibid., 87.

[140] The insistence is found in a fascinating 1827 marginal addition to the discussion of the nature of "love" in the doctrine of virtue. Describing love in terms of the activity of the interpenetration of reason with nature, with reason being the active principle and nature being the passive principle, Schleiermacher addresses an objection that characterizing reason's activity as being directed towards "nature" would seem to go against the Christian conviction that God ought to be the ultimate object of our love. "[T]he exposition of our concept," Schleiermacher notes, "ought to express the Christian basis of our philosophy." The solution to the dilemma is a solution that will be familiar to readers of the *Glaubenslehre* who are cognizant of Schleiermacher's insistence on the identity of the knowledge of the world and the knowledge of God: "Love for nature is only ethical if understood as love for God, love for God is only true if understood as love for nature."E 1812/13 109 (DV.III.1n2), 387. See also GL §169. The insistence on the Christian basis of his philosophy is one area where Schleiermacher's project in ethics and the philosophy of religion fundamentally differs from Troeltsch's later grappling with the possibility of Schleiermacher's commitment to both the scientific study of religion and the absoluteness of Christianity. A full discussion of this point cannot be engaged in at this juncture, but one cause for the disjunction between the two is the fact that they operated with fundamentally different conceptions of what makes science scientific. For Schleiermacher, knowledge and religion are – like politics and religion – also fundamentally distinct but also necessarily overlapping spheres of human activity.

[141] CS 90. The discussion takes place in the context of Schleiermacher's discussion of a Christian attitude towards state revolution.

Schleiermacher, this is on account of the way that Christianity had originally spread in the apostolic era (among the politically powerless lower classes) and on account of the kinds of political arrangements that had characterized the medieval era. It was not until the Reformation, Schleiermacher suggests, that a "true Christian political consciousness" is established, presumably laying the foundation for Schleiermacher's own political philosophical vision.[142]

Instead of a sharp distinction between reason and revelation that reflects a disjunction between the ordinary and the miraculous understood in terms of norm and exception, Schleiermacher insists upon a teleological conception of the relationship between reason and revelation in which one can attempt to discern how "the supernatural becomes natural."[143] As a Christian, Schleiermacher is thinking most particularly of the influence of the incarnation of God in Christ on human history, but the basic point can just as well be applied to the impact of any event that one may recognize as a genuine historical *novum*, the introduction of a new principle or dynamic that cannot simply be reduced or explained by appeal to precedents or pre-conditions alone.[144] Schleiermacher's political philosophy thus attempts to take into account the ways in which the introduction of Christianity has a decisive effect on the politics of the West while simultaneously also remaining cognizant that the dynamics of political and economic development possess their own integrity apart from that of religion.

The articulation and defense of the ways in which these various forms of action and spheres of society are both distinct and yet intricately interrelated is the project of Schleiermacher's ethical theory as a whole.[145] What is significant for our purposes, however, is the recognition of how

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[142] Ibid., 90-91.
[143] Schleiermacher uses this language to describe his project in OG. See also GL §13. For a recent attempt to provide an overview of this theme in Schleiermacher's dogmatic theology and ethics, see Kevin M. Vander Schel, *Embedded Grace: Christ, History, and the Reign of God in Schleiermacher's Dogmatics* (Minneapolis: Fortress Press, 2013).
[144] See the discussion of the person of Christ in GL §93.
[145] For an English-language discussion of the various factors keeping Schleiermacher's ethics from being better known, see Brent Sockness, "The Forgotten Moralist: Friedrich Schleiermacher and the Science of Spirit" *Harvard Theological Review* 96:3 (July 2003): 317-348. See also Hans-Joachim Birkner, *Schleiermachers christliche Sittenlehre im Zusammenhang seines*

Schleiermacher's political theology can be seen to be offering a concrete non-liberal alternative to most of Schmitt's main emphases. Instead of a parallel between theology and secularized political concepts, Schleiermacher insists on the ongoing significance of understanding the distinctions between the ecclesial and the political, even as the two may interpenetrate one another. Against the post-Reformation realities of a state church and against liberalism's privatization of religion alike, Schleiermacher will advocate for a church that actively seeks to organize itself in accordance with its own dynamics, actively distinguishing its sense of unity from the unity of the state. Contrary to Schmitt, Schleiermacher offers a defense of the significance of the Protestant distinction between the visible and invisible church that can make theological sense of the distinctively Christian drive for unity and schism within the church, a drive that, for Schleiermacher, ultimately reflects a different social dynamic than that of state development.[146]

IV. Conclusion

That Schleiermacher's political philosophical vision is accompanied by a corresponding ecclesiological one, however, does not necessarily imply that only committed Presbyterians could find his political philosophical arguments persuasive (or vice-versa, for his ecclesiological arguments). Schleiermacher's insistence on the separation of religion and politics means that there *is* a relative degree of autonomy of these dynamics from one another. In principle, for instance, Schleiermacher's basic political-theological vision already includes a reimagined version of Catholicism and even a variety of Judaism within its contours.[147] The degree to which this

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philosophich-theologischen Systems (Berlin: A. Töpelmann, 1964) and Gunter Scholtz, *Ethik und Hermeneutik: Schleiermachers Grundlegung der Geisteswissenschaften* (Frankfurt am Main: Suhrkamp, 1995).

[146] GL §§148-156.

[147] For an account of modern Jewish trajectories vis-à-vis the emergence of liberal politics and emancipation, see Leora Batnitzky, *How Judaism Became a Religion: An Introduction to Modern Jewish Thought* (Princeton: Princeton University Press, 2011). For an articulation and defense of one interpretation of Roman Catholicism's attitude towards religious freedom and liberal democracy in the post-Vatican II era, see the work of John Courtney Murray, i.e. "E Pluribus Unum: The American Consensus" in *American Conservative Thought in the Twentieth Century,* ed. William F. Buckley, Jr. (London:

revisioning may or may not be ultimately faithful to these other traditions, of course, will be an object of ongoing dispute, but it is not in principle different than the kind of revisioning that liberal political theories correspondingly demand of religion.[148] Indeed, if anything, Schleiermacher's version permits religions an ongoing dimension of publicity and even overlapping with the state provided that it remains compatible with the state's overall dynamic (i.e. legislative changes are effected via public opinion and executive discretion exercised so as to retain the trust of the citizenry), something beyond the privatization often demanded by prominent streams of liberal theory.[149] What matters most is a shift in the basic strategy of dealing with religion and politics: instead of formulating a negative conception of the state and abstracting away from the positivity of religion, one needs to find ways to try to coordinate positive accounts of both state and religion.[150]

Routledge, 2011), 37-51 or "The Issue of Church and State at Vatican Council II" *Theological Studies* 27 (Dec 1966): 580-606. See also George Weigel, "Catholicism and Democracy in the Age of John Paul II" *Logos: A Journal of Catholic Thought and Culture* 4:3 (Summer 2001): 36-64.

[148] Schleiermacher's insistence on the separation of church and state would allow him to insist that Jewish emancipation and inclusion within the bounds of Prussian citizenship *not* require conversion and baptism on the grounds that this would result in further (politically-motivated) corruption of the church. By contrast, Schleiermacher suggested that it would be possible to extend citizenship to Prussian Jews *as* Jews, provided that understand their commitment to Jewish law in ways – parallel to Schleiermacher's eventual account of Christ's kingly office – that would not put it fundamentally at odds with the dynamics of national state development. See David Friedländer, Friedrich Schleiermacher, William Teller, and Wilhelm Abraham. *A Debate on Jewish Emancipation and Christian Theology in Old Berlin*, trans. and ed. Richard Crouter and Julie Kassen (Indianapolis, IN: Hackett Publishing, 2004). Schleiermacher, however, seems to have been highly doubtful that this would ultimately be possible, as he would characterize Judaism as the preeminent example of a theocratic religion in which religion and statehood could not be easily separated. Nor is this necessarily an unjust assumption: given Schleiermacher's conception of a close conception between ties of inter-marriage and nationhood, Jews would have to be willing to give up or significantly modify laws about intermarriage with Gentiles in order to accommodate to Schleiermacher's vision. Giving up on the corresponding assumptions that undergird such a conclusion may very well be too high a cost for the committed Jewish practitioner or the "Schleiermacherian nationalist" to consider. While some have taken this to imply that Schleiermacher is fundamentally and irredeemably anti-Semetic, it is important to note that this is also in principle a problem for any political theory that refuses to countenance restrictions on marriage (i.e. reject miscegenation laws). The degree to which Schleiermacher's version of nationalism is careful to emphasize the importance of maintaining regional and "tribal" diversity may permit for some accomodation, but, as we shall discuss in ch.5, there is a degree to which Schleiermacher's "racialist" conception of nationalism and "non-Jewish" conception of Christianity may require some reconstruction if one wishes to rehabilitate it for contemporary use. For a critique of Schleiermacher's relationship to Judaism, see Matthias Blum, *"Ich wäre ein Judenfeind?": Zum Antijudaismus in Friedrich Schleiermachers Theologie und Pädagogik* (Cologne: Böhlau Verlag, 2010). See also ch. 9 of Wolfes, *Öffentlichkeit und Bürgergesellschaft*.

[149] This may not ultimately be satisfying for advocates of Judaism or Islam who have decried the "Christian" assumptions underlying liberal conceptions of the separation of church and state, but it at least allows for a different way to approach the conversation which may or may not be able to yield alternative results.

[150] See also Daniel Whistler, "Early German Romanticism and the Characteristics of Religion" in *Oxford History of Modern German Theology, Vol. I: 1781-1848,* ed. Grant Kaplan and Kevin M. Vander Schel (Oxford: Oxford University Press, 2023), 239-259.

Whatever disagreements one may have with Schleiermacher's characterization of the various "religions" in the fifth speech of the *Reden*, it is at the very least a rejection of the post-Enlightenment hopes of generating a rational "natural religion" that abstracted away from the historical and social particularities of actual cultic traditions and practices and a call to take very seriously the political-theological implications of the kinds of sociality that they may engender.[151] In contexts heavily influenced by the legacy of European politics and colonialism, this means grappling with the ongoing implications of the Reformation and the way confessional commitments may continue to structure inter-Christian dynamics. And even if it is not just Christian ecclesiology with which one has to deal, Schleiermacher suggests that the modern political task demands engagement with the internal dynamics of non-statist formations of sociality. A stable religiously-, if not just confessionally-, plural political order demands more than just a one-time demonstration of the compatibility of a particular religious tradition or Rawlsian "comprehensive doctrine" with a liberal conception of politics, but an ongoing grappling with the tradition's unfolding dynamics and the ways in which they may or may not contribute to the ongoing formation of the state.[152] Political philosophy, in other words, must always also be political theology.

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[151] "You call these existing determinate religious manifestations "positive religions," and under this name they have long been the object of a quite exquisite hatred. But in spite of all your aversion to religion generally, you have always endured ever more easily and have even spoken with esteem of something else, which is called 'natural religion.' …But not admitting these arguments, you will perhaps heap all the old reproaches, which you were otherwise accustomed to make against religion, upon the individual religions, while maintaining that these reproaches are occasioned and justified anew by the element that you call positive in religion. …Consider how much of this corruption is attributable to those who have forced religion out of the depths of the heart and into the civil world." R 98-99. "The essence of natural religion actually consists wholly in the negation of everything positive and characteristic in religion and in the most violent polemic against it." R 110.

[152] Two important attempts which have recognized the ongoing need to make the case for compatibility for the ongoing viability of a liberal democratic enterprise can be found in the essays collected in Nicholas Wolterstorff, *Understanding Liberal Democracy: Essays in Political Philosophy,* ed. Terence Cuneo (Oxford: Oxford University Press, 2012) and Jeffrey Stout's advocacy for the church-centered organizing of the Industrial Areas Foundation in Jeffrey Stout, *Blessed Are the Organized: Grassroots Democracy in America* (Princeton: Princeton University Press, 2010). The problem with abstracting away from the internal social or ecclesiological dynamics of religious organizations to be coopted into the liberal democratic enterprise is that it may neglect the ways in which the internal organization of various ecclesial traditions may continue to be shaped by structures and habits inherited from a very different vision of the relationship of church and state.

Chapter 2: Recognition and Exchange: Political Economy and Schleiermacher's Theory of Right

> "Let us notice first of all that the so-called *rights of man,* as distinct from the *rights of the citizen*, are simply the rights of a *member of civil society*, that is, egoistic man, of man separated from other men and from the community. …Political emancipation is a reduction of man, on the one hand, to a member of civil society, an *independent* and *egoistic* individual, and on the other hand, to a citizen, to a moral person. Human emancipation will only be complete when the real, individual man has absorbed into himself the abstract citizen; when as an individual man, in his everyday life, in his work, and in his relationships, he has become a *species-being*; and when he has recognized and organized his own powers as *social* powers so that he no longer separates this social power from himself as *political* power."
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> Karl Marx, "On the Jewish Question"[1]

> "If such an association [of state] is not rooted in [a common] particularity it can only have a negative basis, namely to safeguard every person's activity, which means also those individuals who are in opposition. If the state is not merely to be some kind of criminal institution, it must attempt to supersede any grounds for disruption. But then it is itself dispensable and either people will live as hordes once again… or else in isolation."
>
> Friedrich Schleiermacher, *Lectures on Philosophical Ethics*[2]

I. Introduction

1. Overview

The concept of right plays a central role in the theory and practice of modern liberal politics. The American, French, and Haitian Revolutions presented themselves as movements centered around the protection of basic, self-evident, and fundamental rights; and many other movements seeking political independence or civil equality have followed in their wake. From abolition, to women's suffrage, to post-colonial struggles for self-determination and the fight for civil rights, coalitions of oppressed and oppressors alike have articulated their demands in terms of rights and their violation, staking their appeal on the assumption that the defense of rights is among one of the core functions of the modern state. Historians, cognizant of the concept's importance, argue over

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[1] Karl Marx, "On the Jewish Question" in *The Marx-Engels Reader, 2nd Ed.*, ed. Robert C. Tucker (New York: W.W. Norton & Company, 1978), 42, 46.
[2] E 73 (HG.III.96), 335.

where and when the term is first systematically used in its more modern resonances.[3] Critics of modernity question the term's conceptual coherence or compatibility with other deeply held commitments.[4] In many ways, how one treats the concept of right reveals much about one's attitude towards some of the fundamental political questions of modern politics and the significance of the state.

This chapter dedicates itself to an exposition of the basic contours of Schleiermacher's post-revolutionary theory of right. In particular, it attempts to situate Schleiermacher's unique approach to rights-discourse alongside that of two better-known contemporaries: that of Immanuel Kant and Johann Gottleib Fichte. Understanding how Schleiermacher both builds on and departs from these two influential liberal thinkers is key to making sense of why Schleiermacher's theory of right ought to be of interest to those concerned with the dynamics of modern politics even as it challenges a number of principles that are often assumed to be fundamental: that states ought to be thought of as limited and that all individuals are to be thought of as possessing equal rights. Schleiermacher's close association with the early German Romantics and his insistence on understanding right in relation –

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[3] Hobbes, Grotius, and Locke among others, have all been nominated as key figures in the invention of the modern conception of right. Other scholars have sought to trace the pre-history of the concept even more deeply into the medieval era. Brian Tierney, for instance, claims that it is in the context of Franciscan debates over apostolic poverty that the language of rights first takes up the modern resonance of referring subjectively to a sphere of permitted activity. Cf. Brian Tierney, *Liberty and Law: The Idea of Permissive Natural Law, 1100-1800* (Washington, D.C.: Catholic University of America Press, 2014). Richard Tuck, by contrast, sets early modern debates over colonialism, international trade, and reasons of state at the center, pointing out Hobbes as the key transitional figure. Richard Tuck, *The rights of war and peace: political thought and the international order from Grotius to Kant* (Oxford: Oxford University Press, 2002). Cf. Leo Strauss, *Natural Right and History* (Chicago: The University of Chicago Press, 1953).

[4] The criticism of rights-talk has become quite influential among several Christian modernity-critics, who variably identify the use of rights-language as subjectivistic, undermining of communal norms, and at odds with ethical visions that emphasize the importance of the moral law and the common good. Consider, for instance, Alasdair MacIntyre, "Community, Law, and the Idiom and Rhetoric of Right" *Listening: Journal of Religion and Culture* 5 (1991): 96-110; Joan Lockwood O'Donovan, "Historical Prolegomena to a Theological Review of 'Human Rights'" *Studies in Christian Ethics* 9:2 (1996): 52-65 and "Rights, Law, and Political Community: A Theological and Historical Perspective" *Transformation* 20:1 (Jan 2003): 30-38; John Milbank, "Against Human Rights: Liberty in the Western Tradition" in *The Meaning of Rights: The Philosophy and Social Theory of Human Rights*, ed. Costas Douzinas and Conor Gearty (Cambridge: Cambridge University Press, 2014), 39-70; Stanley Hauerwas, "How to Think Theologically About Rights" *Journal of Law and Religion* 30:3 (2015): 402-413; and Nigel Biggar, *What's Wrong With Rights?* (Oxford: Oxford University Press, 2020). Cf. Nicholas Wolterstorff, *Justice: Rights and Wrongs* (Princeton: Princeton University Press, 2008) and John Witte, "Christianity and Human Rights; Past Contributions and Future Challenges" *Journal of Law and Religion* 30:3 (Oct 2015): 353-385.

not only to the individual, but also – to the community has led various commentators to characterize him as a "communitarian" thinker whose theory of right is ultimately deficient by virtue of its incompatibility with fundamental liberal assumptions.[5]

Schleiermacher does indeed challenge a number of fundamental liberal assumptions. With his fellow early German Romantics, he rejects the disjunction between morality and right that is typically used to characterize the kind of negative liberty that the liberal state seeks to defend. In the previous chapter, we have seen how this can nevertheless be compatible with an account of the separation of church and state. But Schleiermacher also goes further and rejects the assumption that rights adhere to individuals qua individuals (rather than as standing in community) and that individuals are necessarily to be seen as possessing *equal* rights.[6] Instead, as we shall see, Schleiermacher posits that rights-discourse is ultimately a way of asserting claims on the basis of how one is (or could be) recognized as being situated within a community's division of labor.

As wild as this view may seem, part of the onus of this chapter is to demonstrate that Schleiermacher is not as distant from liberal theories of right – at least that of Kant and Fichte – as one might initially assume. That is, even if Schleiermacher is critical of liberal rights discourse, he does not advocate for its abandonment in favor of an alternative hearkening back to pre-modern precedents, but attempts to effect a revitalization of the concept in light of a greater appreciation of its political-economic contours. Indeed, in emphasizing that rights are grounded in the concrete

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[5] See esp. Miriam Rose, *Schleiermachers Staatslehre* (Tübingen: Mohr Siebeck, 2011) and Andreas Arndt, "Der Begriff des Rechts in Schleiermachers Ethik-Vorlesungen" in *Wissenschaft, Kirche, Staat und Politik – Schleiermacher im Preussischen Reformprozess*, ed. Andreas Arndt, Simon Gerber, and Sarah Schmidt (Berlin: Walter de Gruyter, 2019). Arndt develops on his argument in Andreas Arndt, *Die Reformation der Revolution: Friedrich Schleiermacher in seiner Zeit* (Berlin: Matthes & Seitz Berlin, 2019).

[6] Since the original drafting of this chapter, Jeffrey C. Kinlaw has attempted to offer an analytical defense of Schleiermacher's conception of right that, in many ways, is akin to the one offered here. Kinlaw does not, however, situate the argument in its historical-theoretical context and in doing so makes a few erroneous claims. Schleiermacher's conception of right, for instance, does not allow him to affirm the conception of bodily autonomy as Kinlaw suggests he does. This topic will be picked up in greater detail in the following chapter. See Kinlaw, C. Jeffrey. "Individual Rights in Schleiermacher's Limited Communitarian State" *British Journal for the History of Philosophy* 30:4 (2022): 687-706.

political-economic relations in which actual individuals are situated, Schleiermacher can be recognized as offering a critique of liberalism's undue focus on abstract conceptions of equality and personality as insufficiently attentive to both the material conditions of citizenship and the individuality of individuals while reconstructing an account of right that he thinks does better justice to how the discourse actually operates. Decades before Marx would launch his dialectical materialist critique of Hegel's philosophy of right and the limitations of the German ideology, Schleiermacher would articulate an alternative political-economic critique of the liberal concept of right.

On the flip side, Schleiermacher's insistence that rights-talk is not to be negatively, but positively grounded leads him to develop a theory of right that is situated within determinate conceptions of the common good and actual communal relations of collective labor and exchange. This would set Schleiermacher at odds with the modernity-critics who have tended to see accounts of subjective right as fundamentally at odds with broadly communitarian accounts of the good, leading many to reject rights as a secular and inadequate concept for religious engagement with the political. Schleiermacher's Romantic critique of the abstract individualism of liberal rights-discourse thus allows him to pick up on many of the concerns of figures such as MacIntyre, Milbank, Hauerwas, and O'Donovan, yet without reaching the conclusion that the discourse should be abandoned altogether. Schleiermacher's distinct way of privileging – not abstract individuals – but individuals-in-community thus represents an innovative way of trying to move beyond the opposition between liberalism and communitarianism.

The chapter is divided into two broad sections. The first focuses on Schleiermacher's early engagement with the theory of right as found in the unpublished "Notizen zur Vertragslehre" (Notes on the Theory of Contract). After a brief introduction to the late-18th century German rights-discourse, I attempt to demonstrate in what sense Schleiermacher can be recognized as constructing a "post-Kantian" theory of right. Drawing on Kant's *Metaphysics of Morals* (1797) and the early

Fichte's "Von der Sprachfähigkeit und die Ursprung der Sprache" (1795), Schleiermacher attempts to articulate a distinct account of the nature of coercive right. With Kant, Schleiermacher would identify the bindingness of contracts with the mutual recognition of an intelligible act of will-determination that can neither be identified simply with the act of promising nor the act of accepting a promise. Unlike Kant, however, Schleiermacher would not see rights grounded in pure practical reason and a working out of a principle of innate freedom, but instead posits an original community of signs lying at its basis. While the position in the "Notizen" remains incomplete and tentative, Schleiermacher nevertheless sets forth two principles that would continue to characterize even his later theory of right: an insistence that rights have a positive, rather than negative grounding and an attentiveness to the linguistic conditions which make acts of mutual recognition possible.

The second half of this chapter then turns to the account of right that Schleiermacher develops in his later *Brouillon* (1805/6) and various editions of his *Ethik* (1812/13 and 1816/17). Here, I focus on the ways in which Schleiermacher's account can be made intelligible when set alongside the innovative recognitive theory of right set out in Fichte's *Foundation of Natural Right* (1796/7) and *The Closed Commercial State* (1800). Developing on his earlier views, Schleiermacher's insistence on linguistic community and a positive foundation for right is now inflected by political economic concerns for understanding collective action in the context of an increasingly complex division of labor. Like Fichte, Schleiermacher would insist that rights were founded on relations of reciprocal recognition; but unlike Fichte, the product of such acts of recognition are not spheres of abstract individual freedom, but concrete roles in a material division of labor alongside a recognition of the unique individuality of the individuals who play those roles. In place of Fichte's opposition between abstract individuality and general universality, Schleiermacher would insist that the bounds of generality and individuality are mutually co-implicating.

The chapter will conclude with a few reflections on how Schleiermacher's approach to the theory of right may yet have constructive promise in the context of a contemporary discussion in which Kant and Fichte continue to be drawn from as interlocutors. In particular, Schleiermacher offers a critique of classical liberal approaches to rights while nevertheless departing from the communitarian trajectory found in the theories of Hegel and Marx.

2. A Deficit?

Scholarly attention to Schleiermacher's theory of right is limited. Miriam Rose addresses the subject briefly in *Schleiermachers Staatslehre* and Andreas Arndt responds to her characterization in an essay in a collected volume which is later developed into a full monograph on Schleiermacher's politics as a whole.[7] Jeffrey C. Kinlaw has offered a defense of Schleiermacher in response to Rose and Arndt,[8] but there is otherwise little dedicated literature to the subject apart from a number of attempts to rebuff characterizations of Schleiermacher, in his emphasis on the importance of tradition and community, too closely in relation to the (conservative) historical rights school of Savigny.[9] Both Rose and Arndt alike characterize Schleiermacher's theory of right in a communitarian way, as primarily concerned with protecting the identity and character of a people, rather than the innate subjective freedoms of individuals.[10] For Rose, the neglect of subjective right is attributed to a purported unfamiliarity with the classics of modern liberal political theory – figures like Grotius, Hobbes, Locke, Rousseau, Montesquieu, and the like –, the post-Napoleonic context of

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[7] See note 4 above.
[8] Jeffrey C. Kinlaw, "Individual rights in Schleiermacher's limited communitarian state" *British Journal for the History of Philosophy* 30:4 (2022): 687-706.
[9] Schleiermacher's association with historicism often leads to such comparisons. In a classic attempt to rebuff this comparison, Gunter Scholtz attempts to situate Schleiermacher between Savigny's "historical-rights school" and Hegel's "philosophical right school" as more akin to Hegel in "Philosophisches und historiches Rechtsdenken. Schleiermacher und Savigny" in *Ethik und Hermeneutik*, 170-192.
[10] i.e. "Das Recht hat hiermit vor allem eine Erhaltungs- und Schutz-funktion für die geschichtlich-konkrete Gemeinschaft. Nicht der einzelne in seiner Individualität wird vom Recht geschützt, sondern die Gemeinschaft in ihrer konkreten Bestimmtheit." Rose, *Schleiermachers Staatslehre*, 225-226.

Prussian political conversations,[11] and Schleiermacher's own "wissenschaftliche" framing of his political theory as oriented towards providing the ideal categories for the historical description of states rather than itself a "political" work.[12] Arndt concurs with Rose's description of Schleiermacher's theory of right as fundamentally community-oriented and especially deficient on the question of individual rights, but argues that this is actually a deliberate implication of his political theory in general – especially his marginalization of the significance of a written constitution – rather than a difference in emphasis.[13] For Arndt, Schleiermacher's attempt to attribute rights to persons as members of determinate peoples rather than as humans is fundamentally incompatible with modern conceptions of right and undermines attempts – like Wolfes' – to rehabilitate Schleiermacher's politics for modern liberal democracies.

Setting aside the question of the compatibility of Schleiermacher's politics with modern democracy, there are good reasons to call into question the degree to which Schleiermacher's purported failure to consider the question of individual rights should be considered a deficit. For one, Schleiermacher explicitly rejects the framing of a number of classical modern political theories, but in a way that suggests he is attempting to incorporate their insights:

> Namely, the one [opinion] that the *state* only is there to *implement right*. If insight leads to [the conclusion] that the shortest process (i.e. arbitration) is the best: then the state has become superfluous. The same goes if one wants to lead it back to the *need for defense*. Once an experience that aggression fails has formed the opponent, they will no longer attack. Both

[11] Rose situates Schleiermacher's *Staatslehre* in a context where the radical edge of liberal reforms was now more associated with debates over the significance of public opinion for political authority rather than discourse about the social contract and natural rights, which, in the aftermath of the collapse of the French Republic and the rise of Napoleon, was almost universally viewed – even by advocates of liberal reform – as topics to be avoided.

[12] Rose characterizes Schleiermacher as having presented an "unpolitical political theory" which is nevertheless not value-neutral, but moral. It is "unpolitical" in the sense that it is not primarily concerned with effecting political change (although it indirectly does so by means of creating a consciousness of liberal citizenship among its audience), yet nevertheless *normative* in the sense that it reflects considered judgments on trajectories in the development of European politics. For her discussion of Schleiermacher's theory of right in particular, see esp. chapter D (four) of Rose, *Schleiermachers Staatslehre*, 212-235.

[13] Andreas Arndt, "Der Begriff des Rechts in Schleiermachers Ethik-Vorlesungen" in *Wissenschaft, Kirche, Staat und Politik – Schleiermacher im Preussischen Reformprozess*, ed. Andreas Arndt, Simon Gerber, and Sarah Schmidt (Berlin: Walter de Gruyter, 2019).

> views [the state as commercial or the state as militaristic society] are simultaneously one-sided.[14]

Indeed, far from merely overlooking the thinkers of classical modern political thought, Schleiermacher seems to single out their views for criticism. In continuity with his Berlin days among the early German Romantics,[15] Schleiermacher's *Ethik* explicitly distances itself from theories of social contract in its discussion of the state.[16] "That the state should arise through contract is an impossibility," Schleiermacher writes.[17] And going on, "A state which is founded on contract, moreover, cannot last."[18]

Schleiermacher also singles out liberal anti-perfectionism for criticism:

> If such an association [of state] is not rooted in [a common] particularity it can only have a negative basis, namely to safeguard every person's activity, which means also those individuals who are in opposition. If the state is not merely to be some kind of criminal institution, it must attempt to supersede any grounds for disruption. But then it is itself dispensable and either people will live as hordes once again… or else in isolation.[19]

We shall have more occasion to consider Schleiermacher's theory of state more closely in the fourth chapter, but Schleiermacher's critique of a state grounded in negative freedom represents one of the central themes of his approach to the theory of right. Against liberal theories which would set the universality of the state over and against an indeterminate bare individuality, Schleiermacher would

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[14] "Nämlich die daß der S t a a t nur da ist um d a s R e c h t zu handhaben. Wenn nun die Einsicht dahin führt daß der kürzeste Prozeß (d.h. der schiedsrichterliche) der beste ist: so ist alsdann der Staat überflüßig geworden. Dasselbe gilt, wenn man ihn zurükführen will auf das B e d ü f n i ß d e r V e r t h e i d i g u n g. Denn hat sich bei den Gegnern eine Erfahrung gebildet daß Angriffe mißlingen so werden sie nicht mehr angreifen. Beide Ansichten sind zugleich einseitig…" KGA II/8, 71.

[15] For an account of Schleiermacher's early engagement with the politics of early German Romanticism, see esp. Kurt Nowak, *Schleiermacher und die Frühromantik* (Göttingen: Vandenhoeck & Ruprecht, 1986).

[16] "The romantics made contributions of the first importance to modern political theory. They spearheaded the critique of modern civil society; they developed a new organic concept of society in opposition to the mechanical model of the paternalist tradition; they questioned the fundamental premises of social contract theory and liberal individualism; and they formulated a sexual politics whose demands for sexual equality and freedom still sound modern." Frederick Beiser, *Enlightenment, Revolution, and Romanticism: The Genesis of Modern German Political Thought, 1790-1800* (Cambridge: Harvard University Press, 1992), 222-223. For an introduction to the politics of the early German Romantics, see esp. ch.9 of the work; see also ch.6 of Beiser, *The Romantic Imperative: The Concept of Early German Romanticism* (Cambridge: Harvard University Press, 2003).

[17] E 71 (HG.III.89),335 .

[18] E 72 (HG.III.90), 335.

[19] E 73 (HG.III.96), 335.

continuously insist that it is the interrelation of commonality and particularity that more adequately safeguards the individuality of the concrete individual. The problem with any state not grounded in some kind of shared communal identity – necessarily particular by virtue of being determinate – is that it sets itself the impossible task of purportedly simply protecting individuals *qua individuals*. For Schleiermacher, this is impossible because this means somehow attempting to hold together people even when they may live lives that are actually in contradiction with one another without *actually* resolving these contradictions. The only ways this is possible either requires no state at all – the individuals are already part of determinate sub-communities (hordes) which already get along – or requires separating out the individuals so that they do not get in one another's way – not a community at all. For Schleiermacher, the only other alternative – besides the one he himself advocates – is for the state to enforce a kind of conformity by violence – a criminal state.

Given these sharp critiques of notions often central to liberal conceptions of the state, it should be unsurprising that Schleiermacher's conception of right departs from that of the classical liberal theorists. As Rose and Arndt have noted, Schleiermacher does not treat individuals *qua individuals* as innate bearers of rights. This does not mean, however, that Schleiermacher rejects the concept of individual rights altogether, but merely insists that individuals bear rights *qua* members of communities. Nor is Schleiermacher's view entirely without precedent. As we shall see, far from being ignorant of classical theories of right, Schleiermacher develops his own distinctive approach in close engagement with the theories of Kant and Fichte in particular.

II. Schleiermacher's "Kantian" Theory of Contract in the 1796/97 "Notizen zur Vertragslehre"

1. Contracts and Coercive Right in Early Modern Political Philosophy

What exactly is a right? The prominence of the concept in modernity has not precluded significant disagreements over how to understand what exactly it meant for someone to have a right

to possess a thing or to perform some action.[20] A particularly important dimension of the debate would center on the coercive dimension of right, namely, the belief that one's having a right to something conveyed to that person the license to justly exercise coercive force against anyone who may seek to deprive them of their right. The question of how it was that one could acquire such a coercive right vis-à-vis someone else stands at the center of the contractarian theories of state that sought to provide "natural" alternatives to sidestep the way in which confessional disputes continued to complicate questions of the role and authority of monarchs.[21] The idea that the state's right to coerce its citizens was founded in consent naturally put debates over the nature of the contract (and especially the original contract) front and center into discussions of right.

Moses Mendelssohn, to take one example, would attempt to set forth an account of how coercive rights could be derived out of contracts in an attempt to make the case for the religious toleration of Jews in an otherwise Christian-dominated society. In his *Jerusalem: Or on Religious Power and Judaism* (1783), Mendelssohn would sharply distinguish between civil and ecclesiastical power, explaining how one could acquire coercive rights over someone by means of a contract and insisting that, unlike the relation between citizens and the state, there simply is no contract between the church and its citizens in order to reach the conclusion that no such thing as a right to subject religious beliefs to coercion.[22]

It is worth briefly considering Mendelssohn's account to get a sense of one prominent account of contract with which Kant and Schleiermacher both engaged when they attempted to work out their views on the subject. Like many advocates of the social contract, Mendelssohn would begin with an account of the natural liberties that purportedly defined humans in the state of nature.

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[20] While the Hohlfeldian analysis of rights is widely referenced, the concept continues to be hotly debated up to the current day. See W. Hohfeld, *Fundamental Legal Conceptions*, ed. W. Cook (New Haven: Yale University Press, 1919).
[21] i.e. Hobbes' *Leviathan*, Locke's *Second Treatise on Government*, Rousseau's *The Social Contract*.
[22] Moses Mendelssohn. *Jerusalem: Or on Religious Power and Judaism*, trans. Allan Arkush (Waltham, MA: Brandeis University Press, 1983).

Humans, Mendelssohn insists, have a natural and exclusive right to their own capacities and things that they produce in accordance with these capacities. These things are to be devoted either to their own use or – out of benevolence – for the use of others. In the state of nature, one's natural liberty consists in the right to be one's own judge of what things are to be devoted to the self and what things one is willing to give away to others.

Mendelssohn introduces a distinction between perfect rights (and duties) and imperfect rights (and duties) in order to characterize how it is that coercive rights emerge and contracts can be considered valid. The concepts of right and duty, for Mendelssohn, are correlates; to every right corresponds a duty, and to every duty corresponds a right. A perfect right is one in which "all the conditions under which the predicate belongs to the subject are invested in the holder of the right"; an imperfect right is the opposite, a right which can only be ascribed to someone on the basis of conditions that are not all present in the holder of the right.[23] Simply put, to possess a perfect right is to put others under an unconditional obligation (i.e. they have a perfect duty) to respect one's right. These are absolutely to be respected and can be enforced coercively. An imperfect right, on the other hand, only puts others under an indeterminate obligation (i.e. an imperfect duty) which is only binding on the conscience and cannot be enforced coercively.

The question of the origin of coercive right and how one exits the state of nature and enters civil society, then, is described by Mendelssohn in terms of how it is that one can gain a perfect right to something that does not naturally belong to them. In other words, how does the imperfect duty of beneficence – giving something of one's own to someone else in accordance with one's own judgment – become a perfect duty in which someone else has a coercive right to one's property? Mendelssohn's answer: by means of a contract, one gives up one's natural liberty to judge for oneself

[23] Ibid.,s 46.

and cedes it to another.[24] It is initiated by a promise, a declaration of will that is to be made known to the other by means of some sign; it is then concluded by an act of acceptance, after which the right to decide has passed from the promiser to the acceptor.

For Mendelssohn, the bindingness of contracts consists in the fact that the declaration of will, if it is not to be ineffectual and thus contradictory, must actually effect a transformation in the state of right. "My neighbor's previously imperfect right must have become, through this transaction, a perfect right, just as my formerly perfect right must have been transformed into an imperfect right. Otherwise my decision would be null and void."[25] The essence of the contract, Mendelssohn insists, cannot rest merely on the moral obligation to keep one's promises on account of the expectations that they give rise to in others, as this does not effect a change in the state of right.[26] The expectation that one keep one's promise remains at the level of an imperfect right. It may be unfair that one's expectations are not met, but unless a genuine transfer of right has taken place and the other now possesses a perfect right where they previously had an imperfect right, it is not to be considered unjust.

2. The "Notizen zur Vertragslehre" and Post-Kantian Theories of (Coercive) Right

The philosophy of Kant would inspire, at the end of the 18th c., a series of new and creative attempts to work out the doctrine of right. Part of the challenge of characterizing what I am calling "post-Kantian theories of right", however, lies in the fact that, in a way, Kant himself can be thought of as a "post-Kantian" thinker, at least with respect to his political philosophy. This is for the simple reason that, although the first and second *Critiques* and the *Groundwork* had seemingly lay

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[24] "Thus, a contract is nothing but the *cession*, by the one party, and the *acceptance*, by the other party, of the right to decide cases of collision involving certain goods which the promising party can spare." Ibid., 54-55.
[25] Ibid., 53.
[26] Mendelssohn explicitly attempts to distinguish his account from that of Ferguson. Ibid., 55.

a foundation for a Kantian theory of right by the mid-1780s, the first part of the *Metaphysics of Morals* would not be published until early in 1797. In the meantime, the advent and progress of the French Revolution over the course of the 1790s, the partial reformation of the Prussian legal system along natural-rights lines in the *Allgemeine Landrecht* in 1794, and the frequent characterization of Kant's thought as giving philosophical expression to the French struggle for freedom then manifesting itself politically meant that anything that Kant would eventually write would emerge in the midst of an increasingly crowded field of authors attempting to present a "Kantian" perspective on the nature of right and on the revolution itself. Kant's views, first expressed in his 1793 "Theory and Practice" essay, elaborated upon in the 1795 "Toward Perpetual Peace", and systematically exposited in the *Metaphysics of Morals* would become the object of criticism from conservative anti-Revolutionaries and radical supporters of the revolution alike, many of whom claimed to have set out "Kantian" philosophies of right.

This would lead to a situation in which many so-called "Kantian" thinkers could very well find themselves very much at odds with Kant himself even as they claimed to be advancing philosophically along Kantian lines. Many radical supporters of the revolution, for instance, would criticize Kant for his rejection of democracy, universal suffrage, or the right of resistance.[27] Thus, Friedrich Schlegel in his "Essay on the Concept of Republicanism occasioned by the Kantian Tract *Perpetual Peace*" (1797) would insist that republican governments were necessarily democratic.[28] Fichte in his *Foundations of Natural Right* (1796-7) and Johann Adam Bergk in his *Untersuchungen aus dem Natur-, Staats- und Völkerrechte* (1796) would both castigate Kant for excluding women (at least the

[27] For an attempt to situate Kant's views on these topics vis-à-vis his various 1790s critics, see Reidar Maliks, *Kant's Politics in Context* (Oxford: Oxford University Press, 2014). Maliks will complicate the picture further by suggesting that Kant also ends up changing his views in part in response to the evens and discussions surrounding the French Revolution.

[28] See Friedrich Schlegel, "Essay on the Concept of Republicanism occasioned by the Kantian tract 'Perpetual Peace'" in *The Early Political Writings of the German Romantics*, ed. and trans. F. Beiser (Cambridge: Cambridge University Press, 1996).

unmarried ones) from the franchise.[29] All three (and others with them), were quite dismayed by what seemed to be Kant's rejection of the legitimacy of revolution as a means of reform.

What complicates this further is the fact that some of Kant's "Kantian" critics could themselves significantly change their mind about various subjects in part due to Kant's further clarifications on the subject. For instance, the "Kant" of the Fichte of the 1793 *Contribution* clearly differs from the "Kant" of the Fichte of the 1795 *Foundations of Natural Right*. Whereas the former seemed to advocate for a "Kantian" view that sought to derive the concept of right out of the moral law, the latter would insist on the independence of right from concepts of morality and derive it as hypothetically necessary concept for making sense of life in the context of a community, explicitly citing Kant's *Perpetual Peace* as having had a significant new impact on his thought.[30] Yet, notwithstanding Fichte's suggestion that it is "highly probable that his [Kant's] deduction agrees with the deduction given here", there remain significant differences between the theory of right propounded in Fichte's *Foundations of Natural Right* and the one advanced by Kant himself in the *Metaphysics of Morals*.

It is with these complications in mind that one must approach Schleiermacher's claim to advance a "Kantian" view of contract in the mid-1790s.[31] The "Notizen und Excerpte zur Vertrageslehre" and "Entwurf zur Abhandlung über die Verträgslehre" are comprised of a number of 14 closely related folio leaves bundled together in the Zentralen Archiv der Akademie der Wissenschaften der DDR and published for the first time by Günter Meckenstock as part of the

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[29] See J.G. Fichte, *Foundations of Natural Right*, ed. Frederick Neuhouser (Cambridge: Cambridge University Press, 2000) and Johann Adam Bergk [Anonymous], *Untersuchungen aus dem Natur-, Staats- und Völkerrechte, mit einer Kritik der neuesten Konstitution der französischen Republik* (Kronberg: Scriptor Verlag, 1975 [1796]).
[30] Fichte, *Foundations of Natural Right*, 13.
[31] For an attempt to offer a survey and evaluation of various post-Kantian derivations of right in the 1790s with a focus on evaluating the effectiveness of Fichte's rejection of non-relational derivations in his *Foundations of Natural Right*, see Michael Nance, "Two Deductions of Right in Early Post-Kantianism" *British Journal for the History of Philosophy* 30:4 (2022): 589-608.

Kritische Gesamtausgabe in 1984.[32] One double-sided leaf lays out the beginnings of an outline of what seems to have been intended to be an essay on the theory of contract (the *Entwurf*), while the rest are comprised of a series of close engagements with a number of various works on contract and natural rights from the time period alongside a few propositional summaries of what seem to be Schleiermacher's own views on the matter (the *Notzien*). G. Hufeland's *Lehrsätze des Naturrechts* (1790), Moses Mendelssohn's *Jerusalem* (1786), and Theodor Schmalz's *Das reine Naturrecht* (1792, 2nd ed. 1795)[33] receive dedicated treatments, but other thinkers including Garve,[34] Pufendorf, Feder, Kant, Fichte, Hobbes,[35] and even Aristotle[36] are explicitly referenced. On the basis of both internal and external evidence, Schleiermacher likely worked on the notes in the final months of 1796 and ceased work before the fall of 1797.[37] Most significantly, this would have given Schleiermacher the opportunity to read and digest the first part of Kant's *Metaphysics of Morals*, which would appear in January 1797.

The choice of interlocutors already situates Schleiermacher for the most part within the "post-Kantian" context. Hufeland had claimed to be the first to offer a theory of right on Kantian grounds (though given his ultimate grounding of obligation in a principle of perfection, his position ultimately remains closer to that of the Wolffian school). Schmalz, criticizing Hufeland's

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[32] For more on the compilation and ordering of the various leaves, see the editorial introduction. Günter Meckenstock, "Historische Einführung" in KGA I/2, xxii-xxv.

[33] Jeffrey Church and Anna Marisa Schoen, "The Pure Natural Right, by Theodor Schmalz," *British Journal for the History of Philosophy* 30:1 (2022): 152–89.

[34] Likely for his translation and advocacy of Cicero's *De officiis* (1783), against which Schleiermacher would polemicize in his later *Grundlinien*.

[35] The way in which Hobbes is referenced, however, closely follows Hufeland's characterization of Hobbes' position in the *Lehrsatze*. Cf. note 2 of §224 in Gottlieb Hufeland, *Lehrsatze des Naturrecht und der damit verbundenen Wissenschaften* (Jena: Christ. Heinr. Cuno's Erben, 1790), 107.

[36] Only very briefly as having advocated for a view that rejects the validity of *contractus de future*. Schleiermacher is likely referring to the portions in Nicomachean Ethics Book VIII where Aristotle discusses these in the context of friendship, a section that Schleiermacher would translate and comment on during his school days. See Friedrich Schleiermacher, "Anmerkungen zu Aristoteles: Nikomachische Ethik 8-9 (1788)" in KGA I/1.

[37] The most significant indication of the terminus a quo is the fact that one of the pages is an invoice dated Nov. 4th, 1796 and the absence of a discussion of Fichte's modified theory of contract in the second part of the *Metaphysical Foundations of Natural Right* suggests a terminus ad quem of Sep 29th, 1797, when the volume appeared in bookstores.

perfectionism, has a stronger claim to being the first *actually* Kantian theory (which attempts to ground obligation in the moral law). Mendelssohn, although not a Kantian, could very well have been included on account of Kant's explicit engagement with his theory of contract in the *Metaphysics of Morals*.

Throughout the various pages of Schleiermacher's engagement with these theories, what becomes eminently clear is that the central question with which Schleiermacher is concerned is how it is that one can attain a "positive" coercive right to something and whether or not past theories of contract actually provide an adequate answer to that question. Schleiermacher's engagements with Hufeland, with Mendelssohn, and with Schmalz lead him over and over again to a negative conclusion. Despite their ambitions, they fail – on Schleiermacher's lights – to adequately explicate the origin of coercive rights. In the *Entwurf*, Schleiermacher enumerates two criticisms of previous theories of contract: firstly, they have attempted to derive a positive right of coercion out of what would have been, in the state of nature, merely a negative right; secondly, Schleiermacher seems to level a version of Hume's skeptical paradox:[38] "how is it possible that someone cause a coercive duty to arise by means of a voluntary action?."[39] The criticisms are clearly intended to set up for Schleiermacher's own theory of contract, but the draft of the outline contains only the first section of the proposed treatise "On earlier theorems". The second section "My theory", remains unwritten. Hints of what Schleiermacher might have said, however, can be discerned from the *Notizen*.

One can get a better handle on Schleiermacher's argument by considering his criticism of Mendelssohn's account of how one acquires a coercive right by means of a contract. "Since Mendelssohn speaks so much of the imperfect right which the other has before my decision [to give

[38] The argument is found in the *Treatise on Human Nature* Bk. III, Pt. 2, sec. v "Of the obligation of promises", where Hume attempts to deny the central assumption of much Enlightenment contract theory by calling into question the ability of anyone to put themselves under obligation in the state of nature. Hume will then move on to suggest that the practice of promising lies on a conventional basis.
[39] KGA I/2, 73-74. Schleiermacher's questions are also posed in the *Notizen* KGA I/2, 55.

up my natural right to judge of my own property], thus is it apparent that he wants to ground the perfect [right] which arises through the decision on that imperfect [right]."[40] The basic maneuver that Mendelssohn seeks to explain is how an imperfect right becomes a perfect one. Schleiermacher then reconstructs the argument roughly as follows:

(1) The conditions of the imperfect right are not possessed by the holder of the right, but in the other, the correlate duty-holder (Definition of Imperfect Right)

(2) If the correlate duty-holder transfers the determinations which they hold to the holder of the imperfect right, the imperfect right becomes a perfect right on account of the fact that they now hold all of the conditions (Definition of Perfect Right)

(3) The correlate duty-holder transfers the determinations by means of making a decision and declaring their intent

(4) A perfect right is identical with a right of coercion

(5) Therefore, the holder of an imperfect right obtains a coercive right upon the declaration of intent of the correlate duty-holder.

Having reconstructed the argument thus, Schleiermacher then raises objections to both (3) and (4). The problem with (3), Schleiermacher argues, is that it is not actually the determining grounds that are actually transferred through the decision and declaration of intent, but only a judgment made on the basis of the determining grounds. The decision to make a contract, in the state of nature, must itself be an expression of one's natural right to judge whether one's goods should be for self-use or benevolence. The declaration of intent can make visible the contents of that judgment, but not the reasons on which the judgment is grounded. Mendelssohn simply asserted that "Once this independent man has passed a judgment, that judgment must be valid."[41]

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[40] KGA I/2, 61. Translation mine.
[41] Mendelssohn, *Jerusalem,* 53.

Schleiermacher simply asks why this must be the case. What if the judgment was wrong? And what if it were such that carrying it out would actually lead to a dereliction of the original duties taken for granted by the theory of contract such that the supposed transfer would actually be against what is right? Because one does not actually grasp the grounds, but only the judgment (which could be wrong), there is a certain instability remaining that will always call into question one's possession of the perfect right:

> I thus presume the grounds of determination only on his authority, and if he now follows another judgment and relies on the right of error, I cannot defend my possession; he takes back his authority, by which he does indeed in a way humiliate himself (in that he confesses to a moral error), but does not offend me, but rather shows me a service in that he frees me at the same time from an error.[42]

As long as it is possible for the original judgment to give up one's right of judgment to be erroneous, it is impossible for all of the conditions for the attribution of a right to be transferred entirely to another so as to constitute a perfect right. The coercive right supposedly attained by means of a contract is thus actually contingent upon the proper exercise of one's natural right to dispose of one's own possessions in the state of nature, the improper exercise of which no one can punish on account of no one having a coercive right against them prior to the contract. Mendelssohn's contracts, Schleiermacher argues, are inherently unstable.

But even if this were not a problem, Schleiermacher also raises an objection against (4). Obtaining a perfect right to a thing does not imply that one has obtained a coercive right to a thing. Once again, Schleiermacher wants to insist that there is a difference between communicating a judgment about one's right to decide how to dispose of one's possessions and *actually transferring* that right. The only way to transfer a right is by a contract (which, as Mendelssohn defined it, has to do not only with material, but also intelligible goods). Yet it is precisely how it is that contracts work that is supposed to be explained by the transfer of right. If nothing is actually transferred, one is left

[42] Schleiermacher, *Notizen*, KGA I/2, 61.

only with the judgment that was expressed. Even if, contrary to Schleiermacher's previous criticism, it would be possible for one to have perfect knowledge of all the grounds of that judgment and thus have absolute certainly about the rightness of that judgment, Schleiermacher insists that there remains a fundamental difference between knowing *what is right* (quid sit iustum) and actually having a right (ius).

Having previously sketched out Mendelssohn's theory of contract, we are in a position to notice something odd about Schleiermacher's attempt to criticize it: Mendelssohn's language of perfect right and judgment are interpreted in an intellectualistic way, as in part concerned with the *rational grounds* of judgment. While it is certainly possible to read Mendelssohn's view as implicitly inviting such a reading – as a rationalist, Mendelssohn could certainly have ultimately seen cases of collision between individuals in the state of nature as rational disagreements over whose judgment is correct –, he almost certainly did not intend to introduce so sharp a disjunction between the intellect and the will so as to suggest that it is the possession of the *knowledge* of what is right that conveys right itself. Mendelssohn, after all, will insist that "In reality, everything depends solely upon this declaration of will, and even the actual transfer of movable goods is valid only insofar as it is taken to be a sign of a sufficient declaration of will," a position that Schleiermacher will also affirm.[43] Interpretive decisions aside, however, the basic contours of Schleiermacher's critique can be discerned. At its heart, it is actually an objection to Mendelssohn's initial assumption that there is "an external 'mine' and 'your' before every contract, a not conventional property."[44] If Schleiermacher's interpretations may seem unfair, it is because what is ultimately at stake is as much a question of first principles as it is a question of the validity of Mendelssohn's arguments. In insisting that, prior to the contract, there exists a determinate possession against which others can

[43] Mendelssohn, *Jerusalem*, 54.
[44] Schleiermacher, *Notizen*, KGA I/2, 60.

only have an imperfect right, Schleiermacher believes that Mendelssohn has already made it impossible to explain how a coercive right can arise. His criticism of (3) basically reiterates his second summary question: it is impossible to explain unfreedom out of freedom. As long as the declaration of will signaled in one's act of decision or judgment is ultimately grounded in a pre-conventional natural right, no contract will be secure because it is always revocable. The criticism of (4) reiterates the first summary question: it is impossible to get a positive right of coercion out of a negative one. Original possession in the state of nature means that the only kind of coercive right originally present is one of non-interference. To the extent that the wills of the original holder ground this possession, nothing in the nature of contracts can ever actually transfer that which really matters. The acceptor of the promise can possess everything and anything – even a perfect right! – but not that which is absolutely necessary for the possession of a coercive right, the other's will.

Concluding his discussion of Mendelssohn, Schleiermacher adds a final criticism directed at (1), Mendelssohn's initial assumption that individuals may possess an imperfect right prior to the contract. By contrast, Schleiermacher suggests, "the imperfect right, which ought to precede the perfect does not exist. The imperfect rights of a man arise only indeterminately towards all that is not his own, but never determinately towards something in so far as it belongs to an individual. This [determinate] imperfect right is first acquired through the offering."[45] The original negative right on which the positive right of coercion is supposedly grounded does not even exist in the state of nature (at least, not in a determinate way such that one could recognize it as a negative, rather than a positive right), but only arises in the course of the contract itself.[46] With this final objection,

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[45] Ibid., 62-63.

[46] Schleiermacher could be seen as making a similar point to Margaret Gilbert's critique of post-Humean theories of obligation which attempt to ground demand-rights on moral requirements: these accounts fail to take into account the specific directedness of the claims. See esp. ch.6-7 of Margaret Gilbert, *Rights and Demands: A Foundational Inquiry* (Oxford: Oxford University Press, 2018).

Schleiermacher gestures towards the view which he will eventually hold, one which sees property originally arising out of the contract rather than preexisting it.[47]

Schleiermacher enacts similar criticisms of the other thinkers he engages in the *Notizen*, finding ways to criticize the mechanisms by which they purportedly move from conceptions of original rights or duties to a right of coercion obtainable by means of a contract.[48] The form of the argument is ultimately akin to a kind of negative transcendental deduction. Given the existence of coercive right, what are the principles that allow us to make sense of its possibility? The inadequacy of the principles offered by previous theories of right are demonstrated by means of showing that they do not actually prove what they purport to prove. The view that remains, purportedly Schleiermacher's, must then be the only possible way to explain the situation and is therefore the correct one (given that coercive right *does* seem to exist). What then *are* the principles required? The scattered character of the notes and the incompleteness of the draft leave much to be desired, but at least one point is clear: Schleiermacher attempts to align himself with Kant.

3. Schleiermacher's "Kantian" Theory of the Bindingness of Contracts

Of the various thinkers engaged with over the course of the *Notizen* and the *Entwurf*, only one is cited in an unambiguously positive way. Twice, Schleiermacher will insist on the Kantian provenance of his theory.[49] Yet, as we shall see, there are a number of ways in which Schleiermacher's commitments are decisively *un*Kantian (in the sense that he directly disagrees with Kant's mature, considered views as manifested in the *Metaphysics of Morals*) while remaining Kantian

[47] We will have more opportunity to discuss Schleiermacher's rejection of original acquisition and the consequent account of property in a future chapter.
[48] Schleiermacher will summarize the various differing ways thinkers seek to answer his two questions multiple times over the course of the *Notizen* and the *Entwurf*.
[49] Schleiermacher, *Notizen*, KGA I/2 56, 59.

(in the sense that it remains broadly inspired by the critical project and post-Kantian thinkers working in its wake).

The theory of contract that Kant presents in the *Metaphysics of Morals*, like Mendelssohn's, ultimately centers on the acts of promising and accepting.[50] Yet unlike his predecessor – and the various other theories Schleiermacher considers in the *Notizen* – Kant rejects the claim that Schleiermacher finds problematic: "what belongs to the promiser does not pass to the promise (as acceptant) by the *separate* will of either but only by the *united will* of both, and consequently only insofar as both wills are declared *simultaneously*" (MM 6:272). For Kant, as for Mendelssohn, it is the declaration of will that is the most important part of the contract. But unlike Mendelssohn, this cannot be a unilateral action – it is not the making of the promise or its acceptance that is the key moment. Indeed, the promise and the acceptance ought not to be seen as acts of individual actors apart from the contract itself; rather, "both acts, promise and acceptance, are represented not as following one upon another but… as proceeding from a single *common* will… and the object is represented, by omitting empirical conditions, as acquired in accordance with a principle of pure practical reason" (MM 6:273). The conception of a common will allows Kant to avoid the dilemma that Schleiermacher posed to those seeking to derive coercive right out of an entirely self-imposed obligation. The "self" that engages in the contract is not the unfettered self in firm possession of an

[50] For a contemporary exposition and defense of Kant's account of private right – including his account of the contract – see ch. 3 of Arthur Ripstein, *Force and Freedom: Kant's Legal and Political Philosophy* (Cambridge, MA: Harvard University Press, 2009). For a contemporary defense of a "Kantian" theory of right and contract, see Margaret Gilbert, *Joint Commitment: How We Make the Social World* (New York: Oxford University Press, 2013) and Margaret Gilbert, *Rights and Demands: A Foundational Inquiry* (New York: Oxford University Press, 2018). See also Sharon Byrd, "Kant's Theory of Contract," in *Kant's Metaphysics of Morals: Interpretive Essays,* ed. Mark Timmons (Oxford: Clarendon Press, 2002), Sharon Byrd and Joachim Hruschka, "Kant on 'why must I keep my promise?" *Chicago-Kent Law Review* 81:1 (2006): 47-74, or the relevant section in Sharon Byrd and Joachim Hruschka, *Kant's Doctrine of Right* (Cambridge: Cambridge University Press, 2010).

object and who exercises a sovereign act of will to relinquish their possession, but the collective "self" that exists in relation to both the giver and receiver.[51]

This may be an odd claim given that phenomenal experience seems to suggest a temporal (and perhaps even *logical*) ordering to the brokering of an agreement. Someone makes an offer. The other thinks about the offer and accepts it. The contract is sealed in some manner that reflects the mutual agreement. For Kant, however, the necessary *empirical* succession that accompanies the establishment of a contract ought not to detract from the *intelligible* reality that undergirds it. In keeping with Kant's conception of the *Rechtslehre* as a genuine "metaphysics" of morals, only if right is a concept of pure practical reason, removed from all empirical conditioned-ness, can it be an objectively valid concept. Although the promise may look like it precedes the acceptance and the acceptance looks like it follows upon the promise, the two ought to be seen as two sides of a single unified act, not the expression of two people contingently in agreement but otherwise independently separable, but of a common will.[52]

Schleiermacher's debt to Kant is immediately clear in the position that he takes in the *Notizen*:

> [W]hich then, is actually the binding moment of pacts, after which no retraction is possible? This, some posit to take place in the declaration of will, others in the acceptance, still others in an actually accomplished performance. …My explanation is that of Kant: the declaration of will must be thought together with the acceptance. The jurists make this simultaneous existence representable through the act of underwriting, which at the very least realizes this idea so far as each party in a single act recognizes [anerkennt] his and the opposing declaration of intent.[53]

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[51] Note, the existence of a common will does not necessarily imply that there is some kind of supra-person operating here. As we shall see in ch.5, Schleiermacher does indeed affirm the existence of such supra-persons which arise out of certain forms of coordinated collective activity, but that the coordinated activity of individuals should give rise to a common entity does not necessarily imply that the act which gives rise to it *is* the act of that common entity.

[52] This is not necessarily as unfounded as one might think. In contemporary moral and political theory, Margaret Gilbert makes similar moves in her defense of joint-commitment as the ground of rights against views which treat agents separately and seek to ground the bindingness in some moral principle. Indeed, she explicitly cites the passages on contract in the *Metaphysics of Morals* as being consonant with her view. See esp. ch. 8 of Margaret Gilbert, *Rights and Demands: A Foundational Inquiry*.

[53] Schleiermacher, *Notizen*, KGA I/2, 56. Translation mine.

The contract is not to be thought in terms of a series of actions by parties abstractable one from the other, but a single act that holds both the promise and the acceptance together. By means of this move, Kant – and Schleiermacher following him – purportedly seek to resolve the problem that characterizes Schleiermacher's second objection to prior theories: it is not the voluntary action of one or the other individual separately that is somehow to give rise to a coercive right, but the joint action together, thought of as an intelligible reality. Indeed, the fact that Kant cites Mendelssohn's *Jerusalem* to serve as the example to show the inadequacy of previous attempts to demonstrate the possibility of contract could go a long way to explaining why Schleiermacher may have chosen to engage Mendelssohn – as the sole non-Kantian theorist of contract included – in greater detail in his *Notizen.*

Yet even as Schleiermacher affirms the "Kantian" character of his approach, Schleiermacher does not embrace the language of a "common will". Instead, he claims that "each party in a single act recognizes his and the opposing declaration of intent."[54] What is taking place in the simultaneous promise and acceptance is not the expression of a common will, but a simultaneous mutual act of recognition of two discrete wills. The language of mutual recognition would seem to pick up on the arguments of another "post-Kantian" theorist of natural right: Johann Gottlieb Fichte.

4. Schleiermacher's "Fichte-ian" Deduction for his „Kantian" Theory of Contract

a. Schleiermacher and Fichte: Is Schleiermacher's Early Theory of Contract Influenced by the Foundations of Natural Right?

That Fichte would be an important interlocutor for Schleiermacher ought to be somewhat unsurprising. The influence and proximity of Fichte to the early German Romantics with whom

[54] KGA I/2, 56.

Schleiermacher was closely associated during his time in Berlin meant that Schleiermacher was certainly, at least by the time he was working on the theory of contract, working to become familiar with his works and arguments.[55] In a September 1797 letter to Brinckmann, for instance, Schleiermacher will speak of "Fichte-izing" his philosophy alongside his then-roommate F. Schlegel.[56] That Schleiermacher would have studied Hufeland, Mendelssohn, and Schmalz and not at least considered taking a look at Fichte's contribution is somewhat hard to imagine. When Fichte's *The Closed Commercial State* was published in 1800, Schleiermacher would discuss writing a review of the work for the *Athenaeum* with A.W. Schlegel, writing that he believed himself "fairly well equipped to pass judgment on it, even as far as empirical knowledge is concerned."[57] Indeed, *The Closed Commercial State* is one of the few works explicitly mentioned and responded to in Schleiermacher's later lectures on the state.[58]

Despite this interest and proximity, however, Schleiermacher was by no means a "Fichtean". If anything, Fichte would more often serve – as he would for Jacobi – serve as a foil for Schleiermacher as much as an influence. Despite many mistaking its anonymous author as Fichte himself, Schleiermacher's *Monologen* (1800) and review of Fichte's *The Vocation of Man* enact a critique of Fichte in oddly Fichtean language. Fichte would also come in for critique in Schleiermacher's *Grundlinien* (1803) and his review of the *Basic Features of the Contemporary Age* (1807). Others have also noted that Schleiermacher seemed to have deliberately scheduled his first lectures on *Dialectic* to

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[55] Manfred Frank would characterize the relationship of the Berlin/Jena circle of the early German Romantics with whom Scheleiermacher as ex-students of Reinhold who, having seen the failure of one foundationalist attempt to ground the Kantian philosophy, engaged critically with Fichte's project as presenting yet another (doomed) foundationalist attempt to ground the Kantian philosophy. See Manfred Frank, *The Philosophical Foundations of Early German Romanticism,* trans. Elizabeth Millán-Zaibert (Albany, NY: SUNY Press, 2004).

[56] KGA V/2, 23.

[57] „Dafür will ich den Schelling übernehmen, und wenn es Ihnen gelegen ist Fichte's Buch von H a n d e l u n d G e w e r b e | welches Ihnen wahrscheinlich eben so unbekannt geblieben ist, als der sonnerklare Bericht; es erscheint ohnedies nach Allem was ich gehört habe noch eher als dieses. Ich glaube zu Beurtheilung desselben, auch was die empirischen Kenntniße betrift ziemlich ausgerüstet zu sein, und werde es recht ernsthaft nehmen und mich um Fichten auch ainmal gefällig zu sein alles Wizes enthalten." To A.W. Schlegel, Oct 14th, 1800 KGA V/4, 290-291.

[58] See §10 and §51.of the 1829-1833 notes in KGA II/8 76 and 122.

coincide with the times that Fichte was supposed to lecture on his *Wissenschaftslehre* in 1811.[59] Past scholarship has done a good job of highlighting Schleiermacher's engagement with and rejection of Fichte's transcendental philosophy; Schleiermacher would be highly critical both of Fichte's idealism and a priori transcendental method.[60] Little, however, has been done to work out the way in which Schleiermacher similarly formulates his political doctrines in both appropriative and critical relation to Fichte as well. In the *Notizen*, then, we have an opportunity to get a glimpse of this critical appropriation in action. As with Kant, Schleiermacher seems to be adopting Fichtean ideas to ultimately ground a somewhat *un*Fichtean conclusion.

Given that the first part of Fichte's *Foundation of Natural Right* would have appeared the year prior to the first part of Kant's *Metaphysics of Morals*, Schleiermacher certainly would have had the opportunity to have read and digested the text. Is the reference to a kind of reciprocal act of recognition, then, evidence that Schleiermacher had done so? Not necessarily. While the influence of the argument of the *Foundations of Natural Right* and the *Closed Commercial State* is clearly evident in Schleiermacher's mature theory of right, I want to suggest that, at least in the *Notizen*, Schleiermacher's use of the term recognition actually owes its provenance to a different, lesser-known Fichtean text, the "Von der Sprachfähigkeit und die Ursprung der Sprache" (1795).[61] Indeed that Schleiermacher had *not* yet read the *Foundations of Natural Right* could also go a long way to explain why Schleiermacher's treatise on the theory of contract was never finally completed and why he would write to Brinckmann about "Fichte-izing" in September 1797: once he *had* begun reading

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[59] See the editor's introduction to Friedrich Schleiermacher, *Dialektik (1811)*, ed. Andreas Arndt (Hamburg: Meiner, 1986).

[60] For attempts to characterize Schleiermacher's relationship to Fichte, see esp. Günter Meckenstock, „Schleiermachers Auseinandersetzung mit Fichte" in *Schleiermacher's Philosophy and the Philosophical Tradition*, ed. Sergio Sorrentino (Lewiston: The Edwin Mellen Press, 1992), 27-46 and Andreas Arndt, "Schleiermacher und Fichte" in *Schleiermachers Philosophie* (Hamburg: Felix Meiner Verlag, 2021), 37-42.

[61] Meckenstock notes references to this text in Schleiermacher's *Notizen* by means of the critical apparatus of the text, though he does not identify the language of recognition with it or draw out the argument regarding its conceptual influence on how Schleiermacher understands the theory of contract.

and processing the work – perhaps in preparation for the publication of its second part at the end of September –, Schleiermacher would recognize how differently Fichte was now approaching the question of right compared to the Fichte of the *Contribution.* This would be a development that could prompt Schleiermacher to begin to rethink his own views in response.

b. Schleiermacher and the Early Fichte

At any rate, the Fichtean theory of contract considered and rejected in the *Notizen* is not that of the second part of Fichte's *Foundations of Natural Right*. Indeed, that this is the case has served as evidence that these notes and draft reflected a project that Schleiermacher had been engaged in before the end of September 1797 when the second part of the *Foundations of Natural Right* appeared in print. The Fichtean theory of contract discussed in the *Notizen,* then, is the version discussed in the 1792 *Contribution to the Correction of the Public's Judgment on the French Revolution*, where Fichte defends a right to revolution by articulating a view of contract which holds them as only remaining valid as long as the one promising actively sustains consent.[62] Indeed, Fichte would argue against the possibility of any eternal contract on the basis that no human could ever possibly promise to not change his mind and that the development of human culture demands a constant change and progression.[63] "In this way, however," Schleiermacher writes in response, "the whole right of

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[62] "Now in this contract, who imposes the law on me? Evidently, I myself. No human being can be bound, but by himself; no human being can be given a law, but by himself. If he allows a law to be imposed on him by a foreign will, he relinquishes his humanity and makes himself an animal. And that he may not. …Now, if the binding character of social contracts arises only from the will of the parties to the contract, and if this will can change, it is clear that the question whether they can change their contract is completely identical to the question whether they could enter a contract at all. Every change to the first contract is a new contract, wherein the old is canceled to such or such an extent or entirely, and, in turn, confirmed to such or such an extent. Changes and confirmations obtain their binding character from the consent of the parties to the second contract. Reasonably, such a question should therefore not arise to begin with. – It follows immediately from the above that all contracting parties have to be in agreement and no one could be coerced into membership. For otherwise a law would be imposed on him by something other than his will." J.G. Fichte, *Contribution to the Correction of the Public's Judgments on the French Revolution*, trans. Jeffrey Church and Anna Marisa Schön (Albany, NY: SUNY Press, 2021), 44 ad 48.

[63] "No constitution is unchangeable; it is in their nature that they all change. A bad one that fights against the necessary final end of all constitutions must be changed. A good one that promotes the end goal changes itself. …A clause in the social contract [stipulating] that the contract shall be unchangeable would therefore be the harshest contraction to the

coercion would be annulled. … This error stems from another Fichte-ian proposition, namely that there can be no eternal contract because humans can never promise to not change his judgment."[64] The Fichte of the *Contribution* thus falls victim to Schleiermacher's second argument about the self-defeating character of one-sidedly self-imposed obligations.

But there is a second, and more ambivalent reference to Fichte. After setting out his "Kantian" account of the contract, Schleiermacher raises another question and answers it: "is there an understandable and generally accepted sign of a determination of will? I answer: there must be one because the recognition of personality rests on it."[65] In the summary propositions that seems to try to set out something like Schleiermacher's positive view of contract, the question is answered again but with slightly different terminology. "[T]he postulate of natural right," Schleiermacher suggests, is that "there must be a generally valid sign for every fact of the mind which refers itself to the social condition, and only the one who can understand these signs makes a claim on it to be taken as a human (Note on Fichte's Question)."[66] In order for the kind of simultaneous reciprocal recognition that undergirds contracts to take place, Schleiermacher suggests that it is necessary for there to be some sign that allows those who would be involved in a contract to recognize one another as engaged in the otherwise intelligible act of determining their wills.

Meckenstock suggests, and here I concur, that the reference to "Fichte's Question" here refers to one of the questions raised in Fichte's 1795 essay "On the Linguistic Capacity and the Origin of Language".[67] "What," Fichte asks, "gave people the idea to invent a language in the first

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spirit of humanity. [Imagine] I promise never to change or allow to be changed anything about this state's constitution. This means I promise not to be a human being nor to tolerate anyone to be a human being as much as I can." Ibid., 62.

[64] Schleiermacher, *Notizen*, KGA I/2 58-59. Translation mine.

[65] Ibid., 57. Translation mine.

[66] Ibid., 69. Translation mine.

[67] J.G. Fichte, "Von der Sprachfähigkeit und dem Ursprung der Sprach" in *J.G. Fichte: Gesamtausgabe der Bayerischen Akademi der Wissenschaften,* Reihe 1, Band 3, *Werke 1794-1796*, ed. Hans Jacob and Reinhard Lauth (Stuttgart-Bad Cannstatt: Fromann-Holzboog, 1966), 97-127. For a work that attempts to analyze and situate the work within the context of late 19th c. conversations about the natural or supernatural origins of language, see Jere Paul Surber, *Language and German Idealism: Fichte's Linguistic Philosophy* (Atlantic Highlands, NJ: Humanities Press, 1996).

place?" and "[I]n what natural laws lie the reason that that this idea was carried out in this way and not otherwise?"[68] The answer that Schleiermacher gives in his "postulate of natural right" is almost the same as the one presented in Fichte's essay. Humans, Fichte argues, are not differentiated from animals merely by virtue of a rational capacity to act in accordance with ends. What is required is that one can coordinate one's ends in response to another. Recognition of another as a rational being requires an interaction [Wechselwirkung] between oneself and the other in which one can recognize an intentionality in the other.[69] The need to interact with and relate to other humans is that which awakens the idea of communicating thoughts to one another by means of arbitrary signs, the idea of language.[70]

In "On the Linguistic Capacity and the Origin of Language", Fichte was not so much concerned with the question of contracts and coercive right as he was of giving a theory of language and of outlining a narrative of its necessary development from sound-words, to picture-words, to more and more complex grammatical rules and structures. Yet Schleiermacher adapts this argument to supplement his "Kantian" theory of the contract. Kant had set out his theory of the simultaneous common act of promising and accepting, and then concluded that this deduction of acquisition by contract ultimately rests on a principle of pure practical reason fully abstractable from empirical reality the way that the truths of geometry are synthetic a priori principles.[71] By contrast, Schleiermacher will insist that the possibility of mutual recognition rests on a non-ethical *linguistic* basis:

> The foundational proposition claims that a faculty of representation and a human body only make up a person if they are attached to a will as an instrument; thus it self-evidently follows that I must be able to recognize the will independently from the activity of these

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[68] Fichte, I/3 98. Translation mine.
[69] "Nur ein Wesen, das, nachdem ich meinen Zweck auf dasselbe äußerte, den seinigen in Bezeihung auf diese Aeußerung ändert, das z.B. Gewalt braucht, wenn ich gegen dasselbe Gewalt brauche, das mir wohlthut, wenn ich ihm wohltue, nur ein soches Wesen kann ich als vernünftig erkennen." Ibid., 101.
[70] "Durch die Verbindung mit Menschen wird also in us die Idee geweckt, unsere Gedanken einander durch willkürliche Zeichen anzudeuten – mit Einem Worte: die I d e e d e r S p r a c h e ." Ibid., 103.
[71] MM 6:272-273.

> instruments… Everyone thus finds themselves required to strive towards an understandable sign of his will, and practical reason postulates here thus an original society lying at the ground of all others, namely, the community of signs. This is, however, a wholly other postulate than the ethical, since reason also makes it real; it [reason] shows us that it has really established the society which has as yet nowhere died out or been abolished, a society defying all cultural differences, all wars, and all wickedness, since the spiteful word cheat himself carries out his craftiness by accepting the recognized meaning of the introduced signs and only through artificial ambiguity tries to blame his opponent for a misinterpretation.[72]

The postulated existence of an actual symbolic community is required to make possible the kind of simultaneous mutual recognition of wills that lies at the ground of contract and coercive right. This original community guarantees that it cannot be mis-recognition all the way down, that it *is* really possible for two individuals to recognize one another's wills and thus to form contracts.

Schleiermacher thus posits that there are three fundamental universal signs that transcend all human differences, even if they may manifest themselves in differing cultural manifestations and practices:

> There is and has always everywhere been before every other society three generally recognized signs: a positive sign that one wants to do something (sanction foederis), generally through an anticipation of an action which is thinkable only under a presupposition of the conditioned state. For example, one eats communally as a sign of renewed friendship, one sacrifices communally as a sign that one has the same gods and the same wish. – a negative sign that one does not want to do something (signa pacis): for example, leading with an olive branch instead of weapons, coming with music and not in the silence of spies, the smoking of a peace-pipe as a symbol of inaction. – a sign of solemnity: the appeal to witnesses (who had been insulted through a joke). Here belongs also in theistic peoples the oath, which was originally only a pledge in fetischism, and perhaps thus in modern times the handshake is the traditional original symbol.[73]

Schleiermacher does not offer an argument for why these are the three universal signs, but they do roughly seem to correspond to the category of quality in Kant's table of judgments: "affirmative", "negative", and "infinite".[74] The affirmative, the negative, and the solemn signs, so it seems, are the practical "categories" necessary to make contracts possible. If Kant grounds the possibility of

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[72] Schleiermacher, *Notizen*, KGA I/2, 57. Translation mine.
[73] Ibid., 57. Translation mine.
[74] See CPR A67-76, B92-101.

contract in a transcendental deduction that leads to an a priori practical principle, Schleiermacher's regresses back to an a priori theoretical one.[75] It is *not* the moral law that makes right possible, but a basic capacity for linguistic representation that allows for the recognition of acts of will:

> The reason why someone has a right of coercion is not that he has reason (since this does not allow itself to immediately present itself sensibly in order to justify his claim), but rather that he has a choice [Willkühr], that he produces a representation according to an inner principle. A child has thus a right of coercion, yes, even a madman, only it will not be left to him to judge it. Hufeland's §104 that whoever does not recognize the moral law can demand no right for himself is manifestly false.[76]

Contracts are grounded in choices, in the determination of the will, but these can only become valid in a context of reciprocal recognition, which requires that they be expressed through some kind of sign. The existence of these signs, for Schleiermacher, constitutes an original community that is the necessary presupposition of coercive right. This is, so it seems, the positive basis of right that Schleiermacher insisted that all his various Kantian interlocutors was lacking: "The general acceptance of this formula [Schleiermacher's postulate of natural rights that there must be a generally valid sign given for every fact of the mind that refers to the social condition] is an a priori fact which lies at the ground of all society, something originally positive."[77]

c. Symbols and Coercion

Key to understanding why it is that Schleiermacher might draw so much from Kant and Fichte yet nevertheless depart from their views is his commitment to a compatibilist view of human agency. Very early on, Schleiermacher had developed the conviction that transcendental noumenal freedom thought of in terms of indifference was ultimately incompatible with the ways humans

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[75] "The word-language in which is found no psychological connection of signs with the signified and thus also no necessary a priori allows itself to imagine a resulting hermeneutics only as a consequence of another society." Schleiermacher, *Notizen*, KGA I/2, 57-58. In other words, these necessary signs are the *necessary a priori* that makes linguistic communication possible.
[76] Ibid., 58.
[77] Ibid., 69.

engaged in practices of moral accountability.[78] In early essays such as his "On the Highest Good" (1789), the "Notes on Kant: the Critique of Practical Reason" (1789), the "Dialogue on Freedom" (1789), and the "On Freedom" (1790-1792), Schleiermacher would attempt to develop an account of human responsibility and action that was not dependent on freedom understood as an absolute indifference of the will, but one which nevertheless would allow for attribution of causality to an agent rather than just a series of prior states, even if nevertheless completely determined.

The contours of these reflections are present also in Schleiermacher's concluding propositions in the *Notizen* in which he sets out the basic lineaments of his own view. Key to the concept of coercive right is the concept of a determination of will. On the one hand, the determination of will is, for Schleiermacher, not simply an action's beginning, but rather "is already completed according to its essence, since the causality is determined and the consequence is effect, mechanism."[79] A deterministic conception of causality requires that the initiation of a chain of action also carry with it its necessary conclusion. There is no possibility of "otherwise" in a mechanistic chain of causes. On the other hand, however, the determination of will has to be recognizable as a determination of will (as opposed to merely an accidental concatenation of causes). For this to be the case, Schleiermacher insists on the necessity of the symbolic representation of will-

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[78] Engagement with Schleiermacher's "determinism" has been a staple of Schleiermacher scholarship as far back as Dilthey's *Leben Schleiermachers*, although exactly what is entailed by the claim can remain hotly contested. For a work that roughly develops on Dilthey's appraoch to the subject, see Albert L. Blackwell, *Schleiermacher's Early Philosophy of Life: Determinism, Freedom, and Phantasy* (Chico, CA: Scholar's Press, 1982). Since the publication of more of Schleiermacher's early works in the KGA, newer scholarship has been able to work with greater access to sources than before. See esp. Günter Meckenstock, *Deterministische Ethik und kritische Theologie: Die Auseinandersetzung des frühen Schleiermacher mit Kant und Spinoza 1789-1794* (Berlin: Walter de Gruyter, 1988). See also ch. 1 of Jacqueline Mariña, *Transformation of the Self in the Thought of Friedrich Schleiermacher* (Oxford: Oxford University Press, 2008) and ch.1 of Andrew Dole, *Schleiermacher on Religion and the Natural Order* (Oxford: Oxford University Press, 2010). See also, Jacqueline Mariña, "Where Have All the Monads Gone? Substance and Transcendental Freedom in Schleiermacher" *The Journal of Religion* 95:4 (October 2015): 477-505. Much of the debate between Mariña and Dole seems to stem out of a misunderstanding. Dole (wrongly) accuses Mariña of attributing to Schleiermacher an incompatibilist conception of freedom in the *Monologen*, perhaps provoked by her somewhat misleading use of the language of "transcendental freedom" (following Derk Pereboom in distinguishing transcendental freedom from the freedom of *Willkür*). In the end, both are insistent that Schleiermacher is "deterministic" in the sense that all of creation – including the self – are determined by the divine causality for their preservation and existence, but draw differing conclusions by virtue of the broader goals of their interpretive projects.

[79] Schleiermacher, "Notizen", KGA I/1, 68. Translation mine.

determination: determinations of will express themselves not only by the completed actions that they enact, but also by means of symbolic representations.[80] The act of determining a will gives rise to a material-causal effect (the essentially completed action) and a cognitive-representational effect (the symbol of the determination).

For the early Schleiermacher, the right to coerce someone to fulfill their contracts arises merely out of the fact that the entire effect of the determination of will is supposed to follow mechanically. Once two individuals have reciprocally recognized one another's determination of will – promise and acceptance – the use of force to make sure that what was begun is indeed brought to conclusion is merely a question of mechanical necessity: "If someone has completed a determination of will, and I have used it as a means, but he does not allow the mechanism to follow… I must then force him, I must [force] him in view of this once passed-over-in-the-sensible-world activity as a stalled machine whose course I must help along."[81] Implicit in Schleiermacher's claim is already the specter of a kind of "expressive freedom": freedom does not consist in the ability to decide otherwise, but in being able to properly express one's individuality – in this case, carry out one's will. In this sense, the "right to coerce" that arises in a contract is not actually something that takes away a purportedly prior ability to act otherwise, but something that *furthers* the determination of will that itself lay at the foundation of the contract. One is not taking away someone's freedom when one forces them physically (yet non-violently) to act in accordance with their earlier determination of will, but actually helping them – as a mechanism – along. Thus, if contesting the other's attempt to

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[80] "An action is completed through the determination of will. What yet follows from it is either a physical mechanism or a symbolic representation. Someone has promised to make a garment for me, from the instant in which he has declared his will, the occurrence enters – it does not first begin, but rather is already completed according to its essence, since the causality is determined and the consequence is the effect, mechanism. – Someone says he will not eat from this dish, the action that he passes on is completed – that he turns over the plate is only a symbolic representation. The passing on in itself means absolutely nothing; if someone offers something to me one-sidedly, can I conclude out of it that I should look upon it as mine? Will he not say: it was not meant thus, I only wanted to show it to you. It has therefore no other legal impact apart from being a symbol of the determination of will. Even so with the mechanism, it already goes its course, it is actually already given through the determination of will." Ibid.

[81] Ibid., 68.

force one to comply with one's earlier declaration of will, one cannot – pace the early Fichte – insist that one has changed one's mind, but rather must insist that one had never determined one's will in such a way in the first place: "He must also not say: that was my will, [but] I took it back; but rather he must say: it was never my will, I have only spoken in jest."[82]

Yet, at this early juncture, Schleiermacher's argument account still seems to carry the character of a certain sort of individualism. The reason one must force the other to fulfill one's contract is that their failure to do so would be a hindrance of one's own causality once one has incorporated the expectation of its completion into one's own acts of will: "I must force everyone who wills to hinder me in order to use my causality in the sensible world."[83] Unlike Kant's insistence on a common will and, as we shall see, Schleiermacher's later insistence on recognition's giving rise to a sphere of communality alongside that of particularity, the Schleiermacher of the *Notizen* seems to focus mostly on the *recognition* aspect of "reciprocal recognition". The "positive" at the ground of Schleiermacher's conception of coercive right is not Kant's community of wills, but is merely one's own right to act expanded by the ability to incorporate the choices of others that one can recognize by virtue of an original community of signs. Thus, Schleiermacher's postulate of natural right is not – unlike Kant's – concerned with the coexistence of one's freedom with everyone else's freedom, but the conditions of possibility of the *recognition* of free action in a deterministic world: "there must be a generally valid sign for every fact of the mind which refers itself to the social condition, and only the one who can understand these signs makes a claim on it to be taken as a human."[84] In order for a right to coercion to exist, it must be possible to reciprocally recognize events in the world as signaling determinations of will and thereby to coordinate one's wills.

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[82] Ibid., 68-69.
[83] Ibid., 68.
[84] Ibid., 69.

Thus, even as he embraces a rationalist emphasis on the determination of will as the key binding moment of contracts, Schleiermacher's concern with the epistemological conditions of recognizing declarations of will manifests in the way that he explains the merits of alternative perspectives. What the theory of expectation – which focuses on the act of the promiser as the key binding moment – gets right is that "compulsory liability rests on the determination of will hanging together with the actions of the other which must not be destroyed."[85] One's making of a promise leads others to adjust their own agency appropriately, such that one's failure to live up to it would hinder their action. On the other hand, the promise itself is not enough because the "theory of acceptance" also contributes something: "namely, I would not be able to exercise my right of coercion if I cannot demonstrate the actual existence of a determination of will in a generally valid formula."[86] One cannot adjust one's agency to another and coerce that other to follow through with their promise without being able to actually recognize the other's action as a sign of their determination of will and to express one's recognition in a generally recognizable way. What Kant's account of contract needs, Schleiermacher argues, is an account of the signs that make the intersubjective recognition that lies at the heart of the contract possible.

5. Schleiermacher's Positive Theory of Right

The incomplete and scattered nature of Schleiermacher's *Notizen* make it difficult to gauge the exact contours of Schleiermacher's views and how committed he is to some of the various arguments offered throughout the text. Furthermore, because the notes are populated more with critiques of the positions of others rather than a straitforward setting forth of his own position, how Schleiermacher's views may hang together in a singular, unified account is not entirely clear. In many

[85] Ibid., 69.
[86] Ibid., 69.

ways, one gets a better sense of Schleiermacher's general method than the actual substance of his theory of right. After a review and dismissal of previous views, Schleiermacher prepares to present his own as the only possible way to do justice to the concept of right. Yet because this positive alternative is never fully sketched out, the actual arguments for Schleiermacher's position and why it is that non-positive and one-sided accounts of the origin of coercive right that underlies Schleiermacher's criticism of the prior views are never entirely set forth. We are therefore more aware of what views Schleiermacher rejects than what he actually thinks.

Thus far, I have attempted to tease out some of these positive arguments by means of situating Schleiermacher within the space of post-Kantian theories of right. As we have seen, Schleiermacher is "Kantian" not so much in the sense that he was loosely inspired by Kant's earlier work in the *Groundwork* or the *Critique of Practical Reason*, but in that his theory of right takes inspiration from Kant's account of the contract in the *Metaphysics of Morals* in its insistence that the bindingness of contracts cannot be seen as arising one-sidedly from either something having to do with the act of promising or something having to do with the act of accepting. In this regard, Schleiermacher shares with Kant the insistence that the right of coercion cannot be derived out of one's duty to keep one's promises or out of the need to coordinate expectations in light of a promise, positions that continue to be defended by philosophers today.[87] Instead, contracts arise out of an act of reciprocal recognition between two agents acting within the context of a common (symbolic) community. Focusing on the hermeneutical conditions for the possibility of recognizing another's determination of will within the context of a world seemingly structured by deterministic action, the early Schleiermacher departs both from Kant's conception of a common will and from

[87] For contemporary reflections on the nature of the promise and the bindingness of agreements that arise out of them, see the essays contained in *Promises and Agreements: Philosophical Essays*, ed. Hanoch Sheinman (Oxford: Oxford University Press, 2011). For a defense of a modern "expectation theory" see Michael E. Bratman, *Shared Agency: A Planning Theory of Acting Together* (Oxford: Oxford University Press, 2014). Schleiermacher also denies that promises are to be understood as arising out of a "practice of promising" oriented toward a wide variety of possible goods – peace, trade, or the like.

what would be the later Fichte's account of a necessary "summons" to reciprocal recognition between free individuals.[88] Although the argument remains fragmentary here, Schleiermacher's insistence on the symbolic basis on which recognition and thus coercion rests will play an important role in distinguishing his later view from that of the later Fichte's.

At this stage, however, the basic contours of the view seem to emerge mostly with Kant in the background. Coercive rights *are* a product of contracts, understood as an intelligible act in which promise and acceptance, whatever their empirical status or order, are reciprocally recognized as simultaneous declarations of will. For this to be possible, it must be possible to recognize something in the world that is not merely a natural occurrence, but as a willed occurrence, which, even if its consequences are likewise determinate, can be recognized as the act of a human person. That which is required to recognize such declarations of will is an original community of signs. Once someone declares one's will and it is reciprocally recognized and accepted by another, the other now possesses the coercive right to force them to act in accordance with their expressed will, as doing so would only further progress the mechanical unfolding of their original determination of will.

Whatever one may think about the cogency of Schleiermacher's arguments, the account of coercive right in the *Notizen* at least goes to show that, unlike the suggestion of some of his commentators, Schleiermacher is *not* unfamiliar with conversations about the theory of right and that his mature views are *not* developed in such a way so as to ignore the problem of disagreement and the question of coercion in mind. Indeed, the fact that Schleiermacher's mature view of right sees it as coextensive with the realm of possible exchanges – the "community" within which actual contracts are possible – suggests that Schleiermacher, even if he does modify his views, nevertheless does not fundamentally depart from the trajectory that he has already established in the *Notizen*.

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[88] This would seem to put Schleiermacher somewhere in the territory of Margaret Gilbert's defense of a "Kantian" conception of collective agency and Stephen Darwall's "Fichtean" account of rights as second-personal.

III. The Political Economic Turn: Schleiermacher and Fichte on Right

1. After the "Notizen"

Schleiermacher would never finish the "Notizen". While it may be impossible to ascertain the precise reason why, it does not seem completely unreasonable to imagine that it is connected with Schleiermacher's discovery of Fichte and the innovative account of right and reciprocal recognition first set out in the *Foundations of Natural Right* and applied in *The Closed Commercial State*. Even if this were not the immediate cause of Schleiermacher's claim to be "Fichte-izing" in his letter to Brinckmann, it is clear that the works that Schleiermacher would publish in the preceding years – the 1800 *Monologen* and the 1803 *Grundlinien einer Kritik der bisherigen Sittenlehre* (Outline of a Critique of Earlier Ethical Theories) – would attempt to set forth positions which were critical of Fichte while remaining clearly influenced by his work. When the subject of rights thus arises again in Schleiermacher's mature systematic ethics, one should expect to see this dual influence present.

Miriam Rose and Andreas Arndt have accused Schleiermacher of advocating a "communitarian" theory of right that is far too optimistic about the prospects of harmony between the interests of the individual and the interests of the community.[89] Schleiermacher's insistence on the co-instantiation of individual and community, Arndt suggests, reflects a naïve trust in the "spirit of liberalism and the invisible hand".[90] Drawing from Hegel, Arndt characterizes Schleiermacher as having failed to adequately recognize the ways in which civil society had become distinct from the modern state such that one could only understand abstract universality and the particularity of

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[89] Rose, *Schleiermachers Staatslehre.*

[90] "Schleieramcher ist in diesem Zusammenhang völlig davon überzeugt, dass zwischen Privateigentum bzw. Eigentümlichkeit überhaupt und Gemeinschaft grundlegende Konflikte gar nicht möglich seien; in dieser Hinsicht vertraut er im Geiste des Liberalismus der unsichtbaren Hand, also letztlich wiederum dem Gesetz des ethischen Fortschritts..." Arndt, *Die Reformation der Revolution*, 215.

private right as standing in contradiction with one another.[91] For Arndt, Schleiermacher's treatment of the opposition between individual and communal as merely a relative one could only reflect a political-economic vision that had failed to adequately break from the pre-modern vision of the individual household as the basic unit of economic activity.

When judged against liberal political assumptions, Schleiermacher's mature theory of right may certainly seem to fall short. But when read against the backdrop of Fichte's theory of right, much of what interpreters like Arndt find foreign may become increasingly familiar, even as it continues to present a challenge to liberal politics. Far from a "communitarian" theory of right, Schleiermacher's insistence on the co-instantiation of the individual and the general ought to be recognized as a variation on Fichte's attempt to deduce right out of relations of reciprocal recognition. It is the Fichte of the *Foundations of Natural Right* that first insists on the co-determination of individual and community; Schleiermacher merely takes what Fichte conceives of as negatively-defined spheres of individual freedom and insists that they are to be understood positively. When combined with Fichte's concern to interpret these spheres as reflective of a complex division of labor, what emerges is a *positive* account of the way that linguistic concerns are tied up with the ability to recognize the roles that one may play in the division of labor. In other words, Schleiermacher's mature theory of right is exactly what one would expect if the author of the "Notizen" took the insights he had originally developed in conversation with earlier theories of right and resituated them into a rights-framework that took its primary inspiration from that of Fichte. In order to demonstrate how that this is the case, however, we must first consider Fichte's mature theory of right.

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[91] Ibid., 209.

2. *Fichte on Right and Reciprocal Recognition*

a. *Right and the Communal Possibility of Free Action*

Fichte's derivation of right from the principle of recognition is among one of the more influential arguments in the history of political philosophy. The canonical significance of Hegel's "master-slave dialectic" for the Marxist tradition can too easily obscure the way that Hegel's own perspective develops upon a motif that first found formulation in Fichte's 1796 *Foundations of Natural Right*.[92] Published before Kant's own 1797 *Metaphysics of Morals*, the *Foundations of Natural Right* would set forth yet another "post-Kantian" trajectory distinct from prior treatments of right in that it sought to ground the concept solely on *theoretical* rather than practical considerations.[93] If Kant's own derivation of right grounds itself on the principle of being able to coexist with the freedom of all in accordance with universal law, Fichte posits right as necessarily arising out of the conditions of possibility of a free subject's self-positing.

Fichte's *Foundations of Natural Right* thus attempts to derive the concept of right out of the very conditions of being a self-conscious "I" at all.[94] One's very ability to determine oneself, Fichte argues, is dependent upon the reciprocal existence and recognition of another. The deduction

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[92] Compare, for instance, the section on the master and the slave in Hegel's *Phenomenology of Spirit* with this passage in Fichte's *Foundations of Natural Right*: "In fact, from the moment they come to know of one another, neither can be secure even in his previously acquired possessions… An undecidable conflict of right arises between them, a conflict of physical forces that can end only with one of them being physically annihilated or completely driven away." J.G. Fichte, *Foundations of Natural Right*, ed. Frederick Neuhouser (Cambridge: Cambridge University Press, 2000), 113-114. Cf. §§178-196 in G.W.F. Hegel, *The Phenomenology of Spirit*, trans. Terry Pinkard (Cambridge: Cambridge University Press, 2018). Hegel's appropriation is probably mediated through Schelling's treatment of the matter in *System of Transcendental Idealism* (1800), but the resemblance nevertheless remains.

[93] In this, Fichte can be said to have been influenced by Maimon and Erhard, who also introduce a theoretical dimension to their treatments of the concept of right. Indeed, Gabriel Gottlieb will argue that Erhard also preempts Fichte in emphasizing the significance of acts of reciprocal recognition for understanding rights, though Fichte will go beyond Erhard in insisting that such acts play a constitutive role in the establishing of rights. See Gabriel Gottlieb, "A Family Quarrel: Fichte's Deduction of Right and Recognition" in *Kant and His German Contemporaries, Volume II: Aesthetics, History, Politics, and Religion*, ed. Daniel O. Dahlstrom (Cambridge: Cambridge University Press, 2018), 170-192.

[94] For more-detailed attempts to reconstruct the argument, see Nedim Nomer, "Fichte and the Relationship between Self-Positing and Rights" *Journal of the History of Philosophy* 48 (2010): 469-90; Michael Nance, "Recognition, Freedom, and the Self in Fichte's *Foundations of Natural Right" European Journal of Philosophy* 23:3 (2015): 608-32; Allen Wood, "Deduction of the Summons and the Existence of Other Rational Beings" in *Fichte's Foundations of Natural Right: A Critical Guide*, ed. Gabriel Gottlieb (Cambridge: Cambridge University Press, 2016), 72-91; and Paul Franks, "Fichte's Kabbalistic Realism: Summons as ẓimẓum" in ibid., 92-116.

proceeds synthetically step-by-step. From a self-positing I, Fichte reaches the conclusion that the I must understand itself to be free. From the concept of free self-positing, Fichte then concludes that this is only possible given the existence of a sensible world in which the "I" can express its activity in a determinate and limited way. This condition leads to a problem. On the one hand, in order for the self to be "free", the object of positing must correspond to *subject's* positing – that is the definition of a subject; on the other hand, the self needs to be *constrained* in positing the object – otherwise, it would not be an object.[95] Fichte's solution to this seeming contradiction is to posit that the nature of the external limitation upon the subject in its free activity upon an external object ought to be understood as *"its being-determined to be self-determining*, i.e. as a summons to the subject."[96] The subject is externally determined, but in such a way so as to make its freedom possible. Fichte quickly concludes that the only kind of efficacy that can affect this kind of external summons is another free self-positing self.[97] In other words, the only way – so Fichte argues – for a subject to be both free and constrained at the same time in its positing of an object, is for it to be constrained *rationally* by another subject which it can only understand to be a free subject like itself (as opposed to being *physically* constrained by an object, which would make the action *unfree*).[98]

From here, Fichte reaches the conclusion that the self-positing self can only posit these other free selves only if it understands itself as standing in relation to them in a relationship of right. If the determination required for self-positing can only come from an external summons from

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[95] "The synthesis is supposed to yield an object; but the nature of an object is such that, when it is comprehended by a subject, the subject's free activity is posited as constrained. But this object is supposed to be the subject's own efficacy; however, the nature of the subject's efficacy is to be absolutely free and self-determining. Both are supposed to be unified here; the natures of both object and subject are supposed to be preserved without either being lost. How might this be possible?" *Foundations of Natural Right*, 31.

[96] Ibid.

[97] "In accordance with I-IV above, the rational being cannot posit itself as such, except in response to a summons calling upon it to act freely. But if there is such a summons, then the rational being must necessarily posit a rational being outside itself as the cause of the summons, and thus it must posit a rational being outside itself in general." Ibid., 37.

[98] For an attempt to make use of a version of this argument to ground contemporary ethics (rather than just the notion of right), see Stephen Darwall, "Fichte and the Second-Person Standpoint" in *Honor, History, and Relationship: Essays in Second-Personal Ethics II* (Oxford: Oxford University Press, 2013), 222-246.

another free self-positing being, Fichte argues, the self should also recognize that the other posited being's freedom itself depends upon their being recognized by the self:

> The relation of free beings to one another is a relation of reciprocal interaction through intelligence and freedom. One cannot recognize the other if both do not mutually recognize each other; and one cannot treat the other as a free being, if both do not mutually treat each other as free. The concept established here is extremely important for our project, for our entire theory of right rests upon it.[99]

One's very ability to act freely upon an external object presupposes that they recognize the ability of another being to freely act upon an external object and that this other being recognizes them in turn. Fichte thus arrives at the conclusion that rights are necessarily reciprocally determined – person A's right depends on their recognition of person B's right. Thus,

> the concept of individuality is a *reciprocal concept*, i.e. a concept that can be thought only in relation to another thought, and one that (with respect to its form) is conditioned by another – indeed by an *identical* – thought. This concept can exist in a rational being only if it is posited as *completed* by another rational being. Thus this concept is never *mine*; rather, it is – in accordance with my own admission and the admission of the other – *mine and his*, *his and mine*; it is a shared concept within which two consciousnesses are unified into one. … The concept of individuality determines a *community*, and whatever follows further from this depends not on me alone, but also on the one who has – by virtue of this concept – entered into community with me.[100]

For Fichte, there is no such thing as an individual without a community. The very fact that there is an "I" or a "mine" assumes that there is a "he" or a "his" alongside. The capacity to act freely in a determinate manner demands that one also be recognized by another whom one likewise recognizes as capable of acting freely. Individuals always exist in community.

The remainder of the *Foundations of Natural Right* is dedicated to deriving the concepts of property (original right), law (the right of coercion), and the state out of this initial derivation of the recognitive character of right. We shall have more occasion to consider the account of property and contract that Fichte develops in the following chapter. For now, however, it may be useful to

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[99] Fichte, *Foundations of Natural Right*, 42.
[100] Ibid., 45.

highlight the ways in which Fichte's theory of right is both similar to, but also departs from that of Kant in the *Metaphysics of Morals* and the Schleiermacher of the "Notizen". All three are keen to emphasize the way in which rights-discourse presuppose some conception of community. For Fichte, the existence of a "mine" presupposes the existence of a "his" alongside – two distinct spheres of individual activity and freedom. Here, "community" is to be thought of almost as a concatenation of reciprocally-recognizing individuals and their individual spheres of activity. For Kant, however, the existence of a stable "mine" and "his" actually presupposes the existence of an "us" – a joint determination of will that transcends the particularities of the individual wills.[101] Here, "community" is to be thought of as a kind of higher-level unit that encompasses the subordinate individuals. As we have seen, the Schleiermacher of the "Notizen" is close to the Kant of the *Metaphysics of Morals*, deviating only by his emphasis that this "community" be a positive one that not only shares a determination of will, but also a basic symbolic repertoire by which to recognize acts of will-determination. As we shall see, however, the Schleiermacher of the later *Brouillon* and *Ethik* would shift in a decisively Fichtean direction. Before we turn to this, however, we must highlight one other important aspect of Fichte's approach to right.

b. Fichte and the Turn to Political Economy

For all the innovativeness of Kant's critical philosophy, there was nevertheless one aspect of his political thought that remained relatively conservative: his account of the political significance of the economy. Although Germany's "industrial revolution" is not often thought of as beginning until after 1815 and the end of the Napoleonic wars, the end of the 18th century would already see the

[101] In more Kantian language, the stable existence of a "mine" and "his" presupposes the existence of an omnilateral will that transcends the particularities and partialities of the individual wills. Kant's insistence on joint willing in his account of the contract is part of a more general conviction about the conditions that make the genuine coordination of freedom possible (on the basis of mutual subordination to a general will). One way to draw out the significance of Fichte's alternative derivation lies in his having replaced Kant's account of subordination with one of reciprocal recognition.

beginnings of a shift towards a commercial society among the German-speaking lands. In Prussia, the *Allgemeine Landrecht* of 1794 and the Stein-Hardenberg reforms would enact and reflect the rapid transition away from a feudal society structured around *Stände* and a more economically liberal society organized around class. Picking up on new financial experimentation with paper and fiat currencies taking place in post-Revolutionary France, Fichte's theory of right would seek to offer an alternative to Adam Smith's conviction that the inequality of market societies could be justified by an appeal to natural liberty such that states should be minimally engaged in the management of their economies. By contrast, Fichte would attempt to adapt a Rousseau-ian account of the general will for use in the context of a modern economy characterized by an increasingly complex division of labor.[102]

The difference that a political-economic focus can make can be discerned in the very different ways in which Kant and Fichte treat the institution of the family. Kant's conception remains for the most part beholden to the corporatist vision of society in which the household could yet be conceived as the basic and economically self-sufficient unit of society.[103] Thus, Kant's vision of the family still includes a "right to persons akin to rights to things" that characterizes the relation of the head of household vis-à-vis the various dependents – spouse, children, and servants – who lack an economic self-sufficiency and contribute to the internal economic activity of the household.[104] On this scheme, what marks the moment of independence for children and dependents from subjection to the head of household is "merely by attaining the ability to support themselves," a capacity that is automatically equated with legal and juridical independence: "they

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[102] For an attempt to situate Fichte's arguments in their political-economic context, see Isaac Nakhimovsky, *The Closed Commercial State: Perpetual Peace and Commercial Society from Rousseau to Fichte* (Princeton: Princeton University Press, 2011).
[103] For a comparison of Kant, Fichte, and Hegel's views of the family vis-à-vis changes taking place in Prussian society, see ch. 4 of Christopher Yeomans, *The Politics of German Idealism* (New York: Oxford University Press, 2023). See also Isabel V. Hull, *Sexuality, State, and Civil Society in Germany, 1700-1815* (Ithaca, NY: Cornell University Press, 1996).
[104] See, for instance, MM 6:282-284.

become their own masters (sui iuris) and acquire this right without any special act to establish it and so merely by law (lege)."[105]

By contrast, Fichte's vision of the family has severed the association with economic self-sufficiency and instead focuses on the sexual relation that undergirds marriage: "Marriage is the perfect union of two persons of each sex that is grounded upon the sexual drive and has itself as its own end."[106] The right that parents have over their children is now thought of as terminating, not automatically at their achieving economic self-sufficiency, but at the end of a process of education that leads up to their own marriage, a process that is *not* self-vindicating: "since the child's upbringing ends when the child is married, but since only parents are entitled to judge when their child's upbringing can end, parents have a right to withhold for a while their permission to marry, or a right to postpone the marriage."[107] Within the context of a complex division of labor, the household is no longer capable of serving as a basic economic unit of society. And thus the family no longer serves also as an economic union in which dependents such as servants are included, but solely as a reproductive and educative unit.

The existence of a complex division of labor meant that Fichte, unlike Kant, could no longer take for granted that citizenship could be thought of as necessarily co-extensive with the conditions of its material sustenance. Rather, for Fichte, the only way for citizens to be guaranteed the material means to enjoy their rights was for the state to coordinate and regulate all relations of exchange such so as to make sure that each participant in the division of labor could be guaranteed their ability to sustain their existence. Although the basic lineaments of the view were already present in the *Foundations of Natural Right*, Fichte would set out the argument most explicitly in his *The Closed Commercial State*: in the context of a complex division of labor, attaining Kant's vision of perpetual

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[105] MM 6:282.
[106] Fichte, *Foundations of Natural Right*, 273.
[107] Ibid., 316.

peace required not only the adoptation of republican constitutions, but also the formation of closed commercial states which possessed an economic sovereignty corresponding to their legal sovereignty. The existence of free trade, Fichte posited, is incompatible with the Kantian vision precisely because states would be unable to guarantee their citizens the enjoyment of their rights in the face of market fluctuations that could undermine the economic basis of their citizenship.

c. The Division of Labor and Property in Action

Fichte's distinctive derivation of the concept of right and his concern for political and economic security in the face of a complex division of labor leads him to develop a correspondingly distinctive account of property. Kant, like Locke and many others, would begin his account of the right to property with an account of original acquisition, how it is that humans come to acquire property in land and things beyond that of their body, their original unalienable property. In keeping with his conviction that the existence of a stable mine and his required the existence of a general omni-lateral will that transcends the "I" and the "he", Kant would offer an account of how preliminary acts of acquisition in the state of nature could be secured within the civil condition of mutual subordination to a state sovereign who represents the general will.[108]

By contrast, Fichte's derivation of right out of the conditions for free action leads him to the controversial claim that property is first and foremost about the right to perform *actions* rather than dominion over *things*:

> I have described the right to property as an exclusive right to *acts*, not to *things*. …
> Free activity is the seat of the conflict of forces. Hence, it is free activity that is the true object concerning which the conflicting parties negotiate treaties. In no way are things the object of the treaty. The ownership of the object of a free act first issues and is derived from the exclusive right to a free act.[109]

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[108] i.e. "It is possible to have something external as one's own only in a rightful condition, under an authority giving laws publically, that is, in a civil condition." MM 6:255.

[109] Fichte, *The Closed Commercial State*, 92-93. Cf. *Foundations of Natural Right*, 183-184: "At first, a sphere for the exercise of his freedom, and nothing more, is allocated to him. This sphere contains certain objects, as determined by the

Acts of mutual recognition lead to the recognition of individual spheres of free activity. What is originally *mine* and *his* are thus spheres of action rather than things. That this should be the case arises quite naturally out of Fichte's derivation of right out of the conditions of possibility of free-positing. The reciprocal self-limitation that takes place is not fundamentally in response to the materiality of external objects but in response to the freedom of other self-positing beings. What one acknowledges is the other's freedom to *act* upon external things in abstraction from what the actual character of that action may be. The right to things is then derived from this original freedom.

What this shift amounts to is a fundamental re-conceptualization of the project of natural rights through the lens of political economy.[110] Instead of an initial distribution of land and an attempt to rationalize the compatibility of the forms of inequality concomitant with a more complex division of labor with natural rights,[111] Fichte's conception of right makes the division of labor more fundamental than the distribution of things. If Locke grounds property in things by making property in one's own person inviolable and the basis of the appropriation of external things by means of labor, Fichte's approach reverses the order.[112] One's right to one's body is fundamental precisely because it is the necessary object of one's free activity and the means by which one expresses it. Indeed, what constitutes the bounds of the body is itself defined in terms of this free activity: "The material body we have derived is posited as the *sphere of all the person's possible free actions*, and nothing more. Its essence consists in this alone."[113]

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freedom that has been granted to him. *Thus his right to have property in these objects extends as far as the freedom granted to him extends, and no further*. He acquires such objects only for a particular use; and it is only from this use, and from what might hinder such use, that he has the right to exclude everyone else. The object of the property contract is a particular activity."

[110] See especially ch.4 of Nakhimovsky, *The Closed Commercial State.*

[111] i.e. Adam Smith's *The Wealth of Nations*.

[112] See esp. ch.6 of Locke's "Second Treatise on Government".

[113] Fichte, *Foundations of Natural Right*, 56.

Thus, unlike his many predecessors, Fichte would deny that property in land is even possible:

> In our theory there is no property of land, or at least not until those who assume that there is such a thing can make us understand how such a right to property might be *practiced* in actual life – if indeed these truly understand what they are saying, and really mean, as these words declare, a property of *land*, and not, as in our interpretation, a right that is exclusively one's own to a certain *use* of the land. The earth is the Lord's; to man belongs only the ability to cultivate it and use it in a purposeful fashion.[114]

What one has a claim to is not land *per se* but to the *use* of its modifications by virtue of one's right to *act*. Even those engaged in the task of agriculture do not own land, but merely the right to cultivate it.[115] For Fichte, the foundation of right in activity rather than things ought to be obvious given the way in which the *same* piece of land or object can be engaged with by many people at the same time, though in different ways.[116] The fact that many people may live or work on the same piece of land, for Fichte, ought to lead one to the conclusion that right has to do with their navigating around the various roles they play on that land rather than that one person should be considered the land-owner and the rest merely possessing property in their own bodies. It is only in the situation where actions may require *incompatible* uses of the same thing that things are attributed as property – by virtue of their relation to one's right to act.[117]

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[114] Fichte, *The Closed Commercial State*, 130-131. See also: "The earth in particular, regarded as a mass, cannot be owned, for, as a substance, it cannot be subjected to any exclusive end that a human being might have; but according to what was stated above, it is contrary to right to exclude all human beings from using a thing without being able to declare what one's own use of the thing would be" Ibid., 190. Cf. "§12. First acquisition of a thing can be only acquisition of land. Land (understood as all habitable ground) is to be regarded as the *substance* with respect to whatever is movable upon it, while the existence of the latter is to be regarded only as *inherence*. Just as in a theoretical sense accidents cannot exist apart from a substance, so in a practical sense no one can have what is movable on a piece of land as his own unless he is assumed to be already in rightful possession of the land." MM 6:261.

[115] "Therefore, the agriculturalist's right to a particular piece of land is nothing more than the right to cultivate products entirely by himself on this land, and to exclude everyone else from such cultivation and from any other use of this land that would conflict with his use of it." Fichte, *Foundations of Natural Right*, 190.

[116] "In this case too, an object can figuratively and derivatively be called the property of the one who has been granted the title of right, although strictly speaking his property consists only in the exclusive right to a certain free action toward this object. The exclusive right of the farmer to cultivate grain on this certain piece of land is of such a kind. This right does not curtail the right of another to put his herd to pasture on the same land, or the state to engage in mining beneath the surface." Fichte, *The Closed Commercial State*, 130.

[117] "That one person should receive something as his own happens only to mediate the conflict of many over this same thing." Ibid., 131.

Grounding rights in actions rather than things means that Fichte has a very different way of parsing out the original right to self-preservation that is at the foundation of theories of natural right. Instead of beginning with one's absolute ability to exclude others from the *thing* one originally possesses, Fichte begins with the right to exclude others from one's free sphere of activity. Any limitation in that activity must ultimately be compatible with one's retaining one's ability to preserve one's life, leading Fichte to the conclusion that any division of labor can only be justified on the basis that (1) one receives the right to exclude others from one's particular work on behalf of the whole,[118] and (2) one receives the right to *live* off of the performance of one's particular work.[119] In other words, the compatibility of a division of labor with the principles of right is contingent on there being both a monopolistic *right to one's work* (property in action) and a *right to live off of one's work* (appropriation on the basis of one's labor).[120]

In order to achieve the former, Fichte insists that the state must grant members of society a functional monopoly on the particular role in the division of labor that they play within the state. Only by doing so does one receive *property* in that action in possessing the right to exclude others

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[118] "The *equal* degree that each limits the other rests in the law of Right, and does not depend on anything arbitrary. They must nevertheless negotiate *which determinate sphere of activity* should remain exclusively for each one, with the others having to refrain from this sphere of activity for his sake. …It is only in exchange for obtaining his share, and so as to hold on to it undisturbed, that anyone renounces the share of all the rest. If someone hasn't received anything as exclusively his own, he hasn't renounced his right to anything." Ibid., 132-133.

[119] "In accordance with this equality of their rights, the division must be made in such a way that one and all can live as pleasantly as possible when so many men as they are exist next to one another in the given sphere of efficacy. Each, in other words, must be able to live about as pleasantly as the other. I say: be able to, and not have to. Should someone live less pleasantly as he is able, the reason for this must lie with him alone and not with anyone else." Ibid., 7:55 (93). Nakhimovsky notes here that Fichte seems to have elided the right to *live* with the right to live *agreeably*. The elision, so Nakhimovsky argues, is a consequence of Fichte's particular theory of human need and vocation. Contrary to Rousseau's judgment, Fichte held that humans cannot be satisfied with bare life but possess the vocation to expand their activities so as to make life agreeable. This also means that what is "needed" for life changes in accordance with the degree of development of the social life within which individuals are situated. The independence of each individual which Rousseau sought in the balance of individual needs and humanity's abilities ought to be found in the development of life's agreeableness. Of course, one could certainly call into question Fichte's Rousseau-ian premises, as Nakhimovsky notes Ludwig Hestermann does in his "Smith-ian" defense of *The Open Commercial State* (1802) in direct response to Fichte. See esp. Nahhimovsky, *The Closed Commercial State*, 143-156.

[120] "What can the state still give to him? Clearly only the guarantee that he will always be able to find work or sell his goods, and that in return for these he will receive his due share of the goods of the land. It is with this assurance that the state first binds him to itself." Fichte, *The Closed Commercial State*, 133.

from that action.[121] In order to achieve the latter, Fichte insists that the state must guarantee compensation that will be sufficient for life. The division of labor must maintain one's right to live if it is to be a valid contract in accordance with right. And "equal work" (one's particular role in the division of labor) ought to result in "equal pay" vis-à-vis any other role in that division. Fichte is willing to countenance that the nature of some professions may acquire certain benefits by virtue of what is required to accomplish its role – a scholar may require "more varied and revitalizing nourishment" than a farmer engaged in mechanical labor who can subsist on "a mass of vegetable foodstuff"[122] – but the benefits of the division of labor ought to be "distributed among everyone in a relatively equal fashion."[123] One's right to particular things – property in things – is contingent on and adjusted to one's contribution to the labor of the community.

It is this labor that entitles one to appropriation. If it is by virtue of one's action that one attains property in things, the context of a division of labor means that there can arise a degree of abstraction regarding the things one may actually appropriate as property. In light of this division, one has a right not only to the things that one labors on oneself, but also on those produced or provided by others within the community and which one purchases on the basis of the wages one receives for one's labor (or money from the sale of one's goods). Fichte demarcates a few rights and duties connected to this appropriation. For one, everyone has a *right* to appropriate what they need to live. For Fichte, one can only give up one's free right to self-preservation by means of a guarantee to live off one's particular form of work. There is a corresponding duty: each is obligated to provide for those who work, yet have not received sufficient compensation.[124] For another, everyone also

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[121] "Only through this *closure* does a branch of labor become the *property* of the class of its practitioners…" Ibid., 133.
[122] One may very well question the nutritional and somewhat bourgeois assumptions underlying Fichte's argument, but this should not take away from the basic point that one's right to demand compensation from the community is to be grounded in the role that one plays for that community.
[123] Ibid., 106.
[124] "In this regard, the contract is as follows: each person promises to do everything he can in order to be able to live based on the freedoms and rights granted to him; conversely, the populace promise, on behalf of all individuals, to give him something more, should he still be unable to live. All individuals obligate themselves to contribute to such

has the *right* to appropriate everything needed in order to achieve their work. This is both a privilege and a responsibility: "Each person possesses property in objects only insofar as he needs such property to pursue his occupation."[125] By virtue of one's property in action, one may acquire rights to objects that might not otherwise be thought of as "mine" under a more traditional regime of private property. At the same time, however, appropriation is always governed by its relation to the role that an object may play in one's ability to live (at a level of comfort relatively similar to that of one's fellow citizens) and to work. Merely being first to claim something, or even being the person to have labored on it does not give one an absolute right to an object if doing so would end up conflicting with achieving a condition of right in which all have the right to live off of their labor. Appropriation is linked to what one needs for one's work, and what one has a right to on the basis of that work.

3. Schleiermacher's Mature Theory of Right

a. From Contract to Exchange and the Division of Labor

One of the key errors that previous interpreters have made in attempting to understand Schleiermacher's theory of right is to focus too narrowly on trying to find the word "right [Recht]" in his oeuvre and ignoring all of the other concepts that Schleiermacher has closely associated with it. The problem is then often further compounded by the assumption that the concept of right – once identified in Schleiermacher's work – ought to play the same role in his overall political philosophical vision as it does in liberal political thought. Thus, Miriam Rose can suggest that the lack of a dedicated discussion of rights in Schleiermacher lectures on the state implies a significant "deficiency" without considering whether such an omission might itself be warranted by virtue of

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assistance… and thus the civil contract includes a provision for rendering assistance to those who need it…. The state authority oversees this part of the contract, like all other parts of it, and it possesses the right of coercion, as well as the authority to force everyone to fulfill it." Fichte, *Foundations of Natural Right*, 187.

[125] Ibid., 187.

Schleiermacher's non-liberal vision of what the state is and what it is for something to be "political". Indeed, one might say that part of what is at stake in Schleiermacher's intellectual project is the very meaning of the word "politics". It is significant, for instance, that Schleiermacher develops a *Staatslehre* rather than – as Kant and Fichte do – a *Rechtslehre*. The mere absence of a *Rechtslehre* within the *Staatslehre* is therefore an insufficient basis on which to base the conclusion that Schleiermacher lacks a theory of right.

Andreas Arndt goes beyond Rose in suggesting not only that Schleiermacher lacks an adequately developed theory of right, but also that this deficiency is necessarily the case given his overall political principles. To his credit, he goes beyond Rose in considering not only the lectures on the state, but also Schleiermacher's writings on right in the *Ethik*. His focus on Schleiermacher's discussion of right within the doctrine of duty, however, risks minimizing the significance of Schleiermacher's discussion of right within the doctrine of the good. That said, Arndt's approach is not without rationale: in Schleiermacher's earliest 1805/1806 lectures, the word "right [Recht]" is hardly mentioned at all except in a short discussion of the duty of justice. Arndt then quite reasonably takes Schleiermacher's later discussions of right as developing upon this foundation. In doing so, he neglects the way in which many of the key notions connected to Schleiermacher's discussion of right – recognition, the division of labor, community, and exchange – are already present in the 1805/06 discussion of identical organization and that these very notions would be more explicitly discussed in terms of right in the 1812/1813 and 1816/17 notes. Without attending to the complex way in which Schleiermacher both takes up and transforms Fichte's conception of the reciprocity of right, Arndt is led to the conclusion that Schleiermacher's insistence that right only emerges in relation to community is a fundamental rejection of "the modern social-philosophical recognition-concept" of right as "reciprocal relation between equals."[126]

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[126] Arndt, "Der Begriff des Rechts in Schleiermachers Ethik-Vorlesungen", 229.

Schleiermacher's insistence upon the necessary reciprocity of *right* and *community*, however, makes sense when read against the backdrop of Fichte's political-economic intervention into the liberal rights-tradition. This is eminently clear even in the discussion of the duty of right. The formula that is first expressed in 1805/06 and repeated throughout the lectures runs as follows: "So enter into community that you simultaneously appropriate a particular sphere."[127] Schleiermacher quickly glosses this thus: "The particular sphere of each person in the state is that of *proprium* [Eigenthums] and one's rights. Thus, the first maxim is: *So enter into the state in such a way that you obtain your right therein*."[128] The 1812/13 lectures generalize the principle to apply not only to the state, but to communities as such: "*Enter into every community* [Gemeinschaft] *in such a way that your entering is also an appropriation* [ein Aneignen]… Applied to the formative province, then, we find here the positing of a general state of contractuality as identical with the positing of possession or the acquisition of rights in the community as a whole."[129] The 1816/17 lectures add the qualification of equality: "Enter into equal community [Gemeinschaft], so that by doing so you appropriate [aneignest] in it at the same time."[130] Schleiermacher's second maxim regards preserving individuality within one's entrance into community. In 1812/13: "*Enter into every community reserving your whole individuality*."[131]

Arndt interprets Schleiermacher's insistence on the complementary relationship of community, individuality, and right as expressive of a "blind trusting of the invisible hand."[132] Schleiermacher's formulas, however, can sound almost identical to Fichte's own. Take, for instance, Fichte's discussion of the "unification contract" at the basis of the commonwealth: In explicating his view, Fichte considers whether or not individuality, in becoming "a part of an organized whole",

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[127] BE 170; 236.
[128] Ibid., 170; 236.
[129] E 1812/13 128 (DD.DR.2-3), 413.
[130] E 1816/17 226 (DD.I.4), 465.
[131] E 1812/13 129 (DD.DR.6), 414. "Enter into the universal with your entire individuality" BE 170; 236; "Enter into universal community reserving your whole individuality." E 1816/17 229 (DD.I.14), 468.
[132] Arndt, "Der Begriff des Rechts," 226.

thereby becomes entirely "intertwined with the whole – or only partly so"?[133] Fichte differentiates his approach from what he takes to be Rousseau's, in which "each individual gives himself up completely."[134] By contrast, "According to our theory, no individual can bring anything with him to the civil contract, for prior to this contract he *has* nothing. The first condition of giving something up is that one already have received something. Therefore, this contract – far from starting with *giving* – ought to begin with *receiving*."[135] Schleiermacher seems to agree: entrance into the community actually begins with an act of appropriation.

After this appropriation, however, Fichte also defends the ongoing non-total assimilation of individuality within community: "Each individual makes a *contribution*… he makes his particular contribution in the form of abilities, services, products of nature, or… money. But he does not entirely alienate himself or what belongs to him."[136] The state's demand upon the individual cannot be total. This is because "insofar as it undertakes to protect each individual's possessions, it also recognizes those possessions… the state's property is limited to what each individual is obligated to contribute towards shouldering the state's burdens."[137] There is, for Fichte, always to be a remainder left over to individuality even in the state's demands upon it. Schleiermacher's maxim is similar, taking himself to give an even stronger defense of individuality than Fichte does (insofar as the individual does not arise as subsumed within the universal but as correlate with it). Simply put, if individuality in Fichte is an abstract formal form which serves as a negative remainder from the positive of the state community; the particularity which inheres in individuality in Schleiermacher is a

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133 Fichte, *Foundations of Natural Right*, 177.
134 Ibid.
135 Ibid. Fichte thus agrees with Kant that rights properly exist *only* in the civil condition and it is only once one enters into the civil condition that one can make sense of rights. Kant, however, supplements his account with a discussion of "preliminary right" by which one can consider pre-civil appropriation in anticipation of entering the civil condition, thus allowing the civil contract to respect acquisitions acquired in a pre-civil condition. By contrast, Fichte conceives of one's property as only first being *given* only in the civil contract, even if one may have "held" the relevant things beforehand.
136 Ibid., 178.
137 Ibid.

positive form that arises alongside that of the communal to the extent that particularity and universality are co-constituting.[138] Differences aside, both effectively affirm the same maxim that the entrance into community is necessarily non-totalizing, for even if it is only on account of the community that one may be the particular individual that one is, the demands of that community cannot ultimately encompass that particularity: "Universal community," Schleiermacher writes in 1816/17, "may call for the sacrificing of possessions and the activity of identical capacities into infinity, because if it is right, just as much appropriation may proceed from this. But it cannot guarantee what is individual and so it may not demand it either."[139] Everything produced for the sake of the community is potentially subject to the demand of the community insofar as it may play a key role in the communal division of labor; but the community also recognizes a realm of particularity which its demands do not touch.

One should not, however, overstate the similarity between Fichte and Schleiermacher. For even if there are indeed various structural homologies between their treatments of right, the two accounts are situated within significantly different projects. What Fichte understands as a transcendental a priori derivation of the conditions of self-consciousness, Schleiermacher understands in terms of a descriptive inquiry into historical meta-categories. If Fichte could imagine the possibility of a republic of devils and embraced the possibility of an unsocial sociality in a development of Kant's cunning of reason, Schleiermacher would deny the separation of right from morals. Schleiermacher's rejection of intellectual intuition and embrace of the linguistic conditions of recognition would also reflect a far more reciprocal relation between body and mind than Fichte himself would countenance. Yet this is exactly what one would expect from the author of the

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[138] I.e. "In reality the two terms of the equation – that reason is inherent in human nature as a general principle, and inherent in the individual as a particular characteristic – cannot be separated. For without the character of generality, being cannot be something reasonable, and without the character of particularity, action cannot be something natural; in each case then one would appear to come to the fore, while the other was forced into the background." E 1812/13 14-15 (HG.I.10), 260.

[139] E 1816/17 229 (DD.I.14), 468.

"Notizen": if rights are to be positively rather than negatively grounded, then one cannot abstract away from the ethical goods that form the basis of the community of right to focus on an abstract conception of freedom; and if one of the key conditions for the possibility of the formation of contracts is the existence of a linguistic community, the conditions of communicability and intelligibility become key aspects of any theory of recognition and right. Paying attention to how Schleiermacher develops these concepts closely related to his theory of right – contract, exchange, recognition – in conversation with political economic concepts like the division of labor in his various lectures on ethics shows that, far from a deficient account, questions closely related to the question of right remain close to the heart of Schleiermacher's concerns. Indeed, one of the reasons why merely tracking the word "right" falls short of grasping what Schleiermacher is getting at is that his use of the term evolves as he better adapts the language to the innovative way in which he is developing the concept.

The influence of Fichte's theory of right and the political economic turn that he takes is immediately apparent in Schleiermacher's first pass at a systematic ethics in the 1805/06 *Brouillon* and even clearer in the 1812/13 and 1816/17 *Ethik*. If the "Notizen" was concerned with the linguistic conditions which make the act of recognition in contracts possible, the account of recognition in the *Brouillon* adds another key factor: money [Geld]. Schleiermacher continues to develop on this conceptuality in the 1812/13 lectures, setting forth his definition of right in the context of his discussion of commerce [Verkehr] alongside definitions of community [Gemeinschaft], the division of labor [Theilung der Arbeiten], exchange [Tausch], persuasion [Ueberredung], and money [Geld]. The basic conceptuality that Schleiermacher has already developed remains for the most part the same in the 1816/17 lectures, with the notable exception of a terminological shift in which Schleiermacher adjusts what he wants to designate by the term right in keeping with the conceptual shift that he has already enacted. Given that this discussion takes up

the greater part of Schleiermacher's account of "identical organizing" – a full fourth of the doctrine of the good in Schleiermacher's ethical system – the suggestion that Schleiermacher somehow has an underdeveloped or deficient account of right can only arise out of a failure to recognize how such political economic categories could be relevant to the concept of right. Let us begin with Schleiermacher's discussion of recognition and exchange in the *Brouillon* before seeing how it gets filled out in the *Ethik*.

b. Recognition, Identity, and Exchange in the 1805/1806 Brouillon

A polemical relation to Fichte can be discerned in Schleiermacher's treatment of recognition [Anerkennung] in the 1805/1806 *Brouillon*. If the Schleiermacher of the "Notizen" had advocated a "Kant-inspired" account of contract centered around the conception of a joint determination of will, Schleiermacher now seems to have adopted something more akin to Fichte's account of right as reciprocal recognition:

> The relation of an activity to reason itself is disclosed not only by transcending personal existence, which would be only a negative conception, but also by the relation of the activity to the totality of all individuals, namely, to the reason indwelling them all. Accordingly, individual reason, by means of a twofold permeation of nature [organic and cognitive], is related to the totality of individuated reason, and thus to the whole of reason in itself. In this polar character, therefore, lies the presupposition for such a totality: the readiness to acknowledge [anzuerkennen] the individual members of that totality and the impulse toward community [Gemeinschaft].[140]

Schleiermacher offers an alternative take on Fichte's argument about the necessary interrelation of individual and community. Fichte, Schleiermacher suggests, merely argued a "negative conception" of the overcoming of the solipsistic problem in his deduction of right.[141] Fichte is able to offer an account of how it is that a "mine" and a "his" arise out of relations of reciprocal recognition, but a community of individual spheres demarcated in their separation from one another is only a negative

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[140] BE 62; 110.
[141] Ibid.

community that is defined more by what it is not (in terms of the freedom of individuals) than what it is (in terms of the content of the rationality shared by all these individuals). By contrast, Schleiermacher suggests that a proper positive conceptual would have two correlative dimensions to the act of recognition: an impulse toward the individual and an impulse towards community. In other words, over and above the recognition of determinate individual spheres of activity is also a recognition of a certain shared sphere of activity. It is this latter sphere that Schleiermacher would eventually come to designate with the term "commerce" [Verkehr] and make the object of his account of "identical organizing" activity.

What follows is Schleiermacher's attempt to make sense of how such a shared communal sphere is possible:

> This acknowledging [Anerkennen] has two elements: First, what is organized by an other is organized for reason in general and no longer requires the formation of another [bedarf also der Bildung des Andern]. Second, the organ of any organizer can also become that of an other.[142]

Schleiermacher's concept of an organ will be developed in the following chapter when we treat his account of property in more detail. For now, it is sufficient to understand that the term refers to objects that have been integrated into someone's way of life – objects that have been infused by labor. Here, Schleiermacher is referring both to the products of labor – things like chairs and tables and computers – as well as the tools used to produce them – things like hammers and sewing machines. Schleiermacher's positive account of recognition is not centered around spheres of freedom on the basis of one's use of one's body, but on the concrete acts by which one exercises one's agency to interact with and form objects for one's purposes. Recognition is not on the basis of an abstract rationality in general, but on the basis of concrete rational action.

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[142] BE 63; 36. Translation modified.

Schleiermacher highlights two necessary elements that need to be present for this concrete activity to be recognized as rational. The first element demands that a particular person's organizing action be characterizable as a kind of common activity rather than merely an idiosyncratic one – it is "organized for reason in general". Let us call this the condition of *complementarity*. Recognition requires that the one recognized be seen as engaging in organizing action, not solely as an individual agent, but as acting on behalf of something beyond merely itself, as an agent of *reason* in general understood as a kind of collective agent. What is at stake for Schleiermacher is the possibility of actions performed by individuals that complement rather than merely overwrite or recast one another: "Without this assumption, the formative activity of reason, instead of leading to community and the propagation arising from it, would, to the contrary, lead to nothing at all, because everyone would in turn recast the organizing done by others."[143] If this kind of complementary action is not possible, then no action escapes the particularity of isolated individuals: every thing acted upon by any person would be stamped by their isolated will and ends, and there is no way for anyone else to engage with any object formed by someone else without thereby radically transforming its very character. The only way to avoid this solipsism, Schleiermacher suggests, is for people to recognize others as acting, not merely for themselves, but in complementary ways which reflect that which is shared between rational agents: their rationality.

Again, Schleiermacher can be seen as responding directly to Fichte, replacing a negative account of reciprocal recognition with a positive one. For Fichte, individuals are entitled to non-interference within their respective spheres of freedom precisely because allowing the activity of others within one's sphere would result in a recasting of one's activity and thus makes it impossible for one to be free within it. For Fichte, as for Schleiermacher, free activity is contingent upon a

[143] Ibid.

determinate conception of the ends which one wishes to effect by that activity.[144] For a free being to be efficacious within a given sphere, then, "it is necessary that *everything remain* as it was once known by the free being and posited in his concept."[145] One's ability to act on something presupposes that one's knowledge of it is accurate, something that would be disrupted if something were to happen so as to change the nature of the thing one was planning to act on. Fichte is quick to note that changes brought by nature in accordance with mechanical laws are not what he has in mind here. Rather, "Only other free beings could have produced an unforeseeable and unpreventable change in our world, i.e. in the system of things that we have known and related to our purposes; but in that case, our free efficacy would be disrupted."[146] The activity of someone else within one's sphere of efficacy results in the recasting of the objects in that sphere so as to disrupt one's potential for free agency. On the basis of this chain of reasoning, Fichte then concludes that

> The person has the right to demand that in the entire region of the world known to him everything should remain as he has known it, because in exercising his efficacy he orients himself in accordance with his knowledge of the world, and as soon as a change occurs in the world he immediately becomes disoriented and impeded by the course of the world's causality, or he sees results completely different from the ones he intended.[147]

The possibility of free agency thus requires the ability to exclude others from a determinate sphere of activity.[148]

Schleiermacher does not deny the existence of this personal sphere of non-transferable objects and agency. But what he is interested in is the possibility of a broader sphere, one in which the activity of different individuals does not merely recast one another's agency, but actually

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144 "Efficacy and determinate knowledge reciprocally condition one another." Fichte, *Foundations of Natural Right*, 104.
145 Ibid., 105.
146 Ibid.
147 Ibid., 105-106.
148 Fichte recapitulates this point in *The Closed Commercial State*: "Property should be an *ideal* possession of a thing that I do not immediately possess *realiter* by carrying it in my hands, covering it with my body, or the like. Yet if this possession is not to remain thoroughly ideal, consisting in the necessity that all men *think* that the object is mine and not theirs; if this possession is to have any sort of real consequence in actual life, this must consist in all men being bound to refrain entirely from all effects on this thing, not changing it in any way but leaving it as it is, with all activity upon this object likewise left exclusively for me to perform." Fichte, *The Closed Commercial State*, 131.

contributes to a joint agency in complementary ways. I make use of the term "complementary" in order to try to capture how Schleiermacher is attempting to navigate between the poles of absolute identity and difference. It is neither general or particular. Although the product of the action can be interpreted as a *common* one, it is not so solely by virtue of its being absolutely identical to the products of others included in that commonality. Thus, even if it is set in opposition to absolute incommensurable difference, it should not be understood as thereby implying absolute identity. This has to be the case if the account of recognition is to work within the context of a division of labor. Despite actions and products being different, they nevertheless have to be seen as a reflection of something common. Thus some kind of complementarity – as opposed to mere difference – characterizes the first element of recognition.

The second element reflects a commitment to an *exchangeability* of organs. In the *Brouillon*, Schleiermacher parses this out both in terms of the exchange of goods (the exchange of external organs) and services (using one's internal organs for another's purposes).[149] Recognition thus requires not only that a particular person be seen as acting on behalf of reason in general, but that the organs they organize be capable of use beyond their own personal sphere. For this to happen, there must be a certain degree of similarity and transferability: one must be capable of organizing something in such a way that it is not so individualized a product that only the original organizer can make use of it. Schleiermacher himself offers the example of products for barter and sale. Trading goods is the paradigmatic instance of an organ leaving the sphere of one person and entering into someone else's sphere. Indeed, in 1805, Schleiermacher will put forth money as *the* exchangeable

[149] "In regard to the second point, that the organ of any organizer can become the organ of another:… The matter can be conceived of in a twofold manner: (a) the transposition of something already organized into the sphere of another; (b) the use of an organizing capacity for the purposes of another." BE 64; 37.

organ *par excellance* insofar as it "makes possible the transposibility of products independent of any other community."[150]

But alongside the transposability of products, exchangeability also includes the use of organs for the purposes of another. As with the "Notizen", Schleiermacher is not merely concerned for the material conditions for exchange, but also its epistemological conditions. Although later lecture notes will refer to this aspect of exchange as falling under the category of "persuasion", the 1805/06 *Brouillon* themselves will retain the concern of the "Notizen" by identifying this feature with "language" (*Sprache*). Schleiermacher will then understandably repudiate this identification in a later marginal addition.[151] Having developed language as the characteristic medium of identical cognizing whose circulation presupposes its own social dynamic, Schleiermacher is keen to highlight the role that cognizing plays in identical organizing while maintaining the relative distinction between the two. Ultimately, Schleiermacher insists, he is merely highlighting the more cognitively-significant dimension of exchange – the fact that in addition to actual goods exchanged, there must also be a kind of shared understanding:

> The discussion is only (in the same relation of the striving toward separateness as is found in the organizing capacity toward the product itself) about a striving to place organizing capacities in a position that permits another to be active through them. Also, others are placed in a position so that I can be active through them. That is, there is a congruity of imitation and persuasion, both together striving for a uniformity of activity wherein understanding through signs is also included.[152]

In other words, parallel to the exchangeability of actual organized products is also the transmissibility of capacities for the sake of shared purposes. What Schleiermacher is concerned with

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[150] Ibid., 65; 37-38.

[151] "Language does not belong to this point in the presentation at all…" Ibid. This seems to follow through with the caveat that Schleiermacher had already included in the main discussion: "However, if language, which by its nature belongs to cognition, is considered exclusively from this point of view, the moral unity of language is left behind and the ideas present in it must then be willfully suppressed" Ibid. The point remains clear: there is a cognitive dimension to the act of identical organizing activity, but the dynamics of language are ultimately distinguishable from the dynamics of its use in the context of exchange.

[152] Ibid., 65n55; 38n1,

is the possibility of genuine collective action, in which the organs of one individual can be recognized as playing an essential role in a complex action for the sake of a purpose that is not solely their own. Here, an organ is transferable not by virtue of actually being given away, but by virtue of one person acting on behalf of someone else as part of some shared purpose.

At the heart of Schleiermacher's account of recognition is an attempt to formulate a vocabulary by which one can make sense of a sphere of collective action over and beyond individual spheres of activity, or, more specifically, the ways in which the actions of individuals can be taken to be complementary to one's own and therefore bear communal weight.[153] The two elements that Schleiermacher identifies – complementarity and exchangeability – represent two conditions for anyone to be recognized by another as such a communal actor. Their action must somehow express the generality of reason (rather than merely their own idiosyncracy) and their organs must be exchangeable in that they can be used by others either directly (in being transferred into the others' possession) or indirectly (in being used for their purposes). In a way, these two elements can be seen as being closely interrelated. One's organs can be transferred to or used by another only insofar as there is *some* relation of complementarity between the two. Even if the other does not have the capacity to *organize* the exchanged organ from scratch, they must nevertheless possess the capacity to put it to use. In other words, a failure to satisfy the conditions of exchange cannot always be placed on the failure of the organizer to have adequately succeeded in performing an act of communal

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[153] The co-constructed character of the spheres of individuality and communality is what C. Jeffrey Kinlaw misses out on in his otherwise insightful defense of Schleiermacher's conception of individual right. This leads him to interpret Schleiermacher's conception of communality as following upon a prior conception of one's own act as rational, suggesting that the communal follows to some extent upon the individual. By situating Schleiermacher within a trajectory shaped by Kant and Fichte, however, one can recognize that this was almost certainly not the case for Schleiermacher. Already in the "Notizen", Schleiermacher had called into question the adequacy of one-sided approaches to contract that began with a conception of individual will in abstraction from the joint determination of the contracting collective (following Kant). There is no reason why Fichte's influence upon Schleiermacher should change this conviction, given that Fichte likewise sees individuality arising only alongside the community. Indeed, we have already seen how Schleiermacher is consistently critical of views that conceive of reason as inhering *only* in personality and not also beyond it. Kinlaw's overall point, however – that Schleiermacher does not hold the position that individual right is grounded in communal right – remains valid. See C. Jeffrey Kinlaw, "Individual Rights in Schleiermacher's Limited Communitarian State" *British Journal for the History of Philosophy* 30:4 (2022), 701.

organization, but can also be the result of the receiver not possessing the adequate (communal) formation to adequately engage with the product. For exchange to take place, both organizer and receiver must be recognizable as complementary to one another, participating in a common reason. Otherwise, even if *some* transfer takes place, the use put to the object may itself "recast" the exchanged organ so as to change its character. Far from being a common object or common action, one only has two differing actions mediated by a misunderstanding.

At this juncture, Schleiermacher does not use the language of right to characterize his account of recognition, but the way in which it develops upon the conception of contract sketched out in the "Notizen" ought to be clear. Although Schleiermacher may have adopted Fichte's conception of the reciprocal recognition of individuals in community and his sensitivity towards the development of modern finance and the categories of political economy, he does so while continuing to emphasize the positivity of right in acts of contractual exchange and with an eye towards the epistemological conditions of its possibility.

c. Community and Right in the Ethik

The basic framework already worked out in the *Brouillon* remains present in the later *Ethik*. But if the language of rights was almost entirely absent in the *Brouillon*, Schleiermacher is now explicit that his account of recognition and exchange within a common sphere of commerce amounts to a theory of right. The argument in the 1812/13 lectures almost exactly tracks that of the *Brouillon* with a few minor differences. Again, Schleiermacher begins with a rejection of solipsistic skepticism:

> The inclination to proceed skeptically in this regard [in the possibility of positing a formative activity that is posited as having validity for everyone] is an indication that one is caught up in personality; reason in the personality must seek itself outside the personality also and trust lovingly in the possibility of renewed recognition [Wiedererkennen]. This recognition

> [Anerkennung] is, to the extent that it excludes what has been formed from the process of formation, is the basis of all *right* [Rechts].[154]

In the *Brouillon*, Schleiermacher had rejected Fichte's "negative conception" as inadequately going beyond the bounds of mere personality before insisting on a concept of recognition that contained both an impulse towards the individual as well as towards the community. Here, Schleiermacher instead takes aim at the solipsistic view that Fichte himself had attempted to resist. In both places, Schleiermacher identifies what he takes to be the false assumption: the identification of the operations of reason with individual personality that fails to recognize a corresponding shared reason that constitutes a shared sphere that transcends the individual. In the *Brouillon*, Schleiermacher had spoken of "the readiness to acknowledge [anzuerkennen] the individual members of that totality and the impulse toward community"; in the 1812/13 lectures, he makes use of the term "right" [Rechts] to refer to the former and "community" [Gemeinschaft] to refer to the latter.[155]

Again, Schleiermacher's insistence on the co-constitution of individuals and community ought not to be seen as constituting a rejection of individual rights, but as predicated on his distinctive approach to right as the product of reciprocal recognition. In the 1812/13 lectures, Schleiermacher goes further than the *Brouillon* in trying to find a language that will do justice to the fact that individuals do not preexist the community such that they could be thought of in abstraction from it, even as he continues the insistence that community itself is only formed through the interaction of individuals. The act of recognition is not an original one based upon an abstract notion of personhood, but one that must be continually renewed and maintained in the face of the

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[154] E 1812/13 30 (HG.II.26-27), 279.

[155] The following proposition reads: "Furthermore it follows that reason in personality considers a talent which is called by the same name to be the same in other individuals as it is for him, and thus posits that every organ could also be used from the point of view of reason just as the organs of the individual could also be used by others. To the extent that it supersedes all exclusive referring back to the personality, this requirement is the basis of all *community* [Gemeinschaft]." E 1812/13 30 (HG.II.28), 279-280.

ways one's constitution and relation may be transformed over the course of one's acting and being acted upon. Thus, reason must "trust lovingly in the possibility of *renewed* recognition [emphasis mine]."[156] As such, instead of being able to speak of the *being* of individuals solely in terms of their free *actions*, as Fichte does, Schleiermacher must speak *both* of the being of persons as presupposing the forming activities of the communities in which they are embedded *and* the forming activities as themselves presupposing formed organs.[157]

Schleiermacher's concept of right thus remains indexed to the existence and preservation of an individual personality, though because Schleiermacher's individual person does not somehow exist determinately prior to and apart from community, there is no way to talk about individual being and its actions – insofar as they are reflective of identical organizing activity – without also referring to the way in which it participates in the common action of the community and *retains its right* in the face of possible transformations. Thus, beyond the task of maintaining one's individuality in the face of a "continuing reciprocal interaction between one's body and the external world," Schleiermacher's person must also retain the appropriate position and relation that they stand in relation to the community.[158] Thus, Schleiermacher introduces a distinction between personality [Persönlichkeit] and particularity [Eigenthümlichkeit].[159] The communal action of reason upon a person has to grapple with *both* the ways in which a given person may be situated in their natural

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[156] See n149 above.

[157] "…nothing is formed without formation and there is no formation which does not presuppose something formed." E 1812/13 30 (HG.II.29), 280.

[158] It is thus that, though Schleiermacher does not speak explicitly as Fichte does of a right to live off of one's work, he nevertheless essentially affirms the same principle in his denial of the morality of charity. There ought to be, for Schleiermacher, no such thing as "pure gift" and what may appear as such ought to be understood as compensating for adjustments within a community within which a particular individual participates. Everything should be thought of in terms of *sustainable* reciprocal exchanges. "Every act of giving from one's own property without money and without persuasion is immoral and may only be defended as common charity a) on the assumption that one person's circumstances have been straitened by the division of labor to another's advantage, or b) on the assumption that one receives an equivalent through the totality. Charity is to be regarded merely as a transaction." E 1812/13 33 (HG.II.47), 283.

[159] In a marginal note, Schleiermacher also characterizes the distinction as one between identity and particularity: "Differences in identity; how they are distinct from what is particular." Ibid. 30 (HG.II.30), 280.

condition and the idiosyncrasies of nature *and* the way in which that given personality is to be situated *morally* in their particular relation to the communal activity of reason.[160] Fichte merely expressed negative concern about the interference of others making it impossible to exercise one's own free activity within one's own sphere. Schleiermacher's positive account of right needs to go further and explain how it can be the case that one's activity on behalf of others and the actions of others for oneself can also end up being co-constitutive of one's own action and identity. In 1812/13, Schleiermacher uses the langauge of the co-conditioned character of community and right:

> Just as both concepts, right and community, follow from the same thing, so each is conditional upon the other, in that the former refers to the continued existence of what has been formed, the latter to the action of continuing formation, in that nothing is formed without formation and there is no formation which does not presuppose something formed.[161]

Right refers to the determinate sphere that is the concrete product of one's labor within one's own sphere of individuality. It is correlate to the sphere of general activity in which individual action can be seen as constituting complementary, as opposed to contradictory, action. Yet while this general sphere is itself constituted by individuals ("no formation which does not presuppose something formed"), individuals themselves also presuppose this common sphere of activity ("nothing is formed without formation").

In 1816/17, Schleiermacher continues to adapt the same general picture while shifting his terminology. Instead of defining "right" and "community" as mutually conditioned concepts, Schleiermacher chooses to use the term "right" to designate the entire complex of opposition, taking up the language of "acquisition" [Erwerbung] to refer to that which he had previously designated by means of "right". Just as right and community are "conditional upon the other" in 1812/13,

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[160] "As the depiction of the existence of reason in nature, each person is conditioned externally (i.e. above and beyond that internal principle which makes for particularity) by the various influences of the external powers, and at every point of moral activity this conditioning is something given, with the result that it can have more of an effect on one side than on another." Ibid.

[161] E 30 (HG.II.29), 280.

"acquisition must be posited at the same time as community" if "acquisition is to be perfectly moral" and "community is to be moral."[162] Instead of representing only one of the poles of this conditionality, the concept of right is promoted such that "The state of right is simply this mutual conditionality [of acquisition and community]."[163] The notion of right now expands beyond that of the individual's claims upon others to recognize their own claims, but also the reciprocal demands upon the individuals from others as well. Promoting right to refer to the *mutual conditionality* rather than just the dimension that acquisition represented thus allows Schleiermacher to expand the scope of the claims that can be characterized by a relation of right to demands *upon* those individuals who have not fulfilled their duties to the community:

> if the only object of right is identical inculcation, while wrong resides precisely in acquisition which seeks to deny community, and community which refuses to recognize acquisition, then what we have demonstrated here is the true moral significance of the state of right. Community provides the basis for the claims of all against each person, on the assumption of his acquisition and by means of that acquisition, while acquisition provides the basis for the claims of each against all in the domain of their community and by means of that community; the two things together constitute their relationship of right.[164]

The 1812/13 definition of right allowed for Schleiermacher to affirm the right of any representative actor – one who, by virtue of complementarity, can be seen as acting on behalf of the community in their particular role in the division of labor – to be preserved as an organ of that community. In so doing, he was able to incorporate something akin to Fichte's insistence on the right to live off of one's labor. The 1816/17 definition, however, goes beyond Fichte to formulate a notion of right that goes beyond Fichtean individuality to incorporate Schleiermacher's insights about the reciprocity of personality and community: a community can *by right* demand that an individual contribute to it in a manner commensurate with their acts of acquisition. The elevation of right to incorporate the conditionality of community alongside acquisition elevates right as a concept so that

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[162] Ibid.
[163] Ibid.
[164] Ibid., 192-193 (DG.I.55), 591-592.

the relationship of right can simply be characterized in 1816/17 as "the moral coexistence of individual beings in commerce."[165] In saying this, Schleiermacher is not saying anything beyond merely reaffirming that right has to do with the same interrelation of individual and community at the heart of recognition that Schleiermacher had mapped out already in the *Brouillon*.

d. Exchange and the Division of Labor in the Ethik

The 1812/13 and 1816/17 *Ethik* also sees the return and further development of the two elements of recognition first broached in the 1805/1806 *Brouillon*. In the *Brouillon*, what I designated by the terms "complementarity" and "exchangeability" are now explicitly designated using the language of the "division of labor [Theilung der Arbeiten]" and "exchange [Taush]". And as in the *Brouillon*, exchange has both a material and a cognitive dimension, which Schleiermacher designates using the language of "money [Geld]" and "persuasion [Uberredung]". As with the concepts of right and community, Schleiermacher has further developed his thinking about the division of labor and exchange, but much of the language with which he uses to characterize the elements of recognition remains similar. Thus, the language of relation to the totality of reason remains in Schleiermacher's account of the division of labor: "If formative activity is related to the totality of reason, that conditioning (seen as the natural determination of the individual organ) becomes a schematism imposed on the organ; this is the foundation of the *division of labor*."[166] Recognition demands the ability to see and interpret an individual's actions as transcending their own particularity and contributing to a greater common sphere. What makes this possible is a certain kind of conditioning that allows one's actions to both be (at the level of action) and be recognized as (at the level of

[165] Ibid, 192 (DG.I.55), 591.
[166] E 1812/13 31 (HG.II.31), 280.

cognition) complementary. In 1812/13, Schleiermacher develops the language of operating in accordance with an "identical schematism" to designate this complementarity:

> The character of identity finds expression in schematism, namely in the fact that just as a piece of objective knowledge is posited as having validity for everyone… every formative activity is to be posited as being the same from everyone's point of view and as being considered the same by everyone.[167]

Parallel to the concept of objective knowledge is the concept of communal production: organizing activity that produces an object that is not merely an expression of particularity, but commonality.

Similarly, Schleiermacher retains the same language as the *Brouillon* in his discussion of exchange in the 1812/13 lectures. If the *Brouillon* insisted that "the organ of any organizer can also become that of an other," the lectures will insist that "exchange in its turn is conditional upon the transferability of things and the possibility of using the organic capacities of the one to promote the purposes of the other."[168] Though the terminology has changed, we are still working within the basic thought-world that Schleiermacher had started off with in his early drafts on the theory of contract. It is the sphere of possible exchange that sets the ground for the possibility of coercive right:

> When exchange is conditional in this way, we find in it the identity of right and community. Reason, and hence the individual as the representative of reason, can acknowledge personal right only to the extent that everything can once more come to the point of exchange; and the individual, as the organ of reason, can surrender something to the community only to the extent that he receives something back from it with the acknowledgment [Anerkennung] of the totality.[169]

Having been influenced by Fichte, Schleiermacher's positive theory of right is now inextricably tied with questions of political economy. Complementarity and exchangeability within the context of a division of labor set the conditions for the relationship of right, not abstract relations between

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[167] E 1812/13 29-30 (HG.II.24), 279. In the 1805/1806 *Brouillon*, Schleiermacher speaks instead of the "identity of forming and cognizing activity." BE 63; 111.
[168] BE 63; 111 and E 1812/13 31 (HG.II.36), 281.
[169] E 1812/13 31 (HG.II.37), 281-282.

abstract right-bearing individuals. Actual demands are situated in the contexts of actual exchanges in which goods (money) and reasons (persuasion) are exchanged:

> Thus in individual matters, too, someone can only surrender something to the extent that he either receives something similar in return or else acknowledges that surrender is necessary for an objectively reasonable purpose. Just as all possibility of transference rests on the identity of the schematism, so the reality of how far we should acknowledge an action which originated not in a particular human being himself but in another individual to be an essential element in the process, rests on *persuasion* [Ueberredung]. The reality of the transference and the extent to which the individual should reduce the circle of his personality, rests on [the idea of] equivalence, which is only fully realized in the concept of *money* [Geldes].[170]

Again, the basic framework that Schleiermacher already began to develop in his "Notizen" remains present. Rights are not to be grounded negatively as a free modification of a prior and stronger original right to something, but in some way positively. In addition, one needs to be cognizant of the intellectual conditions by which the act of will-determination can be recognized as such. The language of will-determination is absent, but the conceptuality remains present in the notion of persuasion: underlying the act of reciprocal recognition that operates within the space of possible exchange is an *actual* exchange of goods (or money) undergirded by an *actual* conception of a common good that underlies the exchange.

Schleiermacher will reaffirm these two conditions in the 1816/17 lectures: "It is essential to any exchange that there should be agreement as to the morality of the action and agreement as to the price of what is done."[171] The first condition secures that the exchange is in accordance with the advance of the ends of the reason which transcends their individualities: "Since every activity which goes beyond personal possession is directly related to the task of reason in general, its final moment, that of being given away, can only come if there is a conviction that some part of the task of reason will really be achieved by transference."[172] The morality of a contract is thus not merely grounded in

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[170] E 1812/13 31-32 (HG.II.37-39), 282.
[171] E 1816/17 211 (DG.II.21), 614.
[172] Ibid.

the free agreement of individuals, but also in its furthering of the common good shared between them.[173] The second condition affirms a civil consequence of the reciprocity of acquisition and community: "In the same way, however, the action will never be performed if the two parties cannot reach a common decision as to the recompense [required]; for otherwise the assets of one of the two would be diminished, which goes against the original premise."[174] Exchange requires a fair price to be decided upon.[175] When thought of as a recurring transaction, Schleiermacher insists that exchange requires *both* trust and material compensation. Stated in other terms, exchange ought to be characterized by "the mutual and steadfast presupposition that one is included in the task of reason together with one's formative activity and not in the face of it."[176] Serving the task of reason in general involves the preservation of one's relation in the division. One's surrender and acquisition ought to be one that continues to affirm the ongoing preservation and furtherance of one's personal being and not merely the goods and services provided by one's formative activity. Schleiermacher condemns the attempt to make up for a lack of trust via more compensation as bribery and the attempt to make up for the lack of compensation with an appeal to trust as fraud.[177] Both are wrongs which could very well result in an exchange grounded in an act of misrecognition, an act of

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[173] "One ought not to give away something one possesses for the benefit of a scoundrel at any price." Ibid.
[174] Ibid., 211(DG.II.20), 614. Cf. "Thus in individual matters, too, someone can only surrender something to the extent that he either receives something similar in return or else acknowledges that surrender is necessary for an objectively reasonable purpose." E 1812/13 31-32 (HG.II.37), 282. Schleiermacher preempts this conclusion already in 1812/13, though in a less developed form.
[175] "[O]ne ought not to give anything away even for the benefit of the most excellent of men if the recompense one receives is less than its value." E 1816/17 211 (DG.II.20), 614. What makes a fair price? In the 1812/13 lectures, Schleiermacher suggests that the cost of a good or service ought to be linked to the opportunity cost that is lost by a particular individual when he utilizes his organs on behalf of someone else: "Given that B persuades A to be directly active, as an organ, in a deed which can only exist in the totality of the formative process through the action of B's personal circle, no money is required other than as compensation for the activity which A was meanwhile not performing in his own personality circle." E 1812/13 32 (HG.II.46), 283.
[176] E 1816/17 211 (DG.II.21), 615.
[177] E 1816/17 212 (DG.II.24), 616.

violence.[178] What remained undeveloped in Schleiermacher's original essay has now been filled out with Fichte-inspired political economic categories.

IV. Concluding Considerations: Some Implications and Potential Objections

1. Rights and the Equality of Individuals

That Schleiermacher's theory of right can be situated within a broad post-Kantian trajectory ought to go a long way towards responding to arguments that he advances a communitarian theory of right or trusts too much in the "liberal spirit and the invisible hand". Far from an anomaly, Schleiermacher's insistence on the co-instantiation of individual and community is simply a different variation on an argument that Kant and Fichte themselves offer, Kant in his insistence on the preliminary character of right outside the context of the civil condition and Fichte in his insistence that the grounding of right in relations of reciprocal recognition meant that individual freedom is only comprehensible within the context of a community. Schleiermacher merely differs in his characterization of the nature of the individual and the community. Instead of a negative conception of an individual conceived of in abstraction from the particular goods towards which their free activity may aim and a negative conception of a community conceived of as a mere union of these abstract individuals, Schleiermacher advocates for a positive conception of individuals-in-their-individuality situated within concrete communities of complementary labor and exchange. Schleiermacher's theory of right is eminently individualistic without being atomistic.[179] His references

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[178] "In instances of isolated appropriation the purely human character gets lost and takes on the form of violence [Gewaltthätigkeit], i.e. non-recognition [Nicht-Anerkennens] of personalities outside the self" E 1812/13 21 (HG.I.39),

[179] In this sense, Schleiermacher's theory of right could perhaps be a resource for feminist philosophers searching for a philosophical idiom to work out the conception of "relational autonomy". As a modification of Fichte's conception of reciprocal recognition as playing a key role in constituting the very self, Schleiermacher thus offers a view in which relationships are both *constitutive* of the self while retaining a determinative sphere of individuality in addition to a shared sphere of activity. The rejection of abstract equality dovetails well with feminist critiques (as well as those of black and disability activists) that the generic conception of the human seems to presuppose the white, male, and ableist body. Schleiermacher's rejection of equality allows his account of right to take seriously the material implications of embodied difference in demands of right. Instead of a generic "human equality" that then has to be adjusted for gendered

to community need to be understood, not first and foremost about the right of a community that somehow exists over and above that of individuals, but about the ways that individuals can act in representative ways such that they are acting on behalf of a community and not just themselves. It is precisely because individuals act in complementary and exchangeable ways above and beyond their own idiosyncrasies that there can exist demands upon them as constituent contributors to the common good.

That Schleiermacher's conception of right does not improperly neglect the individual, however, does not automatically allow his theory to merely be presented as a slight variation on classical liberal theories that merely adds a sphere of collective right and activity on top of individual ones. That is, even if Schleiermacher can insist that relations of right extend beyond the bounds of the state as far as the bounds of possible exchange can exist, the concrete and material way by which he grounds rights also means that he does not subscribe to one of the fundamental assumptions of liberal theory: the equality of individuals. Schleiermacher makes this explicit in the 1816/17 lectures: "Right extends over the whole earth; but is not necessarily an equal relationship of each to all."[180] That is, Schleiermacher is committed to there being *some* right claim that any individual can make vis-à-vis any other individual, but what that claim is and the kind of binding obligations it implies will depend heavily on the existing and possible material relations that can be used to characterize the relationship and the various ways those involved are capable of recognizing their respective contributions within a division of labor.[181]

Given how central a concept of abstract individual equality has been for modern liberal politics in the wake of the Declaration of the Rights of Man, it is important to properly understand

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difference (while purportedly retaining some degree of "equality"), Schleiermacher's account can demand recognition gendered difference insofar as they are relevant for the achieving of various communal goods.

[180] E 1816/17 193 (DG.I.56), 592.

[181] "If we say that it [right] must extend over the whole earth, we mean that one cannot imagine two people coming into real contact anywhere and acknowledging [anerkennen] each other as such without an acknowledgment [Anerkennung] of possession arising from it and a community thereby following." Ibid.

what is at stake in Schleiermacher's rejection of equal rights. What Schleiermacher does *not* affirm is a conception of inequality that grounds right merely in historical or genealogical relations as Savigny and his followers do.[182] Even if many of Schleiermacher's early German Romantic colleagues had valorized the medieval era as a more harmonious and unified time than the present, the conception of organic unity that they espoused was by no means a defense of feudal society and the status hierarchy of the medieval *Stände.*[183] The affirmations of inequality are thus not a conservative rejection of liberal reforms and their appeal to natural right. Indeed, Schleiermacher's adaptation of rights-language actually sets him within the natural rights tradition.

Rather, as with the early German Romantics, Schleiermacher's rejection of individual equality could better be recognized as part of his ongoing polemic against the abstract formalism of liberal social contract theory. Far from rejecting claims of right, Schleiermacher can be seen as attempting to offer a superior explication for their moral force: individuals who assert their rights are not demanding to be recognized by virtue of being abstract individuals who stand in relations of equality with other abstract individuals, but by virtue of the very individuals that they are in relation to the persons from whom they are demanding recognition. Precisely because people will be situated differently in relation to one another – they may stand in different roles in the division of labor and may also individually have contributed differing amounts to those roles – one would expect that the weight of their various claims would be different. Those who have more at stake have more of a right to demand attention. If, for Rawls, the given talents and social attributes are to be thought of

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[182] Both Scholz and Arndt note that Schleiermacher is far closer to Hegel and the rationalism of the idealists than to Savigny and the historical rights school. See ch.7 of Günter Scholz, *Ethik und Hermeneutik: Schleiermacher Grundlegung der Geisteswissenschaften* (Frankfurt am Main: Suhrkamp, 1995) and Arndt, *Die Reformation der Revolution*, 221-226.

[183] Thus, Frederick Beiser was keen to distinguish the early German Romantics from the later Romantics who would follow (and F. Schlegel in his later years). See ch. 9 of Beiser, *Enlightenment, Revolution, and Romanticism: The Genesis of Modern German Political Thought, 1790-1800* (Cambridge, MA: Harvard University Press, 1992). Something similar can be said of Hegel, who explicitly recovers the language of the *Stände* even as he advocates for a very different account of how they operate. See Christopher Yeomans, "Perspectives without Privileges: The Estates in Hegel's Political Philosophy" *Journal of the History of Philosophy* 55:3 (2017): 469-490.

as "arbitrary from a moral point of view";[184] Schleiermacher's account of right emphasizes that it is precisely how these talents and attributes are picked up and situated into community that matters. What matters is not so much that everyone have a fair chance behind a veil of ignorance that abstracts from their individuality, but rather that they are given exactly what they are due given exactly who they are and what they do. The justice of compensation for labor arises not out of the fact that employers and employees voluntarily consented to a shared amount as free rational individuals, but out of how well the contract actually gives expression to the capacity and contribution of the parties within the communal division of labor in which they are embedded. It is not mere consent (a negative and voluntaristic conception of right) that provides the binding moment of the contract, but the actual shared positive good that sits at the basis of the shared community that arises out of an act of reciprocal recognition.

That is, Schleiermacher's embrace of inequality should not be seen as a rejection of the conception of right, but an attempt to make sense of the actual ways in which the concept is efficaciously used in moral discourse. We respond to rights claims when they seem to adequately set forth one's claims (for money or some other good) vis-à-vis a shared good that we recognize, not by virtue of the fact that, as rational beings, reason demands that we act in accordance with a maxim that coexists with everyone's freedom of choice (Kant) or that right characterizes the external relation which must underlie our ability to be free agents at all (Fichte). The problem with concepts of abstract equality, one could say, is that what may have begun as an assertion of equality often ends up deviating quite a bit once actually applied in concrete circumstances which end up modifying the terms of equality.[185] What does equal access to bathroom facilities mean when one is

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[184] John Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971), 72.

[185] Anne Phillips has recently leveled a critique of the failure of accounts of human dignity and rights that purports to ground equality by linking it to some conception of shared humanity. Over and over again, what is supposed to be a conception of substantive equality is qualified and applied unevenly so as to end up legitimating substantial inequality. In response to such a failure, she advocates an "unconditional" affirmation of equality that seeks to overcome the purported problems of the past formulations by refusing to specify conditions of applicability. By contrast, one could say

trying to accommodate those who identify as men, women, or neither? Is it the same number of stalls? Identical square footage? Or should the main consideration be accomodating to the relevant bodily functions and relevant differences which can affect factors such as availability and wait times? Is differentiation at all rather than providing unisex spaces itself improper? For Schleiermacher, the "equality" being striven for is not an abstract equality of persons, but a doing justice to the recognized goods and relevant material conditions (bodies) that may be involved. When a given arrangement is perceived to fall short, it is not only on account of its purported failure to conform to an abstract ideal, but on account of its failure to do justice to the actual relations in play and the shared good at stake.

That Schleiermacher's embraces inequality in his conception of right, however, does not imply that any relationship goes. Precisely because right is established in relationships of reciprocal recognition, the refusal to offer such a recognition – as with the problem of misrecognition – represents a form of violence, a relationship that is not structured by right:

> Where this [recognition] is absent, and a man treats another as if he simply did not possess any rights, we assume that the activity of reason has not yet developed in this relationship, because the singleness of nature in everyone and the relatedness of formative activity in everyone cannot yet have been acknowledged [anerkennen]. If someone is treated as if he did not possess any rights, this also means therefore, that he is treated as if he were raw material in moral terms, as nature which simply has yet to be formed, nature that anyone can appropriate according to their inclination and their need.[186]

That is, the individual who is treated as being without any rights is treated not as a person, but as a thing. Instead of the mutual act of reciprocal recognition that grants to each their reciprocal sphere

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that Schleiermacher would insist that what Phillips has identified as failures is actually just a feature of the problem of abstract formulations of equality: by not actually highlighting the relevant features in play, it fails to be attentive to the conditions under which right claims can actually be made and recognized. Instead of doubling down on the concept of equality, what one ought to focus on are the actual material relations and common good at stake. See Anne Phillips, *Unconditional Equals* (Princeton: Princeton University Press, 2021). We shall have occasion to revisit this question in greater detail in ch.5 when we take up Kant and Schleiermacher's conception of race and personhood. There, I argue that Kant's affirmations of universal human equality are ultimately compatible with his racialized account of human development precisely because he thinks of the latter as providing the material conditions of possibility for the historical development of reason.

[186] Ibid.

of activity alongside a shared sphere, one merely treats the other arbitrarily in accordance with their whims. For this reason, Schleiermacher reaches the somewhat unexpected conclusion that acts of charity ought not to be seen as one-sided unobligated and gratuitous gifts, but as acts of distributive justice responding to what is due, either in light of an unexpected and temporary shift that disrupts the division of labor or in light of what one has received from the community as a whole.[187] "Charity," Schleiermacher writes, "is to be regarded merely as a transaction."[188] Otherwise, it would reflect a state of injustice, a violent one-sided acting in accordance with one's whim.

This, Schleiermacher notes, is what takes place in slavery, which cannot thereby be justified on rational grounds, even if it can be rationally interpreted.[189] Slavery, Schleiermacher speculates in a marginal note, is made possible by an inability to adequately communicate with one another on account of a lack of a similar enough formation. Schleiermacher suggests that this can take place on account of differing degrees of developmental progress: "the one who falls behind cannot understand the one who has progressed while the latter has no interest in considering the sphere of the one who has fallen behind, then sociability is restricted to a sphere where states have developed in the same way."[190] Slavery can take place when, instead of a relationship of reciprocal recognition, one party refuses to acknowledge the other's sphere of right on account of believing it to exist at a more primitive level such that the other's activity and formation cannot be recognized as rational

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[187] "Every act of giving from one's own property without money and without persuasion is immoral and may only be defended as common charity a) on the assumption that one person's circumstances have been straitened by the division of labor to another's advantage, or b) on the assumption that one receives an equivalent through the totality." E 1812/13 33 (HG.II.47), 283.

[188] Ibid. We have not had the opportunity to explore this issue in greater detail, but the question of the place of charitable institutions and the way in which they are jointly administered by the church and the state is one of the loci that Schleiermacher works out his account of church-state relations in greater detail. See "Zum Armenwesen" in KGA I/2 and the significant notes that Schleiermacher adds on the subject in the 3rd edition *Reden*.

[189] That is to say, Schleiermacher's rejection of liberal abstraction and conception of ethics as historically-oriented would make him a practitioner of non-ideal theory. The task of ethics is not to construct the ideal rational state of affairs, but to generate meta-categories which can make sense of actual (and possible) historical phenomena.

[190] In 1827, a marginal note is added: "Basis of slavery?" E 1812/13 39 (HG.II.105), 291-292.

and thus has nothing to offer them. They thus establish a one-sided person-thing relation rather than a relation of right.

Schleiermacher's attempt to situate slavery within a developmental narrative about the possibilities of communication and understanding between peoples at different degrees of culture can certainly be alarming. It is important, however, to recall that the difference between adopting something like Schleiermacher's theory and an alternative account of, say, human equality is *not* the ability to condemn slavery or not, but differing understandings of the conditions under which such condemnation is possible and the grounds on which it can be overcome. Schleiermacher is not attempting to offer a *justification* of slavery – as a deficient rational relation, Schleiermacher's vision of ethics as the gradual increased ensoulment of nature by reason is necessarily dedicated to its abolition – but an attempt to describe the objective conditions under which it is possible. The way that the conditions are described can lead to an identification of how to overcome the condition: reciprocal recognition can be made possible if the enslaved party's claims can be made intelligible to the enslaving party, whether by showing that their initial judgment to be at a lower level of development is mistaken or by becoming similar enough in formation such that the enslaving party no longer recognizes them as lagging behind. As we shall see in the sixth chapter, Schleiermacher will attempt to map out a theory of how a state with subordinated peoples within it can overcome the hierarchical structure on which it is grounded, a process that involves a complex coordinated interplay between subjugated persons and the government of the regnant group.

What is at stake in Schleiermacher's formulation of it can perhaps best be understood when it is set alongside another developmental account of slavery, that of Hegel's master-slave dialectic in the *Phenomenology of Spirit*.[191] Hegel's goal in the Lordship and Bondsman section is to establish the reciprocal character of recognition by virtue of a demonstration of the internal instability of one-

[191] See Hegel, *The Phenomenology of Spirit*, 111-119.

sided approaches to understanding the character of self-consciousness. Beginning with two equal individuals who both one-sidedly recognize only their own sphere of activity, Hegel narrates how their viewpoints will necessarily enter into conflict and result in a struggle to the death.[192] The defeat of one leads to their subjection to the will of the other as a slave. Hegel then suggests that this arrangement is ultimately unstable on account of the fact that the master's self-consciousness, although supposedly self-independent, is actually dependent on the slave's recognition;[193] furthermore, the slave, though supposedly nothing but an instrument of the master, will through their labor come to a consciousness of their own independent self-activity.[194] Both forms of one-sided consciousness turn out to be self-contradictory: the master who thinks of himself as independent is actually dependent upon the recognition of his servant; and the servant who thinks of themself as enslaved is actually independent by virtue of their labor.

Like Schleiermacher, Hegel characterizes slavery in terms of a failure to adequately achieve a relation of reciprocal recognition and an expression of a one-sided domination on the basis of one of the parties.[195] But in presuming an original equality that is broken by one's submission to the other in a life-and-death struggle, Hegel suggests that the slave's condition is in part the product of their own embrace of their inferiority, a giving up on achieving their freedom out of the fear of

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[192] "Thus the relation of the two self-conscious individuals is such that they prove themselves and each other through a life-and-death struggle. They must engage in this struggle, for they must raise their certainty of being *for themselves* to truth, both in the case of the other and in their own case. And it is only through staking one's life that freedom is won." Ibid., 113-114.

[193] "But it is clear that this object does not correspond to its Notion, but rather that the object in which the lord has achieved his lordship has in reality turned out to be something quite different from an independent consciousness. What now really confronts him is not an independent consciousness, but a dependent one. …The truth of the independent consciousness is, accordingly the service consciousness of the bondsman." Ibid., 116-117.

[194] "Through this rediscovery of himself by himself, the bondsman realizes that it is precisely in his work wherein he seemed to have only an alienated existence that he acquires a mind of his own." Ibid., 118-119.

[195] "[T[he two do not reciprocally give and receive one another back from each other consciously, but leave each other free only indifferently, like things. Their act is an abstract negation, not the negation coming from consciousness, which supersedes in such a way as to preserve and maintain what is superseded, and consequently survives its own supersession" Ibid., 114-115.

death.[196] Hegel's very different diagnosis of the condition of slavery thus offers a different remedy for its overcoming. Slaves are slaves because they have given up on asserting themselves out of the fear of death. This is why they continue to live as slaves rather than die in the process of staking their lives for their own truth. Furthermore, what is to be achieved in liberation is not the way in which both have been entwined in a collective shared commercial enterprise above and beyond their own individual spheres of activity, but an assertion of one's own being and sphere of activity over and against that of the other. Hegel's concern with the structure of consciousness does not lead him to draw out practical implications, but many following in his wake from Marx to Fanon have thereby put revolutionary resistance at the center of liberatory praxis. It is by staking one's life again that one again demands recognition.

In gesturing towards teleological accounts of slavery and its overcoming, Schleiermacher, Hegel, and those working in their wake present a different vision of what making progress in rights looks like. The abstract declaration of rights and their enshrining in a constitution or bill of rights does little, for Schleiermacher and Hegel alike, if they are not reflective of developments within the actual ethical life of a particular nation. The use of rights language, Schleiermacher suggests, reflects one's past, present, or future situatedness in a particular division of labor, not a conception of citizenship thought apart from the material conditions in which it exists and is maintained. Violations of right are instances of misrecognition in which either one's labor is not being given adequate credit or the shared common good is not properly being aimed at. The differing geographical and climatic conditions in which differing people are situated, the differing forms and abilities of bodies, the particular skills and practices that one has honed, these and more are all

[196] "For this consciousness has been fearful, not of this or that particular thing or just at odd moments, but its whole being has been seized with dread; for it has experienced the fear of death, the absolute Lord. In that experience it has been quite unmanned, has trembled in every fibre of its being, and everything solid and stable has been shaken to its foundations." Ibid., 117.

factors that are relevant for making sure that any individual person gets their due as the individual that they are. Justice is ultimately not to be achieved by the attainment of a formal equality, but a substantive unity-in-diversity in which each receives what is theirs.

2. *Subjective Right?*

The perfectionistic contours of Schleiermacher's theory of right would seem to set him apart from many of his liberal contemporaries (Kant and Fichte, even if not Hegel). For one, they allow him to affirm that the relation of right can hold even outside the contours of the state and at differing levels of communal organization – as far as the relation of contractuality can extend – even as he conceives of the state as playing a key role in stabilizing its application.[197] By contrast, Kant and Fichte would both insist that the communal character of right implies that the state is a necessary condition of its proper application, to the extent that Kant can even insist that it must be compatible with justice to forcibly "civilize" those not standing within a civil condition because it is only under such a condition that rightful possession is possible in the first place.[198]

But Schleiermacher's situating of the concept of right within a discussion of the good can no doubt lead to questions about whether the concept of right – thought of as a subjective possession of individuals – can adequately be compatible with a more perfectionist conception of a community centered, not around the concept of freedom, but a determinate common good. Indeed, the

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[197] Justice and the relation of right, for Schleiermacher, preexists the existence of the state, which serves to organize and give better expression to it. "This organizing function has the character of communality throughout. It is no ought, no limitation, but is directly given in reason's organizing activity, for otherwise each person would again have to destroy what another would already have organized in order to organize it for oneself. Whatever is organized from any single point serves reason generally, and whatever is organized for the sake of reason serves each point. This is the condition of justice. All organizing must be observed simultaneously with this condition of justice and in reference to it. This communality, however, is to be organized in turn, resulting in the *idea of the state*." BE 47; 94.

[198] "If it must be possible, in terms of rights, to have an external object as one's own, the subject must also be permitted to constrain everyone else with whom he comes into conflict about whether an external object is his or another's to enter along with him into a civil constitution." MM 6:256. Because every relation in the pre-civil condition is thought of as potentially violent on account of the lack of a third party mediator with sufficient power to enforce a decision regarding a dispute between two individuals, Kant argues that the it must be permissible to use violence to attain to a situation where justice (and not violence) decides the question of disputed right.

assumption that modern rights discourse is somewhat fundamentally at odds with a discourse centered on the common good has been a mainstay of a certain trajectory in Christian ethics for the past several decades. The perception that the individualist orientation of rights-discourse necessarily contributes to an egoistic conception of the self and the breakdown of communal norms and institutions has led thinkers such as Alasdair MacIntyre, John Milbank, Joan Lockwood O'Donovan, Oliver O'Donovan, Stanley Hauerwas, and Nigel Biggar to call for a wholesale rejection or at least a significant reevaluation of the place of rights-claims in Christian moral discourse.[199] Often couched within broader intellectual-historical narratives which suggest that rights-language marks a substantial departure from pre-modern categories of civic virtue and the common good which grounded moral discourse in objective concepts of *ius* rather than in the arbitrary whims of egoistic individuals, their work has elicited responses from others – most prominently Nicholas Wolterstorff and John Witte, Jr. – who have sought to defend the rise of rights-language as an internal development within Christian ethical discourse.[200]

In such a context, Schleiermacher's affirmation of subjective individual rights within the context of a broader account of the highest good may simply seem to be a contradiction in terms. It can therefore be tempting to think that Schleiermacher cannot have it all. Is an embrace of subjective right compatible with a commitment to perfectionist politics? If Schleiermacher's conception of right does not exist outside the back-and-forth of claims for recognition, how can it

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[199] Alasdair MacIntyre, "Community, Law, and the Idiom and Rhetoric of Right" *Listening: Journal of Religion and Culture* 5 (1991): 96-110; Joan Lockwood O'Donovan, "Historical Prolegomena to a Theological Review of 'Human Rights'" *Studies in Christian Ethics* 9:2 (1996): 52-65 and "Rights, Law, and Political Community: A Theological and Historical Perspective" *Transformation* 20:1 (Jan 2003): 30-38; John Milbank, "Against Human Rights: Liberty in the Western Tradition" in *The Meaning of Rights: The Philosophy and Social Theory of Human Rights*, ed. Costas Douzinas and Conor Gearty (Cambridge: Cambridge University Press, 2014), 39-70; Stanley Hauerwas, "How to Think Theologically About Rights" *Journal of Law and Religion* 30:3 (2015): 402-413; and Nigel Biggar, *What's Wrong With Rights?* (Oxford: Oxford University Press, 2020).

[200] See, esp. Nicholas Wolterstorff, *Justice: Rights and Wrongs* (Princeton: Princeton University Press, 2008) and John Witte, *The Reformation of Rights: Law, Religion, and Human Rights in Early Modern Calvinism* (Cambridge: Cambridge University Press, 2007. See also, Brian Tierney, *The Idea of Natural Rights: Studies on Natural Rights, Natural Law, and Church Law, 1100-1625* (Atlanta, GA: Scholars Press, 1997).

not but reflect an ultimately subjectivistic conception of the common good? Indeed, Schleiermacher's adoption of the language of persuasion (*Ueberredung*) seems to correspond in Kantian epistemology to the category that Kant identifies with false conviction, a belief that one feels to be justified on the basis of the evidence but that, on further examination, turns out not to be. In more Kantian langauge, beliefs held on the basis of persuasion have subjective, but not objective sufficiency.[201]

Indeed, Schleiermacher's identification as a "Romantic" and as a "nationalist" thinker has led many – before Beiser's attempt to rehabilitate the early German Romantics as distinct from later Romantic movements – to read Schleiermacher as an irrationalist.[202] Even if Schleiermacher does insist that the relations of recognition that constitute right are to be concretely indexed to one's actual and potential contributions to the division of labor, the complexities of making sense of individual contributions to collective action may easily lead to the suspicion that this could justify quite arbitrary distributions, especially in lieu of equality as an abstract ideal. As long as intersubjective agreement exists, could something like disproportionate CEO compensation be perfectly within the bounds of right?

To the extent that a reevaluation of the relations and relative significance of the concepts of the good, of virtue, and of duty was a central part of Schleiermacher's ethical project as a whole and the subject of his 1803 *Outline of a Critique of all Previous Ethical Systems*,[203] there is certainly much that can be said about Schleiermacher's response to an objection along these lines. We shall have a greater occasion to consider how Schleiermacher's approach to constructivism works out in his conception of the relation of law, nationhood, and personality in chapters 4 and 5. For now,

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[201] In the Canon of Pure Reason of the First Critique, Kant would lay out a typology in which beliefs can be held with objective sufficiency (conviction or Überzeugung) with mere subjective sufficiency (persuasion or Überredung) or with neither objective or subjective sufficiency (opinion or Meinung). See Andrew Chignell, "Belief in Kant" *The Philosophical Review* 116:3 (Jul 2007): 323-360.

[202] We shall consider these critiques in more detail in ch.4.

[203] The work can be found in KGA I/4.

however, it is sufficient to note that Schleiermacher is committed both to there being a real idea of the common good that will be both an objectively sufficient description of the community in its reciprocal relations and a product of intersubjective agreement. In language that we will explicate further in chapter five, the conception of the common good must "proceed from something originally given, before all moral activity, and must continue to develop within the progressive unification of reason with nature."[204] In other words, there must be an original objective ground of this concept that exists apart from human activity even as the concept retains its self-identity when recognized by and actively sought by human activity. It must be possible to make explicit something that is merely implicitly true while both maintaining the character of that implicit truth even as one's act of making-explicit may be constitutive of the reality of that truth.

Objectivity, Schleiermacher argues, does not merely exist somewhere "out there" in the world without human participation, but is the product of an active process of human subjectivity while remaining non-arbitrary.[205] There really is a truth of the matter, even as this truth can only be discerned in the process of intersubjective recognition and agreement. One can never be sure that one's idea of the whole and one's place in it is reflective of reality or merely a product of subjective preference unless it is taken up and recognized by another. Yet in setting forth the concept, one may very well be playing a key role in bringing that very whole – in the way that one has described it – to

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[204] E 1816/17 199 (DG.I.64); 599.

[205] From 1812/13 on, it will be the task of Schleiermacher's doctrine of the schematism to give an account of the epistemological conditions of how this simultaneous intersubjective agreement and correspondence to objective reality can be possible. Although the language of the schematism would be absent from Schleiermacher's first pass on his lectures on Dialectic in 1811, the 1814 version of the lectures would be heavily dedicated to performing a transcendental deduction of the possibility of such knowledge by appeal to the idea of an identical schematism. Humans, Schleiermacher posit, are capable of reaching similar conclusions about similar objects if trained in such a way to be able to interpret things similarly. The natural languages just *are* the products of the extended process of interactions between humans and world that serve to play a constitutive role in both giving access to but also constructing reality. Tables really *are* things out there, but they are also things that do not exist without humans making them as such. What is true of artifacts is even true of objects that seemingly exist apart from human intervention. Even if humans have very little ability to interact with stars, they nevertheless do play a key role in pointing out stars and wrapping them up with the significance that they do have in human society, such that one cannot say that the word "star" – as opposed to, say, "Stern" – exists apart from the active shaping that it has received from the hands of a particular community of discourse.

reality. Although there *is* an objective concept that is supposed to correspond to reality, it is not something that any individual can one-sidedly set forth and enact alone. For Schleiermacher, the recognitive uptake by the other is a constitutive element of the community of right. On the other hand, that intersubjective agreement and recognition play constitutive roles in bringing the concept's truth to reality (to the extent that self-conscious affirmation of the respective spheres of individuality and community are tied up with the concept) does not imply that anything goes. Rather, there really does need to be a coordinated conception that transcends the particular perspective of any one individual at play. That such a shared realm of activity is possible is at the very heart of Schleiermacher's insistence on the co-construction of individuality and community in his account of right.

Does the CEO deserve their pay? Maybe from their perspective. But whether that is really the case will depend on the actual facts of the matter and whether or not they reflect a just arrangement. It also depends on whether any particular account of the role that they play in the corporation is not merely idiosyncratic and can find uptake among others engaged in the shared endeavor. Trying to discern the actual respective contributions and roles that are actually operating in a given division of labor may be a difficult and contentious task, but the existence of contracts, for Schleiermacher, implies that there *must* be a way of working out a just arrangement that can both reflect reality and receive intersubjective uptake and agreement about that reality. It is not, for Schleiermacher, violence and misinterpretation all the way down. Disagreements with the CEO's perspective or even the status quo, however, will have to come from alternative formulations of what exactly *is* the state of the division of labor and the respective roles and contributions that each have made to it, not a transcendental comparison with an ideal distribution thought of in abstraction from the task of attempting to discern and formulate the common good that a given community has been and is pursuing. Schleiermacher's demand that exchange be founded both on intersubjective

recognition and on a material basis in reality may seem difficult to grasp by those accustomed to contrasting objectivity and subjectivity, but his insistence on its possibility is merely a variation on Kantian arguments already set forth in the *Critique of Pure Reason* wherein Kant argues that objects are the product, not solely of things out there leaving an impression on the human mind, but of the particular way that the human understanding interacts with the effects of things on the senses. Rights can both be subjective and exist only on the basis of the making of subjective claims to them while nevertheless being grounded in objective conceptions of the good. The mere existence of disagreement about these goods (and respective spheres of right) does not, for Schleiermacher, imply that no possible agreement could exist.

3. Summary

This chapter has attempted to reconstruct and explicate Schleiermacher's theory of right in the face of suggestions that Schleiermacher's political philosophy either lacked a concept of right or developed a deficient conception of it. I began by situating Schleiermacher's early "Notizen zur Vertragslehre" within its post-Kantian context and showing the ways it both built on and departed from the theory of contract and right expressed in Kant's *Metaphysics of Morals*. I then moved to show how the ideas originally formulated in the "Notizen" were put into conversation with Fichte's *Foundations of Natural Right* and *Closed Commercial State* in Schleiermacher's later ethics lectures. By doing so, I have attempted to show the ways in which Schleiermacher can be recognized as having formulated a theory of right that is both far closer to the liberal theories of Kant and Fichte than previously recognized while remaining significantly critical of key aspects of their liberalism. Far from rejecting the notion of individual right, Schleiermacher is critical of liberal theories of right for not taking the individuality of individuals seriously enough. Furthermore, in insisting on a positive ground of right in the material relations that characterize a division of labor, Schleiermacher offers

an objective grounding for a theory of right that nevertheless makes acts of reciprocal recognition a constitutive part of bringing the very divisions that are posited into reality. These qualities make Schleiermacher's theory of right an excellent candidate for further study by those who are frustrated with the way in which the abstract formalism of liberal conceptions of individualism may seem to exclude those who do not fit well into a single taken-for-granted mode of autonomous existence as well as those who are frustrated with what is perceived to be the undermining of communities on account of the radical subjective character of the appeals to rights.

The complexities associated with these issues will no doubt leave many still feeling like even this extended treatment remains far too abstract or underdeveloped. For this reason, we shall turn in the next chapter to see how Schleiermacher's theory of right plays out in his account of property. As with the theory of right, Schleiermacher's theory of property can be recognized as standing in a relation of similarity and difference with various other post-Kantian theories, particularly that of Fichte. His innovative conception of the co-instantiation of individuality and community, as we shall see, allows Schleiermacher both to affirm a very strong right to private property and also develop an innovative account of property-in-common.

Chapter 3: Individual and Collective Ownership: Schleiermacher on Property

> "In my opinion the fundamental error of the opposed theory of property – the first source from which all false assertions about property derive; the true reason for the obscurity and oversubtlety of many doctrines; and what is, properly understood, the cause of their one-sidedness and incompleteness when applied to actual life – is this: that one posits the first, original property in the exclusive possession of *a thing*. With such a view holding sway, it is no wonder that we have even experienced a theory claiming that the estate of large landholders, or the nobility, is the only true proprietor, the only citizen from which a state is formed, and that all others are mere accessories who must buy the toleration of the former under whatever condition pleases them. … In opposition to this theory, our theory posits the first and original property, the basis of all others, in *an exclusive right to a determinate free activity*."
>
> J.G. Fichte, *The Closed Commercial State*[1]

> "Both of these things, division of labor and exchange, are conditioned upon the community of direct organs, which are both [dexterity and thing] at once, so that what is said of each is true of both."
>
> Friedrich Schleiermacher, *Lectures on Philosophical Ethics*[2]

I. Introduction

1. Overview

How do things become "mine" or "yours"? Debates over the nature of property have long been one of the fundamental loci of political philosophical reflection. Indeed, it has even been argued that medieval debates over apostolic poverty and its relationship to the ownership of property has laid the foundation for modern conceptions of subjective right.[3] It should thus be of little surprise that one of the foundational rights that are discussed by modern political philosophy is the nature of the right to acquire property. As such, one way to get a better handle on Schleiermacher's theory of right is to see how he treats the question of property.

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[1] Fichte, *The Closed Commercial State*, 129-130.
[2] E 1816/17 210 (HG.II.20), 613-614.
[3] See, for instance, Brian Tierney, *The Idea of Natural Rights: Studies on Natural Rights, Natural Law, and Church Law, 1150-1625* (Atlanta, GA: Scholars Press, 1997) and Annabel S. Brett, *Liberty, Right, and Nature: Individual Rights in Later Scholastic Thought* (Cambridge: Cambridge University Press, 1997).

This chapter will attempt to exposit Schleiermacher's account of property and how it both builds on and departs from Fichte's innovative account in the *Foundations of Natural Right* and the *Closed Commercial State.* While classical accounts of property have often assumed the existence of common possession before offering an account of individual acquisition, one interesting aspect of both Fichte's and Schleiermacher's approach to property is that they are similarly concerned with how ownership can be compatible with collective use of the same objects within the context of a division of labor. As a result, alongside an account of individual appropriation, Schleiermacher will also develop an innovative account of collective property that attempts to provide categories to discuss the goods and services that may play constitutive roles in the sustaining of communal life.

Both the account of private property and the account of collective property depart from classic liberal political philosophical doctrines in interesting and productive ways. With regard to the former, Schleiermacher's insistence on the positivity of right will lead him to offer an account of property ownership that insists that the morality of private ownership is linked to its use for hospitality. Schleiermacher has long been recognized for his development of an innovative account of friendship and free sociability. Attention to his political philosophy, however, shows how free sociability takes a political-economic turn in his mature thought and becomes entangled with Schleiermacher's account of property and its appropriation. With regard to the latter, Schleiermacher's insistence on the possibility of a shared space of activity will lead him to posit that commercial activity also necessarily presupposes a shared conception of ownership. Things like land, machines used for mass production, scientific instruments, and the ways that the bodies of skilled laborers have been formed for specialized tasks in the division of labor, Schleiermacher posits, cannot be made sense of on the basis of individual private ownership alone, but must be recognized as subject to the claims of others who may be engaged in the same collective task. Underlying both is a very different way of understanding the relation of nature to culture that highlights the way that

one's body becomes entwined with one's possessions and the tools used to perform one's role in the division of labor.

The way in which Fichte and Schleiermacher can be recognized as sharing a similar basic framework even as their actual views on property may diverge quite a bit makes a consideration of Fichte's theory of property important for making sense of Schleiermacher's own. Indeed, in light of the sparsity of some of Schleiermacher's comments, it is very often only by paying attention to the structural homologies that Schleiermacher shares with his philosophical colleague that the significance of some of Schleiermacher's claims can be properly appreciated. Indeed, the way in which Fichte sets the stage, not only for Schleiermacher, but also for Hegel and – after him – Marx allows for a productive comparison of how Schleiermacher's innovative approach to property allows for him to develop a different critique of liberal accounts of labor and capital than Marx does in *Das Kapital.*

II. Fichte on Property

1. "The Earth is the Lord's": Property in Action

Fichte's derivation of right from relations of reciprocal recognition and the way his turn to political economy informs his account of property makes his account of possession quite interesting, even if for the most part implausible. The fundamental and original object of property, Fichte insists, is not things, but actions.[4] The possession of the former follows from the latter. Fichte self-

[4] "In my opinion the fundamental error of the opposed theory of property – the first source from which all false assertions about property derive; the true reason for the obscurity and oversubtlety of many doctrines; and what is, properly understood, the cause of their one-sidedness and incompleteness when applied to actual life – is this: that one posits the first, original property in the exclusive possession of *a thing*. With such a view holding sway, it is no wonder that we have even experienced a theory claiming that the estate of large landholders, or the nobility, is the only true proprietor, the only citizen from which a state is formed, and that all others are mere accessories who must buy the toleration of the former under whatever condition pleases them. … In opposition to this theory, our theory posits the first and original property, the basis of all others, in *an exclusive right to a determinate free activity*." Fichte, *The Closed Commercial State*, 129-130.

consciously notes that this is a significant departure from the traditional approach to property, which usually begins from the original possession of one's body to the possession of other objects. Consider, for instance, how Locke treats the subject in his *Second Treatise on Government*. The possession of the right to self-preservation naturally leads to the right to the use of various things – food, drink, and the like – for one's preservation.[5] Although all things originally are held in common, the necessity of there being a means by which humans can appropriate for their own exclusive use leads to the need to make sense of how such appropriation is to be justified. Beginning with an assumed property in one's own person, Locke posits that the mixing of one's labor with a particular thing – the use of one's own body – grants one an exclusive right to that thing precisely because this labor is "the unquestionable Property of the Laboure".[6] The original right to one's body and its actions gives rise to property in other things, the most fundamental of which is land itself.[7]

Fichte affirms property in things, but only as a consequence of what he takes to be a more fundamental form of property: property in a determinate form of action within the division of labor.[8] This follows from Fichte's derivation of right from the possibility of free positing. To act freely in a determinate manner, free agents must respond to a summons from other rational agents who reciprocally recognize one another as entitled to their own respective spheres of free activity. It is only after deriving this original sphere of activity that Fichte then turns to consider the material conditions of its applicability, arguing that the positing of free efficacy requires positing a material body which serves as the "sphere of the person's free actions."[9] Thus, even if Fichte similarly affirms that the original right to self-preservation implies "the right to the continued existence of the

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[5] John Locke, *Second Treatise of Government*, V.25.
[6] Ibid. V.27.
[7] "But the *chief matter of Property* being now not the Fruits of the Earth, and the Beasts that subsist on it, but the *Earth it self;* as that which takes in and carries with it all the rest" Ibid. V.32.
[8] "The basis of all right to property, it follows, is to be placed not in the exclusive possession of objects, but in the right to exclude others from a certain free activity reserved for ourselves." Fichte, *The Closed Commercial State*, 132.
[9] "Furthermore – since the body thus described is nothing other than the sphere of the person's free actions, the concept of such a sphere is exhausted by the concept of the body, and *vice versa*." Fichte, *Foundations of Natural Right*, 56.

absolute freedom and inviolability of the body" this is solely on account of it being a necessary entailment of the possibility of one exercising free agency in the world.[10]

Fichte will work out the individual spheres of freedom in political economic terms: they represent determinative roles within the division of labor. When entering into community, "they must nevertheless negotiate *which determinate sphere of activity* should remain exclusively for each one, with the others having to refrain from this sphere of activity for his sake."[11] As with property in things, Fichte conceives of property in action as consisting in the right to exclude others from it. Property in action consists of the right to exclude others from playing the particular role that one has in the division of labor. For Fichte, only by possessing a monopoly on a particular role (farming, manufacture, trade, etc.) does one gain a sufficient recompense for giving up one's right to act unrestrictedly in the state of nature in order to secure one's self-preservation:

> Only through this *closure* [of the number of those who may conduct the same branch of labor and provision for the cultivation of the sustenance needed by all] does a branch of labor become the *property* of the class of its practitioners, and only through *this provision of sustenance* a property *from which they could live* [emphasis original].[12]

The right to property in action, Fichte insists, is merely the expression of the original right to self-preservation in the context of participation within the division of labor.[13] The willingness to restrict one's free activity to one determinate domain is thereby accompanied by the right to carry out one's activity within that domain in an unimpeded manner and a recognition of the respective determinate domains of others.

Fichte argues for the priority of property in action over property in things by suggesting that only the former can one make sense of the reality that multiple persons are capable of

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[10] Ibid., 108.
[11] Fichte, *The Closed Commercial State*, 132.
[12] Ibid., 133.
[13] "To be able to live is the absolute, inalienable property of all human beings. We have seen that a certain sphere of objects is granted to the individual solely for a certain use. But the final end of this use is to be able to live. The attainment of this end is guaranteed; this is the spirit of the property contract. A principle of all rational state constitutions is that everyone ought to be able to live from his labor." Fichte, *Foundations of Natural Right*, 185.

simultaneously making use of the same things. Far from the most fundamental form of property, Fichte puts forth land as that which paradigmatically *cannot* be owned.[14] The same piece of land, Fichte suggests, can be used by a farmer to grow grain, by a shepherd as a pasture for their flock, and by a miner to mine at one and the same time without the activities necessarily interfering with one another.[15] Instead of designating one as the owner who permits the others the use of their land, each must regard the other as possessing a right to engage in their characteristic activity undisturbed. If dispute over a particular thing or part of the land may arise, it is not to be seen as a dispute to be resolved by identifying who the sole and proprietary owner of the thing or the right to use it is, but by seeing in what ways the rights to action conveyed in the original contract may directly or indirectly imply a right to that object. Fichte does believe that certain actions can lead to exclusive claims over particular objects – one's body, for instance. But the possibility that multiple persons can non-competitively make use of the same objects will also lead Fichte to argue that property must not fundamentally inhere in the things themselves, but in one's right to the use of the things in order to accomplish an action. It is property in action that gives rise to the possibility of property in things.[16] The rise of complex divisions of labor that transcend the traditional agricultural basis of a household's economic activity demands a conception of property that secures one's location in that division.

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[14] "In our theory there is no property of land, or at least not until those who assume that there is such a thing can make us understand how such a right to property might be *practiced* in actual life – if indeed these truly understand what they are saying, and really mean, as these words declare, a property of *land*, and not, as in our interpretation, a right that is exclusively one's own to a certain *use* of the land. The earth is the Lord's; to man belongs only the ability to cultivate it and use it in a purposeful fashion." Ibid., 130-131.

[15] See esp. Fichte, *The Closed Commercial State*, 130.

[16] "This right to exclude foreign activity is, it follows, the true seat of the right to a property of things" Ibid., 132.

2. The Duty of Profession and the Right to Appropriate

It is this concern for self-preservation in the context of a division of labor that leads Fichte to reject justifications for property that rely on a conception of unilateral appropriation on the basis of either labor or first occupancy. Locke and Kant justify a unilateral appropriation of property on the assumption that such appropriation is necessary for the preservation of life. Fichte saw this paradigm as unable to address the problems that arise from increasingly complex divisions of labor. When the preservation of life is contingent, not on what things one may have in one's immediate possession, but on being able to exchange the limited products of one's labor for the other necessities that are produced by other branches of the division of labor, appropriation needs to be theorized on a different basis. Thus, instead of a theory that grants the right to appropriate on the basis of being the first to claim something or to infuse something with one's labor, Fichte suggests that appropriation is to be understood in relation to one's role in the division of labor.

In the *Foundations of Natural Right*, Fichte will set forth a tripartite property contract that exists between all individuals in community.[17] Firstly, all individuals are under the obligation to make a public profession of "how they intend to make a livelihood", to mark out a determinate role in the division of labor.[18] Secondly, all other individuals are thereby to recognize that individual's sphere of activity and to allow them an exclusive right in it.[19] Finally, the individual receives a guarantee that they will be able to appropriate a sufficient amount so as to be able to live off of their labor.[20] The

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[17] See Fichte, *Foundations of Natural Right,* 187.
[18] "All declare to all – and in making their guarantee, to the populace as a *whole* – how they intend to make a livelihood. This statement is valid without exception. Anyone who cannot declare this cannot be a citizen of the state, for such a person can never be obligated to recognize the property of the others." Ibid.
[19] "All – and by virtue of the guarantee, this means the populace – allow each person to pursue this livelihood exclusively in a certain respect. There can be no occupation in a state without the state's permission. Each person must expressly declare his occupation, and thus no one becomes a citizen *in general*, but each enters into a certain class of citizen at the same time that he enters into the state." Ibid.
[20] "The end of all such labor is to be able to live. All – and by virtue of the guarantee, this means the populace – guarantee to each person that his labor will attain this end; and in truth, they obligate themselves to provide all the means they can towards that end. These means belong to the full right of each person, which the state must protect." Ibid.

existence of property remains tied to a individual's right to life, but takes a different form in the state. Instead of appropriating things to sustain one's life, one receives property in action – and through this action, a right to things – which entitles one to exchanges which will allow one to sustain one's life. Within the state, one possesses both the duty to work and the right to live off of one's work.

Fichte discusses private property within this broader framework, defining "absolute property" as the remainder that is left over after someone has already fulfilled their obligation to the state.[21] It is by virtue of performing one's role in the division of labor that one is then free to appropriate. And precisely because one has already fulfilled one's obligations to the state, Fichte is quick to assert that the state possesses no authority over what one does with this remainder provided it does not harm others or interfere with the state's duty to guarantee that all its citizens be capable of living off the products of their labor.[22] This can be achieved, Fichte posits, by the use of money. The state guarantees their citizens a living wage, collects taxes on production, and maintains control over the market price of commodities while leaving the task of actual procurement up to the citizens.[23] What one does with the things that one acquires at the end of this process, Fichte insists, must be free from state interference.

If the state plays the *sine qua non* role in securing its citizens property in action and coordinating exchange so as to secure one's ability to work and to live off of one's work, it is supposed to play no role in the space that is marked out by the free space of acquisition that one

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[21] See section F in Fichte, *Foundations of Natural Right*, 206-209.

[22] "But since, in consequence of the same [state] contract, the state has the right to force each person to share his property with those citizens who need it, everyone receives *money* in its place. And this money is *absolute, pure property, over which the state no longer has any rights at all*. Every piece of money I possess is simultaneously a sign that I have fulfilled all of my civic obligations. With regard to such money, I am completely free of the state's obligations." Ibid., 209.

[23] In *The Closed Commercial State*, Fichte would attempt to show how the state's control over the market can allow for each contributor to the division of labor to receive an equal due in the face of yearly fluctuations or non-culpable disruptions See esp. Book I, ch. 6 of Fichte, *The Closed Commercial State*, 121-127. Fichte is an early advocate of fiat currency who continues to advocate for paper money even in the face of the collapse of the French currency. See esp. ch. 3 of Isaac Nakhimovsky, *The Closed Commercial State*.

receives as a recognition that one has fulfilled one's role within the division of labor. Fichte marks out two forms of this "indeterminable property" (property that does not have a public state-sanctioned referent by virtue of one's possession of property in action) – an immediate and a surrogate – treating both with reference to one's original right to one's body as a locus of free action. Firstly, Fichte insists, "the state has granted to each person the *use* of the goods he himself has built, made, or purchased" and "a person's immediate, state-sanctioned use of something signifies and defines a piece of property within the state."[24] This is on account of the fact that immediate use places the object in immediate proximity to one's body and therefore "that thing is associated with the person's body".[25] Secondly, however, Fichte will also insist that there must be a means by which one may appropriate things designated not for immediate, but also future use. Since one cannot be expected to carry all of one's belongings alongside oneself at all times, Fichte suggests that "there must be some kind of surrogate for my body, by virtue of which anything associated with it – simply because it is thus associated – is designated as my property."[26] This "surrogate body," Fichte posits, is found in the concept of a "house", wherein one possesses a kind of freedom akin to one's right over one's own body: "Within my house, I am sacred and inviolable, even as far as the state is concerned."[27]

The sphere of immediate use and of the home thus mark out a distinct "private" sphere independent from the "public" sphere of the division of labor and the state. If the state is bound to uphold the rights pertaining to one's property in action and coordinating the division of labor in the public sphere, it is to play absolutely no role whatsoever in the protection of property in the private sphere. Rather, precisely because the home marks out a sphere of activity that is supposed to be free

[24] Fichte, *Foundations of Natural Right*, 210.
[25] Ibid., 211.
[26] Ibid.
[27] Ibid.

and independent of the state, it also marks out a regime of property whose protection is not guaranteed by the state. Instead, the home stands under the direct dominion and protection of the homeowner and the private interactions which may take place within it are governed by norms of good faith and trust rather than by law.[28] For this reason, Fichte will insist that "everyone has the right to defend (even by endangering the transgressor's life) unmarked property, i.e. property whose ownership is indicated only by the fact that someone has it on or near his person, or in his house."[29] Fichte seems to reintroduce a sphere *within* the state that would nevertheless seem to operate as if it preexisted the civil condition save for the fact that one's ability to appropriate such a sphere is itself contingent on one's fulfillment of one's duty to the state and therefore negatively bound by the state's demands. Indeed, even if one is justified in using violence to defend one's home from invasion or theft, this is only on the condition that the state cannot offer its protection. In such cases of self-defense, Fichte will still insist that one remains liable for giving an account to the state – not of the rightness of one's conduct, but – of why one's actions stood outside of the jurisdiction of right.[30]

Fichte's distinct account of the division of labor and property in action has thus resulted in a two-tiered account of property in the state. "Marked property" corresponds to one's recognized role in the division of labor and is secured and defended by the state. Citizens are obliged to declare an occupation and to fulfill their role in the division of labor, but their loss of liberty is to be

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[28] "Everything in the house, e.g. cash, furniture, food, etc. (excluding food in the case of merchants), is beyond the supervisory authority of the state, and property in these things is not directly guaranteed. All contracts concerning such things are based on good faith and trust." Ibid., 212-213.

[29] Ibid., 218.

[30] "This also implies limits on the right of self-defense. I have this right only to the extent that the state cannot defend me; thus the fact that the state cannot defend me must not be my own fault, and I am obligated as a matter of right and so far as I am able, to make it possible for the state to defend me. I am obligated to call upon the state for assistance as soon as I am in danger; I do this by *crying for help*. This is absolutely necessary, and it is the exclusive condition of the right to self-defense." Ibid. "After the right of self-defense has been exercised, whether in response to an attack or a natural contingency, the one who has exercised it owes the state an explanation. For this person has subjected himself to the state's laws for all time and wants to continue to be regarded as subject to them; but now in this case he has exempted himself from these laws, since no law of right could apply under the circumstances. It is incumbent upon him to show that the law of right did not apply." Ibid., 221.

compensated by the reception of property in action that enables them to have access to everything needed to act within their recognized sphere of activity. "Unmarked" or private property remains outside the purview of state oversight and defense. Having fulfilled their role, individuals are now entitled to use their monetary compensation to appropriate goods for both immediate and future use. The house marks out a sphere into which the state may not cross and where homeowners are invested with the authority to enforce their property claims by recourse to violence to the extent that no state protection is available. In an odd twist, Fichte's account of private property would seem to introduce relations that may seem more akin to what other modern theorists of property and right would associate with the pre-civil condition save for the fact that the very ability to claim a house for one's own is contingent on one's entering into the civil condition and participating in the division of labor.

3. Fichte and Schleiermacher

Fichte's account of property and appropriation represents a distinct contribution to modern political thought by virtue of its explicit engagement with questions of political economy. Most significantly, as the author of the 1802 rebuttal *The Open Commercial State* argued, Fichte's vision represented a rebuttal of Adam Smith's suggestion that the inequality of modern market societies could be justified by an appeal to the demands of natural liberty.[31] For Fichte, the idea of original appropriation has no merit precisely because it is only in the context of the encounter with the other that one comes to possess a sphere of one's own in the first place.[32] This means that, in an

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[31] For a discussion of Ludwig Hesterman's critique of Fichte vis-à-vis Adam Smith, see esp. ch.4 of Isaac Nakhimovsky, *The Closed Commercial State*.

[32] "In fact, from the moment they come to know of one another, neither can be secure even in his previously acquired possessions, because it is always possible that the other might appropriate one of his possessions under the assumption that it is not yet possessed by anyone." Fichte, *Foundations of Natural Right*, 114. "For instance, it cannot be decided by appealing to an earlier appropriation of the thing; for neither can demonstrate that he was first to appropriate it, and so the claim to first appropriation is not valid for the purpose of external right." Ibid., 115. "I cannot think of myself as an individual without positing another individual in opposition to me: by the same token, I cannot think of anything as my

agricultural economy as well as in a modern commercial and industrial one, the conception of property is grounded in the respective roles that one plays in the division of labor, a role that entitles them to equal participation in the collective benefits of the division.

Unlike figures like Locke and Kant, Fichte would insist that property exists only in the civil condition. It requires not only acts of reciprocal recognition, but also the existence of a common power to adjudicate conflicts and enforce relations. But like Locke, Fichte grounds acquisition in labor.[33] One earns one's entitlement to property in the state by declaring one's occupation and absolute property by performing one's obligatory labor for the sake of the state. But what one is entitled to is not only the direct products of one's labor – which one owes to the community by virtue of one's recognition of one's place in the division of labor – but an indirect compensation in the form of money, which one can then dispose of at one's discretion to acquire the absolute property that one uses to fulfill one's needs. But the key connecting idea is that property manifests one's free activity exercised through the efficacy of one's body. Fichte's insistence on the significance of community and labor would be decisive for Hegel's theory of property and alienation, and the Marxist adaptation of the notion that followed.[34]

It would also be significant for Schleiermacher. Despite fundamental differences in the Fichtean and Schleiermacherian conceptions of property, Fichte's influence is evident in the basic structure of Schleiermacher's writings on property. In recognizing a two-tiered conception of property that involves both a general communal level and a second personal level, Schleiermacher reveals the Fichtean provenance of his theory. Like Fichte, Schleiermacher would affirm both a

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property without at the same time thinking of something as the property of an other; and conversely, the same applies to the other. All property is grounded in reciprocal *recognition*, and such recognition is conditioned by *mutual declaration*." Ibid., 117.

[33] For an attempt to situate Fichte's theory of property amidst the accounts of Kant, Hegel, and Marx, see ch.2 of David James, *Property and its Forms in Classical German Philosophy* (Cambridge: Cambridge University Press, 2023).

[34] Again, see David James above. But also see ch.5, "Hegel's Justification of Private Property" of Alan Patten, *Hegel's Idea of Freedom* (New York: Oxford University Press, 2002) and Andreas Wildt, *Autonomie und Anerkennung. Hegels Moralitätskritik im Lichte seiner Fichte-rezeption* (Stuttgart: Klett-Cotta, 1982).

sphere of collective activity to which one contributes by virtue of one's role in the division of labor and a sphere of personal appropriation free from the control of the state.

But as with his theory of right more broadly, Schleiermacher will insist on positively grounding what Fichte had conceived in terms of negative spheres of free activity. Thus, if Fichte characterizes the sphere of absolute property and the home negatively in terms of its freedom from state control, Schleiermacher will characterize it positively as a sphere of "free sociability". While insistent that it is a realm of human activity that is to be left free by the state, Schleiermacher also insists that this does not imply that it is not without its own social dynamic and norms. Acts of particular appropriation, Schleiermacher insists, must be normed by the dictates of hospitality and the drive towards self-communication. Indeed, it is this very dynamic that actually drives communal development while nevertheless remaining outside the realm of commerce proper.

On the flip side, Schleiermacher's insistence on the positive grounding of the sphere of right in conceptions of the common good likewise takes seriously the role of relations of reciprocal recognition and money, but without a corresponding insistence on the formal abstract equality achieved by Fichte's conception of property in action. Yet Schleiermacher's rejection of the specifics of Fichte's proposal does not reflect a rejection of the basic principle that one both has a duty to work on behalf of the community and has a right to live off of one's labor. While also affirming Fichte's rejection of original appropriation and insisting that the concept of property and its appropriation arises only in the context of community, Schleiermacher nevertheless sees Fichte's vision of community as reflective of only one – highly suspect and deficient way – of affirming the form that the right to self-preservation takes in the context of a division of labor.

In the place of Fichte's innovative account of property in action, Schleiermacher thus offers an equally innovative account of collective property that similarly seeks to take seriously the way that multiple agents can non-competitively engage in coordinated activity using the same objects. That is,

over and above the recognition of property that is exclusively to be recognized as adhering to an individual in their individual particularity, Schleiermacher wants to affirm the existence of a form of property that extends beyond mere particularity and that can make sense of how individual organs and actions can transcend the self and be recognized as representing a form of collective property. Schleiermacher can thus affirm Fichte's insight that land does not seem to be an object of individual appropriation by virtue of the fact that multiple people inhabit and work on it simultaneously. But instead of embracing Fichte's account of property in action, Schleiermacher can imagine land as an example of collective property.

Schleiermacher's reflections on this subject will also lead him both to reconceive what it means to have property in one's body and to reject any attempt to introduce a fundamental disjuncture between internal and external appropriation that assumes a certain priority of one over the other. Like Marx, Schleiermacher will be able to formulate a critique of the distinction between capital and labor, a distinction founded on a division between those who can be said to own the means of production and those who own solely their bodies alone. Instead of assuming that one acquires external property by the use of one's body, Schleiermacher is interested in understanding how – in the context of a complex division of labor – the formation of one's body for one's role in the division of labor may result in parts of one's very body attaining to public significance and become subject to communal demands, as well as how one's sense of self may expand beyond the formation of one's immediate body – one's "internal organs" – to encompass the "external organs" that constitute the extended sphere of one's operation. Indeed, Schleiermacher therefore proposes a reevaluation of the status of machinery and scientific instruments – what he will refer to using the term "apparatus" [Apparat] – as instances of collective property which cannot properly be recognized as belonging to any one individual but which may be used by individuals for the sake of

the community. Schleiermacher thus offers the conceptual framework for a very different way of thinking about property in the context of modern commercial society.

III. Schleiermacher on Property

1. Schleiermacher on Right and Appropriation

The influence of Fichte's account of property is perhaps most strongly present in his treatment of the doctrine of duty. Andreas Arndt has interpreted Schleiermacher's duty of right as paradigmatically communitarian and inadequately appreciative of the status of the individual.[35] In the previous chapter, I showed how this interpretation inadequately appreciates the extent to which Schleiermacher's theory of right builds on and modifies Fichte's account of the necessary co-constitution of the individual and the community in relations of reciprocal recognition. This case can be strengthened when one understands that Schleiermacher's treatment of the duty of right alongside the other duties represents his creative reinterpretation of Fichte's insistence upon the duty to work and a right to live off of one's labor. By insisting that the right to appropriate is contingent upon one's playing one's role in the community, Schleiermacher joins Fichte in rejecting the relevance of unilateral acts of appropriation; by insisting that the entrance into community requires a reservation of one's individuality, Schleiermacher likewise joins Fichte in affirming that one has the right to live off of one's labor.

Schleiermacher introduces the concept of duty as that which is concerned with the morality of individual actions.[36] Because actions undertaken in accordance with duty simultaneously reflect

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[35] See Andreas Arndt, "Der Begriff des Rechts in Schleiermachers Ethik-Vorlesungen" in *Wissenschaft, Kirche, Staat und Politik – Schleiermacher im Preussischen Reformprozess*, ed. Andreas Arndt, Simon Gerber, and Sarah Schmidt (Berlin: Walter de Gruyter, 2019) and Andreas Arndt, *Die Reformation der Revolution: Friedrich Schleiermacher in seiner Zeit* (Berlin: Matthes & Seitz Berlin, 2019).

[36] "Here morality is viewed not as it indwells the individual as a continual process of production but only as it places its stamp upon the particular act as a process of production. Moral character is to be recognized in this act. Unity is thus producing viewed as the particular act. This is a unity different from that of the highest good, for there even the smallest element was not the act of the individual; rather, it was organically united both individually and communally throughout.

both rational intentions and material results united in a single movement, Schleiermacher will insist that the fundamental distinction between organizing and cognizing that would structure his account of the highest good is not relevant for making sense of the concept of duty. This is because every action, although necessarily taking place within the primary context of one of Schleiermacher's various spheres of activity (identical organizing, particular organizing, identical cognizing, or particular cognizing), must also be in accordance with all the rest of the spheres if it is to be properly in accordance with duty.[37] The alternative would presuppose that various duties could be in conflict with one another and that the highest good would thereby be self-contradictory.[38]

Schleiermacher thus proposes a different way of mapping out the differing kinds of duties that exist. In place of the distinction between cognizing and organizing action, Schleiermacher introduces the distinction between community and appropriation.[39] To this, he adds a second distinction between the general and the particular so as to create four differing types of duty.[40] General community-forming duty is the duty of justice or right; general appropriation is the duty of profession; particular community-formation is the duty of love; and particular appropriation is the duty of conscience.[41] A closer look reveals that each can be recognized as corresponding to an

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Here, in contrast, we have to consider the action of the individual as something separate." BE 166; 231. "The doctrine of duty is the depiction of the ethical process as a movement, and is therefore the unity of moment and deed" E 1812/13 123 (DD.I.1), 406. In his 1803 *Grundlinien,* Schleiermacher would criticize other ethical systems for improperly elevating either the concept of the good, of virtue, or of duty to the exclusion of the others and insist on the necessary irreducibility and interrelatedness of each concept. This would underlie Schleiermacher's three-fold division of his philosophical ethics into the doctrine of the highest good, of virtue, and of duty for the rest of his career.

[37] "The object of individual moral actions must be in a definite moral sphere, for the unity of an act can only be produced within a single sphere. Now since the idea of morality is not entire in any action, inasmuch as it relates only to a single sphere of the highest good, an opposition created by the dicta "Actions which are in accordance with duty must contain the whole idea of morality" and "Every action which is in accordance with duty must relate to a single moral sphere," which it is necessary to resolve. Each individual already finds all the moral spheres within every moment, and his action can therefore only join on to what has already been given. Thus every action which is in accordance with duty is a kind of following on." E 1812/13 123-124 (DD.I.4-6), 407.

[38] "The highest good is the totality of all actions in accordance with duty. If these were in conflict with one another, then individual components of the highest good would be in conflict with one another. Thus there can be no collision between duties." E 1812/13 124 (DD.I.13), 408.

[39] E 1812/13 127 (DD.I.36), 412.

[40] E 1812/13 127 (DD.I.37), 412.

[41] E 1812/13 128 (DD.I.40), 412.

aspect of Fichte's account of property and appropriation that has gone through a few Schleiermacherian modifications in accordance with Schleiermacher's theory of right. The duties of right and profession roughly correspond to Fichte's insistence that citizens publically declare an occupation and receive a sphere of public property in action that marks out their role in the state. The duties of love and conscience, by contrast, correspond to Fichte's account of interaction and acquisition in the private sphere of the home.

Let us begin with Schleiermacher's account of the duty of right. Arndt has attempted to read this section as setting out a communitarian theory of right that sees rights as adhering to communities rather than individuals.[42] But when situated against the backdrop of Fichte's theory of property, it becomes clear that what Schleiermacher is up to here is similarly affirming Fichte's claim that the acquisition of property only takes place within the context of one's entering into a community and its division of labor. That is, what is being rejected is not the idea of individual rights, but the rejection that one can have a unilateral right to acquire property outside of the context of community. "We find here the positing of a general state of contractuality as identical with the positing of possession or the acquisition of rights in the community as a whole."[43] There is no property without the existence of a community in which exchanges can take place. Far from rejecting the concept of individual rights, Schleiermacher is specifying the conditions under which an individual may possess property rights as an individual. It is the Lockean or Kantian conception of original acquisition by means of the infusion of labor or first occupancy that is being rejected, not the idea of individual rights.

In emphasizing the reciprocity of community and acquisition, Schleiermacher is setting out his version of Fichte's insistence that one has both the duty to work and the right to live off of one's

[42] See note 34 above.
[43] E 1812/13 128 (DD.DR.3), 413.

labor. In a number of maxims, Schleiermacher sets out the conditions under which one should undertake action for the sake of the community. Firstly, "Enter into every community in such a way that your entering is also an appropriation."[44] Make sure that you are being recognized for your effort, that there is a sphere of property and rights that you can claim by virtue of your contribution to the community's division of labor. Every entering into community comes with the demand for recognition of one's place and role in it. Fichte would parse this out in terms of property in action, but, as we shall later see, Schleiermacher has a broader vision of the form that such property can take. Secondly, "Enter into every community reserving your whole individuality." In addition to public "marked" property, Fichte would note that citizens receive in exchange for their labor a corresponding "unmarked" or absolute property that is free from state control. What Fichte articulates negatively (free from state interference), Schleiermacher will articulate positively in terms of having the space to work out one's religious, familial, or friendship relations. But the same basic insistence on a "private realm" that ought to be free of state interference is clear:

> there can be complete independence of individual communities alongside universal ones, and if the latter seek to restrict the former (church, family, friendship), then they are despotic. – There is often a desire to restrict hospitality and the church as a result of political concerns; but this has its basis only in the immoral condition of civic association.[45]

Any attempt for the "universal community" of the state to act in such a way that is not in accord with the dynamics of the various forms of "particular community" that Schleiermacher posits constitutes a violation of its authority. As with Fichte, Schleiermacher seems to imply that this sphere of individuality consists of possessions which have been removed from general circulation and made one's own in exchange for money that one has received:

> It might appear that the right of the universal community is curtailed by property that has been withdrawn from exchange. On the one hand, however, money, for example, is always

[44] E 1812/13 128 (DD.DR.2), 413.
[45] This point is not the most obvious in the 1812/13 version that I have earlier been quoting from, but is evidently clear in the corresponding later treatment. E 1816/17 229 (DD.DR.16), 469.

> equal to property and must first be given as an equivalent; on the other hand, the individual means of each subject exists only in particular relationship.[46]

The creation of a sphere of absolute property (to borrow Fichte's language) is not contrary to right on account of the fact that it must have been purchased with money. What characterizes this absolute property is that it is marked in some way by its standing in some special – and not general – relationship to the individual. Fichte will characterize the special relation in terms of its physical proximity to the body or to the body's surrogate; Schleiermacher, as we shall see, will have a slightly different account of this.

The final two formulae reflect aspects of Schleiermacher's thought that depart from that of Fichte's insofar as he insists on a unity of the ethical and the political rather than the possibility of a disjuncture between the two. "Enter into community in such a way that you are already reconciled to it."[47] There should be a kind of harmony between the individuality and the community generated by the individual's entering into it such that one can be "at home" in the community.[48] And fourthly, "In every community, act in such a way that internal stimulus and external demand coincide."[49] One's relationship to the community should be characterized by love and a commitment to its good because one recognizes one's own good in it rather than mere external conformity. Both of these formulas reflect Schleiermacher's positive commitment to a perfectionist conception of community and his continuation of the early German Romantic critique of the mechanistic liberal states of Kant and Fichte which posited a distinction between morality and legality.[50]

For now, however, it is sufficient to note that the rest of the duties merely focus in on various dimensions of the basic picture of general and particular appropriation in the context of

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[46] E 1816/17 229-230 (DD.DR.17), 469.
[47] E 1812/13 129 (DD.DR.10), 415.
[48] E 1812/13 130 (DD.DR.11), 415.
[49] E 1812/13 130 (DD.DR.17), 416.
[50] We shall have a greater opportunity to consider Schleiermacher's views on this matter in the following chapter.

community that has just been sketched. Schleiermacher's duty of profession [Berufspflicht] would seem to correspond with Fichte's demand that citizens declare their vocation [Beruf] when entering into the state. Instead of property in action, Schleiermacher will characterize this more generally in terms of taking up some public role such that one's belongings and actions take on a representative communal significance. But by setting forth a particular role and appropriating property and rights for oneself, one enters into the play of reciprocal recognition and must give up certain things insofar as one recognizes them as belonging to others: "Applied to the formative capacities this means, therefore: in possessing, you concede other claims, whether of a general or an individual nature."[51] The appropriation of property and a role for oneself implies that one recognizes the property and role of others. Again, what is being excluded is the possibility of property outside the context of community. In accordance with the tradition of seeing property as an expression of the right to self-preservation, Schleiermacher will note that "the first acts performed by this activity can be traced back to the animal instinct for self-preservation."[52] If one has a determinate and recognized vocation within the community, one has the right to live off of that vocation and recognizes the right of others to live off theirs. Each therefore has the duty of identifying how they can contribute to the collective life and sustenance of the community.

As with the duty of right, Schleiermacher will set forth a number of maxims characterizing proper universal appropriation. It must be done in such a way so as to recognize the community that has the right to demand one play one's role.[53] It must be done in such a way that one also retains a

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[51] E 1812/13 131 (DD.DP.2), 417.
[52] E 1816/17 232 (DD.DP.1), 473.
[53] "Thus, as far as anything that has been appropriated is concerned, nothing may be held in reserve; hence a state. A man is a bad citizen if he seeks to limit the claim on his possession exercised by the whole. This applies uniformly to indirect and direct appropriation. Every skill that has been inculcated belongs to the community, and every thing that has been inculcated belongs to civic commerce. Every new appropriation thus also increases the claims exercised by the whole." E 1816/17 233 (DD.DP.4), 474.

sphere of *non*-collective absolute property that is free from these communal demands as well.[54] There must be a kind of wholeness in this appropriation; and there must be a certain coincidence of internal stimulus and external demand. There is an orientation towards the community, an orientation towards the particular, and a unity of the ethical and the political.

Schleiermacher's account of the duty of love and the duty of conscience, however, differ significantly from that of Fichte in that it offers a positive account of the kind of obligations that pertain to the sphere of absolute property.[55] Fichte had merely denied that the state could interfere within this space, concluding that it therefore operated in accordance with the norms of trust and one's ability to defend one's own property against theft, even to the point of using force. By contrast, Schleiermacher would posit that there are determinate duties and obligations – even if not enforceable by the state – that ought to characterize the sphere of particular property. On the one hand, one is obligated to appropriate in such a way so as to express one's distinct individuality and in accord with the norms of hospitality (the duty of conscience). On the other hand, one is also obligated to appropriate property in such a way so as to promote non-universal communities of those who share in particularities (the duty of love). In order to understand these latter duties properly, we shall have to turn to discuss Schleiermacher's account of free sociability.

2. *Property and Free Sociability: The Ethics of Absolute Property*

That the concept of free sociability constitutes one of Schleiermacher's distinct contributions to the analysis of human action is well-known. First articulated in his Berlin years, much has been

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[54] "Carry out all your uniform [acts of] appropriation whilst reserving the whole of your particularity" E 1816/17 234 (DD.DP.8), 475.

[55] This section is heavily truncated and essentially assimilated to the duty of profession in the 1812/13 version. The later version separates out the duties of conscience and love and places them after a brief reflection on the possibility of having a concept of duty that is strictly focused on the individuality of individuals rather than universal in character. i.e. can there be imperatives that are not only not categorical, but only apply to singular individuals?

written about the ways in which Schleiermacher's experience among the salons and his dalliance with Romanticism inspired an account of individuality, friendship, and the importance of spaces for non-instrumental interaction that would remain determinative for his thought over the course of his life. Often focused on the ways in which the ideal would influence his account of religion, studies of the concept often focus on his 1799 essay "Versuch einer Theorie des geselligen Betragens" (Essay on a Theory of Sociable Conduct) and the first edition of the *Reden* before moving to identify how it continues to shape his views in the mature *Glaubenslehre*.[56] Indeed, the close association of Schleiermacher with the ideal of free sociability and its association with salon culture has often undergirded Marxist-inspired "political" interpretations of Schleiermacher's thought which have – in lieu of actual historical study of Schleiermacher's political biography – sought to characterize him as giving paradigmatic expression to a kind of liberal bourgeois politics as a way of criticizing Schleiermacher's purported influence on modern theological practice.[57]

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[56] The *Versuch* can be found in English translation at Friedrich Schleiermacher, "Essay on a Theory of Sociable Behavior" in *Friedrich Schleiermacher's Essay on a Theory of Sociable Behavior (1799),* ed. Peter Foley (Lewiston, NY: Edwin Mellon Press, 2006), 153-176 and Friedrich Schleiermacher, "Toward a Theory of Sociable Conduct" in *Friedrich Schleiermacher's 'Toward a Theory of Sociable Conduct', and Essays on its Intellectual-Cultural Context*, trans. Jeffrey Hoover, ed. Ruth Richardson (Lewiston, NY: Edwin Mellon Press, 1995), 22-40. For a more recent treatment of the subject that follows roughly this pattern, see esp. Matthew Ryan Robinson, *Redeeming Relationships, Relationships that Redeem: Free Sociability and the Completion of Humanity in the Thought of Friedrich Schleiermacher* (Tübingen: Mohr Siebeck, 2018). To his credit, Robinson's study of Schleiermacher's account of sociability takes into account the 1805/06 *Brouillon*, but noticeably side-steps what he recognizes to be changes to the account that are introduced in the later 1812/13 and 1816/17 editions of the philosophical ethics. Robinson seems to suggest that the main shift is epistemological, arguing that "in 1812/13 and later, Schleiermacher 'deduces' ethics from or by means of *Dialektik*" and that "identifying a freely sociable structure in the later lectures would necessarily include an analysis of the relationship between *Dialektik* and free sociability" (Robinson, *Redeeming Relationships*, 93n74). Putting aside the question of the relationship between the *Ethik* and the *Dialectik*, the political-economic turn that the influence of Fichte's political philosophy would have on Schleiermacher's account of sociability is already discernible in the 1805/06 *Brouillon* in that the account of sociability and friendship is already situated within a discussion of the reciprocity of community and the acquisition of property (proprium).

[57] i.e. Yorick Spiegel, *Theologie der bürgerlichen Gesellschaft: Sozialphilosophie und Glaubenslehre bei Friedrich Schleiermacher* (Munich: Kaiser Verlag, 1968); Dieter Schellong, *Bürgertum und christliche Religion: Anpassungsprobleme der Theologie seit Schleiermacher* (Munich: Kaiser Verlag, 1975); Frederick Herzog, *Justice Church: The New Function of the Church in North American Christianity* (Maryknoll, NY: Orbis Books 1980). See esp. Richard Crouter's response to this trend in Richard Crouter, "Schleiermacher and the Theology of Bourgeois Society: A Critique of the Critics" *The Journal of Religion* 66:3 (Jul 1986): 302-323. More recently, Ted Vial's insinuation that the ideal of free sociability shapes Schleiermacher's view of religion undergirds his attempts to suggest that Schleiermacher's definition of religion reflects a set of unexamined normative assumptions that privilege liberal politics and theories of the self. See Vial, Theodore. "Religion and Politics: Schleiermacher's Reden in the Perspective of Religious Studies" in *Interpreting Religion: The Significance of Friedrich*

While it is certainly true that Schleiermacher's account of free sociability plays a key role in shaping the way he thinks about religious communication, what is often missed in jumping directly from Schleiermacher's early *Reden* to his later *Glaubenslehre* without considering the *Ethik* is that, in the wake of Schleiermacher's engagements with Fichte's political philosophy, his later account of free sociability takes a decisive political-economic turn. No longer just a generic account of friendship and communication, the ideal of free sociability now serves to norm Schleiermacher's account of the acquisition of private property and his analysis of the dynamics of class.

a. Absolute Property: Schleiermacher's Extended Conception of the Body

This shift is apparent as early as the 1805/06 *Brouillon*. Schleiermacher begins his discussion of "organizing activity in its character of uniqueness" by equating it with the question of "absolute appropriation":

> As uniqueness, however, the organizing activity of reason has the character of nontransposability, because in each person a fundamental relationship of the person is expressed that is not applicable to any others. This uniqueness dwells in activity as the impulse of exclusive separating out, of absolute appropriation [absoluten Aneignens]; its result is *proprium* [Eigenthum]. Even here there is no sharp divorce between the person and the person's expansion out of the nature that surrounds it. Both, as products of a person's unique reason, are conditioned through each other. For that reason, both possess the same sanctity.[58]

Fichte would use the distinction between "marked" property administered by the state and "unmarked" absolute property free from state influence to designate the difference between public and private appropriation. Schleiermacher's emphasis that the state of contractuality can both pre-exist and extend beyond the borders of the state will lead him to express the distinction in terms of a contrast between exchangeable and non-exchangeable things and actions, but the basic conceptuality

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Schleiermacher's Reden Über die Religion for Religious Studies and Theology, ed. Dietrich Korsch and Amber L. Griffioen (Tübingen: Mor Siebeck, 2011).

[58] BE 68; 117-118.

remains present. The former stands within the realm of right and is subject to claims and counterclaims within the play of recognition of one's place within the broader whole. The latter lacks this general character and instead bears the mark of the individual's particularity. The basic point remains clear: appropriation is on the basis of the infusion of one's labor into objects. But this cannot be thought of, as Locke does, as a one-sided act performed by individuals in the state of nature. Rather, one needs to recognize "the identity of *proprium* [Eigenthums] and community."[59] The ability to have a sphere of one's own possessions recognized as one's own is contingent on one's recognition of the spheres of others. The appropriation of property is a concept that only makes sense within the context of a community and plays a key role in the generation of that community.

There is, however, one key difference. Fichte's account of absolute property begins with an individual's free sphere of activity, move to an original affirmation of the body as the unique property of any individual, and then extend to the immediate and mediate appropriation of objects which can be recognized as unique possessions by virtue of its spatial proximity to the body or its surrogate. By contrast, Schleiermacher's emphasis on the qualitative uniqueness of each individual would lead him to emphasize that it is not mere spatial proximity to the body that is significant, but whether or not any object bears the stamp of any individual's unique activity. Both will emphasize that appropriation is on the basis of labor and linked to the acquisition of a sphere of objects that one can exclude others from acting upon by virtue of the fact that they are linked to one's own activity. But only Schleiermacher would challenge the givenness of the self and recognize that one's own body is very often also the object of formation.

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[59] "The identity of *proprium* [Eigenthums] and community can also be clarified (3) genetically, because one cannot arise without the other. If one posits a plurality of individuals, absolute appropriation [Absolute Aneignung] is possible only through acknowledgment [Anerkennung] of others, and this acknowledgement presupposes a community of thought set forth, as we have posited it, only as the product of communal impulse." Ibid., 69; 118.

Schleiermacher's positive conception of a sphere of individuality (as a sphere of acquisition that belongs to one by virtue of the way in which it bears the stamp of that individual's activity) rather than a merely negative conception will allow Schleiermacher to embrace an extended conception of the self that recognizes not only one's immediate body, but also all things that it has been formed alongside and which are intrinsically connected to its continuing subsistence and peculiar activity as falling under the scope of the self and deserving of its sanctity. Indeed, Schleiermacher will explicitly contrast his "extended concept of organ"[60] with traditional views which assumed a fundamental property in body which then would extend one's property by the acquisition of external objects:

> [T]his [traditional] scheme rests upon a strict separation between the formation of immediate organs and of mediated organs. This separation, however, is not natural, for neither can be conceived in terms of separation and sequence; rather, the two are strictly conditioned by each other. The development of personal existences determines the assimilation of nature, and vice versa. For that reason, it is better to keep the whole together, and this outlook is what we wish to express in the idea of *culture*.[61]

Fichte would insist against Locke and Kant that appropriation always took place in the context of community. Schleiermacher would go beyond Fichte to emphasize that the very concept of the self is co-constructed in relation to the things on which it works and to which it relates itself. Our bodies cannot be isolated from their environment and the things that make life possible. The adaptation of a tool or an instrument for use is not a mere external addition to a self that can be thought of as abstractable from that instrument, but also an adaptation of one's very body for that tool or instrument. Consider, for instance, how one's spatial awareness when driving can adapt itself to become accustomed to the use of GPS maps, or how one's ability to recall information adjusts

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[60] "In order to understand the full scope of such activity, one must return to an extended concept of organ. This concept is amplified not only through the identity of the physical and the psychological but also through the identity of the immediate and the acquired. Nature that is personal is simply the point from which activity proceeds and apprehends all that can enter into association with it." Ibid., 56-57; 104.

[61] Ibid., 58-59; 106.

depending on whether a piece of information is searchable on the internet or written down in a notebook. Every act of external appropriation is simultaneously a transformation of one's inner organs to adapt to life with that newly appropriated object. Instead of speaking of a distinction between one's body and acquired objects, one ought instead to think of differing body-object complexes and the individual ways of life to which they give expression.[62]

Schleiermacher presents his extended conception of the self as a response to something akin to Rousseau's critique of civilization and culture:

> In ethics there have always been opponents of culture. Such opposition must appear to us as offensive, for without the formation of organs for reason there could be no moral life at all. How can this sort of occupation be seen as the seed of corruption, then? The cause, however, lies in their having torn the idea of culture apart and having set its components against each other individually, for once moral unity is dismembered, naturally only immorality remains.[63]

Rousseau had suggested that, far from advancing morality, the arts and sciences had ironically led to its degradation.[64] For Schleiermacher, Rousseau's denigration of "culture" and valorization of "nature" could only reflect a mistaken separation of the body from the objects of its appropriation that assumed that the former could be seen as existing with its own integrity apart from the latter such that the introduction of the latter could only be seen as corrupting it. Culture, however, should not only refer to the effects that the arts and sciences have had upon a purportedly independent nature, but signifies the particular ways in which bodies and objects have always already been entangled in complex relations of co-formation. What Rousseau thought was a tension between nature and culture actually ought to be recognized as a tension between differing kinds of nature-culture syntheses.

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[62] Long before Donna Haraway's suggestion that humans ought to recognize ourselves as "cyborg" existences entangled with our technology, Schleiermacher has advocated an extended conception of personality and the self. See Donna Haraway, "A Cyborg Manifesto: Science, Technology, and Socialist-Feminism in the Late Twentieth Century" in *Simians, Cyborgs and Women: The Reinvention of Nature* (London: Routledge, 1991).
[63] Ibid., 59; 107.
[64] See Jean-Jacques Rousseau, "Discourse on the Sciences and the Arts" in *Rousseau: The Basic Political Writings, 2nd Ed.* (Indianapolis, IN: Hackett, 2012).

Schleiermacher's conception of the extended self is thus part of his broader perfectionist vision that would insist on the ethical basis of the political. Rousseau had seen the rise of private property as part of the transition from the primitive state of nature towards a more sophisticated, but more selfish society that would require the introduction of a general will to discipline. Kant had built on this characterization by suggesting that the unsocial sociability of humans actually concealed reason's cunning operation in history whereby the tension between the drive towards society and the resistance to that drive could nevertheless lead to a condition where the ends of reason would achieve their purposes as the species-level in spite of individual immorality.[65] States could therefore achieve relations of external justice despite being filled with immoral and selfish individuals. Against Kant's suggestion that a disjunction between the ethical and the political could eventually reconcile itself despite itself, Schleiermacher's response would stress that the ethical basis of sociality can itself be discerned in the formation of property. Instead of a disjunction between the innate and the acquired, the state of nature and the civil condition, Schleiermacher's insistence on the co-construction of one's "internal" and "external" organs and the identity of community and acquisition represents his attempt to provide a positive ground for sociability.

The basic picture set up in the 1805/06 *Brouillon* would be developed into a broader account of the dynamics of sociability of individuals qua individuals in the later lectures, but the contours remain similar. "Property in the narrow sense of the term" is the product of formative activity that expresses the individuality of the individual such that it does not enter into the domain of exchange.[66] It represents that which cannot be acted upon by another without having its distinctive

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[65] See esp. Immanuel Kant, "Idea for a Universal History with a Cosmopolitan Aim" in *Anthropology, History, Education*, ed. Robert B. Louden and Günter Zoller (Cambridge: Cambridge University Press, 2007). For a discussion of Kant's vision of "unsocial sociability" in its relation to Rousseau, see Allen Wood, "Unsocial Sociability: The Anthropological Basis of Kantian Ethics" *Philosophical Topics* 19:1 (Spring 1991): 325-351 or J.B. Schneewind, "Kantian Unsocial Sociability: Good out of Evil" in *Essays on the History of Moral Philosophy* (Oxford: Oxford University Press, 2010), 319-340.

[66] "What is inculcated from external nature takes on the characteristics of the inculcating organs, and cannot therefore be the organ of another without being transformed either into identical schematisms or into another particularity, that is,

character transformed. It is the sphere of activity that is not general, where the interference of another would indeed overwrite one's own activity. My roommate's leaving his clothes on the floor disrupts the order that I have attempted to maintain in my personal space. No matter how much two individuals may be attempting to coordinate their activities, there exists certain bounds where the other's actions do not complement, but conflict with one's own. Yet at the same time, Schleiermacher is keen to insist that even this sphere of absolute property remains oriented toward a particular kind of community. What Schleiermacher had spoken of in terms of the "identity of property [Eigenthum] and community" in the 1805/06 *Brouillon* has now been transformed in 1812/13 into the language of the mutual determination of "property [Eigenthum]" and "hospitality [Gastfreiheit]".[67]

And as with the 1805/06 *Brouillon*, Schleiermacher remains committed to an extended sense of the body that refuses to separate the "formation of the direct organs" and "that of the indirect ones."[68] This conception of human personality is likewise supposed to provide a counterbalance to one-sided polemics against either "nature" (the ancient Cynics and Stoics) or "culture" (the moderns).[69] Schleiermacher continues to reject the Rousseau-ian characterization of the tension between ethics and politics: "To posit evil in the conflict between the will of an individual and the general will is an incorrect formulation, because all progress within a moral whole must proceed

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without the first formation being destroyed. It is accordingly appropriated to become property in the narrow sense of the term, and does not belong in the domain of exchange." E 1812/13 36 (HG.II.77), 288.

[67] "The morality of individual property is conditional upon hospitality, and hospitality in this sense is conditional upon that morality" E 1812/13 37 (HG.II.88), 289.

[68] "If we take away the intensive orientation towards a content of reason, all those things which are necessarily bound together by it then fall apart; 1) an opposition arises between formation of the direct organs (education) and that of the indirect ones (inculcation) … If the extensive orientation is taken away, the intensive one contracts to nothing and reason is there in nature with nothing and to no purpose. Indeed, even the formation of the understanding and the will becomes something inconsequential, because they too are now something external; and if we posit them, we cannot maintain a distinction between what is the human being himself, and what is posited as being outside the human being." E 1812/13 28 (HG.II.17-18), 277-278.

[69] "The modern polemic, which attributes to culture a lack of cognition and a cowardly spirit, is directly at the disintegration into [a multiplicity of] skills, where the higher consciousness of the masses is lost in mechanistical transactions, and at the pleasure content which is all that remains, and which demands to be saved by any possible means." E 1812/13 29 (HG.II.20), 278.

from the conflict of individuals."[70] Rousseau and those following after him have mistakenly interpreted what ought to be seen as a tension between differing individuals and the way in which they represent distinct already-united ways of being in the world as a tension between an atomistic self and a community with property.

b. The Ethics of Absolute Property: Property and Hospitality

Fichte's conception of absolute property was, for the most part, negatively conceived. It represents the realm of *un*marked property that does not have a public referent administered by the state. It therefore marks out a sphere of activity to be characterized by an absence of state intervention. As such, it is not characterized by the state of contractuality and right even if it depends on such a state for its existence. Fichte draws from the basic right to self-preservation to articulate a few minimal norms: exchanges can take place on the basis of trust, and individuals can use coercive force to defend what is theirs. But apart from the insistence that such appropriation assumes that one has fulfilled one's public duty to the state by performing one's professed role in the division of labor and – in the *Closed Commercial State* – that there ought not to exist too great an inequality in these spheres by virtue of the equality that citizens should hold by virtue of being recognized as playing a role in the division of labor, the realm of absolute property is essentially without substantive ethical constraints. It is a sphere for individual freedom and absolute discretion. Although it has a relationship to community – the appropriation of absolute property assumes the existence of the state – it is almost purely a negative relation.

That this should be the case makes sense given Fichte's insistence on there being a distinction between the political and the ethical. Fichte's conception of the state and the community that it constitutes is supposed to be able to sustain itself even if the citizens who constitute it may be

[70] E 1812/13 26 (HG.I.80), 274.

immoral. Thus, the *Foundation of Natural Right* was set forth as a theoretical derivation of the nature of right in abstraction from the dictates of the conditions of external freedom in general.[71] Situated outside the community of the state, the space of absolute property is not to be thought of as itself promoting some kind of sociality with positive ethical norms.

By contrast, Schleiermacher's modified account of absolute property and appropriation remains structured by ethical demands even as it is to remain free from the dynamics of the state. For Schleiermacher, the appropriation of private property does not mark out a domain of absolute freedom whereby one can act entirely in accordance with one's discretion and without any constraints as long as one has not violated the rights of others. Rather, even if independent from the dynamics of the state, the act of absolute appropriation is to play a role in a distinct form of sociality, that of free sociability.

Schleiermacher uses the language of free sociability [freie Geselligkeit] to speak of the distinct kind of community that is formed out of the interaction of individuals by virtue of their individuality (rather than anything that they may have in common). Precisely because this individuality consists in the way that persons appropriate in accordance with their peculiar way of living, it is a community concerned with the interactions of individuals in their absolute property. In keeping with Fichte's vision, it is the realm of the house and of the home.[72] But unlike Fichte, Schleiermacher will insist that it is a sphere normed by the demands of hospitality:

> The morality of individual property [individuellen Eigenthums] is conditional upon hospitality [Gastfreiheit], and hospitality in this sense is conditional upon that morality. The identity of both [property and hospitality] is the essence of sociability, in which the highest forming activity of the person is united with the self-consciousness of reason in the form which underlies that activity.[73]

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[71] Whether Fichte's position is ultimately defensible, however, is another question. For attempts to suggest that Fichte's derivation of right ought to be set on a normative grounding, see Stephen Darwall, "Fichte and the Second-Person Standpoint" *International Yearbook for German Idealism* 3 (2005): 91-113 and Michael Nance, "Recognition, Freedom, and the Self in Fichte's Foundations of Natural Right" *European Journal of Philosophy* 23:3 (2012): 608-632.

[72] "To the extent that house and home denote the domain where particularity is dominant, nothing that belongs to it is available for sale, and this constitutes the moral immovability of posessions." E 1812/13 37 (HG.II.79), 288.

[73] E 1812/13 37 (HG.II.88-89), 289.

After having performed one's role in the division of labor for the sake of the community and having received monetary compensation for the fulfillment of one's duty, Schleiermacher posits that the goal of acquisition for personal purposes is not to be thought of as entirely arbitrary nor solely oriented towards the sustaining of one's bare life, but oriented towards hospitably receiving others.

This is because the realm of individual property is – just as the realm of right – also constituted by relations of reciprocal recognition. But whereas the relation of right is constituted by the reciprocal recognition of the ways in which individuals can be recognized as engaged in a common task, the relation of sociability is constituted by the reciprocal recognition of the ways in which individuals are engaged in a particular, non-transferable kind of formation. One's very ability to be engaged in the task of particular formation presupposes one's recognizing and being recognized by others engaged in the task of forming their own distinct spheres:

> No one regards his own particular formative activity as a moral act, except to the extent that the particular formative activity of others is posited alongside it. …Each formative agent necessarily excludes all the others from his procedures and their results, and for this reason posits himself as excluded in the same way from theirs. Allowing oneself to be excluded in this way, however, can only exist alongside the unity of reason insofar as we can posit at the same time, in one and the same activity, that those who exclude and those who are exclude can only perfect the organism of reason together, in the formative activity they undertake.…All particular formative activity, then, must include the endeavor to have it acknowledged [Anerkenntniß] as such by others, and to acknowledge [anzuerkennen] their formative sphere oneself; and in its unity this perfects the essence of sociability, which consists in the acknowledgement [Anerkennung] of alien property, in order to allow it to be opened up [aufschließen] to oneself, and the opening up of one's own, in order to have it acknowledged.[74]

Schleiermacher's argument runs almost parallel with Fichte's account of right and his derivation of individual spheres of activity explored in the previous chapter. The ability to recognize oneself as

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[74] E 1816/17 195-196 (DG.I.59), 595. Here, I have drawn from the later lectures, but the basic point is already present in the 1804/05 *Brouillon*. i.e. "This fixed *proprium* [Eigenthum] thus has a conditional moral ground, one, however, that is certainly acknowledged by everyone. The contradiction with community is resolved by *proprium*'s being productive for community." BE 70; 120. "The universal form is thus the voluntary admission of others into the sphere of *proprium* [Eigenthums], and since only the one who is observed within this sphere can be known throughout, it must be reciprocal = mutual, open hospitality [Gastfreiheit]." Ibid., 75; 126.

engaged in a moral task that exemplifies the unity of a common human reason in one's act of particular appropriation, Schleiermacher posits, is by virtue of one's ability to recognize others as engaged in a similar task, even as any attempt to interfere in their activity (or to allow one's own appropriation to be interfered with) would actually disrupt it. Instead of an abstract summons, however, Schleiermacher posits that it is through concrete acts of visiting the homes of others and hosting guests that the act of recognition is enacted.

The interrelatedness of acquisition and hospitality for Schleiermacher means that, beyond the demand that one must be able to live off of one's labor, there is a further constraint upon acquisition within the community. One's appropriation can only be recognized as moral to the extent that it can be recognized as oriented towards the sharing of one's life with others in relations of hospitality. Stated in other terms, "the hospitality of the house [is] the counterpart to the householder's right to privacy."[75] The attempt to appropriate that is not accompanied by a willingness to open up one's space for the enjoyment and recognition of others, can only be "a selfish, morbid state where the organ has torn itself away from unity with the whole, and activity and its results no longer appear moral."[76] As with the relation of right, one only appropriates a sphere to oneself insofar as one recognizes and is recognized by others. Without receiving the recognition that can only be given by inviting others into one's own space to observe the way that one's individuality is bound up with it, it cannot be recognized as property in the absolute sense: "For only something that can be an element in sociability constitutes property."[77]

What is the purpose of such hospitality? Schleiermacher names two: firstly, the act of creating a space of one's own contributes to *Bildung* and "enhances an individual's existence" such that it has an influence on all aspects of their activity, including their activity for the sake of the

[75] E 1816/17 215 (DG.II.30), 620.
[76] E 1816/17 196 (DG.I.59), 596.
[77] Ibid.

whole.[78] Secondly, encountering the individuality of others can itself be a stimulus for one's own individuality and lead to imitation and further cultivation.[79] In other words, it is through the reciprocal acts of hosting and visiting that individuals can develop themselves more fully as individuals by inspiring and being inspired by how others live their lives. This is significant because these acts of inspiration can lead to improvement, not only in the realm of absolute property, but in the broader communal sphere of activity as well:

> Since what proceeds initially from hospitality is simply the acknowledgment of the particular sphere, the interest of reason is at first perfectly satisfied by the fact that the particular sphere shows itself to be productive for the sphere of commerce…. In this way the two spheres of formation develop an equilibrium, in that the sphere of particularity needs the other as a basis, but then has a powerful effect on it in its turn.[80]

The appropriation of absolute property is contingent on one's performing one's role in the division of labor, but the division of labor can also be enhanced by creative new ways of doing things originally discovered in the play of individual activity and inspiration. And what was formerly the unique act of one individual can be turned into something exchangeable and usable by others. The unique way in which a friend has modified their cup can become an inspiration for one to do something similar. This can then become the impetus for a new line of cups that now brings what was previously an expression of individual personality out of the realm of absolute property and into the realm of commerce.

Fichte's state of abstract individuals would see the realm of absolute property as a negative sphere of individual freedom to which one is entitled after performing one's labor for the state. By contrast, Schleiermacher's insistence of the co-construction of the individual and the communal

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[78] "[T]he development of particularity itself enhances an individual's existence, so that this also has an influence on his identical activity; and on the other because the more his organs are formed in a particular way, the more he can achieve with them in every domain." E 1812/13 38 (HG.II.91), 289.
[79] "[T]he observation of particularity stimulates particularity in others in its turn, in that they imitate individual processes and apply them to their own more or less highly developed particularity." E 1812/13 38 (HG.II.92), 289-290.
[80] E 1812/13 37-38 (HG.II.90 and 93), 289-290. See also, "Just as property develops out of commerce, so commerce develops in its turn out of the hospitality of property." E 1816/17 217 (DG.II.33), 576.

would likewise see each having a mutual influence on each other. Schleiermacher's communities are constituted by individuals who are able to change the character of the community simply by changing as individuals. Far from advocating a communitarian conception of the state, Schleiermacher criticizes Fichte for not having a sufficient appreciation of the significance of an individuality that lies outside the realm of the state for the benefit of – among other things – the community of commerce that is the object of the state.[81]

3. Beyond Private Property: Commerce and Common Possession

a. Schleiermacher Contra Fichte

But over and above the conception of individual acquisition that Schleiermacher offers in his account of the dynamics of free sociability, Schleiermacher also offers an innovative account of what it means to have property in common. That is, corresponding to Schleiermacher's insistence that acts of reciprocal recognition constitute spheres of collective activity alongside spheres of individual activity is an insistence that there exists a concept of collective ownership alongside individual ownership. The world simply cannot be parceled out into individual lots, but also consists of spheres that are communal and subject to state regulation without being the property of the state. For

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[81] "Nevertheless, the dominant character of ethics, not only for today but almost always having been so, is to be abstracted from individuality. One sees this easily in rationalistic as well as in eudaemonistic systems. …Thus, the actual sphere of such ethics is this community, yet not one that is individualized but one simply left vague. … Two differing methods of dealing with individuality are given in this process of abstracting. One regards individuality either as something to be negated by means of morality or as something utterly alien and accidental to it, something absolutely physical. The first understanding of individuality fully expresses itself in its completeness by establishing one norm for all people and through its view of the state as the higher individuality, partly also under the one norm for all and partly as the task to make itself dispensable. The next basis for interpreting individuality is the confusion of true, natural uniqueness with an acquired one-sidedness arising from habit. The first understanding consists of a distinct relation between organs and functions, while the second understanding consists of a particular attraction of single organs for single objects. Through the first understanding no organ is restricted from any portion of its area, yet this is precisely what happens through the second understanding. … However, the other treatment, which views individuality as something totally accidental and merely a given for morality is no better; for if in ethics one once permits the maxim of viewing something that must be produced as a given, then this maxim will continue to spread ever further. One does, in fact, see this effect. Even the state is seen simply as a given in this view. (This notion appears, for example, when F[ichte] says that one is indeed obligated to enter into the state but not to establish it.)" BE 72-74; 122-124.

Schleiermacher, the existence of a division of labor makes it the case that one cannot simply resolve disputes over ownership into the question of individual ownership and the right to do what one wishes with one's property.

Schleiermacher builds upon and transforms Fichte's two-tiered vision of property in the state. Insisting that property in action was more fundamental than property in things, Fichte would set forth a vision whereby one's exclusive right to a particular role in the division of labor would undergird one's right to the use and possession of things, both "marked" and "unmarked". The latter referred to that sphere of absolute property free from state control appropriated for immediate or future use and recognizable by virtue of its proximity to one's body or its surrogate. The former represented those things necessary for the pursuing of one's role in the division of labor and within the purview of the state's coordination and oversight. In doing so, he sets the stage for a different variation on the familiar distinction between private ownership by individuals and public administration by the state.

What is at stake in Fichte's vision of state-administered property is best captured in his rejection of property in land and embrace of property in action. In the context of a division of labor, one may end up in situations in which differing persons performing differing tasks all have need of access to the same things – i.e. a piece of land. In such a context where the livelihood of each is dependent on their ability to perform their role, to suggest that one is to be given proprietary ownership of the thing such that others may only have access to it at their discretion would effectively make the livelihoods of those others arbitrarily dependent upon the one who owns it, endangering the ability of those entering the division of labor to fulfill their duty to work and exercise their right to live off of their labor. Fichte's solution is to insist that one therefore must have a right to anything that one may need in order to perform one's duty to the state. Property in action therefore safeguards the original right to self-preservation.

Schleiermacher's conception of commerce and common property affirms the basic problematic that Fichte attempts to address while rejecting the particular details of Fichte's solution. In particular, Schleiermacher would find the concept of property in action too unwieldy. In his later 1829-33 *Staatslehre*, for instance, Schleiermacher would characterize Fichte's vision as merely offering a new, non-hereditary version of a theocratic caste system:

> If the extent of the state, whatever its form or order, does not permit the whole to decide individually regarding the individuals, an abbreviated form becomes necessary. One such form is the caste system. ... One generally finds the caste system at the same time as a religious institution and thus as a theocracy because the disadvantage will be accepted as divine fate. Related with this is the caste system of the Fichtean state, relating to it as the Platonic (non-hereditary) aristocracy to the common. The consumers are assigned to certain producers so that these are certain of their subsistence. In this is contained the proposition that needs may not be obtained from outside. …The whole closure, however, is a step back to the original condition of isolated being which is in contradiction with the general ethical tendency.[82]

Schleiermacher's critique is situated within a broader discussion of his claim that "the state takes part in all actions through which the individuals win their subsistence."[83] Schleiermacher's basic point is to suggest that there are many differing ways for the state to respond to the formation of the division of labor and to coordinate the activities of its citizens so as to allow individuals to participate in the division of labor and to make a living off of their labor. These differing ways will correspond with differing forms of government and reflect differing degrees of intervention ranging from the minimal – the state only guarantees each a freedom against interference – to the maximal – the state actively and directly guarantees each their subsistence.[84]

The vision that Fichte sets forth in *The Closed Commercial State*, Schleiermacher suggests, represents a deficient way of trying to address the question of the right to subsist off of one's labor in the context of the division of labor by virtue of its attempt to maintain a certain kind of individual

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[82] Schleiermacher, KGA II/8, 121-122. Translation mine.
[83] Ibid., 121.
[84] Ibid.

independence in the midst of community. Instead of admitting that the interdependence of individual and community requires admitting that the community must be able to have a say in the lives of individuals, Fichte's attempt to grant to each an unchanging and exclusive sphere of their own merely results in an ossified division of labor that cannot adapt to changing circumstances and that can only respond to the vagaries of chance and changing market conditions by closing itself off, an anti-social tendency that goes against the way in which appropriation ought to lead towards sociability and the possibility of new forms of commerce. That is to say, Schleiermacher's rejection of Fichte's conception of property in action is exactly what one would expect given Schleiermacher's critique of the negative individuality of Fichte's liberalism in the face of his positive account of the co-construction of the individual and the community.

As we have already seen in the previous chapter, the question of how multiple individuals can operate within the same sphere of activity or on the same object without overriding and canceling one another's actions is exactly the question that was at stake in Schleiermacher's derivation of the interdependence of community and right. Individuals have to be able to be recognized as operating in a way that is complementary to one another (so as not to be working at cross-purposes) and possess or produce exchangeable organs (so that the products of one's labor are not so idiosyncratic so as to lose their character entirely when removed out of the sphere of one's personal possession). It is precisely the way in which individuals are capable of mutually cooperating with one another in a shared endeavor that characterizes the state of right. And precisely because the recognition of other individuals implies for Schleiermacher not only the formation of separate individual spheres, but also a common one, when it comes to the question of the appropriation of property, Schleiermacher will affirm a sphere of common property alongside that of the particular.

b. Non-Statist Collective Property

Schleiermacher's discussion of this topic is not as developed as his account of individual appropriation and absolute property, but that he affirms such a category of common possession is beyond doubt. The 1805/06 *Brouillon* discusses the possibility of raising a personal talent to the level of an organ with the "character of absolute community [absoluten Gemeinschaftlichkeit]."[85] In 1812/13, Schleiermacher will set the contrast between "common possession [Gemeinschaftlicher Besitz] and possessed community [besessene Gemeinschaft]" alongside the contrast between "all property-sociable [Eigenthum gesellig] and all sociability property-forming [Geselligkeit Eigenthum],"[86] suggesting that there is a communal version of the distinction between appropriation and hospitality. Finally, in 1816/17, speaking once again in the context of the development of personal talents (which Schleiermacher now speaks of in terms of dexterities [Geschicklichkeiten]), Schleiermacher will insist that "Both of these things, division of labor and exchange, are conditioned upon the community of the direct organs, which are both [dexterity and thing] at once, so that what is said of each is true of both."[87] The langauge of common possession is used to designate those organs which play a role in the production of things designated for common exchange. They are not only a reflection of natural talent or disposition, but the product of deliberate formation so as to play a specialized role in the division of labor.[88] They are both grounded in a natural disposition that may not be universally accessible to all and the deliberate product of social formation for a particular social purpose. They are thus both "dexterity" and "thing", a natural-moral hybrid.

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[85] BE 48; 94.
[86] E 1812/13 23 (HG.I.55),
[87] E 1816/17 210 (DG.II.20), 613-614.
[88] "For things are not necessarily isolated and divided in the same way as dexterities, and so the same person cannot do everything equally well with regard to all those things that are to be formed, so that we find a community of activity directed towards the same thing, whereas it can in fact only become the property of a single person." E 1816/17 210 (DG.II.20), 614.

As with his treatment of property in body, Schleiermacher seems far more sensitive to the ways in which the bodies of individuals are themselves the object of formation for social purposes. As a result, Schleiermacher's concept of collective property thus seems to be oriented both towards what Marx may refer to as the "means of production" and the ways that individuals adapt their very bodies to the role that they may play in the division of labor.[89] Indeed, while Schleiermacher indeed affirms that the body remains the most irreducibly particular and therefore non-transferable objects of personal appropriation,[90] he will also insist that, to the extent that one's body becomes inextricably tied to one's role in the division of labor and therefore the well-being and preservation of others, it, too, can rise to the level of common property. "In a certain sense, then," Schleiermacher writes, "we can even regard the individual limbs, with reference to the way they are used, as the object of commerce."[91]

In one sense, this would seem to be nothing radical. Political philosophers from Locke to Kant have long affirmed the possibility of owning – not another's body – but the right to the use of another's body.[92] In insisting that one's body can become the object of commerce, Schleiermacher is merely affirming the age-old idea that people can earn a living by means of contracting away their labor. But Schleiermacher goes beyond this to suggest that parts of one's body – by virtue of the fact that it now plays a crucial role in the division of labor – actually attain to the status of collective property. That is, it is not so much that another individual has gained the right to the use of ones's body, as that parts of one's body now have a public significance such that no one person has an exclusive proprietary claim to it. This may not be quite as radical as it sounds. Public officials

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[89] Consider, for instance, the definition of the means of production found in Karl Marx, *A Contribution to the Critique of Political Economy*, trans. S.W. Ryazanskaya (London: Lawrence & Wishart, 1971).
[90] "The most confined formative domain in this sense, the smallest unity given to us, is the human body, each constituting one especial body for one especial human soul; thus life [constitutes] the most completely self-contained and non-transferable property." E 1816/17 186 (DG.I.43), 583.
[91] Ibid.
[92] i.e. In the *Metaphysics of Morals*, Kant will speak of owning the deeds of others.

become public persons whose lives and bodies are subject to obligations (and gain privileges) by virtue of their service to the state.[93] What is different about Schleiermacher's approach is the way in which collective property is indexed not to its role in the state, but to its place within a community's formative organs and the role that it may play in its division of labor. Collective property is about economic production, not political relations of subordination and obedience. Thus, even if Schleiermacher will ultimately affirm that property claims will take on a stable status ultimately only in the state, it is not the relation to the state that gives a collective organ its collective quality, but its relation to the community of formation that the state perfects.[94] Common property marks out a horizontal, rather than a vertical relation.

The difference that this makes becomes even clearer once one considers Schleiermacher's more detailed discussions of the ways in which bodies and things are modified for the sake of identical forming activity. Schleiermacher will use the term "gymnastics [Gymnastik]" to refer to "the formation by reason of all the capabilities of the senses and the talents invested in human nature."[95] The term "mechanics [Mechanik]" is then used to refer to "the formation of inorganic nature to be the tool of the senses and of talent."[96] Finally, the term "agriculture [Agricultur]" is used to refer to "The formation by reason of lower organic nature in order to serve higher human nature."[97] Between these three categories, Schleiermacher thinks that he has for the most part encompassed the extent of organs that play an extended role in human society: human bodies, mechanical tools, and animal and vegetable life. In keeping with his insistence that the body is

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[93] Nor is this a recent phenomenon. Ernst Kantorowicz has made a classic study of the way in which European monarchs have long been interpreted as possessing a public as well as a private body. See Ernst Kantorowicz, *The King's Two Bodies: A Study in Medieval Political Theology* (Princeton: Princeton University Press, 1957).

[94] "It is the state which first gives rise to the ultimate, complete form for contract and property, and determines criteria for their existence and violation which are generally valid, since in the horde the necessary external aspect is lacking, and for this reason restitution is only ever a private matter." E 1812/13 74 (HG.III.102), 338.

[95] E 1816/17 205 (DG.II.7), 607. See also, E 1812/13 27 (HG.II.7), 276.

[96] E 1816/17 205 (DG.II.8), 608. See also, E 1812/13 27 (HG.II.10), 276.

[97] E 1816/17 206 (DG.II.9), 608. See also, E 1812/13 27 (HG.II.12), 276.

formed alongside its environment, he will insist both that "Mechanics cannot exist without gymnastics, however, just as the latter cannot exist without the former"[98] and that "Farming, just like mechanics, is connected with gymnastics."[99] All three are also connected with signifying activity, which he will designate in with the language of "collection [Sammlung]": "Indirect organic use, whether of the organic or the inorganic, is the bringing together of the individual entities according to similarity and diversity in order to become an organ of cognition."[100] In addition to the formation of organs for the sake of producing things, Schleiermacher is keen to note that organs can be organized for scientific purposes as well.[101] Here, the goal is not the production of a thing, but of knowledge, of the cognition of similar things under a concept or the distinguishing of differing things by means of a judgment.[102]

Again, Schleiermacher is keen to insist that one should not attribute an undue priority to the body by understanding gymnastics to somehow be capable of existing in a form prior to and abstracted away from the actual activities with which the body is engaged in the world. Gymnastics and mechanics mutually condition one another. One adapts one's body to the use of machines and also designs machines in accordance with what it is possible to achieve with the body. This is not merely a matter of material formation, but also intellectual to the extent that developing the ability to sense and judge how well one is engaged with a tool is a key aspect of its use. Similarly, Schleiermacher will also insist that bodies develop in interaction with the land, life, and fauna that it cultivates for its own life and survival. One's relationship to the land and the life that it gives rise to

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[98] E 1816/17 205 (DG.II.8), 608.
[99] E 1816/17 206 (DG.II.9), 608.
[100] E 1816/17 206 (DG.II.10), 608-609.
[101] That scientific instruments are what Schleiermacher have in mind is clear, not only from his insistence that he is concerned about "organs of cognition" but also from Schleiermacher's explicit discussion of scientific instruments in his discussion of collection in the 1805/06 *Brouillon*: "Cumulation of scientific instruments, a purely preserving activity [Sammlung des wissenschaftlichen Apparates, rein erhaltende Thatigkeit]. Transition to the area of the cognizing function." BE 57; 105.
[102] Schleiermacher would argue that knowledge exists in the form of both concepts and judgments in his *Lectures on Dialectic*.

is thus a constituent aspect of one's very self to the extent that the body adapts itself to a particular climate and diet. This will be, as we shall see in chapter five, significant for Schleiermacher's broader account of race and personhood.

It is when Schleiermacher's account of gymnastics, mechanics, agriculture, and collection intersects with the division of labor that one gets a closer glimpse at how he thinks about collective property.[103] Although individuals may be engaged in these activities outside of a division of labor, Schleiermacher is keen to emphasize the ways that they are transformed once one is operating in the context of a community and not just alone. But even if "division of labor extends to all formative domains," Schleiermacher also notes that it does so "in an unequal way."[104] Firstly, "It [the division of labor] is at its weakest in gymnastics; since each individual must after all exercise all his functions, for otherwise reason would not completely inhabit his nature."[105] Even if there are ways in which parts of one's body may be swept up into the division of labor and thus acquire the status of communal organs, there are nevertheless many bodily functions and activities that simply cannot be separated and divided up. These remain irreducibly particular. On the farthest extreme,

> It is at its strongest, on the other hand, in the domain of collecting; here, inclinations of a highly individual nature appear to be [mere] amateurism and idiosyncrasy, and the whole – inasmuch as it derives from the activity of individuals – quite fragmented. Indeed, lying as it does on the boundary between organizing and symbolizing activity, we can say that there is no moral necessity posited for there to be an especial talent of this kind in each individual, for the moral property of each person is the apparatus he collects so that he himself can be recognized from it.[106]

The organizing of organs for scientific purposes stand at the opposite extreme.[107] Although they do involve formation, their purposes are oriented more towards the dynamics of knowing rather than

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[103] In what follows, I will mostly be drawing on the account in the 1816/17 lectures, but Schleiermacher can be seen to have discussed gymnastics, mechanics, agriculture, and collection as early as the 1805/06 *Brouillon*. See esp. BE 57; 105.
[104] E 1816/17 209 (DG.II.18), 612.
[105] Ibid.
[106] E 1816/17 209 (DG.II.18), 612-613.
[107] In this sense, Schleiermacher can be seen to be foreshadowing the "experimental" turn in the history and philosophy of science which has seen a significant rise in focus on the key role that experimental apparatuses play in scientific practice. In the words of Ian Hacking, there has been a shift from a focus on "representing" towards "intervening",

the dynamics of appropriation. As opposed to the moral property that individuals appropriate for the sake of allowing themselves to be recognized as the individuals that they are in relations of hospitality, the ideally formed scientific apparatus is one which ideally lacks any specific individual referent at all even as it has to be operated by an individual. Between the extremes of gymnastics and collection lie mechanics and agriculture.[108]

The degrees to which these may participate in the division of labor mark out the degrees to which they may rise to the character of community and become collective organs:

> It is equally true of this community that it runs through all the formative domains; it is at its weakest in gymnastics, where it is primarily only teaching and education itself, and at its strongest in the domain of collecting, where nothing can be achieved without the united [efforts] of several people.[109]

Bodies participate in community the least, but the collective character can nevertheless be discerned in those aspects where some degree of education is required to pass on a particular way of forming the self. If one needs to be taught how to comport one's body to engage with a particular machine, animal, or instrument, it is a bodily formation that reflects something of the community rather than one's own idiosyncracy. On the other hand, scientific instruments become the paradigmatic instance of collective property, and all the more so on account of the fact that they are organs that often involve significant collective effort to operate and those whose bodies are formed to interact with

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especially among historians and philosophers of physics working in the wake of quantum mechanics. In parallel, historians of biology have begun to emphasize the important role that "model organisms" play in the modern biological sciences. See Ian Hacking, *Representing and Intervening: Introductory Topics in the Philosophy of Natural Science* (Cambridge: Cambridge University Press, 1983); Hans-Jörg Rheinberger, *Toward a History of Epistemic Things: Synthesizing Proteins in the Test Tube* (Stanford: Stanford University Press, 1997); Nancy Cartwright, *The Dappled World: A Study in the Boundaries of Science* (Cambridge: Cambridge University Press, 1999); Joseph Rouse, *How Scientific Practices Matter: Reclaiming Philosophical Naturalism* (Chicago: University of Chicago Press, 2003); Karen Barad, *Meeting the Universe Halfway: Quantum Physics and the Entanglement of Matter and Meaning* (Durham, NC: Duke University Press, 2007); and Angela N.H. Creager, Elizabeth Lunbeck, and M. Norton Wise, eds., *Science without Laws: Model Systems, Cases, Exemplary Narratives* (Durham, NC: Duke University Press, 2007). For an example of how these trends are starting to affect the interpretation of the early German Romantics and Idealists, see Jelscha Schmid, "Schelling's method of Darstellung: Presenting nature through experiment" *Studies in History and Philosophy of Science Part A* 69 (June 2018): 12-22.

[108] "Between these two we find mechanics and farming, with the requirement that each person practice something of both, since otherwise the connection between human nature and external nature would not be posited morally in him." E 1816/17 209 (DG.II.18), 613.

[109] E 1816/17 210 (DG.II20), 614.

them are supposed to cognize, not in an idiosyncratic manner, but on behalf of the community as a whole.

In between, the machines that may require some degree of special training to operate and the land whose distinctive character may require some degree of familiarizing to cultivate participate in both a collective (in that many people may be involved in the process) and particular (in that not everyone in the division of labor will be capable of engaging in the task) dimension. In accordance with Schleiermacher's theory of right, the extent to which one's contribution to the collective task involves the use of the organ and the extent to which the lives of others are dependent upon one's use of the organ will no doubt effect the strength of one's claims to the object. Schleiermacher's belief that a kind of collective ownership is compatible with the need of multiple differing agents to engage in their respective tasks using the same thing or land will allow him to affirm that which Fichte does not: property in land. Land, Schleiermacher will suggest, is another (collective) possession of a people: "Essentially people and soil belong together, and for this reason the soil is the first object, for everyone, of the force of attraction exercised by love, so that a people must always feel it to be theft when it forfeits some part of the soil it originally inhabited."[110] Like Locke, Kant, and many others political philosophers throughout the ages, Schleiermacher seems to attribute particular significance to property in land. But this property is not to be thought of in terms of the complete apportionment into individual lots or the setting aside of certain parcels to be administered specifically by the state. Rather, it is to be thought of as a collective possession, compatible with a non-exclusive collective use in which differing persons all can be said to possess rights to it.

[110] E 1812/13 77 (HG.III.129), 343.

IV. Conclusion: Schleiermacher's Critique of Political Economy

1. Schleiermacher and Marx

Our exploration of Schleiermacher's theory of property demonstrates how his commitment to the positivity and communally embedded conception of right allows him not only to develop an ethic of private property centered around the demands of free sociability but also to develop a distinct way of thinking about collective property in which organs, though usable by individuals, become the object of common possession. Most significantly, however, Schleiermacher's insistence that personal appropriation and the existence of communal organs reciprocally determine one another means that, in a Schleiermacherian society, disputes over property and use cannot simply be reduced back to the question of proper ownership and the right to dispose of one's property at one's own discretion. This is both because the appropriation of personal property is to be normed by the demands of hospitality and because not every organ can easily be traced back to an individual proprietor.

Schleiermacher therefore provides an interesting ethical and political framework by means of which one might be able to leverage a political economic critique of societies shaped by property regimes that reflect differing ways of thinking about the relationship between private and public property. Like Marx, for instance, Schleiermacher offers categories for the critique of societies structured by liberal assumptions about the individual ownership of property that can result in a divide between labor and capital, those who purportedly own only their bodies and those who own the means of production and the right to the labor of others over and above their bodies. For Schleiermacher, as with Marx, the fact that industrial workers could be treated as not having a right to the products of their labor would similarly constitute a form of alienation or injustice. That this would be the case ought to be unsurprising given the ways in which both their theories of property

can likely be traced back to that of Fichte, who similarly emphasized the connection between labor and appropriation.

Similarities aside, Marx and Schleiermacher nevertheless offer very different analyses of how to make sense of and respond to this alienation, differences which reflect the very different way they think about the relation between the individual and the communal. In *Das Kapital*, Marx would famously develop his account of the commodity by distinguishing between use-value and exchange-value.[111] The former has to do with the concrete, physical qualities that characterize a particular object when infused with human labor; the latter, by contrast, has to do with the abstract, quantitative proportion that arises when differing objects are exchanged for one another.[112] If the former has a fixed, absolute value linked to the amount of labor-time necessary for an individual to produce the object; the latter's value is necessarily relative and a reflection of the social relations that characterize exchange. For Marx, the possibility of alienation will arise precisely because "the exchange relation of commodities is characterized precisely by its abstraction from their use-values."[113] This is not to say that the existence of exchange value is itself a problem. Insofar as exchange is a necessary condition of the division of labor, commodities will necessarily have to possess both a use-value and an exchange-value. Where things go wrong for Marx is in the possibility of commodity fetishism, the way in which the social relations that characterize exchange value are reified and mistakenly viewed as reflective of an objective value, thereby allowing the processes of production – which are themselves a social product of relations of exchange – to take

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[111] See Karl Marx, *Capital: A Critique of Political Economy, Vol. I*, trans. Ben Fowkes (London: Penguin Books, 1990).
[112] "The usefulness of a thing makes it a use-value. But this usefulness does not dangle in mid-air. It is conditioned by the physical properties of the commodity, and has no existence apart from the latter. …Exchange-value appears first of all as the quantitative relation, the proportion, in which use-values of one kind exchange for use-values of another kind. This relation changes constantly with time and place. Hence exchange-value appears to be something accidental and purely relative, and consequently an intrinsic value, i.e. an exchange-value that is inseparably connected with the commodity, inherent in it, seems a contradiction in terms." Ibid., 126.
[113] Ibid., 127.

on an objective existence that mistakes a relation between persons as a relation between objects.[114] When exchanges are further distanced from their ultimate purpose of attempting to realize use-value and instead reoriented towards the further accumulation of exchange-value, one has now stepped into the domain of capital.[115] The rest of *Das Kapital* is dedicated to an exposition of the historical and social dynamics of a world in which the mistaken reification of exchange-value results in the subjugation of what ought to be free human laborers entering into relations of production and exchange to blind material processes. The key to recognizing the arbitrariness of this, Marx insists, is a recovery of the recognition of the objectivity of the true nature of value, which lies in the labor that is invested into objects and which establishes the ground of the actual equality of all humans.[116]

The dynamics of Marx's dialectical materialism thus hang on a fundamental disjuncture between the individual and the community, the concrete and the abstract. Although influenced by Hegel's critique of Fichte, Marx nevertheless ultimately retains the basic way in which Fichte's account of recognition and right sees the sphere of community, not as a positive and material space standing alongside that of the individual as Schleiermacher does, but as a space standing over and against otherwise self-contained individual spheres of freedom and activity. Thus, despite the emphasis on sociality, Marx's account of labor and use-value remains oddly individualistic:

> Objects of utility become commodities only because they are the products of the labour of private individuals who work independently of each other. The sum total of the labour of all these private individuals forms the aggregate labour of society. Since the producers do not come into social contact until they exchange the products of their labour, the specific social

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[114] "It is however precisely this finished form of the world of commodities – the money form – which conceals the social character of private labour and the social relations between the individual workers, by making those relations appear as relations between material objects, instead of revealing them plainly." Ibid., 168-169.

[115] "The first distinction between money as money and money as capital is nothing more than a difference in their form of circulation. The direct form of the circulation of commodities is C-M-C, the transformation of commodities into money and the re-conversion of money into commodities: selling in order to buy. But alongside this form we find another form, which is quite distinction from the first: M-C-M, the transformation of money into commodities, and the re-conversion of commodities into money: buying in order to sell. Money which describes the latter course in its movement is transformed into capital, becomes capital, and from the point of view of its function, already is capital." Ibid., 248-249.

[116] "Equality in the full sense between different kinds of labour can be arrived at only if we abstract from their real inequality, if we reduce them to the characteristic they have in common, that of being the expenditure of human labour-power, of human labour in the abstract." Ibid., 166.

> characteristics of their private labours appear only within this exchange. In other words, the labour of the private individual manifests itself as an element of the total labour of society only through the relations which the act of exchange establishes between the products, and, through their mediation, between the producers.[117]

Unlike Schleiermacher's insistence on the possibility of multiple people collectively working together on the same object without overwriting one another's labor, Marx remains within the Fichtean assumption that individual spheres of activity are required if one is to be capable of exercising their free activity. Thus, the sphere of exchange, community, and money is seen as being opposed to and distinct from the sphere of private production rather than a complementary co-construction.[118] Collective labor is conceived of as the aggregate sum of individuals laboring together rather than as a distinct sphere of collective activity existing alongside the sphere of individual labor and appropriation. The problem of capitalistic accumulation and the alienation of workers from the products of their labor is thus interpreted by Marx as a misrecognition of the equal labor value that every worker invests into their object in favor of the domination of an exchange value that has swung entirely free from the social sources of real value and replaced with the pursuit of unending individual accumulation. Thus, the ideal is likewise seen in terms of a transition from individual to collective ownership of the means of production and the proper distribution of commodities in accordance with individual labor-time and need.[119] Exactly how this transition is to take place is the

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[117] Ibid., 165. Or, again: "Only the products of mutually independent acts of labour, performed, in isolation, can confront each other as commodities." Ibid., 132.

[118] For the sake of brevity, I have not delved into a deeper discussion of Schleiermacher and Fichte's differences on the nature of money and the possibility of a state-backed fiat currency. Fichte would continue to champion paper money even in the aftermath of the failure of the French Republic's attempts to enact a new national currency, while Schleiermacher would take the failure to suggest that one cannot entirely divorce currency from actual use-value. Thus, for Schleiermacher, persuasion and money are reciprocal concepts that cannot be entirely divorced from one another while for Marx and Fichte, money can hang entirely free from the value of the medium used for it.

[119] i.e "Let us finally imagine, for a change, an association of free men, working with the means of production held in common, and expending their many different forms of labour-power in full self-awareness as one single social labour force. All the characteristics of Robinson's labour are repeated here, but with the difference that they are social instead of individual. The total product of our imagined association is a social product. One part of this product serves as fresh means of production and remains social. But another part is consumed by the members of the association as means of subsistence. This part must therefore be divided amongst them. The way this division is made will vary with the particular kind of social organization of production and the corresponding level of social development attained by the producers. We shall assume, but only for the sake of a parallel with the production of commodities, that the share of

still the subject of much dispute among Marxists today, but that some shift from individual consumption to social coordination is required is not in question.[120]

By contrast, Schleiermacher's insistence on the co-construction of individual and communal spheres of appropriation already offers a different way to make sense of the situation. The problem with a society shaped by individual consumption and ownership is not so much a false reification of the social to be replaced with a proper appreciation of the social, but the failure to recognize the way that the very functioning of the division of labor already depends on the implicit recognition of several spheres of collective ownership alongside private appropriation. For Schleiermacher, the adoption of a concept of labor value based on time invested already gives too much to the liberal conception of property with its willingness to divide between innate and acquired property. The exchange between labor and capital ought to be seen not as a contract in which one compensates the other for the use of their body, but as the creation of a sphere of collective property to which all involved persons possess a claim – to the extent that the minds and bodies of each are adapted to playing some role in the collective production of objects of commerce by means of common organs.

The monetary compensation that the worker receives is not for the use of one's body, but in exchange for the product of their collective labor and in proportion, not to labor-time, but to the particular role that is played. By virtue of the fact that the laborer adapts his body *gymnastically* to engage with the means of production *mechanically*, they expand their personality to include those means of connection as part of their extended selves to the extent that they play a role in the

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each individual producer in the means of subsistence is determined by his labour-time. Labour-time would in that case play a double part. Its apportionment in accordance with a definite social plan maintains the correct proportion between the different functions of labour and the various needs of the associations. On the other hand, labour-time also serves as a measure of the part taken by each individual in the common labour, and of his share in the part of the total product destined for individual consumption." Ibid., 171-172.

120 For broad historical overviews of the various currents in Marxist theory, see Leszek Kolakowski, *Main Currents of Marxism: Its Rise, Growth, and Dissolution,* 3 vol., trans. P.S. Falla (Oxford: Clarendon Press, 1978), Perry Anderson, *Considerations on Western Marxism* (London: New Left Books, 1976), and Christoph Henning, *Philosophy After Marx: 100 Years of Misreadings and the Normative Turn in Political Philosophy* (The Hague: Brill, 2014).

collective task. Likewise, others engaged in the task gain a right to the aspects of their body now formed for the task to the extent that they, too, play a role in the task. While the play of recognition may still be fierce and disagreements over the moral worth of the respective contributions of each individual may persist, the debate is not to be resolved by virtue of one individual or collective claiming proprietary ownership over the means of production and the products of the enterprise. Collective ownership is not a question of the aggregation of individuals, but an immanent affair involving individuals who are no longer acting merely on their own behalf, but as complementary and representative parts of a whole. Their actions cannot be conceived as isolated and interpreted in terms of an abstract equality, but they stand in relations of right to the degree that they participate in this communal sphere of activity and by virtue of the way that they participate. Indeed, to the extent that it is one's labor that entitles one to appropriate and to stand in a relation of right, someone who merely claims individual proprietorship and plays no real role in the actual process may find themselves with very little claim to the collective organs at all.

2. *Schleiermacher on the Stände*

How, then, does Schleiermacher make sense of the historical reality of serfdom and the practice of collecting rent on land that one seemingly plays no role whatsoever in cultivating or collecting profits on products that one does not play a role in manufacturing? Can it only be interpreted in terms of the violence of misrecognition and the failure to realize the reality of this collective sphere? Schleiermacher's vision of collective property may offer an intriguing new angle to approach the question of economic justice, but it is also accompanied by a different way of understanding inequalities in the realm of individual appropriation. If classes are not to be differentiated by their relative degrees of material well-being precisely because all participate collectively in the realm of right by virtue of their situation within the division of labor,

Schleiermacher will nevertheless suggest that social differences can only represent moral differences in the realm of individual appropriation that marks out the bounds of relations of free sociability, picking up on the old language of the estates to designate these groupings: "The variety of the formative levels is the content of the moral concept of *class* [Stand], and identity within a class [Stand] closes off the sphere of free sociability."[121] Even if appropriation is supposed to be contingent on hospitality, Schleiermacher is aware that it is easier to host some rather than others on account of similarities (not necessarily in the roles that persons may play in the division of labor) in the way they appropriate and express their own individual personalities.

On the one hand, Schleiermacher seems keen to emphasize the ultimate equality of the various estates: "The identity of the type which runs through all the activities of the formative function and is defined by the character of a particular formative level or class [Stande] is *custom* [Sitte]. Every real, genuine custom is therefore as good as any other."[122] Indeed, on account of this equality, Schleiermacher is keen to emphasize that other spheres of society must take care to not allow the differences in estates to affect the way they organize their own social dynamics. Thus, "In the church public worship must be absolutely popular, uniting all the classes [Stände] and then the more religious interest predominates, the more social connections are formed on this basis, proceeding outward from public worship without being too precise about class boundaries [die Grenze des Standes]."[123] Likewise, "Every state must have institutions with which to unite the [different] classes and the same will be true of these according to the level of political interest."[124] One's social standing in terms of individual appropriation is not to play a role in determining one's status in the church or the state.

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[121] E 1812/13 96 (HG.III.237), 367. Note: Louden's decision to translate Stände as "class" can be quite misleading here.
[122] E 1812/13 96 (HG.III.240), 367.
[123] E 1812/13 98 (HG.III.256), 370.
[124] E 1812/13 98 (HG.III.257), 370.

On the other hand, however, precisely because the sphere of free sociability cannot be reduced to that of the other spheres of society and has dynamics of its own, there is also a sense in which the existence of differing levels of formation may also lead to significant inequality. Precisely because some individuals have realized their individuality to a greater degree than others, relations of what is supposed to be reciprocal hospitality can turn increasingly one-sided. The one who has put a lot of thought into organizing their house may have a hard time appreciating the order of the one whose slovenliness is not a matter of design but of incapacity. One person who has a sophisticated taste in music might find it difficult to appreciate someone who has barely developed their ear. At its most extreme, one can even begin to question whether the other even can be said to genuinely possess moral property on account of the inability to recognize the deliberate imprint of the individual's labor:

> If it [dissimilarity] is at the same time bound up with the greatest possible difference of [developmental] intensity, one particularity developed to the highest degree, the other still completely repressed, then acknowledgment [Anerkennung] cannot take place. In undeveloped particularity the only moral event that can take place is the honoring of developed particularity, which can be acknowledged [anerkennende] even where it is not understood; developed particularity, however, can only consider formative power in the first-mentioned as raw material, in terms of its particular side, but cannot begin to accept it as a closing off [into] property [Eigenthums].[125]

If the failure of reciprocal recognition in the realm of right results in violence, the failure of reciprocal recognition in the realm of sociability constitutes serfdom [Eigenbehörigkeit].[126] Schleiermacher, in what may seem to be an odd claim, will insist that this is acceptable on the assumption that no rights are violated and that the relation is oriented towards the education of the

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[125] E 1816/17 216-217 (HG.II.32), 621. See also E 1812/13 39 (HG.II.104), 291.

[126] "When large masses which are so very different come into contact, this gives rise to a relationship of serfdom. All houses belonging to the one mass are destroyed as houses in their own right and absorbed into the others as mere components, bodies included, in order to be truly permeated by particular formative power." E 1816/17 217 (HG.II.32), 621.

less-developed.[127] That is, to the extent that the one standing in a relation of non-sociable-recognition to the other participates in the division of labor, they cannot be denied their right to appropriate, even if they may not do a good job of putting their own individual stamp on what they do attempt to appropriate. In this sense, Schleiermacher's conception of serfdom is to be distinguished from slavery, which is the product of a one-sided relation in the realm of right and *is* to be considered immoral.

Is such a relation possible? Have historical relations of selfdom existed that did serve educational purposes without violating the rights of those enclosed within the households of others? Schleiermacher certainly seemed to have thought that there were.[128] Though Schleiermacher introduces strict boundaries – no rights violated, solely for the benefit of the serf, and sustainable without violence – those committed to liberal commitments regarding the dignity and equality of all may find it difficult to accept Schleiermacher's embrace of such a category even if one may find his account of collective property and right intriguing. Selfdom is, one could say, one of the "dark sides" of a perfectionist conception of society that refuses to grant sole preeminence to the state and the realm of right. Yet to the extent that Schleiermacher insists on a *moral* rather than a merely juridical conception of private property, one that is linked to one's ability to infuse one's own labor and distinct touch into the things that one claims, the existence of inequality is almost unavoidable given the differing degrees of attention, skill, and scope that differing individuals may approach the appropriation of property for home use.

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[127] "This relationship [of serfdom] is only immoral if the state of right is superseded and the individual rendered incapable of acquisiton, and further, if it is not directed towards the development of particularity so that the one is superseded at the same time as the other." E 1816/17 217 (HG.II.32), 621-622.

[128] "Serfdom, as a purely educative relationship, and within these limitations, considering also how it has always been a great historical tool and has often persisted purely as an inner attitude, without any external force, should decidedly not be regarded as an immoral excrescence." E 1816/17 217 (HG.II.32), 622.

3. Summary

In this chapter, I have sketched out the basic contours of Schleiermacher's theory of property against the backdrop of Fichte's account of property and appropriation in the state. Schleiermacher's insistence on the way that right must be grasped as a positive concept within the context of the co-construction of both communal and individual spheres manifests itself in the form of a very different conception of individual and collective property. The appropriation of absolute property in exchange for one's contribution to the collective division of labor is to be normed by the demands of hospitality and constitutes the sphere of free sociability whereby what matters most is the degree of individuality that is expressed by one's possessions. By contrast, the formation of a sphere of collective activity necessitates the existence of collective organs to which all those who have complementary roles in a given division have a right.

Schleiermacher's indebtedness to Fichte and the political-economic turn that he takes thus sets his theory apart from many standard liberal approaches to the question of property and appropriation. With Fichte, and against figures such as Locke and Kant, Schleiermacher would reject the conception of unilateral appropriation outside the context of community. And with Fichte (and Locke), Schleiermacher would affirm that appropriation is to be on the basis of one's labor, and not something like first occupation. But against Fichte and most other liberal theories of right, Schleiermacher would reject the sharp distinction between innate and acquired property and instead insist on an expanded conception of personhood and immediate possession that extends beyond one's immediate body to include the organic and inorganic things that one has accommodated oneself to in one's life and work. And against the way that most liberal theories distinguish merely between private individual property and public state property, Schleiermacher conceives of an additional sphere of collective property that exists by virtue of the ways that individuals relate to one another in the division of labor. Not only does this provide a new angle to think about property in

land and the collective ownership of the means of production, but it also provides categories to think about the politics of science and the status of scientific instruments within the realm of right. To the extent that liberal theories that operate along different lines have come to dominate our society and politics today, Schleiermacher's creative approach to property and right may represent an intriguing alternative perspective from which one may be able to develop new critiques.

Chapter 4: Democracy and Representation: Schleiermacher's Revisionist Republicanism

"This question becomes simple for us as a result of the consideration that democracy, as the highest form of a state which comprises a great nation, is not possible because a meeting of all citizens in one assembly does not take place. For if the external definition could be extended, if it could still be a democracy if the representatives elected by the people or the representatives elected by those representatives met in an assembly, then the nature of this matter could not continue to exist; for representatives of this kind are entirely separated from their private life for the whole time of their joint meetings and are restricted in their political function. They cannot develop that interplay, which is really confusing but also easily and quickly disentangled, between private interest and public spirit, which is the true character of democracy; thus the representative constitutions have always been separated from the democracies."

Friedrich Schleiermacher, "On the Concepts of the different Forms of the State"[1]

I. Introduction: Schleiermacher the "Nationalist"

The aftermath of the World Wars would see a significant reevaluation of the narrative of German politics. Attempting to account for the spectacular collapse of the Weimar Republic and the rise of National Socialism in its wake, the *Sonderweg* thesis would attribute to Germany an exceptional course through modern political history wholly unlike that of its European neighbors.[2] In 1961, Fritz Fischer would crystallize much of this tendency in his *Griff nach der Weltmacht*, which made the claim that Hitler's rise ought not to be seen as accidental, but as the manifestation of a nationalist and imperialist tendency that had characterized the entirety of modern German history.[3] Though focused on the German reaction to the outbreak of war in 1914, Fischer would make explicit the general attitude towards German nationalism throughout the course of the latter half of the 20th century.

Schleiermacher has often been caught up in this tendency. From Dilthey on, much attention has been put on his active advocacy for a form of pan-German nationalism, with special focus on

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[1] Friedrich Schleiermacher, "On the Concepts of the different Forms of the State" in *The Political Thought of the German Romantics*, ed. H.S. Reiss (Oxford: Basil Blackwell, 1955), 189-190.

[2] Originally advocated by German nationalists in the wake of unification, the narrative would emphasize the non-revolutionary exceptionalism of German modernity in a somewhat triumphalist way. The tenor would be reversed after the collapse of the Nazi regime in 1945.

[3] Fritz Fischer, *Griff nach der Weltmacht: Die Kriegzielpolitik des kaiserlichen Deutschland 1914-1918* (Düsseldorf: Droste Verlag, 1961).

his preaching.[4] While originally seen in a quite positive light at the turn of the 20th century, this would take a decisive shift after 1945. What little work in English on Schleiermacher's politics exists has tended to read him not only in light of the conservative character of later Romanticism, but also of a purported irrationalistic tendency that runs from Luther to Hitler.[5] For H.S. Reiss, German Romanticism was largely "a revolt against reason" and a reflection of "the absence of a German political tradition" and an inward tendency those ideas "can be traced back to Luther, but more immediately [are] found in the Pietist movement."[6] Even the "rationalist side" of Schleiermacher's thought, "in politics and ethics, is no different from what it is in his theology. It is intuitional and subjective. It is essentially romantic, for its basis is a mystical pantheism."[7] Jerry F. Dawson takes a similar tack, situating his interpretation of Schleiermacher's conception of the state in the context of a biography that sought to trace "how the nationalist came to believe in the nation as the supreme object of his devotion."[8] For Dawson, the key factor would be "the retention of the emotionalism of the Pietists… for nationalism itself is a highly emotional experience, defying logical processes and historical evidence."[9]

In 1923, Günther Holstein had awarded to Schleiermacher the honor of being the first political thinker to systematically and scientifically work out the contours of the organic concept of the state as a means of associating him with the spirit of the new Weimar republic and the rise of the

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[4] Wilhelm Dilthey, "Schleiermachers Politische Gesinnung und Wirksamkeit" in *Gesammelte Schriften, XII. Band* (Stuttgart: B.G. Teubner Verlagsgesellschaft, 1960), 1-36; Johannes Bauer, *Schleiermacher als patriotischer Prediger: Ein Beitrag zur Geschichte der nationalen Erhebung vor hundert Jahren* (Berlin: de Gruyter, 1908); Hans Reuter, "Das innere Erleben des Krieges, verdeutlicht aus Schleiermachers Kriegspredigten" *Monatsschrift für Pastoraltheologie* 13 (1917): 83-90, 129-135.
[5] R.C. Raack approaches from a slightly different angle, characterizing Schleiermacher as originally a liberal reformer who, under pragmatic pressures, succumbs to the temptations of an authoritarian nationalism in the face of obstacles to reform. R.C. Raack, "Schleiermacher's Political Thought and Activity, 1806-1813" *Church History* 28:4 (Dec 1959): 374-390.
[6] H.S. Reiss, *The Political Thought of the German Romantics, 1793-1815* (Oxford: Basil Blackwell, 1955), 2-3.
[7] Ibid., 37.
[8] Jerry F. Dawson, *Friedrich Schleiermacher: The Evolution of a Nationalist* (Austin: University of Texas Press, 1966), 5.
[9] Ibid., 16.

neo-Kantianism of Hermann Lotze and Friedrich Paulsen.[10] For Reiss and Dawson, by contrast, organicism is now the mark of his rejection of the rational. Reiss admits that the centrality of the concept of the nation in Schleiermacher's "political biology" allows him to avoid "idolizing the state," but insists that he "comes near to idolizing the *Volk*."[11] Hiding "under a cloak of a detached scientific objectivity" is a "highly arbitrary and subjective" perspective.[12] For Dawson, Schleiermacher's distinct contribution to the theory of the state was to "apply the nationalistic principles to the state as an organism" in a "dry, lifeless collection of political discussions" that lacked any real content or vigor on account of the fact that, at its heart, "the nationalistic sentiment was an attitude" and Schleiermacher's particular faith had "mellowed considerably" in the face of government censorship and surveillance.[13]

The dawning of the 21st century has seen significant questioning of the *Sonderweg* thesis. In his recent reevaluation of Troeltsch's place in the key years leading up to the Weimar Republic, Robert E. Norton builds on much of this scholarship to argue that the purported unified upswell of German sentiment in the "ideas of 1914" that Fischer would use as evidence of the nationalistic and imperialistic character of the people was for the most part a "retrospective construct, formulated and actively promulgated in Germany at a later stage in the conflict when spirits were in fact sagging and in need of uplift as it became clear that the war would neither be short nor victory easy."[14] Rather than a straight, inevitable march to Nazism, Norton would suggest that the character of the

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[10] While admitting that Schleiermacher was not the first nor the only thinker to have an organic conception of the state, Holstein would nevertheless argue that Schleiermacher was the earliest to set it at the foundation of his theory of state and to work it out systematically and in a scientific manner. See esp. ch. 9, where Holstein contrasts Schleiermacher's adaptation of the organic conception with that of Fichte, Schelling, and Hegel, Günther Holstein, *Die Staatsphilosophie Schleiermachers* (Bonn: Kurt Schroeder, 1923).
[11] Reiss, *The Political Thought of the German Romantics*, 34, 36.
[12] Ibid., 37.
[13] Dawson, *Friedrich Schleiermacher: The Evolution of a Nationalist*, 146-147.
[14] Robert E. Norton, *The Crucible of German Democracy: Ernst Troeltsch and the First World War* (Tübingen: Mohr Siebeck, 2021), 18.

German democratic movement was far more diverse and its fate far less obvious than the *Sonderweg* thesis would allow it to be.

That the concept of the nation – as we shall see – plays a key role in Schleiermacher's thought is beyond contestation. But if Schleiermacher's nationalism ought not to be immediately assimilated into the nationalist movements that have since followed, how might one make sense of it? More recent scholarship on Schleiermacher has pushed back against attempts to make him a forerunner of his confirmand Otto von Bismarck by situating him within the Prussian Reform Movement of Karl Freiherr vom Stein and Karl August von Hardenberg.[15] To the extent that Schleiermacher would formulate most of his central political ideas during this period, there is a sense in which this characterization is trivially true. Yet, to the extent that evaluations of the Reform Movement itself are often still shaped by the distinctive brush of the *Sonderweg* thesis – either a failed attempt at liberal reforms or an example of the Prussian tendency towards absolutism – there is a sense in which this does not entirely resolve the issue.[16]

In this chapter, I want to suggest that Schleiermacher's "nationalism" will come into better focus if situated within the context of post-Revolutionary republicanism. More specifically, I argue that Schleiermacher invokes the concept of nation in order to advance a non-contractarian and non-constitutionalist conception of republican liberty that is to characterize the interplay between a

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[15] This is the framing that Andreas Arndt ultimately grants to Schleiermacher. Thus, even as he criticizes Schleiermacher for rejecting fundamental liberal values, Arndt nevertheless keen to note that the cosmopolitan orientation of Schleiermacher's approach makes it impossible to appropriate his theory for nationalistic purposes without fundamentally distorting it. Andreas Arndt, *Die Reformation der Revolution: Friedrich Schleiermacher in seiner Zeit* (Berlin: Matthes & Seitz Berlin, 2019).

[16] The influence of the *Sonderweg* tendency in the aftermath of the World Wars was such that even an American-based historian such as Walter M. Simon, self-consciously describes his attitude toward the Reform movement as "one of regret, though not always for the same reasons that move some of the German historians of the period" (p.xi). As a whole, the book is oriented towards explaining failure, "to discovery why Prussia clung to a political and social system which made it certain that when Germany was finally unified, German cultural values were submerged by unreconstructed Prussian militarism and authoritarianism" (p.5). Interestingly enough, after concluding that one of the most fatal flaws of the reform movement was its top-down approach, Simon points out Schleiermacher as one of two exceptions who identified the crucial need – not to influence public opinion, but – to generate public opinion (p.237). Walter M. Simon, *The Failure of the Prussian Reform Movement, 1807-1819* (Ithaca, NY: Cornell University Press, 1955).

people and its government in a state. Far from being a precursor to an irrational nationalism, this allows Schleiermacher to be situated squarely within a key shift in the development of modern democratic theory as an advocate of a creative form of non-liberal democracy.

The post-revolutionary era would set into motion a veritable explosion of reflection on the nature of republican government and liberty. On both sides of the Atlantic, the pressures and shortcomings of popular government would lead to greater reflections about what it meant to have a republic in the context of increasingly sophisticated commercial economies and territorial claims that stretched far beyond the bounds of the classical city-state. The debates between federalists and anti-federalists in America and between the Girondins and the Jacobins in France would represent the working out of a fundamental sea-change which would lay the theoretical and practical foundations for modern democratic life. From a conception of republic that identified it with the practices of direct democracy and therefore set it in opposition to aristocracy and monarchy, there gradually arose through the influence of thinkers like Alexander Hamilton and James Madison in America, Emmanuel Sieyès in France, and Immanuel Kant in Germany a conception of republican liberty that placed an emphasis on the separation of powers and therefore allowed for the possibility of mixed governments that retained aristocratic or monarchical elements. Schleiermacher's account of state and nation and his willingness to express continued loyalty to the monarch ought to be understood within this context. That is, if Schleiermacher's theory of property and right were developed with reference to that of Fichte, his account of the state stands in constructive tension with that of Kant.

At the heart of Schleiermacher's account of the state is a conception of republican liberty that reflects a creative re-interpretation of what is at stake in democratic government and the rule of law. Indeed, his definition of the state as defined by the opposition between authorities and subjects turns out to be Schleiermacher's own take on the separation of powers, reflecting an innovative conception of representation conceived of in terms of an internal differentiation of an organic whole

in response to the setting forth of the idea of a nation. In insisting that the separation of legislative and executive functions refers, not to a division between branches of government, but to an ongoing dynamic interplay between the people and their government, Schleiermacher offers a critique of constitutionalist approaches to republican liberty and maps out a uniquely non-sovereign way of understanding state power and action that does not identify a single locus of final authority.

As in the previous chapters, the argument will proceed in two main sections. The first introduces Kant's theory of republican government as set forth in his essay on *Perpetual Peace* and the *Metaphysics of Morals* and attempts to situate it within broader currents in the trans-Atlantic development of modern democratic theory. In order to better situate Schleiermacher's own approach, I will additionally consider how two differing figures close to Schleiermacher – Friedrich Schlegel and J.G. Fichte – responded to Kant's definition of a republic in *Perpetual Peace*. Most notably, Schlegel would double down on a more classic conception of republican exclusivism while Fichte would drop his older conception in favor of his own version of the separation of powers doctrine.

The second section then turns to Schleiermacher and his own turn towards the new conception of representative democracy. Like Schlegel and Fichte, the early Schleiermacher would conceive of republican liberty as necessarily opposed to monarchical. But by the development of his mature ethics, he would advocate a new innovative variation of the separations of powers doctrine that reinterpreted the necessity of distinguishing between differing branches of government into the necessity of distinguishing between a people and their government. The government is not to be seen as standing over and above its citizens, but the product of an internal differentiation within a broader organic national whole that encompasses people and government alike. The setting forth of the idea of the nation is what allows what existed merely implicitly in the form of custom to be made explicit in the form of law and situated within the relations of command and obedience that

necessarily structures a state governed by the rule of law. Far from a concession to irrationalist impulses, Schleiermacher's embrace of the concept of the nation as an organic whole allows him to articulate an account of state power and republican liberty that neither attempts to attribute sovereignty one-sidedly to the people nor to one or another branch of the government. The chapter will conclude with a brief look at how Schleiermacher's emphasis on the importance of popular participation in civic life played out in his distinct approach to reform.

II. Kant and Republicanism

1. Kantian Republicanism and the Separation of Powers

The legendary status of Baron de Montesquieu's *The Spirit of the Laws* in the development of modern republics has by now been well solidified.[17] While Montesquieu himself would work within the classical scheme which divided states into republics, aristocracies, or monarchies depending on whether they were ruled by many, some, or one, his inquiry into Britain as a nation whose constitution was centered on liberty would prove decisive for the future trajectory of republican state formation. Having suggested that classical republics were a thing of the past owing to the difficulty of expanding the practices of direct democracy beyond the bounds of a small city, Montesquieu's argument that political liberty in Britain was maintained by the separation of legislative, executive, and judicial powers would set the stage for the rise of constitutionalism and a new definition of republican liberty centered around the separation of powers and the maintenance of checks and balances. "Where legislative power is united with executive power in a single person or in a single body of the magistracy, there is no liberty, because one can fear that the same monarch or senate that makes tyrannical laws will execute them tyrannically."[18] Likewise,

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[17] Montesquieu, *The Spirit of the Laws*, trans. and ed. Anne M. Cohler, Basia Carolyn Miller, and Harold Samuel Stone (Cambridge: Cambridge University Press, 1989).
[18] Ibid., Bk. 11, ch.6; 157.

> Nor is there liberty if the power of judging is not separate from legislative power and from executive power. If it were joined to legislative power, the power over the life and liberty of the citizens would be arbitrary, for the judge would be the legislator. If it were joined to executive power, the judge could have the force of an oppressor.[19]

It is the separation of executive, legislative, and judicial powers of government that allows citizens to enjoy liberty. Montesquieu had intended only to give an account of the kind of liberty that Britain enjoyed in contrast to that of the ancient Roman republic, but his account of the separation of powers would become decisive for defining what it meant for a modern state to be republican.

Montesquieu's path-breaking treatment of republics would play a key role in both America and France as thinkers grappled with the possibility of republican government in the context of large states with increasingly commercial economies. Although developments across the Atlantic would take a decisively different trajectory than those on the continent, thinkers came in varied ways to the affirmation of the necessity of representation and the separation of powers in government, to the extent that the direct democracy of the ancient republics could even be seen as paradigmatically despotic on account of their lack of representation. Thus, when faced with the problems of factionalism and the weakness of the Articles of Confederations, James Madison could write in *Federalist* No.10 of the weakness of "pure democracy" and define a republic as "a government in which the scheme of representation takes place."[20] Because it is the representative character of government that mattered, a republic was now no longer primarily contrasted with monarchy or aristocracy but opposed to that government that was not responsible to the people as a whole, but served particular interests. Significant disagreements could yet arise about what it meant to represent

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[19] Ibid.

[20] "From this view of the subject, it may be concluded that a pure Democracy, by which I mean, a Society, consisting of a small number of citizens, who assemble and administer the Government in person, can admit of no cure for the mischiefs of faction. …A Republic, by which I mean a Government in which the scheme of representation takes place, opens a different prospect, and promises the cure for which we are seeking." James Madison, *The Federalist Papers*, ed. Garry Wills (New York: Bantam Dell, 2003), 63.

the people and the necessary safeguards required to avoid tyranny, but modern republics were to be distinct from their ancient counterparts.

Kant would be the one to introduce this new conception of the republic to Germany, first in the 1795 *Zur ewigen Frieden* (Toward Perpetual Peace) and then also in the 1797 *Rechtslehre* of the *Metaphysics of Morals*. Insisting that "The civil constitution in every state shall be republican," Kant would then move to distinguish a three-fold "form of sovereignty" (autocracy, aristocracy, and democracy) from a two-fold "form of government" (republicanism and despotism).[21] Rather than designating the state that is ruled by many as opposed to some or one, "Republicanism is the political principle of separation of the executive power (the government) from the legislative power."[22] Despotism, by contrast, "is that of the high-handed management of the state by laws the regent has himself given, inasmuch as he handles the public will as his private will."[23] Indeed, by virtue of its identification of the legislative and executive powers with the assembled people themselves,

> Of the three forms of state, that of *democracy* in the strict sense of the word is necessarily a *despotism* because it establishes an executive power in which all decide for and, if need be, against one (who thus does not agree), so that all, who are nevertheless not all, decide; and this is a contradiction of the general will with itself and with freedom.[24]

Far from being the best form of government, the ancient republic is actually the paradigmatically despotic government on account of the fact that it fails to designate a representative distinct from the assembly itself to serve as the executor of its will. By putting the question of execution up to majoritarian voting, the democratic form of government becomes a tyranny of the majority. This would be mob rule, rather than rule by law.

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[21] PP 8:349, 352.
[22] PP 352.
[23] Ibid.
[24] Ibid.

Kant's account is further clarified in the *Metaphysics of Morals*. What was only a two-fold distinction between legislative and executive powers has now become a full-fledged endorsement of Montesquieu's three-fold separation of powers:

> Every state contains three *authorities* within it, that is, the general united will consists of three persons: the *sovereign authority* (sovereignty) in the person of the legislator; the *executive authority* in the person of the ruler (in conformity to law); and the *judicial authority* (to award to each what is his in accordance with the law) in the person of the judge. These are like the three propositions in a practical syllogism: the major premise, which contains the *law* of that will; the minor premise, which contains the *command* to behave in accordance with the law, that is, the principle of subsumption under the law; and the conclusion, which contains the *verdict* (sentence), what is laid down as right in the case at hand.[25]

Kant emphasizes the connectedness and distinctness of the three powers by means of an analogy to the syllogistic form.[26] The basic point is to emphasize that all three play essential and yet distinct roles in making state actions possible. The legislative authority sets forth general legal principles – i.e. those who drive cars must do so in a way that keeps pedestrians safe; the executive authority enacts them by giving specific commands about the object of the laws – i.e. cars must stop at stop signs; and the judicial authority revolves disputes about the proper behavior of actual citizens attempting to live in accordance with the laws – i.e. it is citizen A's failure to stop rather than citizen B's turning into the intersection that is at fault in causing the accident.

The three powers *together* make up the state; yet they must remain distinct from one another for a state to avoid becoming tyrannical.[27] If the legislative were united to the executive, the citizens would essentially be subject to the whims of the lawgiver-executive whose every command would

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[25] MM 6:313.

[26] For a more in-depth attempt to interpret Kant's use of a practical syllogism to describe his account of the separation of powers, see ch.7 of B. Sharon Byrd and Joachim Hruschka, *Kant's Doctrine of Right: A Commentary* (Cambridge: Cambridge University Press, 2010).

[27] "Accordingly, the three authorities in a state are, *first*, coordinate with one another as so many moral persons, that is, each complements the other to complete the constitution of a state. But, *second*, they are also *subordinate* to one another, so that one of them, in assisting another, cannot also usurp its function; instead, each has its own principle, that is, it indeed commands in its capacity as a particular person, but still under the condition of the will of a superior." MM 6:316.

constitute a law to itself.[28] Rather, the two need to be distinct for the executive authority to operate in accordance with the law and for the legislative authority to be capable of holding the executive to account for the proper administration of the laws.[29] Likewise, Kant would insist that the judiciary must remain separate and distinct from the executive and legislative authorities precisely because it is to be the people – rather than the government – judging their fellow citizens as to the proper application of the law. This is because the judiciary deals not with universal principles or particular commands, but specific decisions about what belongs to various individuals in specific situations.[30] For Kant, only a state that is able to enact and maintain this unity-in-difference in its formal constitution can be said to be fully in accord with the principles of justice.

2. The Autocratic Republic?

There are a few things to be noted about Kant's republicanism. Firstly, the account that Kant sets out is intended to be an *ideal* one that explicates the *a priori* outworking of the innate principle of right and the conditions under which it is possible for the freedom of each to be consistent with all. In other words, the categories that Kant sets forth are not designed to be directly applied to actual polities, but to serve as a blueprint that can guide rational persons, regardless of the actual political situation in which they find themselves.[31] Thus, though Kant would seem to set forth

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[28] "A *government* that was also legislative would have to be called *despotic* as opposed to a *patriotic* government… [In a patriotic state,] each is in possession of himself and is not dependent upon the absolute will of another alongside him or above him." MM 6:316-317.

[29] "So a people's sovereign (legislator) cannot also be its *ruler*, since the ruler is subject to the law and so is put under obligation through the law by *another*, namely the sovereign." MM 6:317.

[30] "Finally, neither the head of state nor its ruler can *judge*, but can only appoint judges as magistrates. A people judges itself through those of its fellow citizens whom it designates as its representatives for this by a free choice and, indeed, designates especially for each act. …Since each individual among a people is only passive in this relationship (to the authorities), if either the legislative or the executive authority were to decide in a controversial case what belongs to him, it might do him a wrong, since it would not be the people itself doing this and pronouncing a verdict of *guilty* or *not guilty* upon a fellow citizen." Ibid.

[31] i.e. "By the well-being of a state is understood, instead, that condition in which its constitution conforms most fully to principles of right; it is that condition which reason, *by a categorical imperative*, makes it obligatory for us to strive after" MM 6:318.

a representative democratic ideal in which all the citizens united participate in legislation through the election of representatives,[32] this can remain consistent with an embrace of an enlightened despot as the best way to move from the present condition towards the ideal.[33] Kant can therefore come to affirm the judgment that it is possible for an enlightened monarchy to provide an easier path towards the republican ideal than either an aristocratic or democratic government, writing in *Perpetual Peace* that "the smaller the number of persons exercising the power of a state (the number of rulers) and the greater their representation, so much the more does its constitution accord with the possibility of republicanism, and the constitution can hope by gradual reforms finally to raise itself to this."[34]

This would essentially be reaffirmed in the *Metaphysics of Morals*, where Kant makes clear that the three authorities that he had derived *a priori* from reason are capable of being physically instantiated by a singular "autocratic" legislator. Distinguishing the "autocratic" form of state (in which one alone is the sovereign) from the "monarchical" (in which one represents the sovereign) Kant would go on to insist that the autocratic form was the best with regard to the actual administration of right in the state on account of its simplicity of form: "It is easy to see that the autocratic form of state is the *simplest*, namely the relation of one (the king) to the people, so that only one is legislator."[35] By contrast, "The aristocratic form of state is already *composed* of two

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[32] "But *all* who have this right to vote must agree to this law of public justice; for otherwise there would be a dispute about rights between those who do not agree to it and the first, and yet another higher principle of right would be needed to decide it. Thus if the first cannot be expected of an entire people, so that a majority of votes – and indeed not of those voting directly (in a large people) but only of those delegated to do so as representatives of the people – is all that can be foreseen as attainable, the very principle of letting such a majority be sufficient, adopted as with universal agreement and so by a contract, must be the ultimate basis on which a civil constitution is established." TP 8:296-297.

[33] For a fuller defense of something akin to this claim against those who see Kant's embrace of enlightened absolutism as inconsistent with his own principles, see Robert S. Taylor, "Democratic Transitions and the Progress of Absolutism in Kant's Political Thought" *The Journal of Politics* 68:3 (August 2006): 556-570. Cf. ch.2 of Frederick Beiser, *Enlightenment, Revolution, and Romanticism: The Genesis of Modern German Political Thought, 1790-1800* (Cambridge, MA: Harvard University Press, 1992).

[34] The passage continues: "On this basis it is already harder in an aristocracy than in a monarchy to achieve this sole constitution that is perfectly rightful, but in a democracy it is impossible except by violent revolution." PP 8:353.

[35] MM 6:339.

relations: the relation of the nobility (as legislator) to one another, to constitute the sovereign, and then the relation of this sovereign to the people."[36] And finally, in a shift from his rejection of the possibility of a non-despotic democratic sovereign in *Perpetual Peace*, Kant would write that

> the democratic form of state is the most composite of all, since it involves the following relations: first, it unites the will of all to form a people; then it unites the will of the citizens to form a commonwealth; then it sets this *sovereign*, which is itself the united will of the citizens, over the commonwealth.[37]

Instead of suggesting that any democratically established executive authority would necessarily be a product of mere majoritarianism, Kant now sets out the conditions where a democratic sovereign could be non-despotic.[38] The wills of all must first be united so that the act of appointing itself sovereign is the expression of the general will rather than a mere aggregate of private wills set against other private wills. Now, it is the autocratic ruler – although potentially the best administratively – that is most subject to despotic tendencies.[39]

It is important to note, however, that Kant's account of the separation of powers is perfectly compatible with an autocratic government provided that it maintains a distinction between the various powers. Even if all sovereign legislative authority lay in a singular physical individual, it is still possible for them to designate ministers and magistrates to execute and judge according to their laws. To the extent that these separated powers act on behalf of the people – even if their authority all stems from the singular person of the autocrat – the government can still be said to be republican in the Kantian sense. This perhaps surprising conclusion, however, is only possible because Kant

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[36] Ibid.
[37] Ibid.
[38] For an attempt to make sense of the different attitude towards democracy in the 1795 and 1797 accounts of the forms of government, see Luigi Caranti, "Why does Kant Think that Democracy is Necessarily Despotic?" *Kantian Review* 28 (2023): 167-183.
[39] "It is true that, with regard to the administration of right within a state, the simplest form is also the best. With regard to right itself, however, this form of state is the most dangerous for a people, in view of how conductive it is to despotism." Ibid.

has defined sovereignty in such a way such that every sovereign is only a sovereign on account of their being a representative of the people.

Whether one finds this persuasive or not, however, will depend on what one thinks is at stake in the concept of representation.[40] The debate between the American colonists and British Parliament, for instance, often hinged on differing ways of understanding the nature of representation.[41] For the Parliamentarians, representation was a matter of similarity and tacit consent. On this theory, the colonists were virtually represented in Parliament despite not having a role in their election precisely because the members of Parliament as a whole resembled the entire body of Britain, even if many played no role in electing their representatives. The position that would be paradigmatic of the 1688 Glorious Revolution would famously find expression in Edmund Burke's proclamation that "Virtual representation is that in which there is a communion of interests, and a sympathy in feelings and desires between those who act in the name of any description of people, and the people in whose name they act, though the trustees are not actually chosen by them."[42] A representative can act on behalf of another's interests without explicit authorization or a relation of accountability precisely because the similarity of interests and sentiment would lead the representative to act as if the one represented were acting without having to have any explicit relation to the one being represented.

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[40] For a classic attempt to analyze a number of differing accounts of representation, see Hanna Fenichel Pitkin, *The Concept of Representation* (Berkeley: The University of California Press, 1967). For an interpretation of Kant's theory of representation that is similar to the one offered here, see Alessandro Pinzani, "Representation in Kant's Political Theory" *Jahrbuch für Recht und Ethik* 16 (2008): 203-226.

[41] For one account of this debate, see ch.2 of Eric Nelson, *The Royalist Revolution: Monarchy and the American Founding* (Cambridge, MA: Harvard University Press, 2014). See also ch.1 of Gordon S. Wood, *Power and Liberty: Constitutionalism in the American Revolution* (Oxford: Oxford University Press, 2021).

[42] Edmund Burke, *A letter from the Right Hon. Edmund Burke, M.P. in the Kingdom of Great Britain, to Sir Hercules Langrishe, Bart. M.P. on the subject of Roman Catholics of Ireland, and the propriety of admitting them to the elective franchise, consistently with the principles of the constitution as established in the Revolution* (Dublin: P. Byrne, 1792), 67-68. Cited in Pitkin, *The Concept of Representation*, 173.

While some colonists would reply by attempting to highlight dissimilarities between members of Parliament and the situation of the colonies,[43] others would emphasize an alternative account of representation that emphasized the need for explicit authorization of one's representatives. James Wilson, for instance, would give expression to an elective theory of representation:

> British liberty, it was thought, could not be effectively secured, unless those who made the laws were freely, and without influence, elected by those for whom they were made. Upon this principle is reasonably founded the maxim in law – that every one, who is capable of exercising his will, is party, and presumed to consent, to an act of parliament.[44]

Here, consent is not to be given tacitly or by virtue of a presumed alignment of interests, but by the explicit exercise of the franchise.

Kant's emphasis on connecting citizenship with the franchise would initially seem to put him closer to Wilson than Burke. Indeed, he will affirm that "Any true republic is and can only be a *system representing* the people, in order to protect its rights in its name, by all the citizens united and acting through their delegates [Abgeordneten] (deputies [Deputirten])."[45] The use of the terms "Abgeordneten" and "Deputirten" seem to suggest someone explicitly authorized to act on one's behalf in accordance with one's instructions, though able to operate with some degree of independence.[46] Thus, Kant can read the National Assembly as having attained sovereignty, not by revolutionary action, but by the explicit authorization of Louis XVI, who "made a very serious error in judgment" when he convoked the Estates General to take upon itself the legislative authority. "[A]s soon as a person who is head of state (whether it be a king, nobility, or the whole of the population, the democratic union) also lets itself be represented," Kant would insist, "then the

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[43] Eric Nelson highlights Daniel Dulany's *Considerations on the Propriety of Imposing Taxes on the British Colonies* (1765) and the argument of the sermon *American Resistance Indefensible* (1776).
[44] James Wilson, "Considerations on the Nature and Extent of the Legislative Authority of the British Parliament (1774)" in *Collected Works of James Wilson*, ed. Kermit L. Hall and Mark David Hall, Vol. 1 (Indianapolis: Liberty Fund, 2007), 7. Discussed in Nelson, *The Royalist Revolution*, 91-92.
[45] MM 6:341.
[46] Consider, for instance, the analysis of various analogies for representation in ch.6 of Pitkin, *The Concept of Representation*.

united people does not merely *represent* the sovereign: it *is* the sovereign itself."[47] We shall have more opportunity to consider Kant's interpretation of the Revolution in the next section. For now, however, it is sufficient to note that Louis XVI's explicit act of convening the Estates General is quite important for Kant's conception of representation, even if the eventual actions of the assembly would go in a significantly different direction than the monarch had evidently hoped. Presumably, Kant would not have been as approving of the spontaneous emergence of a national assembly that sought to claim the royal prerogatives without such explicit authorization.

Yet Kant's willingness to entertain the possibility of autocratic and aristocratic sovereigns who represent the people without being directly responsible to them in any way would seem to suggest that, even if explicit delegation or deputization is the ideal, Kant can conceive of genuine representation without it. Indeed, Kant's insistence that one must remain subject to the *de facto* authority and avoid bringing up questions about the origin of any supreme authority would seem to make some kind of tacit consent rather than any explicit act of authorization the key concept at play.[48] Or, more specifically, what one authorizes by one's tacit consent is not so much the specific persons who exercise the function of government, but the constitutional form of the state itself. This could perhaps put Kant closer to the "Royalist" theory of representation that would eventually, for Eric Nelson, be adopted by the American colonists themselves in their quarrel against Parliament. The position would be given clear expression by the royalist pamphleteer William Knox,

> The consent, you will perhaps say, of the majority of the distinct representatives of the people, of *necessity* involves the consent of the whole. So then it is necessary that the people should submit to pay taxes, to which neither themselves nor their distinct representatives do consent; and the whole meaning of this ingenious argument may be summed up in these few plain words: - That a people may constitutionally be taxed by those whom the constitution has vested with the power to impose taxes, which is the supreme legislature; and that every

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[47] MM 6:342.

[48] "A people should not *inquire* with any practical aim in view into the origin of the supreme authority to which it is subject, that is, a subject *ought not to reason subtly* for the sake of action about the origin of this authority, as a right that can still be called into question with regard to the obedience he owes it." MM 6:318.

> man who consents to that constitution or government… consents to all taxes imposed by it, inasmuch as he *consents* to the authority by which they are imposed.[49]

What is required is not explicit authorization and consent to the persons of the representatives (i.e. to have the person one voted for *win* the election), but to the constitutional system of government within which the representative serves (i.e. to accept the use of elections to select representatives even if one's preferred candidate does not win). But if the Americans and the British would ultimately appeal to the American and the British constitutions, Kant would insist that the most relevant constitution at stake is that of the ideal republic set forward in his theory of right:

> But the *spirit* of the original contract involves an obligation on the part of the constituting authority to make the *kind of government* suited to the idea of the original contract. Accordingly, even if this cannot be done all at once, it is under obligation to change the kind of government gradually and continually so that it harmonizes *in its effect* with the only constitution that accords with right, that of the pure republic, in such a way that the old (empirical) statutory forms, which served merely to bring about the *submission* of the people, are replaced by the original (rational) form, the only form which makes *freedom* the principle and indeed the condition for any exercise of *coercion*, as is required by a rightful constitution of a state in the strict sense of the word.[50]

To the extent that perfect allegiance ought to be rationally owed to the ideal of the pure republic that Kant has set forth in his theory of right, any actual empirical sovereign can act as a representative without any direct personal authorization or responsibility to their subjects to the extent that they are guided by this ideal. Indeed, for Kant, the "constituting authority" – again, we shall have more of an opportunity to discuss this in the next section – is obligated to institute the government in such a way so as to make its effect, even if not its reality, approximate what would take place in this ideal republic. Likewise, no matter what the empirical legal situation of any given state may be like, any subject can – and indeed, *ought to* – nevertheless offer his consent and authorization to the overall constitution to the extent that he can interpret the laws as attempting to

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[49] William Knox, *The Controversy between Great Britain and Her Colonies, Reviewed* (London: J. Almon, 1769) cited in Nelson, *The Royalist Revolution*, 95.
[50] MM 6:340-341.

approximate the ideal. Indeed, to the extent that Kant's emphasis is on the *effect* of the laws rather than the actual conformity of a given constitution to the ideal (on account of the fact that no empirical reality will perfectly conform to this), one can understand why the autocratic government, the "simplest" and "best" fitted towards the administration of right would be, for Kant, not only an acceptable, but also potentially the preferable form.

3. Kantian Constitutionalism and the Rejection of the Right of Resistance

This brings us to a second point. Kant's account of the republic and the separation of powers advances an account of sovereign representational authority and consent that is ultimately incompatible with the right of resistance.[51] Given the way in which this could seem to be a repudiation of the French Revolution, Kant's claims would be as controversial in his own days as in ours, but it is important to understand them as part of his shift towards a modern conception of republican liberty.[52] Simply put, there is ultimately no tension between Kant's advocacy of the French Revolution and his rejection of the right of resistance simply because he does not interpret the French Revolution as a rebellion.

Kant's rejection of the right to rebellion follows fairly straightforwardly out of his definition of his conception of the legislative power and the nature of the general will. In order to escape the

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[51] For a broader attempt to situate Kant's views on resistance amidst its broader context and its reception among "Kantians", see ch. 4 of Reidar Maliks, *Kant's Politics in Context* (Oxford: Oxford University Press, 2014).

[52] A number of Kant's contemporary commentators feel pressured to reconcile a supposed discrepancy between Kant's positive attitude towards the French Revolution and his rejection of the right to resist. Thus, Christine Korsgaard attempts to resolve the purported inconsistency by deriving an "ethical" duty to revolt out of Kant's account of the Doctrine of Virtue alongside his denial of the right to revolt in the Doctrine of Right. See Christine M. Korsgaard, "Taking the Law into Our Own Hands: Kant on the Right to Revolution" in *Reclaiming the History of Ethics: Essays for John Rawls,* ed. Andrews Reath, Barbara Herman, and Christine M. Korsgaard (Cambridge: Cambridge University Press, 1997), 297-328. See also Lewis White Beck, "Kant and the Right of Revolution" *Journal of the History of Ideas* 31 (1971): 411-422; Dieter Henrich, "Kant über die Revolution" in *Materialien zu Kants Rechtsphilosophie*, ed. Zwi Batscha (Frankfurt: Suhrkampf, 1976), 359-365; Thomas Hill, "A Kantian Perspective on Political Violence" in *Respect, Pluralism, and Justice* (Oxford: Oxford University Press, 2000), 200-237; Sarah Williams Holtman, "Revolution, Contradiction, and Kantian Citizenship" in *Kant's Metaphysics of Morals: Interpretive Essays*, ed. Mark Timmons (Oxford: Oxford University Press, 2002), 209-231.

state of nature in which every individual has the right to legislate for himself and to judge for himself, Kant will insist that it is necessary for there to be a higher "collective general (common) and powerful will" that puts everyone under obligation.[53] In the essay on *Perpetual Peace*, Kant would state this in terms of the "principles of the *dependence* of all upon a single common legislation (as subjects)."[54] The proper coordination of the whole requires a universal subordination of all to the sovereign power that represents and acts on behalf of the whole. On account of this subordination being necessary for the achieving of any justice at all, "the sovereign has only rights against his subjects and no duties," such that "even if the organ of the sovereign, the *ruler*, proceeds contrary to law… subjects may indeed oppose this injustice by *complaints* but not by resistance."[55] Any attempt by any private citizen to act against the sovereign would undermine the conditions that make right possible and therefore cannot be conceived as justified on account of the fact that it would abolish the possibility of justice at all. Insofar as the civil condition is the only way to attain to just relations between persons, Kant therefore thinks that one has a duty to bear with any and every civil condition insofar as it exists because the presence of gross shortcomings in a system that nevertheless makes justice possible would nevertheless be superior to a condition where justice is not possible at all.[56]

Indeed, Kant's argument is stronger than merely a denial that individuals have any right to resist their sovereign. Precisely because the existence of a sovereign is the only way for there to be a general will, Kant will deny that it is even possible to come to a definitive conclusion that anything

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[53] "Now, a unilateral will cannot serve as a coercive law for everyone with regard to possession that is external and therefore contingent, since that would infringe upon freedom in accordance with universal laws. 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." MM 6:256.
[54] PP 8:349-350.
[55] MM 6:319.
[56] "The reason a people has a duty to put up with even what is held to be an unbearable abuse of supreme authority is that its resistance to the highest legislation can never be regarded as other than contrary to law, and indeed as abolishing the entire legal constitution." MM 6:320.

the sovereign says is unjust. "For, since a people must be regarded as already united under a general legislative will in order to judge with rightful force about the supreme authority, it cannot and may not judge otherwise than as the present head of state wills it to."[57] Any attempt to render a judgment about the very justice of the sovereign is impossible insofar as it is the sovereign alone who can will with general force as opposed to merely in a private and individual way.[58] Nor can sovereigns be judged by other sovereigns. Precisely because nations exist in a state of nature in relation to one another, negotiations between two nations are not to proceed on the basis of right (which would presuppose a mutual subordination of the two nations to a greater power), but on the basis of force.[59] Indeed, Kant would take the attempts to judge and execute a former monarch for wrongdoing as the highest and most unforgiveable of sins that "strikes horror in a soul filled with the idea of human rights" on account of its being an act that is a "complete overturning of all concepts of right."[60] This is because everything that has been done by the head of state "must be regarded as having been done in external conformity with rights, and he himself, as the source of the law, can do no wrong."[61] The sovereign, as the source of the law, cannot be subject to law.

Is Kant's rejection of the right to resistance a justification of injustice? Let us first consider a couple of scenarios before addressing why Kant thinks that the need to justify resistance has become unnecessary in light of his modified conception of republican liberty. Firstly, Kant would have no problem with advocating for activities that could be seen as rebellious in the context of the state of

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[57] MM 6:318.

[58] Noting that complaints about Kant's rejection of a right to resistance often presuppose something akin to a Lockean account of natural justice that allows for judgments about right outside of the civil condition, Katrin Flikschuh suggests that Kant's argument presents a challenge to whether any of these judgments could ever be seen as legitimating a *public* rather than merely a *private* rebellion. See Katrin Flikschuh, "Reason, Right, and Revolution: Kant and Locke" *Philosophy & Public Affairs* 36:4 (Fall 2008): 375-404.

[59] "No war of independent states against each other can be a *punitive war*. For punishment occurs only in the relation of a superior to those subject to him, and states do not stand in that relation to each other." MM 6:347. Also, "The victor does not do this [lay down conditions for peace] from any right he pretends to have because of the wrong his opponent is supposed to have done him; instead, he lets this question drop and relies on his own force." MM 6:348.

[60] MM 6:321.

[61] MM 6:321.

nature. If the injustice of a sovereign is ever so bad that it essentially undermines the capability for anyone to recognize the existence of a civil condition at all, acting to reconstitute a sovereign would simply be acting in accordance with one's duty to enter into the civil condition in order to make justice possible.[62]

Secondly, Kant does not advocate active obedience to governmental actions that one may perceive to be unjust. While Kant rejects "active resistance (by the people combining at will; to coerce the government to take a certain course of action, and so itself performing an act of executive authority)," he nevertheless endorses "*negative* resistance, that is, a *refusal* of the people (in parliament) to accede to every demand the government puts forth as necessary for administering the state."[63] While Kant nevertheless counsels obedience and giving the authority the benefit of the doubt on any matter in which there can be a reasonable latitude of opinion about the justice of the matter precisely on account of the fact that one cannot judge otherwise than the supreme authority,[64] he nevertheless leaves room for refusing acts of outright corruption and injustice. Indeed, the ability to resist unjust demands is itself a sign of the moral vitality of a people and its government: "Indeed, if these demands were always complied with, this would be a sure sign that the people is corrupt, that its representatives can be bought, that the head of the government is ruling despotically through his minister, and that the minster himself is betraying the people."[65]

But if one can practice a kind of passive resistance against specific unjust acts of a government, is it possible for a government itself to be unjust? This is precisely where Kant's

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[62] This is the approach that Reidar Maliks takes to assuage those who may be wary of Kant's rejection of the right to resistance. See ch.4 of Maliks, *Kant's Politics in Context*.
[63] MM 6:322. In insisting that this is only through one's deputies in parliament, however, Kant does not authorize negative resistance by private citizens qua private citizens, but through the mediation of intermediate magistrates. In this regard, he would seem to offer a (negative) version of Althusius' vision of holding the sovereign to account.
[64] Thus, in *The Conflict of the Faculties*, Kant will only argue for the space to offer philosophical criticism on the basis that this does not conflict with one's obligation to render obedience to the state. "The lower faculty is the rank in the university that occupies itself with teachings which are not adopted as directives by order of a superior, or in so far as they are not so adopted." CF 7:27.
[65] MM 6:322.

redefinition of republican liberty comes into play. What in the older conception of a republic might have looked like the attempt to replace an aristocracy with a monarch or a monarch with a republic can only appear in Kant's new scheme as a reformatory change in the structure of the executive branch rather than as a revolution. In other words, given the new definition of a republic in terms of the separation of powers rather than in terms of who rules, revolution drops out as a meaningful category of regime change:

> A change in a (defective) constitution, which may certainly be necessary at times, can therefore be carried out only through *reform* by the sovereign itself, but not by the people, and therefore not by *revolution;* and when such a change takes place this reform can affect only the *executive authority*, not the legislative.[66]

The irreproachable status of the legislative authority makes it such that any fundamental change in the constitution of a country ought to be interpreted as merely a reformatory shift in the way that it administers right. However radical this shift may be, precisely because it is the duty of the legislative authority to hold the executive authority to account, the basic republican structure of any valid state is not fundamentally altered.

Indeed, it is along these lines that Kant reinterprets and critiques the so-called "moderate constitutions" (i.e. Britain's) that purport to establish a limited state where the government is held to account by its people. On account of the fact that any genuine ability to limit any authority implies possession of at least the same amount or more power than the one who limits, Kant concludes that it is impossible to limit the supreme commander on account of the fact that this would no longer make them the supreme commander capable of executing their duty to protect all in the state by virtue of their superior power.[67] What then, ought one to make of the claims of limited government?

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[66] MM 6:321-322.

[67] For, someone who is to limit the authority in a state must have even more power than he whom he limits, or at least as much power as he has; and, as a legitimate commander who directs the subjects to resist, he must also be able to *protect* them and to render a judgment having rightful force in any case that comes up; consequently he has to be able to command resistance publically. In that case, however, the supreme commander in a state is not the supreme commander; instead, it is the one who can resist him, and this is self-contradictory." MM 6:319.

Kant suggests that "the illusion that allows us to think of the people, through its deputies, as the limiting authority" somehow addresses the despotism of a ruling sovereign fails to recognize that any interest that these deputies have to act purportedly on behalf of the people is simply easily overridden by the interest that they may have for potentially playing a role in the administration.[68] Rather than an expression of rightful limited government, for a sovereign to allow such beliefs of accountability to exist in its midst is merely a "principle of prudence, not so much to make it more difficult for a powerful transgressor of the people's rights to exercise at will his influence upon the government as to disguise his influence under the illusion of an opposition permitted to the people."[69] Far from a way to resist governmental despotism, permissible opposition is merely a way for the government to more insidiously exercise its overall executive authority. For Kant, this does very little to check a legislator who acts despotically by themselves exercising executive authority or an executive who combines legislative authority in their person. The legislative power thus possesses the authority to check the executive power by virtue of its ability to depose the executive or even to fundamentally change the form of state, but any purported ability to offer a counter-check to the possible abuse of power by the legislative or executive authorities by virtue of their being unduly mixed together can only be seen as a further expression of executive power.

Kant considers one final possibility. What if the situation were such that what was required is not simply a change in government, but a very change in the constitution of the state? Again, Kant will reject that this can rightfully take place by means of a revolution and can only insist that "it must still be possible, if the existing constitution cannot well be reconciled with the idea of the original

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[68] "The people, in being represented by its deputies (in parliament), has, in these guardians of its freedom and rights, men who have a lively interest in positions for themselves and their families, in the army, the navy, and the civil service, that depend on the minister, and who are always ready to play into the government's hands (instead of resisting its encroachments; besides, a public declaration of resistance requires unanimity in a people which has been prepared in advance, and this cannot be permitted in time of peace). – Hence a so-called moderate constitution, as a constitution for the inner rights of a state, is an absurdity." MM 6:319-320.

[69] MM 6:320.

contract, for the sovereign to change it, so as to allow to continue in existence that form which is essentially required for a people to constitute a state."[70] Because of the radicality of this change, Kant will insist that the "transition to a better constitution is not then a metamorphosis but a palingenesis, which requires a new social contract in which the previous one (now annulled) has no effect."[71] The fundamental change of a constitution implies that there can be no continuity between the past constitution and the new one, even if the same *state* can be said to continue existing in a new form. This is because such a change cannot be said to be the act of the sovereign on account of the fact that the sovereign – as the legislative power – itself only exercises its authority on account of the existing constitution. Therefore, to imply that the sovereign can unilaterally change the constitution – even in its irreproachability – would be against right.[72] Thus, in keeping with Kant's commitment to constitutionalism and the separation of powers, fundamental changes in the constitution can only be recognized as repetitions of the same state in a new form rather than as moments of continuity. The sovereign under the old constitution is not the same sovereign under the new one. Yet even with such a fundamental change, Kant does not refer to it as a revolution. This, as we have already seen, is precisely how Kant interprets the French Revolution, as a transition between an autocratic to a democratic sovereign *within the same state* by virtue of a mistake of the sovereign such that he dissolved his own sovereignty and allowed a new one to be constituted without that new one constituting a rebellion.

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[70] MM 3:40.
[71] Ibid.
[72] "Now this change cannot consist in a state's reorganizing itself from one of the three forms into another, as, for example, aristocrats agreeing to submit to autocracy or deciding to merge into a democracy, or the reverse, as if it rested on the sovereign's free choice and discretion which kind of constitution it would subject the people to. For even if the sovereign decided to transform itself into a democracy, it could still do the people a wrong, since the people itself could abhor such a constitution and find one of the other forms more to its advantage." Ibid.

4. Kantian Checks and Balances?

It is important to note that, by the very same argument that Kant has dismissed the possibility of limiting the executive's power by means of a conception of authorized resistance from the people through their deputies, Kant has also dismissed the possibility of judicial review as a mechanism of checking purported abuse by the legislative and executive powers. Precisely because any act of the judiciary depends for its enforcement on the executive power,[73] any appearance of a judicial check on its authority can also only appear as a clever prudential way for the executive to manifest its authority.[74] Indeed, the only thing resembling the "checks and balances" of the U.S. Constitution in Kant's vision of the separation of powers is the power of oversight that the legislative authority exercises over the executive. Nor is this, as Kenneth R. Westphal suggests, merely an oversight on Kant's part.[75] Rather, it is a fundamental consequence of the way that Kant conceives of the separation of powers as the expression of the parts of a practical syllogism.

In accordance with Kant's theory of judgment, the law is prior to the command is prior to the verdict just as the universal is prior to the particular is prior to act of individual judgment. To imply that the order could go the other way around would entirely undermine Kant's claim to have established an *a priori* theory of right that is able to abstract away from the particular inclinations and sensible conditions by and in which morality actually operates. If acts of command play a constitutive role in articulating the meaning of legislation rather than merely serving as means by which already-existing legislation is made practical, there could be no metaphysics of morals at all.

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[73] "But once the facts in a lawsuit have been established, the court has judicial authority to apply the law, and to render to each what is his *with the help of the executive authority* [emphasis mine]." MM 6:317.

[74] Consider, for instance, the controversy over whether or not Andrew Jackson would enforce the Supreme Court's decision in the aftermath of *Worcester v. Georgia* (1832). The question was never brought to a head because the court never requested the aid of federal marshals, and the outbreak of the Nullification Crisis would lead Georgia to change the law that was originally under contestation, but nevertheless demonstrates the dependence of the judicial authority upon an executive power.

[75] Kenneth R. Westphal, "Republicanism, Despotism, and Obedience to the State: The Inadequacy of Kant's Division of Powers" *Jahrbuch für Recht und Ethik* 1 (1993): 263-281.

This will be, as we shall see, a key aspect of Schleiermacher's criticism of Kant's conception of the separation of powers. But for Kant, the legislator can hold the executive to account and the executive can help the judiciary to enact their judgments, but reciprocal relations from the judiciary to the executive and legislative and from the executive to the legislative are entirely absent. Rather, Kant's judiciary is wholly concerned with the relations between individual citizens rather than the constitution; and Kant's executive does not possess a legislative negative (i.e. the veto power).

The centrality of the notions of checks and balances to the American constitutionalist vision and the dominant place that this vision has played in global politics since should not obscure how innovative and non-obvious the concept of the veto power and judicial review were in their own day.[76] The former, as Eric Nelson has argued, gave an unprecedented amount of power to the American president, power that exceeded even what the British monarch had at the time.[77] The latter was not itself enshrined in the Constitution but developed over the course of a number of decades.[78] *Marbury v. Madison,* which famously made the principle of judicial review explicit, did not take place until 1803, a year before Kant's death. In France, Sieyès would also advocate for the establishment of a constitutional court, so it was certainly possible for Kant to be aware of such a phenomena, but that he did not adopt it is a function of the fundamentally different way that Kant conceived of the separation of powers.

In a creative attempt to rescue a Kantian right to resistance, Westphal would argue that resistance can be made consonant with Kantian principles if it be recognized as an expression of a system of checks and balances between Kant's three separated powers. Noting that Kant refuses to admit a judiciary that is capable of judging between the chief executive and its citizens, and

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[76] For a recent attempt to offer a genealogy and critique of American constitutionalism and how a focus on maintaining constitutional form by means of judicial review came to dominate conversations about modern democracy, see Martin Loughlin, *Against Constitutionalism* (Cambridge, MA: Harvard University Press, 2022).
[77] See esp. ch. 5 and the conclusion of Nelson, *The Royalist Revolution*.
[78] For an overview of the development of a culture of judicial independence and judicial review, see ch. 6 of Wood, *Power and Liberty*.

cognizant that Kant seems to be explicitly critical of expressions of the idea of checks and balances in the sources he would have been familiar with (Montesquieu and Machiavelli), Westphal nevertheless suggests that Kant's willingness to consider impeachment – "a far more drastic measure than a constitutional court"[79] – warrants a reading of Kant that may permit resistance on the basis that citizens are exercising obedience to the constitution – a "higher source of law"[80] – rather than to their rulers.

There are a few problems with this argument, the first being that there is no reason to reason from Kant's willingness to consider impeachment to the existence of a kind of popular judicial review. Impeachment can very easily on Kant's scheme merely be recognized as an expression of the sovereignty of the legislative authority over the executive with no implications for relationships among the other branches apart from the fact that they all have to cooperate to allow each to exercise its own authority. More importantly, however, the reason why Kant cannot imagine the possibility of a constitutional court is that the existence of judicial review reflects a fundamentally different account of the relationship between sovereignty and government than Kant himself adopts.

The reason why the American federalists could advocate for a system of checks and balances and Emmanuel Sieyès could call for the establishment of a constitutional court is that they are committed to a conception of popular sovereignty that identifies the legitimacy of all governmental institutions – legislative, executive, and judicial alike – as mutually stemming from the same source: the "people". Thus, Madison can write in *Federalist* No. 51 that "In a single republic, all the power surrendered by the people is submitted to the administration of a single government; and usurpations are guarded against by a division of the government into distinct and separate

[79] Westfall, "Republicanism, Despotism, and Obedience to the State," 263.
[80] Ibid., 280.

departments."[81] The various departments can be pitted against one another precisely because their authority stems from varied and different combinations of the people that *by design* are intended to check and mutually limit one another. This is further compounded by the federalist structure where the way in which the people are doubly represented in both state and federal governments is supposed to provide a further check and balance.

Similarly, Sieyès could advocate for a constitutional court precisely on account of the fact that it was *not* to be seen as an expression of the ordinary operations of the government – the state's constituted powers – but as a way of maintaining the constitutional form that had been set in place by the people assembled – the state's constituent power.[82] That is, unlike the power of judicial review invested in the American judiciary by virtue of its being a co-equal branch of government, Sieyès constitutional court was to be specifically distinct from the ordinary judiciary precisely because "To treat the constitution as another part of the civil code would be fundamentally misguided."[83] The subject of the constitutional court was not to be the ordinary citizens in their ordinary conduct nor even subordinate officials exercising their office, but those "independent officials" who "when they overstep the bounds of the authority with which they have been entrusted, or fail to conform to the regulations to which they are subject, violate the constitution" in a way that "can be very serious, and may indeed endanger the entire political order."[84] The object of the constitutional court is not the establishment of justice as an exercise of governmental power

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[81] Madison *The Federalist Papers*, 248.

[82] "I am asking, in the first place, for a jury of the constitution (*jury de constitution*) – or, to make my idea sound a bit more French and to phoetically distinguish it from the word *juré* (jury member), a constitutional jury (*jurie constitutionnaire*). This would be a body of representatives with the special task of judging alleged violations of the constitution. A sensible and useful idea was introduced in 1788: namely the distinction between constituent power and constituted powers. This idea belongs among the discoveries that have moved science forward, and it is owed to the French. …Now is the time to make better use of it. If you want to establish a safeguard of the constitution, a beneficial check to contain all representative action within the bounds of its particular mandate, you should set up a constitutional jury." Emmanuel Sieyés, "First Thermidorian Intervention," in *Emmanuel Joseph Sieyès: The Essential Political Writings*, ed. Oliver W. Lembcke & Florian Weber (Leiden: Brill, 2014), 159.

[83] Sieyès, "Second Thermidorian Intervention" in ibid., 171.

[84] Ibid., 172.

among the people, but an exercise of the people's power in maintaining justice within the government. At the end of the day, this is because "Every public power, without exception, is an emanation of the general will; all come from the people, that is to say, from the nation. These two terms must be synonymous."[85]

In his study of the invention of modern democracy, Richard Tuck would argue that a key development in the American and French contexts was the development of a distinction between sovereignty and government that would recognize a fundamental difference between constitutional and ordinary legislation.[86] Attempting to retain a space for direct democracy even in modern democratic states, Tuck would suggest that the emphasis on plebiscites and the direct approval of constitutional law by the citizenry in the formation of the American state constitutions represented a slightly different trajectory than the Sieyèsian emphasis on a constitutional court and the power of judicial review. Although the ordinary operations of government would be left to representatives acting on behalf of the people, Tuck wanted to emphasize that ultimate sovereignty could yet be seen as residing in the people (rather than in the government) by the emphasis that fundamental constitutional questions could not be decided by representatives, but by the people assembled in the exercise of the franchise. Sieyès also maintained a version of this distinction, but his emphasis on constitutional courts meant that constituent power could yet be exercised by representatives rather than by the people assembled. For Tuck, this was a fatal error that could lead to a version of constitutionalism that represents rule by the dead hand of the law in the name of the people that nevertheless actually insulates the government further from the people.

What it is significant for us to note, however, is that Kant ultimately lies in neither trajectory on account of the fact that he is committed to a fundamentally different way of understanding the

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[85] Sieyès, "Reasoned Exposition of the Rights of Man and Citizen" in ibid., 128.
[86] Richard Tuck, *The Sleeping Sovereign: The Invention of Modern Democracy* (Cambridge: Cambridge University Press, 2016).

relationship between sovereignty and government. Simply put, precisely because the general will can *only* exist by virtue of the representation of the legislative authority, Kant can only imagine an account of sovereignty *in* government. Madison and Sieyès both affirm the primacy of the legislature over the other branches by virtue of its closeness to the people.[87] For Kant, however, there simply is no united people outside of the legislator. Though he does recognize a distinction between questions of the law and questions of the constitution and therefore a version of a distinction between a constituted and a constituent power, Kant nevertheless can only recognize sovereignty as residing in the legislative authority rather than the people themselves.

This comes out in the differing ways that Kant and Sieyès interpret the French Revolution. Both will recognize it as a non-revolutionary transition. For Kant, this is because the previously sovereign monarch made the mistake of allowing himself to be represented and thereby lost his sovereignty, allowing for a "palingenesis" of the state under a new republican sovereign. For Kant, the National Assembly *is* the new sovereign, charged with exercising not only the obligation of constituting a new form of government in accordance with the ideal constitution, but also the legislative power of government. For Sieyès, on the other hand, the National Assembly represents a special instance of the constituent power of the people superseding the ordinary operations of the government, an assembly that reconstitutes the government in accordance with a new constitution before dissolving. It is an expression of sovereignty, but not the sovereign (which remains the people). Both can therefore interpret the Revolution in non-revolutionary terms, but do so in quite different ways.

When Westphal attempts to incorporate a conception of judicial review into Kant's vision, he can only do so by fundamentally shifting the tenor of Kant's system. Against Kant's claim that

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[87] Thus, in *Federalist* No. 51, "In republican government the legislative authority, necessarily, predominates." Madison, *The Federalist Papers*, 247.

allowing the limitation of the executive authority would imply a self-contradictory division of the executive power, Westphal would suggest that "Instead of claiming that the 'chief magistrate' wields supreme coercive force, Kant could claim that the 'supreme authority' – now taken as an umbrella term for the three branches of government – wields supreme coercive force."[88] In such a vision of republican rule,

> resistance would be prohibited for nearly the same reason, that the government wields supreme coercive power, but it would also be otiose, since the people would be resisting or rebelling against themselves, as the ultimate seat of sovereignty, and there would be constitutional channels to redress abuses of power.[89]

Westphal has simply replaced Kant's conception of the separation of powers and legislative sovereignty with an alternative version of a distinction between sovereignty and government, wherein the people, *apart from the ways in which they are ordinarily represented in government*, are thought of as reserving sovereign power to themselves. While this conception has indeed gained widespread adherents over the course of the last few centuries, it is simply not Kant's.

Kant does indeed (in 1797) affirm the possibility of popular sovereignty, and so there no doubt exist ways to accommodate Kant's overall vision to other visions of republican liberty and the separation of powers by interpreting constitutional changes as extraordinary expressions of legislative sovereignty. Indeed, Kant admits that the possibility of constitutional change demands that it must be possible for the sovereign to enact such changes. But it is important to remember that Kant's concept of representation was broad enough to include autocratic and aristocratic sovereigns who ultimately are non-identical with the people. And Kant is firm that it is the sovereign alone who must enact these constitutional changes, *not* the people. The absolute supremacy and independence of the various powers of government in their respective realm, and the order in which

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[88] Westphal, "Republicanism, Despotism, and Obedience to the State", 275.
[89] Ibid.

they operate is simply a consequence of the way that Kant understands the separation of powers as an expression of the *a priori* operations of practical reason.

5. The Reception of Kant's Revised Republicanism

It is important to remember that when Kant introduced his redefined republican vision in the essay on *Perpetual Peace*, many still operated with the assumption that republican government was just one of three forms of state and ultimately incompatible with monarchical government. And even as Kant's revised definition would find advocates,[90] the tension between reformist and revolutionary visions with varying attitudes towards the compatibility of republican principles with a monarchical government would continue to characterize the Prussian Reform Movement up to the March Revolution in 1848. The victory of the federalists over the anti-federalists, of Sieyès and the Girondins over the Jacobins, and the eventual dominance of the Kantian philosophy should not lead us to immediately assume that the triumph of the new conception of democracy through representation was either obvious or inevitable.

In 1791, for instance, the willingness of the National Assembly to give the king the right to appoint ministers and veto legislation would lead an anxious Thomas Paine to express concern that the newly enacted French Constitution had reneged on the principles originally set forth in the *Declaration of the Rights of Man*.[91] Declaring himself a defender of "republicanism… against what is called Monarchy and Aristocracy," Paine would balk at the degree of independent authority that the

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[90] Indeed, Otto Dann suggests that the use of the term "republicanism" [Repuklicanismus] was virtually unknown prior to Kant. I suspect that Dann has overstated the case, but that Kant would spark significant debate about the nature of republicanism is without doubt. Otto Dann, "Kant's Republicanism and Its Echoes" in *Republicanism and Liberalism in America and the German States, 1750-1850,* ed. ed. Jürgen Heideking, James A. Henretta, and Peter Becker (Cambridge: Cambridge University Press, 2002), 53-72.

[91] Paine would be a "republican exclusivist" who would argue that all governments apart from the republican form were necessarily despotic. For an account of the development of this position in the early modern period, see ch. 1 of Eric Nelson, *The Hebrew Republic: Jewish Sources and the Transformation of European Political Thought* (Cambridge, MA: Harvard University Press, 2010).

French had invested in the hereditary monarch.[92] Responding in a public exchange that it was important to distinguish between "a representative system" and "republicanism", Sieyès insisted that what mattered most was whether or not the different powers of the government derived their power representatively from the people, not whether or not the legislative assembly exercised significant administrative authority.[93] Paine's insistence that the National Assembly retain more responsibilities vis-à-vis the monarch, Sieyès argued, amounts to asking the question "In a good Republic, is it better that the government should be Monarchic or Poliarchic?"[94] It is enough to separate the executive from the legislative from the judicial. Defining the republic by means of the separation of powers thus remained consistent with the retaining of a singular highest executive authority.

Sieyès' point would come out even more strongly in his attempted *First Thermidorian Intervention* in 1793. Writing against the Jacobins, Sieyès would condemn the "crude ignorance" that led them to consider the "representative system incompatible with democracy."[95] Against the "widespread and false idea… that the people should delegate only powers that it cannot exercise itself," Sieyès would insist that liberty is better safeguarded by "distinguishing carefully between the various representative tasks, and ensure that the constitution does not allow any group of representatives to overstep their particular jurisdiction."[96] Constitutionalism and the separation of powers, not merely the empowering of a legislative assembly, was what is central to republican liberty.

More importantly, however, the fact that the new conception of republicanism that would play a key role in both American and France was compatible with a vision of monarchical government allows for a significant revisioning of the supposed path that Germany took towards

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[92] Thomas Paine and Emmanuel Sieyès, "Controversy between Mr. Paine and M. Emmanuel Sieyès" in *Emmanuel Joseph Sieyès: The Essential Political Writings*, ed. Oliver W. Lembcke & Florian Weber (Leiden: Brill, 2014), 136
[93] Ibid., 138.
[94] Ibid., 143.
[95] Emmanuel Sieyès, "First Thermidorian Intervention" in ibid., 155.
[96] Ibid.

democracy. Far from an entirely separate and unique path to modernity, the Prussian Reform Movement, even if ultimately abortive after the Treaty of Vienna and entirely eclipsed after the failure of the 1848 Revolution, can nevertheless be read alongside political transformations taking place in France and America. The ongoing commitment of many Prussian reformers to the monarchy ought not necessarily signal a predilection towards absolutism within the German spirit, but can also be recognized as a commitment to republican political principles.[97] This will be important for resituating Schleiermacher's nationalism. But before that, let us first turn to how two of his close contemporaries would respond to Kant's revised republicanism.

a. F. Schlegel's Defense of Classical Republicanism

Only a year after the publication of Kant's essay on *Perpetual Peace*, Friedrich Schlegel's "Essay on the Concept of Republicanism occasioned by the Kantian Tract 'Perpetual Peace'" would appear in a Berlin journal. The essay would be a close reading and commentary on "the opinion of the author concerning the nature of *republicanism*" which Schlegel would find "especially interesting" and which would occasion him "to think through the subject anew."[98] Although selectively adopting certain aspects of the Kantian conception of the republic, Schlegel would resituate Kant's views within a renewed defense of an "exclusivist republicanism" that doubled down on the principles of the ancient Greek republics and on democracy as the only acceptable form of republican government. Nevertheless, a number of Schlegel's moves can be recognized as preempting Schleiermacher's own.

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[97] For an attempt to reinterpret Vormarz Prussian Reform along these lines, see Matthew Levinger, "Kant and the Origins of Prussian Constitutionalism" *History of Political Thought* 19:2 (Summer 1998): 241-263.
[98] F. Schlegel, "Essay on the Concept of Republicanism" in *The Early Political Writings of the German Romantics*, trans. and ed. Frederick C. Beiser (Cambridge: Cambridge University Press, 1996), 95.

The problem with Kant's definition of a republic, Schlegel would argue, is that it ultimately remains negative and circular.[99] All Kant has described, Schlegel suggests, is the "minimum of civil freedom" and the "minimum in the infinite progression to the unattainable idea of *political equality*."[100] The true and ideal republic thus is not merely a formal ideal, but the material achievement of a perfect freedom (where political freedom is equivalent to moral freedom) and an "absolute equality of rights and duties for all citizens" that ends "all domination and dependency."[101] Because it is this ideal of the freedom and equality of all that is at the heart of the definition of a republic, Schlegel would find Kant's attempt to redefine republicanism in terms of the separation of powers puzzling, as it seemed to make it possible for one to call a decisively non-republican (in the classical sense of the word) government in which the legislative and executive powers were split between a hereditary monarch and a hereditary nobility respectively a republican one. Rather than defining what makes a republican state republican, Schlegel would insist that the separation of powers only marked out what forms can only be temporary means by which to attain the republican ideal. In a full-throated defense of Robespierre, Schlegel would insist that the combination of executive and legislative powers in the single physical person of the dictator was thus acceptable on republican grounds so long as it is oriented towards the end of achieving the perfect republic and both democratically authorized and temporally limited.[102] Because what makes a republic a republic is its achievement of freedom and equality, Schlegel will insist that "Republicanism is therefore

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[99] "Both attributes [of freedom and equality that Kant mentions] are nothing positive but only negations. Now since every negation presupposes an affirmation, every condition something conditioned, there must be some attribute missing in the definition (and indeed the most important that contains the ground of the other two)." Ibid., 96.
[100] Ibid., 97.
[101] Ibid., 96-97.
[102] "Indisputably, the separation of powers is the rule of the republican state; but the exception to that rule, *dictatorship*, seems to be at least possible. …But dictatorship is necessarily a *transitory condition*; for if all power is transferred for an indefinite time, then that is not representation but a cession of political power. …But transitory dictatorship is a *politically possible form of representation* – therefore a *republican form* of representation essentially distinct from despotism." Ibid., 99.

necessarily democratic", with the "will of the majority" serving as "the surrogate of the general will" until the ideal is ultimately achieved.[103]

Schlegel's reaffirmation of something akin to the older, classical ideal of the republic (though now posited as a kind of regulative ideal towards which one ought to strive) will lead him to interpret Kant's reinterpretation of the three classical forms as referring not to valid forms that a republican government could take, but to three degenerate forms that a despotism could take. Kant's rejection of democracy as necessarily despotic is not an affirmation of the state where *all* rule, but a state where a mass rules: "Kant's concept of democracy seems more adequate to ochlocracy. *Ochlocracy* is the despotism of the majority over the minority."[104] The rule of one or the rule of some can only be compatible with republicanism to the extent that, although they are despotic in form, they pursue republican ends: "The *criterion of monarchy* (that which distinguishes it from despotism) is the greatest possible promotion of republicanism."[105] In other words, although republicanism can be tentatively compatible with monarchy, it is only as a temporary form that strives towards its self-abolition when an adequate level of political culture has been fostered.

Schlegel's insistence that republics had to be defined in terms of the positive achievement of freedom and equality will therefore lead him to posit an alternative to Kant's attempt to replace the ancient definition with an account of the separation of powers. Kant's separation of the executive and legislative, Schlegel suggests, only offers a negative technical perfection of the constitution.[106] A positive technical perfection is defined by how well its constitution approximates the republican ideal of perfect freedom and equality and how well the government actually executes on that ideal. This technical perfection also needs to be accompanied by a measure of political worth, the degree

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[103] Ibid., 102.
[104] Ibid., 105.
[105] Ibid., 106.
[106] "The negative technical perfection of a government is measured by the degree of harmony with the constitution; the positive by the degree of positive power with which the constitution is actually executed." Ibid., 108.

that a state's community is characterized not only by an external political form, but an internal moral culture: "the *reign of morality* is the necessary condition of the *absolute perfection* (the maximum of community, freedom and equality) of the state."[107]

In Schlegel's response to Kant, then, is recognized the contours of a few characteristic early German Romantic moves. There is the rejection of the emptiness of a focus on political form rather than the positivity of material and moral content. Not abstract and formal freedom and equality, but actual concrete freedom and equality is the ideal. To the extent that the separation of powers is identified as a mere negative, formal condition, it is ultimately rejected as a criterion for republican liberty and subordinated to a positive definition, which for Schlegel is found in a reaffirmation of classical democracy as the ideal form of government. The principle of representation is, for Schlegel, a helpful way to adapt republics for the modern world, but exists to supplement direct democratic practice rather than replace it.[108]

Schlegel's democratic vision of republican liberty would finally lead him to reject Kant's denial of the right to resistance. Rebellion is justified, Schlegel argued, when the very viability of a republican constitution is jeopardized: "that insurrection is *legitimate* whose motive is the destruction of the constitution, whose government is a merely provisional organ, and whose goal is the organization of republicanism."[109] It is also justified in the context of a state which, even if it may indeed instantiate a civil condition, actively opposes progress towards a republican form of government: "Absolute despotism is not even a quasistate, but rather an *antistate*, and (even if perhaps physically more tolerable) an incomparably greater evil than *anarchy*)."[110]

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[107] Ibid.
[108] "That the majority of the people acts politically *in person* is in many cases impossible, and in almost all of them extremely disadvantageous. It can be very conveniently done through deputies and commisars. Hence, *political representation* is certainly an indispensable organ of republicanism." Ibid., 103.
[109] Ibid., 111-112.
[110] Ibid. 112.

In Schlegel, then, one sees the ultimate failure of Kant's revised form of republicanism to make an decisive impact on a prior commitment to republican politics. He has provided new language and categories by which to help Schlegel think about the accomplishment of republicanism in history and its possible temporary compatibility with a number of differing governmental forms, but Schlegel's refusal to separate the moral and the political and imagine the operation of the cunning of reason would lead him to reject Kant's vision of reform by means of an enlightened despot in favor of reform by means of a democratically elected dictator.

b. Fichte's Embrace of a Kantian-Style Republicanism

J.G. Fichte provides the case of someone who had a different reaction to Kant's redefinition of republicanism in the essay on *Perpetual Peace*. His 1793 *Contribution to the Correction of the Public's Judgments on the French Revolution* would offer an unabashed defense of the right to resistance on the basis that the bindingness of state legislation rested on one's ongoing voluntary consent and commitment to remaining in its community.[111] While the work is not an explicit endorsement of republicanism, it strikes a decisively negative attitude towards monarchy and aristocracy. "But it is a truth confirmed by a priori grounds and by the entire history: *the tendency of all monarchies is the unlimited sole rule internally and the universal monarchy externally*."[112]

We have in the previous chapters already considered the fundamental way that Fichte's encounter with Kant's essay on *Perpetual Peace* would shift his approach towards the question of right and property. What of republicanism? One finds in the 1796 *Foundations of Natural Right* a rejection of democracy as fundamentally despotic, a definition of republican government in terms of the separation of powers, and – in a reversal of his earlier position – an attempt to square the possibility

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[111] J.G. Fichte, *Contribution to the Correction of the Public's Judgments on the French Revolution*, ed. and trans. Jeffrey Church and Anna Marisa Schön (Albany, NY: SUNY Press, 2021).
[112] Ibid., 55.

of popular accountability with a rejection of the right to rebellion. Despite these similarities, however, Fichte's conception of the nature of the republic nevertheless remains significantly different from that of Kant's by virtue of a different account of representation that leads him formulate a conception of republican liberty centered on the notion of *accountability*.

Fichte's argument begins in the final section of Part I of the *Foundations of Natural Right*, where he attempts to derive the concept of a commonwealth.[113] In accordance with Fichte's synthetic method of construction, he begins with the question of how a common will is possible and adds conditions – the existence of a civil contract, of law, of a law that governs law (a constitution), the need of a coercive authority to enforce that law, and the need of a means to enforce the enforcement of law – until he reaches the conclusion that he has constructed in an *a priori* manner the entire system of the right of the state [Staatsrecht].

Fichte's rejection of democracy arises in the context of his attempt to explore how a constitutional order is to be enacted. What is interesting about Fichte's version of the argument, however, is that – unlike Kant's – popular sovereignty is assumed from the onset. What Kant makes a requirement of the general will – the subordination of all upon a common power – is for Fichte the reason why democracy is necessarily despotic. Beginning with the assumption that "the populace as a whole administer the executive power," Fichte concludes that the play of private interests would necessarily lead to miscarriages of justice such that the condition of a democratic constitution would be almost equivalent to existing without a constitution to the extent that "the populace are simultaneously both *judge and party* in the administration of right."[114]

The proper application of law, Fichte argues, requires a distinction between the person judging and the person being judged. This cannot apply to the populace as a whole because it would

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[113] Section §16 of J.G. Fichte, *Foundations of Natural Right*, ed. Frederick Neuhouser (Cambridge: Cambridge University Press, 2000), 133-164.
[114] Ibid., 140.

then imply that the populace would have to be subject to another. This is, however, impossible because "the populace are, and ought to be, supremely powerful."[115] The only way that they could then be subject to the judgment of another, then, is that they do so voluntarily. Thus, although Fichte will therefore ultimately agree with Kant that the formation of an effective general will with coercive force requires a common subjection, he will insist that this is only a subjection accompanied by a relationship of accountability.

Fichte pauses to note that he has, to the best of his knowledge, presented "the very first strict deduction, based on pure reason, of the absolute necessity of representation within a commonwealth."[116] If Kant is willing to consider the validity of representation without authorization, Fichte explicitly insists that it is the existence of an accountability-relation that makes representation what it is. Indeed, Fichte will conclude with the definition that "A constitution in which the one who administers public power is not accountable is *despotism*," insisting that "no state may be governed *despotically,* or *democratically*."[117] As with the Kant of the *Perpetual Peace*, democracy is identified as necessarily despotic. Yet, by insisting that it is *accountability* that characterizes the relation between a people and its representative, Fichte has offered a significantly different version of the doctrine of the separation of powers:

> It is, therefore, a fundamental law of any constitution that accords with reason and right that the *executive power* (which includes within it, as inseparable, the judicial power and the executive power in the narrower sense) and *the right to oversee and judge how such executive power is administered* (which I shall call the *ephorate* in the broadest sense of the word.[118]

It is not the distinction between legislative and executive, but between the executive and the ephorate that defines republican liberty.

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[115] Ibid., 140.
[116] Ibid., 141.
[117] Ibid.
[118] Ibid.

In an interesting follow-up, Fichte offers a criticism of the threefold separation of powers into legislative, executive, and judicial. Firstly, Fichte dismisses the separation of the legislative and executive as "contain[ing] something indeterminate in it."[119] This is because, for Fichte, there is no act of will involved in the acceptance of any true law. Once one has decided to dwell together with a given people in a given place, "the *content* of law, at least of civil law… comes from the mere assumption that these particular human beings, in this particular place, want to live alongside one another *in accordance with right*."[120] Because Fichte's conception of right is ultimately *theoretically* grounded, the question of legislation is merely a theoretical matter of specifying the proper application of the *a priori* principles of right within a specific context. As such,

> Since those who administer the executive power are charged with presiding over right in general and are responsible for seeing to it that right is to be realized, it must be left up to them to care for the means by which right is to be realized, and therefore even to draft the ordinances themselves, which are not really new laws, but only more determinate applications of the one fundamental law, which states: these particular human beings are to live alongside one another in accordance with right.[121]

Rather than necessarily remaining separate in order to avoid despotism, Fichte will insist on the necessary union of executive and legislative power within the supreme executive on account of the fact that there really is no such thing as new legislation. Everything, Fichte posits, is derivable out of the relations of reciprocal recognition that he has posited as lying at the foundation, not only of right, but of the possibility of free agency in general.

The distinction between the executive and judicial power meets a similar fate: "Separating the judicial from the executive power… is completely futile, and is possible only in appearance."[122] If the executive can exercise no independent judgment in their carrying out of the judgments of the judiciary, the two powers would be united in the person who exercises judicial power. But if the

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[119] Ibid., 142.
[120] Ibid.
[121] Ibid.
[122] Ibid., 142.

executive can exercise some judgment, then they effectively themselves act as a judicial power and the two powers would be united in the person of the executive. Having repeated again his argument for the necessity of an accountable representative, Fichte concludes that it is his distinction between the executive and the ephorate that is actually the most relevant distinction.

Despite this very different account of the nature of representative authority and the separation of powers, Fichte is nevertheless able to relativize the difference between the classical forms of state. If he had previously condemned monarchy as necessarily tending towards injustice, he would now insist that the distinction between a monarchy and a republic merely marked out a different procedure for resolving decision-making conflicts:

> Thus the only difference between a monarchy and republic is that, if there is no unanimity within the corps of persons [who exercise the executive power], the dispute is settled either by the unappealable decision of a life-long president (the monarch), or by some collective voice, such as a majority vote.[123]

As with Kant, the forms of state now merely mark out different ways of setting up the government while whether a state is republican or despotic in form depends on whether the proper constitutional separation of powers is observed.

Fichte's account of the ephorate is perhaps the oddest part of his theory of state, but it follows quite directly from his account of representation. Having united all three powers in the executive, the ephorate is Fichte's attempt at offering a constitutional balance to the executive's authority. Akin to the American plebiscite or to Sieyès' constitutional court or assembly, the one duty of the ephorate is to declare a "state interdict" by which all administration of right is nullified and the people are assembled to render a judgment regarding the constitutionality of the executive's actions and the validity of the ephor's accusations.[124] The people assembled, acting as constituting power, have the right to render judgment about the constituted powers.

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[123] Ibid., 143.
[124] Ibid., 151. See also, "Whatever the populace decide becomes constitutional law." Ibid., 153.

Having made the possibility of resistance to the government the foundation of his conception of republican government, Fichte is able to dismiss the right to rebellion on account of the fact that there is already a specific role in the state whose very task it is to assemble the people in opposition to the executive on the occasion that they abuse their powers. He therefore rejects that there can be a right to rebellion insofar as anyone who attempted to assemble the people apart from the ephorate would be justly punished as a rebel. In the occasion that the ephorate and the executive conspire together to enact a despotic government, Fichte similarly refuses to countenance rebellion, insisting that either "the people themselves rise up unanimously… and pass judgment on the ephors and the executive officials" or some persons assemble the people who, upon passing judgment, either are punished as rebels or recognized as "unordained, natural ephors" who are retrospectively granted public sanction on account of their being recognized by the constituting power to have expressed the general will.

As odd and quixotic as Fichte's views may be, they nevertheless give expression to the kind of influence that Kant's redefinition of republicanism could have on the theory of state. Even as Fichte departed quite significantly from Kant's precise formulations, he nevertheless maintains a number of the broad contours of the Kantian vision. Direct democracy is reinterpreted as a scheme of governmental authority and recognized as inherently despotic. Republican government is identified with any valid civil constitution in general and defined in terms of a separation of powers. And on account of a relativization of the differences in forms of government, the possibility of revolutionary change is rejected.

III. Schleiermacher's Republicanism

1. Republics Ancient and Modern: Schleiermacher as Republican Thinker

The young Schleiermacher was a dedicated republican. His early commentary on Books 8 and 9 of Aristotle's *Nicomachean Ethics* would include an excursus arguing that being a monarch was an unnatural position on the basis that a king could not truly participate in the goods of friendship, a relationship that requires intimacy and rests on equality.[125] He would react positively to the news of the French Revolution, and he and his early German Romantic colleagues would remain advocates of its cause long after others had recoiled at the rise of the Jacobins and the Reign of Terror. Many of his early notebooks and reflections would be filled with scattered reflections critical of monarchy. For instance, in an reflection dated September 1796, the year that F. Schlegel would publish his response to Kant's *Perpetual Peace*, Schleiermacher denied the rationality and conceptual coherence of absolute monarchy as a valid political form, denying that it could ever be the object of a social contract either "in the condition of the simplicity of nature… nor in the condition of culture."[126] Assuming a conception of popular sovereignty, Schleiermacher would present the idea of an monarch exercising absolute authority as beset with insurmountable conceptual difficulties:

> The defender of absolute monarchy inevitably finds themselves in the following dilemma: either there is in such a state no general will, or the people have alienated not only the exercise of sovereignty, but sovereignty itself. If I take the monarch to be a member of the state, there can be no general will because there is no individual will in the state that is not subject to him; [if] I take him as outside [the state], the exercise of sovereignty is thus outside the state and it is thus alienated.[127]

Although it is unclear who Schleiermacher has in mind when he writes of a "defender of absolute monarchy", his republican predilections are clear. Subjection to a monarch is defined in such a way

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[125] "And it appears to be such that, we must rather add, "the more he is capable of friendship, the less he is a king" – this is a new proof that this position, in the form that one commonly encounters us among us, is actually contrary to nature." Friedrich Schleiermacher, "Anmerkungen zu Aristoteles: Nikomachische Ethik 8-9 (1788)" in KGA I/1, 16. Translation mine.

[126] Friedrich Schleiermacher, "Vermischte Gedanken und Einfälle" in KGA I/2, 3. Translation mine.

[127] Ibid.

so as to make it impossible for a monarch to have any access to a general will on account of the fact that the individual wills in the state can only become a reflection of the monarch's own private will. Sovereignty is assumed to rest in the people, and the possibility of its being delegated to an absolute monarch as a representative of the people is rejected on the basis that its delegation would also necessarily be its alienation. Set up in this way, any monarch would necessarily either be a tyrant or a foreign subjugator.

Schleiermacher also defended a right to resistance, insisting that talk of a "contract of submission" belongs only to monarchies and not at all to republics.[128] In a collection of notes on Kant's 1793 essay on *Theory and Practice*, Schleiermacher insisted that Kant had failed to properly distinguish between situations in which the people were merely in danger of losing their happiness (in which the right to resist is correctly denied) and situations in which the people were in danger of losing their rights. In the latter, precisely because the civil condition is itself already dissolved, resistance to the sovereign would merely be an expression of their obligation in the state of nature to enter a civil condition.[129] Furthermore, Schleiermacher also called into question the adequacy of Kant's insistence that a rebelling people would become judges of their own case if they disagreed with the way that the sovereign administered the constitution.[130] Kant, Schleiermacher suggested, had identified the *part* of the people who complain of mistreatment with the whole of the people. There thus remain other persons – both among the people and the government – competent to sit in judgment between these two. To suggest that there is no other governmental authority capable of doing so, Schleiermacher suggested, would be to conflate the executive and judicial powers that Kant sought to keep separate. In making these criticisms, Schleiermacher makes use of assumptions

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[128] Ibid., 4.
[129] Friedrich Schleiermacher, "Excerpt aus Immanuel Kant: Über den Gemeinspruch: Das mag in der Theorie richtig sein, taugt aber nicht für die Praxis (Vermutlich 1793)" in KGA I/14, 22.
[130] Ibid., 23.

that would be foreign to Kant – the determinate validity of right-claims outside of the civil condition and the capacity of the judiciary to judge constitutional questions – but which reflect his ongoing commitment to the republican cause.

From such beginnings, what is one to make of Schleiermacher's later proclamations of loyalty to the king and teaching that monarchy represented the highest form of government? While many have taken Schleiermacher's later monarchism as representative of a conservative or "nationalist" turn that would mark the end of the early German Romantic movement, the shift in his opinions can better be understood against the backdrop of his adoption of a revised conception of republican liberty that allows him to relativize the significance of the differences between differing form of states in favor of an emphasis on the separation of powers.[131] That is, far from just another example of the *Sonderweg* thesis and the inability of democratic ideas to take root in German soil, Schleiermacher can instead be situated within the creative explosion of attempts to adopt republican principles for the modern world in the wake of the American and French Revolutions.[132]

Although Schleiermacher would ultimately be critical of the doctrine of the separation of powers, his insistence that the civil condition is defined by the opposition between authority and subjects turns out to be a modified version of Kant's distinction between executive and legislative power, interpreted as characterizing the interplay between a people (as the origin of legislation) and

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[131] Nowak describes Schleiermacher as seeking a merger of monarchical and democratic visions. While Schleiermacher does see his theory as advocating for a union of the benefits of monarchical and democratic forms of government, my argument emphasizes that Schleiermacher's position is not a mere blending of two differing ideals, but an articulation of how this balancing of monarchical and democratic represents the perfection of the *republican* ideal in the context of the modern state. See Kurt Nowak, "Friedrich Schleiermachers Verschmelzung von Monarchie und Demokratie" in *Freiheit gestalten: Zum Demokratieverständnis des deutschen Protestismus 1789-1989*, ed. Dirk Bockermann et al. (Göttingen: Verderhoeck & Ruprecht, 1996), 69-77.

[132] In this regard, I am echoing Matthias Wolfe's evaluation of Schleiermacher as having contributed to the democratization of Prussian society and as a theorist of democracy. Wolfes was able to reach this conclusion on the basis of his observation of how central the notion of public opinion was to Schleiermacher's politics. Here, I wish to better substantiate the claim by showing how Schleiermacher's own political theory can be seen in relation to the way that Kant stands against the backdrop of theoretical developments in the aftermath of the American and French Revolutions. See Matthias Wolfes, *Öffentlichkeit und Bürgergeschellschaft: Friedrich Schleiermachers politische Wirksamkeit* (Berlin: de Gruyter, 2004).

its government (as the origin of execution) rather than two powers within the government. In an attempt to reconcile both the ancient and modern conceptions of the republic, Schleiermacher would insist that his distinction between subject and authority better captures the essence of republican liberty as it describes the condition under which one can be said to live under the rule of law. This revised conception of the republic will thereby allow Schleiermacher to reconceptualize his understanding of the three basic forms of state which, contrary to ancient and modern authors alike, he would use to describe three differing stages of state transformation in the transition from ancient city-states to the modern nation-state. Schleiermacher's commitment to monarchy must – as with Kant's – be understood within the context of his particular brand of republicanism.

2. *The 1814 "On the Concepts of the differing Forms of State"*

The French Revolution represented a fundamental watershed in the history of modern political thought. With many of his contemporaries, Schleiermacher would follow the events following the storming of the Bastille and the proclamation of the First Republic with great sympathy and interest. Even as the initial republican hopes of the revolution gave way to an era of Napoleonic conflict and conquest, Schleiermacher and his early German Romantic friends would preserve hopes for the success of similar reforms in their own lands. In the aftermath of the 1806 defeat of Prussia at the Battle of Jena-Auerstedt, these hopes would crystallize under the leadership of Karl Freiherr vom Stein and Karl August von Hardenberg, who were granted authority to enact sweeping reforms in the years following the Treaty of Tilset. While resentful that the reforms were undertaken in part under the aegis of French military fiat, Schleiermacher would nevertheless throw himself – as I have earlier discussed – wholeheartedly into the reform efforts.

As Napoleon's defeat seemed more and more certain, however, the return of reactionary and restorationist discourses would increasingly dampen reformist hopes. Brought under suspicion for

his opposition to government support for the proposed peace after Napoleon's defeat at the battle of Leipzig, Schleiermacher's activities would come under increased scrutiny over the course of 1813, eventually resulting in the end of his public political service by the opening months of 1814. Elected secretary of the philosophical class of the Berlin Academy of the Sciences despite opposition from the new interior minister, Schleiermacher would redirect his political energies into reforming the academy and presenting a public lecture on the various forms of state.

Delivered before the Royal Prussian Academy of Science on March 24th, 1814, Schleiermacher's "On the Concepts of the different Forms of State"[133] represents a rare formal presentation of the outlines of Schleiermacher's political theory at precisely the moment when his hopes for the realization of his political vision had essentially come to an end.[134] The lecture laid out a vision of how the classic distinction between the three forms of government – democracy, aristocracy, and monarchy – ought to be re-envisioned within the context of the modern conception of mixed governments and the separation of powers. Distinguishing between the smaller city-states which had dominated Greek political reflection and the "states of higher order [Staaten höheren Ordnung]" that were then in the process of emerging in Schleiermacher's time, Schleiermacher would attempt to vindicate the three-fold schema by suggesting that the three forms can be understood as offering an account of the development of the governmental apparatus as states achieved higher levels of stability and perfection. The small states that were the subject of Greek philosophical reflection, Schleiermacher would suggest, were capable of oscillating between democratic, aristocratic, and monarchical forms of government – as Polybius suggested – owing to their relative instability. Mediating states which aggregated these states into a larger whole, however,

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[133] Schleiermacher, "Über die Begriffe der verschiedenen Staatsformen" in KGA I/11, 96-124.

[134] In a January 7th, 1814 letter to Alexander Graf zu Dohna-Schlobitten, Schleiermacher describes the political situation as one which he would rather not write or think about: "Nowhere can I find clear insights into the spirit and the demands of the time, historically creative talent; I see everywhere that people are spoiling the future in order to please the moment, and the most tremendous waste of human powers and human lives as well as property. But I would rather not think on this last point and on the whole internal administration." KGA V/13, 117. Translation mine.

required governments which took aristocratic or monarchical form, owing to their increased size, though oscillation between these – i.e. tensions between a more confederated and federalist model – could nevertheless exist. The highest order states, however, Schleiermacher claimed, would ultimately be monarchical in structure.[135]

The lecture represented the culmination of the study of political philosophy that Schleiermacher would pick up anew after his first pass through his systematic ethics in 1805/06, summarizing and bringing into sharper contours themes that he had begun to explore in his various lectures on the state and in the 1812/13 *Ethik* and that he would continue to develop in later versions of his lectures on the state. Highly allusive, idiosyncratic in its vocabulary, and original in its vision, it has been more often summarized than understood. When read against the backdrop of Kant's revised republicanism, however, the ways in which it can be better recognized as intersecting and engaging with key ideas in the development of modern democracy become clearer.

a. Schleiermacher Contra Constitutionalism: The Critique of Kant and the Separation of Powers

The lecture would begin with an examination of two different schemes of understanding and categorizing states: the ancient division between democracy, aristocracy, and monarchy and the modern insistence on the separation of legislative, executive, and judicial powers. After dismissing the adequacy of the ancient schema along lines quite similar to that of Kant – they merely represent changes of governmental structure within one self-same state –, Schleiermacher will turn towards an examination of the other approach. The problem with the attempt to define a state in terms of the separation of powers, Schleiermacher argues, is that the three powers, as exercised in the

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[135] Kurt Nowak calls to attention the ways in which Schleiermacher's vision for a constitutional monarchy in the 1814 lecture clearly departs from both that of the Reform Party of which he had previously been a part and that of the conservatives who would increasingly hold sway in the administration. Kurt. Nowak, „Friedrich Schleiermachers Verschmelzung von Monarchie und Demokratie" in *Freiheit gestalten: Zum Demokratieverständnis des deutschen Protestantismus 1789-1989*, ed. Dirk Bockermann et al. (Göttingen: Vanderhoeck & Ruprecht, 1996).

government, are not actually distinct. The judicial system, Schleiermacher argues, deals with civil and criminal law, which have everything to do with filling out gaps in legislation about the relation between citizens and their property and the executive's warrant to deal with internal threats to the state. The judiciary can therefore be recognized as complementing the work of either the legislative or the executive power rather than an independent power of its own. Like Kant, Schleiermacher does not consider the idea of a constitutional court. Nor is this, as we shall see, entirely accidental.

Turning to the distinction between legislative and executive, Schleiermacher would then offer an overview of what he took to be the modern view:

> If legislation and execution are united, whether both reside in one, in several, or in all persons, it is, according to the theory, a despotic state or not a state at all; if legislation and execution are separated, either both are vested in many which would be a republic, or the execution is vested in one and legislation in many which would be a constitutional monarchy; for, that one person should be a legislator and many persons should constitute the executive, no one will consider to be possible, although these concepts do not show in any way why this should be impossible.[136]

As with some of Schleiermacher's earlier writings on monarchy, the way that Schleiermacher frames the separation of powers doctrine continues to betrays his republican bias. Here, the ancient republic is not the paradigmatically despotic government on account of the fact that the legislative and executive authorities can be invested in differing assemblies or colleges of the many.[137] Schleiermacher explicitly defines monarchy in a democratic way by investing legislative authority in the many and making monarchy – like Sieyès in his response to Paine – merely a way of talking about having a single highest executive officer. Most tellingly, he continues to deny the viability of an absolute monarchist scheme of a sovereign monarch delegating executive authority to a number

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[136] Friedrich Schleiermacher, "On the Concepts of the different Forms of the State" in *The Political Thought of the German Romantics*, ed. H.S. Reiss (Oxford: Basil Blackwell, 1955), 180. See also KGA I/11, 103.

[137] In a set of notes drafted sometime during his renewed study of politics, however, Schleiermacher would be more explicit about recognizing direct democracy as necessarily despotic, yet without identifying this form with the ancient republic per se: "Where one starts with the basic principle that no human should be a slave [i.e. the republican ideal of rule of law and not of masters], there a pure democracy is not possible." Friedrich Schleiermacher, "Frühe Aphorismen" in KGA II/8, 24. Translation mine.

of ministers even as he admits that it seems to be conceptually possible under this scheme. Whatever kind of "monarchist" Schleiermacher will end up being is decisively *not* to be identified with a conservative support of the status quo.

The problem with this scheme, Schleiermacher argues, is that the two powers ultimately cannot be made completely distinct.[138] Schleiermacher then picks up on Kant's analogizing of the powers with the parts of a syllogism to make his point:

> For if we proceed from the standpoint that legislation is concerned with the unity of the universal, but that the executive is concerned with the manifold details of the particular in all the cases belonging to the universal, then this contrast between the universal and the particular is merely an indefinite one, because each case can always be compared with a more universal case and *vice versa*.[139]

In keeping with Schleiermacher's rejection of the Kantian and Fichtean ways of relating the universal and the particular, he would here repeat his insistence that they represent only a relative and co-constructed distinction that can be recognized as existing in a spectrum from most particular (and minimally universal) to most universal (and minimally particular) such that either particularity or universality could come more to the fore depending on what angle one was focusing on. *Mutatis mutandis*, legislative and executive are necessarily intertwined and interconnected with one another. Things do not merely move from the universal down to the particular, but, in keeping with Schleiermacher's vision of the oscillation and the co-production of the general and the particulars, it is also the actions of individuals acting in their particularity which can have a decisive effect on the shape of the general. That is, while Schleiermacher accepts the legitimacy of a distinction between legislative and executive, he calls into question whether any actually enacted distinction can be

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[138] "[B]ut merely quite generally I should like to maintain that if the executive power is considered as a peculiar and direct expression of the power of the state, as is the legislative, then no opposition dividing them completely and generally can be maintained between the two in the concept itself." Ibid., 181.
[139] Ibid.

derived on an *a priori* (and merely conceptual) basis and in such a way so as to grant priority solely to the legislative power and not also allow the executive its own initiative.

Lifting up the example of government appropriation, Schleiermacher suggests that it is somewhat arbitrary how any given state decides to divide the task between the legislative and executive powers. The legislature could choose only to set the budget, leaving the questions of revenue to the executive; or it could also concern itself with the revenue, setting a target amount though leaving the means to the executive; or it could go further and specify the tax, leaving only the collection to the executive. There is no good reason to stop at one point rather than another, and either power could seek to expand its authority so as to oversee essentially the whole task.

Laying out a spectrum, Schleiermacher considers the one extreme in which a state sets out clearly in its constitution where the boundaries between the two powers ought to lie and the other extreme in which, lacking clear constitutional boundaries, the distinction can still be maintained on the basis of there being two powers, but without a consistent way of demarcating their respective limits. Different states will adopt differing divisions and differing degrees of constitutional rigidity depending on "their own needs and its own nature."[140] In familiar Schleiermacherian fashion, what in Kant or Fichte would exist as a dualism now exists in the form of a spectrum.

But although Schleiermacher thereby continues to insist that a version of Kant's distinction between legislative and executive authority does exist, he has affirmed that distinction in such a way

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[140] "If one thinks, however, that there is a constitution to determine the limits of both powers and their formation, then the concept of the opposition of the two powers disappears even more. For if a constitution is not merely formal, and such a constitution has not yet existed in reality, then it has at least to express in certain principle points that peculiar essence of a state beyond which the legislative organ may not go, and therefore describe this limit; indeed, it can be said that the more complete the constitution is, the more the whole current legislation can be considered as merely an executive act; for it has nothing to do but to apply the constitution to the existing circumstances and bring it to life, so that they are different only according to the degree of their real execution. But I the state has no kind of constitution it would appear as if both powers could be separated according to the form of the different authorities; then everything becomes arbitrary and fluid and nothing can be defined in a general concept. …It really depends much more on the fact that in every individual state, constitution and observation, it can be determined that the sphere of the one can certainly be separate from the other, but that this delimitation will be a different one in each state, unless one state is blindly imitating another one, and that each will adopt its delimitation independently having regard to its own needs and its own nature. Hence we find many gradual transitions, but no firm classes and divisions." Ibid., 182.

so as to undermine a constitutionalist interpretation of the separation of powers. If different states can effectively come up with different valid configurations of legislative and executive power, it is clearly not maintaining in perpetuity a particular set of boundaries in accordance with a fixed constitution that preserves liberty. Rather, the constitution – when good – at best only gives expression to the particular way that a particular state best organizes its powers on account of its "own needs and its own nature."

In his *Ethik* and *Staatslehre*, Schleiermacher considers many different variations of these arrangements and attempts to identify when they would or would not be expedient. Constitutions, Schleiermacher would insist, needed to be responsive to the distribution of ethnic and tribal relations and the distribution of economic power within any given state.[141] Changes in these social and economic relations thus will require a state to adopt corresponding changes in its constitutional arrangement:

> Partly because these relationships themselves are gradually modified, partly also because the genesis of the state is only the beginning of the process of becoming and the inequality originally posited in it must even itself out to an ever-greater extent, any long-lived state must also experience changes in its constitution.[142]

Entering into a civil condition together necessarily leads to corresponding shifts in the relationships of the various peoples and economic powers as they begin to intermarry and coordinate in ways that will have corresponding effects on the social fabric.[143] These effects need to be adequately reflected

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[141] "Leaving aside the influence exercised by the genesis of the state, such a constitution is as diverse – where the state rests on family bonds – as the relationship of aristocratic families to democratic ones and – where the state is a whole formed by nature – as the relationships of those who are only in possession of the mechanical aspects to those who are also in possession of the intelligent aspects." E 1812/13 76 (HG.III.121), 341.

[142] E 1812/13 76 (HG.III.122), 341-342.

[143] Schleiermacher will actually dedicate a non-trivial amount of space in both the *Ethik* and the *Staatslehre* in exploring how the state can play the key role of coordinating the economy in order to advance its development in a way that also attempts to balance out inequalities that will ultimately prove detrimental to the nation's health. That this is a key function of Schleiermacher's conception of the state simply follows out of his rejection of its negative grounding: "Thus, the state is a communal organizing activity subsumed under an individual idea of culture. This view conflicts with a variety of prevailing views. First of all, it conflicts because it posits the state as a distinct process of productivity. Most recent views usually see the state simply as protecting and liberating the special productivity of individual persons – a thoroughly negative view. …If the individuality of the state is denied, then what is communal also cannot be anything other than an aggregate of individuals." BE 88; 140-141. Economic development, though requiring the coordination of

in the constitution if the state is going to be able to achieve increased political unity and better coordination of its division of labor.

Indeed, in the 1814 lecture, Schleiermacher will interpret the failure of the French government to respond to the reality of these changes as one of the precipitating causes of the French Revolution's attempt to adapt its constitution to the new circumstances occasioned by its achievement of absolute monarchy:

> [W]e must not fail to recognize how just this political situation, in which the state has united the whole national and linguistic territory into a whole and in which the idea of national unity is attained while the constitution has still remained on the precarious and no longer tenable level of an aristocratic monarchy, was one of the natural causes of the French Revolution.[144]

Constitutions are not intended to be permanent, but responsive to the dynamics of state development. *How* responsive it should be is also a matter of individual states and individual circumstances, given Schleiermacher's willingness to imagine an entire spectrum between "perfect" constitutions which only need to be executed and ones which are ambivalent with regard to a number of differing ways of arranging executive and legislative authority.

Nor do constitutions have to be explicitly written down. The idea that the security of a state depends on having a written constitution, Schleiermacher argues, is a mistaken prejudice arising out of specific circumstances in which various peoples are experiencing anarchic or disruptive conditions.[145] Schleiermacher does not countenance the need for a constitutional court precisely

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the state once a complex division of labor becomes more firm, also require the state to avoid taking on the actual task of productions, which remain the domain of individuals: "Since through division of labor each person's sphere becomes a mere fragment and he is unable to acquire a clear sense of its relationship to the whole, often only becoming aware of it too late by experiencing the consequences, a quickening insight into this relationship, and in consequence the proper directing of forces, must come from the ruling authorities. The formative process itself, however, must always come from the individual himself, and when the authorities act in a business capacity, they destroy the opposition again. Since, however, the need for many activities can only be experienced as a result of the overseeing function of the whole, both in its entirety and with regard to individual points, incitement may of course come from the authorities on this point." E 1812/13, 74-75 (HG.III.105-107), 339-340. A full exploration of this subject, however, goes beyond the scope of this dissertation.

144 Schleiermacher, "On the Concepts of the Different Forms of the State", 194. KGA I/11, 117.

145 "If the state is completely constituted only under these conditions, we cannot fend off the question how then this is connected with a constitution fixed on paper. [It is a] prejudice that the security [of the state] depends on it…. The

because constitutions themselves are ultimately to be responsive to the dynamics that are the object of legislative and executive activity, only in a more general way. What norms the relationship of legislative and executive powers is not to be a set of formal relationships set out in a constitution, but the idea of the nation. Nor does he require a constitutional court to represent the people to provide a check on the government. This is because, rather than signifying a distinction between two powers of government, the division between the legislative and executive powers characterizes the very division between a people and their government.

b. The Genesis of the State: The Distinction between Authority and Subject

Although Schleiermacher ostensibly rejects the modern attempt to characterize states in terms of a separation of powers, he ultimately ends up affirming the ongoing significance of the distinction between executive and legislative powers in another form: the difference between authority[146] [Obrigkeit] and subject [Unterthan], ruler [Herrschenden] and ruled [Beherrschten]. "The essence of the *state*," Schleiermacher writes, "consists in the opposition which emerges between authority and subjects."[147] Schleiermacher's insistence upon this division hangs upon his insistence that it is this structure of relations that characterizes what is at stake both in the classical republican ideal and the modern account of the separation of powers. That is, "the two characteristics of a state: a state exists where there is law and a state exists where there is an

written constitution arises only partly in accordance to anarchical conditions, as the Magna Carta, partly in accordance with a general upheaval, as the German Acts of Confederation, and partly in secondary formations, as in America." KGA II/8, 93-94. Translation mine.

[146] In the 1814 Akademie lecture, Schleiermacher will present the opposition as a difference between the government [Regierung] and the subject [Unterthan], but almost everywhere else – the *Ethik* and the *Staatslehre* – will replace government with authority [Obrigkeit].

[147] E 1812/13 71 (HG.III.85), 334. Also, "The opposition between ruler and ruled, between government and subject arises from this." Schleiermacher, "On the Concepts of the different Forms of the State", 184. KGA I/11, 107. "The commonality of both [a monarchical and democratic approach] is the *opposition of authority and subject*. Where this opposition exists, there is a state, and vice-versa." KGA II/8, 69. Translation mine.

opposition of authority and subject."[148] Republican government, Schleiermacher claims, is characterized by the rule of law, a state that requires the existence of a distinction between one who gives the law (legislation) and one who acts upon it (execution).

While Schleiermacher's insistence on this distinction is fairly consistent throughout his later works, it is in his later *Staatslehre* that he offers a more substantive elaboration of what is at stake in the distinction. The existence of the opposition between authority and subject is to be distinguished from two extremes. Firstly, the condition of anarchy, in which no stable opposition ever emerges; and secondly, the condition of despotism, in which there exists an opposition between a despot and their slaves.[149] By contrast, the opposition between authority and subject is characterized by the possibility of rule in accordance with a shared, non-arbitrary norm: the law.

How does law and the civil condition arise? Schleiermacher offers a kind of "general history" of the state by describing what he takes to be a necessary aspect of any historical instance of state-formation even as he abstracts away from its actual details.[150] Whether an actual state arises by

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[148] KGA II/8, 77. Translation mine.

[149] "Where it [the opposition] ceases there is either *anarchy*… a defect of the opposition because violence is adopted always with one-sided arbitrariness and does not endure until consent is confidently and authentically expressed, and thus the opposition is never completely available. Or where it [the opposition] ceases there is *despotism* in the ancient sense where *despotes* (despot) and *doulos* (slave) were correlate. No one calls a patriarch with his slaves a state. Many patriarchs can form a state among themselves, but the slaves as *organa zonta* (organic life) do not belong to it." KGA II/8, 69-70. Translation mine.

[150] "I cannot answer from experience which never goes as far as that, but merely with a presupposed and very vague history. I do not want to call it fiction, for it must really contain the general history of all states, i.e. the uncertain basic features of that which has really filled the interval between two given conditions, the condition we know before the state and those first conditions of the state which we know from history." Schleiermacher, "On the Concepts of the different Forms of the State", 185. KGA I/11, 108. For a parallel attempt to use this method as a means of deriving one's conception of the state, see ch.1 of Philip Pettit, *The State* (Princeton: Princeton University Press, 2023). Thus, contrary to Pettit's claim that no one has yet attempted the task of offering a counterfactual genealogy of the state, Schleiermacher makes this his basic methodology. Interestingly enough, there are incredible similarities between Schleiermacher and Pettit's attempts at doing so even as they diverge at important points. Pettit attempts to describe how societal norms can be raised to the status of laws and give rise to a legal system involving rules for the recognition of norms, for changing laws, and for adjudicating them. In other words, the transition from norm to law takes place in the rise of 2nd order norms to govern the uptake and formalization of 1st order rules of collective conduct. Pettit's genealogy thus results in the articulation of a distinction between ordinary and constitutional law, giving rise to the three-fold division of powers between legislative, executive, and judicial roles. By contrast, Schleiermacher will insist that the transition takes place in the making explicit of what were merely implicit patterns of behavior. Rather than moving from explicitly ratified norms to constitutionally governed laws, the movement is from implicit patterns of moral behavior to their explicit formulation in law. The distinction between legislative and executive is only relative and exists in the movement between the coming-to-consciousness of the implicit norms and the explicit acting upon them that follows

conquest or by contract, these, Schleiermacher claims, are the features that must be present.[151] For Schleiermacher, the formation of law represents the definitive transition that occurs when a people is able to elevate their implicit and unconscious habits and morals into an explicit and conscious form of intentional activity by means of the intellectual apprehension of their collective activity. That is, law is constituted by the recognition of a previously unconscious communal practice into an explicit and intentional end of collective activity: "What exists in the state as right and duty will be much the same as what was previously sense and custom."[152] Previously, the people were "merely lacking the right word" in order to articulate their manner of being together. It is the achieving of this consciousness that characterizes the being of the state:

> In brief, the already existing sentiment and activity have been brought together and laid down in the law through the arising of the state. What existed before is now expressed, the unconscious unity and equality of the mass is transformed into a conscious unity and equality, and this arising of the consciousness of belonging together is the essence of the state. But just as there is no consciousness without its opposite, so in the people the consciousness of belonging together exists merely in opposition to the consciousness of existing in each individual. The opposition between ruler and ruled, between government and subject arises from this. The opposition which is somehow formed is the essential scheme of the state; the endeavour to evoke this opposition and with it the consciousness of the relationship of each individual to a definite whole of nature and to impress it upon the whole of life and retain it independently, is what I call a political instinct in the narrower sense of the word. Before this has awakened, there is no difference between the being and the activity of the individual and the being and the existence of the whole.[153]

The transition from a state of unconscious unity to a state of conscious unity brings with it a number of closely connected concepts. Firstly, Schleiermacher claims, it brings the consciousness of the existence of, not just a sphere of commonality, but a "definite whole of nature" in which one

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upon their being made explicit in law. The difference can be characterized in terms of the difference between Schleiermacher and a more classical Kantian-Hegelian trajectory for thinking about normativity: is it the product of the transition from feeling to action or of a second-order transcendental reflection upon the conditions of possibility of action?

[151] "I am not intending to renew the old contest as to whether a state has arisen in a divine manner or in a human one, and whether in the latter case it has arisen through usurpation or through contract. But I want to show merely what arises through the formation of a state which has not existed beforehand." Schleiermacher, "On the Concepts of the different Forms of the State", 183. KGA I/11, 106.

[152] Ibid., 184. KGA I/11, 107.

[153] Ibid. 184. KGA I/11, 107-108.

belongs. We shall have more to say about why Schleiermacher uses the language of a "definite whole of nature" in the following chapter. For now, however, it is sufficient to note that Schleiermacher will elsewhere think of this in terms of the development of a "national consciousness".[154] It is the explicit articulation of some shared way of being as worthy of a collective normative pursuit in the form of an idea of a nation that gives rise to a state.

Secondly, the consciousness of this national unity brings along an awareness of an opposition between one's existence as connected to the whole and one's existence as an individual. Simply put, what arises is the consciousness of the distinction between public and private existence, a general will and a particular will.[155] As with Kant, Schleiermacher will insist that the civil condition is accompanied with the recognition of there being a general will and therefore a relation of subordination to it. But if Kant would identify the existence of the general will solely with the establishment of the authority or sovereign, Schleiermacher will insist that both authority and subject arise concomitantly as poles of an opposition. The relation of command and obedience is not that of one who stands over and above a whole, but of an internal differentiation within a whole, even if there is one who commands and the other who obeys. The formation of the subject as subject, however, is as much a result of the civil consciousness as the formation of an authority. It is not that there first exists only private wills and then there exists a general will that overrules the

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[154] Schleiermacher is fairly consistent throughout his mature ethical and political writings that states are founded on a "common particularity" that he will identify with either tribal (in the case of smaller states) or national (in the case of larger, modern states) unity. i.e. "Particularity in common is the basis of the state, partly to the extent that it is also a family bond and partly because only to that extent will every individual posit the totality of the external sphere of the state as his own moral, particular sphere. …If we posit the state as necessarily conditioned upon national unity [Nationaleinheit], we are also positing an essential plurality of states." E 1812/13 72-73 (HG.III.93-94), 336-337. Also, "Where now are the sources of difference [among states]? The relation to the unity and the relation to the transition. …The first is an overall proportion of the masses as unity, whether they are a nation [Volk] or a tribe [Stamm]." KGA II/8, 77. Translation mine.

[155] Interestingly enough, Arthur Ripstein's defense of Kant's attempt to define the republic in terms of the separation of powers amounts to a defense of the private-public distinction. In light of what we have argued about Kant, one can characterize Ripstein's defense as actually taking a far more "Schleiermacherian" approach to the separation of powers than Kant's own approach to the issue. See ch. 7 of Arthur Ripstein, *Force and Freedom: Kant's Legal and Political Philosophy* (Cambridge, MA: Harvard University Press, 2009).

private will. Rather, there simply is no distinction between the general and individual prior to differentiation of authority and subject.

It is important to note that this consciousness of one's connected-ness to the whole is distinct from the co-construction of individuality and generality in reciprocal relations of right that we have explored in the previous chapters. Indeed, even in his 1814 lecture, Schleiermacher is keen to note that he is assuming the prior existence of sociality among a nation before the arising of national consciousness and the formation of a state.[156] For this to take place, there must be a kind of possession of the land, something that, as we have seen, presupposes the existence of relations of commerce and right. This national state-consciousness, however, is distinct from the consciousness of standing in a relation of right in that the latter only presupposes a relation of complementarily (an identity with respect to a sphere of common activity) while the former presupposes a relation of totality (an identity with respect to a natural whole). That is, in the relation of right, one recognizes the complementarity of one's activity with another's qua individuals who now form a kind of community with one another; in the relation of state, one recognizes one's situatedness within a self-conscious and intentionally self-reproducing whole. The former designates how individuals participate together in *material* activity; the latter designates the relation of individuals to the *form* of their activity.[157] One demands one's rights as someone standing in a relation of coordination; one obeys the law as someone standing in a relation of subordination. The latter perfects the former, but the former also preexists the latter.

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[156] "For that which has always existed beforehand, the basic material of the state, so to speak, is a people [Volk], a mass which belongs together and lives together naturally. Without people [Volk] there can be no state. If we think of ourselves as men who have been blown together from all the four corners of the world, and imagine that these men could have been brought under laws in the way that legend depicts the formation of ancient Rome, then we can hardly call these men a state before we can call the mass of men a people. We can hardly do so before the soil and men have taken possession of each other, until there has appeared at least a second race of native people which is held together in a natural manner through attachment to the common soil and through the same conditions of life." Schleiermacher, "On the Concepts of the different Forms of the State", 183. KGA I/11, 106.

[157] "The state, however, is the form of the people; the people is completely developed only when this form appears and is represented purely and perfectly in it. But the people exists before this form can be seen." Ibid.

c. Democratic Assembly and the Nature of Representation

How does this making explicit of what was previously implicit take place? While Schleiermacher would go on to consider two ground forms – a "democratic" one and a "monarchical" one –, it soon becomes clear that both are modeled after Schleiermacher's interpretation of what takes place in the original direct democratic assembly. In other words, like Friedrich Schlegel, Schleiermacher would insist that modern republics needed to stand in some relation of continuity with their ancient models. But unlike Schlegel, who would only see the development of concepts of representation and the separation of powers as useful means to extend the reach of direct democratic practices in modern contexts, Schleiermacher would be able to envisage a broader continuity by reading an account of representation and the separation of powers back into the original democratic assemblies. That is, rather than the paradigmatic example of despotic government, direct democracy serves for Schleiermacheras the paradigmatic example of the separation of powers at work.

Underlying this move is Schleiermacher's innovative account of reciprocal action:

> Every living existence which is conditioned by the form of opposition can be conceived only in a twofold series of activities, of which one begins in one link of opposition and ends in the other, the other, however, behaves just in the opposite manner. …If we now apply this to the state, its life will also have to be conceived in two different kinds of activities: one beginning in the circumference, with the body, i.e. the subjects, and ending with the regent [Regenten], and another beginning with the regent, the spirit and center, and ending in the circumference, the subjects. It is not difficult to see that the first is our legislative function; the other, however, our executive function.[158]

The distinction between legislative and executive actions, rather than designating a division of governmental powers, designates the functional interplay between a people and their government. The powers of sovereignty are not divided amongst the government, but between the people

[158] Ibid., 198-199; KGA I/11, 121.

themselves and their government. Schleiermacher will draw an analogy to the interaction of body and soul within the human body, which is just another way of talking about the interpenetration of reason and nature that he posits as lying at the heart of all ethical action. In other words, the interaction between legislative and executive power is, for Schleiermacher, to be thought of in terms akin to the oscillation that takes place in the back-and-forth between cognitive (ensouled nature coming to reason) and organizing (embodied reason acting upon nature) action.

Schleiermacher then turns to the example of ancient direct democracy as the paradigmatic example of the interplay of legislative and executive activity.[159]

> All that we call law in the state passes here through three moments: imitation, deliberation and decision. The first occurs only in the community of the people, but it springs from individuals as such, from their private interest or private opinion. There is often a special assembly for deliberation; it has not yet the full dignity of the community of the people, it merely furthers the course of the matter and brings it nearer to conclusion; the law, however, is completed and thus an act of will of the state constituted in the community only in so far as it appears as one in the act of decision and represents the regent.[160]

Legislative activity is characterized as possessing three distinct moments. First, the formation and circulation of habits and practices within a community. Secondly, within a gathered assembly, deliberation that seeks to bring this previously unconscious practices into an explicit verbal form. And finally, a moment when the gathered community acts as one to set forth a completed law. Even in the democratic assembly, the process of deliberation will be terminated by one person stepping forth in order to proclaim the conclusion to be adopted and enacted. The conclusion of the legislative process and the beginning of the executive process overlap:

> The proclamation of the law, however, is really the beginning of its execution because those whom it concerns are commissioned, i.e. they are set into action. The beginning of the execution, however, is continued by the officials who are indeed instituted by the community but are not invested with its whole majesty; the end of execution is finally found in the actions of the individual citizens in accordance with the proclaimed law.[161]

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[159] "Since the whole process of the state is shortest in the original democracy, without however being formless, the matter can be most easily represented if we return to it." Ibid., 199; KGA I/11, 121.
[160] Ibid., 199; KGA I/11, 121-122.
[161] Ibid., 199; KGA I/11, 122.

The executive activity is likewise divided into three stages: firstly, the same joint act of declaration that culminates the legislative process is also the initiation of the executive process. Secondly, the entrusting of the law's execution into the hands of officials. And finally, the actual completed execution of the law in its being incorporated into the behavior of the individuals of the community.

It is, Schleiermacher insists, this cycle of legislative and executive activity that defines the essence of every state: "the law rises from the individual to the regent, the execution, however, begins with regent and ends in the subject. And nothing beyond this is found even in the state of the highest order."[162] The only difference between a direct democracy and a "republican" monarchy is that, in the latter, the spokesperson who brings to an end the assembly's deliberations is always to be the same person. Schleiermacher has taken Kant's syllogistic interpretation of the separation of powers and modified it to emphasize its reciprocity. Kant would focus only on what Schleiermacher describes as the process of execution (to be associated with the government): the regent proclaims a law, it is then given by command to a subset of officers, it is then expressed in the individual judgments of the people. What Kant had taken to be a sharp and necessary division between three powers, however, Schleiermacher describes as three potentially fluidly-bounded moments within a singular process. Furthermore, Schleiermacher will also insist that Kant, in his focus on top-down governmental action, fails to account for the corresponding bottom-up movement: from individual practice back up to the law, mediated by a deliberative assembly.

But is this not a complete and fundamental rejection of the concept of the separation of powers rather than its adaptation? If what Kant describes as the separation of powers is actually to be taken as mere moments within Schleiermacher's ascending and descending accounts of executive and legislative activity, what is the warrant for continuing to refer to it as legislative and executive

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[162] Ibid..

activity instead of just in terms of, say, a sovereign people and their government? Making such a shift would not necessarily be without precedent. Consider, for instance, Sieyès' own rejection of the separation of powers in favor of a distinction between constituent and constituting power:

> In a representative system, political action is divided into two main parts: ascending actions and descending actions. The former comprise all those acts by which a people directly or indirectly names its various representatives, who are charged with making laws, and with their subsequent execution. The latter encompasses all those acts by which these representatives participate in the making or the execution of laws. In a free nation, the point of departure of this political process can be no other than the primary assemblies. The target of the process is in turn the people as the receiver of the law's benefits. Even without further elaboration, it should be clear that establishing a constitution consists in organizing this circular mechanism.[163]

Like Schleiermacher, Sieyes will describe both an "ascending" and a "descending" motion that begins with the people and ends in a public representative body (the regent or the primary assemblies) and vice-versa. When it comes to the question of dividing up the powers of government, Sieyes will also depart from the classical separation of powers into legislative, executive, and judicial, instead positing that there are "two systems for dividing political powers: the system of equilibrium and that of cooperation – i.e. a system of counter-weights and a system of organized liberty."[164]

The former, worrying about the specter of despotism, divides up power into two or more differing representative bodies and grants them the ability to veto one another's actions. "They pride themselves on avoiding the concentration of powers in one place, which indeed would amount to complete despotism."[165] The problem, however, is that if one looks "at any actual instance of this model, and consider how political affairs are conducted there… you will see that the political system is able to function only because in practice there is really no such counterweight or equilibrium at all."[166] Citing the same English constitutional debates over whether or not the monarch had made

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[163] Sieyès, "First Thermidorian Intervention", 153.
[164] Ibid., 154.
[165] Ibid., 157.
[166] Ibid.

Parliament a rubber stamp for his designs or whether Parliament had overstepped into the realm of royal prerogative,[167] Sieyès insists that the necessity of coordination requires there to be some way of uniting the purportedly differing interests that were supposed to check one another. The problem with the idea of checks and balances is that the actual functioning of government requires coordination which, if it is not merely to be contingent and occasional, requires a unified power. James Madison and the other Federalists had yet to experience the rise of political parties as Sieyès had.

The latter system, that of organized unity, does not attempt to have different parts of the government check one another's power, but distributes power according to a division of labor towards the end of operating as if "the action of a single mind".[168] How is this unity of the powers of sovereignty not despotism? For Sieyès, a government of organized unity is not despotic simply because it does *not* possess the full panoply of sovereign power on accounts of its being part of a representative system. Because the people retain the right to select their representatives, "what comes to be held in common under the name of public or political power is merely the necessary minimum: only that which is needed to enforce the rights and duties of each individual."[169] Sieyès, unlike Kant, would not invest sovereignty in the government, but reserve it to the people, who, as the constituting power, could retain a check on the constituted power of the government by means of a constitutional court. As long as the people do not allow themselves to be represented in a singular individual, despotism is thereby avoided.

Schleiermacher does not advocate for a constitutional court, but it is also the concept of representation that plays the key role in making his account possible. Schleiermacher does not make

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[167] For a closer look at how the American colonists would adapt the latter perspective against Parliamentarians who advocated for the former, see Eric Nelson, *The Royalist Revolution*.
[168] Sieyès, "First Thermidorian Intevention", 158.
[169] Ibid., 156.

this explicit in the 1814 lecture, but the relevance of the concept of representation to his perspective is made eminently clear in one of his preparatory notes: "A mediating position between our earlier [opinion] and that of the elected representative is to form the language of public opinion in an official but merely consultative organ."[170] What Schleiermacher seems to be attempting to do is to find a "middle way" between the advocates of direct democracy (his old position) and the new concept of representative democracy. This, he locates in the idea of an "official but merely consultative organ." In the note itself, Schleiermacher expresses that the position does not seem to be tenable, but the concept of public opinion and the idea of a deliberative assembly will remain mainstays of Schleiermacher's political vision for the rest of his life.[171] The middle step of the process of legislation in the 1814 lecture, after all, is the process of deliberation in a gathered assembly. It is this participation in the legislative process, Schleiermacher insists, that is at the heart – not only of the original democratic assemblies – but of the republican ideal in general.

For Schleiermacher, then, what is ultimately at stake in representation is *not* the act of authorization – the election of representatives by the people. Rather, precisely because what is at stake is whether or not the people have a chance to participate in the process of legislation, Schleiermacher will identify a different fundamental civic right rather than the right to vote: the right to petition. In the 1814 lecture, Schleiermacher considers the question of how a monarch can be distinguished from a despot if they serve as a single non-elected representative of the people exercising the non-separated powers of government:

> By what, however, is the true king to be distinguished from the despot…? According to the form [of the matter], by the fact that he allows his subjects the right of petition; and it can be said in all cases where they produce their wishes, whether he grants them or refuses them, as long as he merely considers them the subjects have begun to make the law.[172]

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[170] Schleiermacher, "Frühe Aphorismen" in KGA II/8, 8. Translation mine.
[171] At the very least, this aphorism is surrounded by reflections on the relationship between legislative and executive authority that map out exactly the way that Schleiermacher will present it in the 1814 lecture, so he certainly does not abandon many other ideas developed in this document.
[172] Ibid. 199; KGA I/11, 122.

For Schleiermacher, the right to petition allows even a hereditary monarchy to maintain the structure of the original democratic assembly. In this way, legislation still begins in the people and their ways of life, rather than in a subset of the people or in merely the king's way of life. Although it may begin historically in a more ad-hoc manner, Schleiermacher will insist that the institutionalized form of the right to petition is the formation of deliberative assemblies oriented towards the formation of legal proposals.[173] These will propose and deliberate about laws, even as they do not finalize them.

Schleiermacher offers here a radical reinterpretation of the original direct democracy and the concept of legislative bodies. Legislative bodies, Schleiermacher claims, ultimately do not legislate *qua* legislative body: "[N]o well-ordered legislative assembly has within its scope the whole of legislative activity; the king, however, who has been wrongly considered as being merely the executive, is really also the end of the legislative power."[174] Even in direct democratic assemblies, however, Schleiermacher will posit a "monarchical moment" where one spokesperson has to step forward and put forth a final proposal for acclamation. The House of Representatives requires a Speaker of the House; the Senate, a President or Majority Leader who speaks on behalf of the whole. Or, more appropriately: the legislative process as a whole in the United States does not culminate until the president signs and promulgates the law. Legislatures, Schleiermacher posits, necessarily carry a "monarchical principle" which brings the process of deliberation to a close. In a direct democracy, it just happens that this person could be anyone in the assembly. In a government with a single head of state, it is the king or president that plays this role. But whatever the governmental form, as long as the same basic dynamic of the legislative process plays out (along

[173] "He cannot see this until the right of petitions, in gradual progression, matures to an organization of legislative assemblies which are nothing but the most extensive and most formal constitution of this right in a regular fixed communication of the subjects with the regent. In this, all legislative initiative must lie." Ibid., 200; KGA I/11, 122.
[174] Ibid.

with its complementary executive process), Schleiermacher is willing to grant the existence of a genuine legislative power residing within the people distinct from the government.

But there is a second criterion. Although it is up to the king to choose whether to adopt or refuse the proposals of the people, for the acts of the king to genuinely constitute *law*, it needs to adequately take up what was previously only unconscious and bring it into consciousness, an act that ultimately requires the recognition and adoption of the people to become valid. Thus, "According to the nature of the matter, however, he [the king] distinguishes himself [from a despot] through the fact that, spiritually united with his people, he proclaims only such acts of will as his subjects will approve of, once the highest principle of state has developed in them."[175] In other words, the basic dynamic of law-making has to be present: the bringing to consciousness of a unity of something that was previously unconscious. The king's legislative pronouncement needs to ultimately correspond to the people's activity in such a way that there can be recognition and uptake. It is not merely the fact that a proclamation comes from an authorized representative that it becomes a law. Rather, a genuine correspondence needs to exist in a shared concept of national unity. The opposition that is supposed to exist is between that of a people and their authority rather than between slaves and their despot.

It is the right to petition, Schleiermacher posits, that is at the heart of democratic life, not the right to the franchise per se. Merely being able to elect one's representatives by no means implies that one has recovered the spirit of ancient direct democracy:

> [elected] representatives of this kind are entirely separated from their private life for the whole time of their joint meetings and are restricted in their political function. They cannot develop that interplay, which is really confusing but also easily and quickly disentangled, between private interest and public spirit, which is the true character of democracy.[176]

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[175] Ibid.
[176] Schleiermacher, "Of the Concept of Different Forms of the State", 189-190; KGA I/11, 112.

Elected representatives who spend most of their time meeting in the halls of the legislative assembly, Schleiermacher suggests, lose connection with the private ways of life from which they originally came. In this sense, even if it maintains the external form of direct democracy (in having a deliberative assembly), it is missing what Schleiermacher takes to be a core part of its fundamental character: the interplay between private activity and public life that characterizes a people who gather to deliberate and then scatter to work. Elected representatives already begin to take on public work as a kind of career in and of itself and therefore is no replication of the dynamic of direct democracy even as it maintains its external form. It is not merely the casting of votes by all, but the active participation in the legislative process by all that makes a government democratic.

In insisting that modern representative democracies fail to replicate the dynamics of ancient direct democracies, Schleiermacher is not thereby rejecting the value of the franchise. Indeed, in the later *Staatslehre*, Schleiermacher insist that elections are a necessary way to make sure that representatives in government adequately represent the differing interests that must be taken into account in legislation.[177] Indeed, he spends quite a bit of time trying to map out differing schemes of legislative apportionment and the varying distributions of ethnic tensions and economic interests that can give rise to differing kinds of legislative assemblies or even multiple legislative assemblies (i.e. an upper and a lower house).[178] Correspondingly, the distribution of executive departments also ought to reflect both the task at hand and the tenor of the people.[179] The key, Schleiermacher would note, is to recognize that representation needed to be adjusted as the various relationships between groups in the nation and economic powers adjusted in order that inequalities that hinder the healthy growth of the state can be combatted. Indeed, Schleiermacher even begins to imagine the potential

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[177] "The representative organs must go forth out of the masses as such, thus elected in forms which represent the private relationships; the governing organs must go forth from the highest power as such. This is the ground of the English institution that a M.P., if they receive a governmental commission, must again be elected, because only in this way does the genesis of the same purely remain in the personal combination of functions." II/8, 93. Translation mine.
[178] A discussion of this subject takes up the better part of Hours 28-33 of the *Staatslehre*. See KGA II/8, 92-99.
[179] This is the subject of Hours 34, 35, and the first part of 36 of the *Staatslehre*. See KGA II/8, 99-101.

benefit of building in structural checks and balances in light of the differing interests at play.[180] But at the end of the day, the purpose of elections is to be situated within Schleiermacher's broader account of the dynamics of legislation, not the foundation of a scheme of representation by authorization.

Schleiermacher would still, however, retain his preference for hereditary monarchy even in the *Staatslehre*, though he would also offer a far more contextualist account of whether elective or hereditary monarchies were more or less appropriate in various situations.[181] The very feature of elections that would allow Schleiermacher to allow for elected legislative representatives – its proxy as a measure of the ability to play a role in the legislative process of bringing unconscious practices into conscious norms – would also be the feature that would lead Schleiermacher to remain suspicious of their benefits for elective monarchies (i.e. presidents). Precisely because the chief executive is to stand above the fray, proclaiming legislation and providing for the execution of laws on behalf of all rather than just a partisan faction, Schleiermacher will insist that monarchs must give up the right to personal property in order to eliminate potentials for conflicts of interest.[182] For the Schleiermacher of the 1814 lecture, the need for the elective monarch to be concerned about their family's private subsistence after the conclusion of office will make it difficult for them to rise above

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[180] i.e. "One can believe even so therefore that a division of the powers would be preferable [in the context that rule falls into the hands of a number of aristocrats who seek to use it for their private goods], because the differing interests would annul themselves against one another." KGA II/8, 85. Translation mine.

[181] Indeed, in an interesting passage, Schleiermacher seems to suggest that the hereditary character of some European monarchs represent an unnatural development stunted by their overly militaristic focus: "the great *predominance of monarchy* remains unexplained because we cannot account for it out of [the concepts of] confederate states and federal states in general. They must evidently emerge out of a point in the transition-state, especially when in the progress towards a higher unity a rapid, predominantly armed development was necessary from an aristocratic king. If now the partial states are already hereditary, so will also the dignity of the first among equals continue to be hereditary as clinging to the soil, otherwise an elective monarchy would be the most natural." KGA II/8, 85. Translation mine.

[182] "Therefore, if the whole is to be governed according to the principle of the unity of a people, the regent must be entirely free of any private interest. He must not be entangled in the business activity of the ruled; otherwise he will become involved in a special opposition with one part, and he who ought to be present everywhere will find one locality closer to his heart than another. …The regent, therefore, and this distinguishes him definitely from all his subjects, has no personal property." Schleiermacher, "Of the Concept of Different Forms of the State", 197; KGA I/11, 119-120.

the fray, introducing too much instability into the state.[183] In an odd twist, the anti-monarchical republican who had conceived of monarchy as contrary to nature had now become a decided "monarchist".

d. Rethinking Sovereignty: The Reciprocity of Legislative and Executive Function

Schleiermacher's version of a separation between legislative and executive functions thus resembles Sieyès' distinction between people and government, but with two key differences.[184] Firstly, instead of an account of representation by authorization via election, Schleiermacher offers an account of representation via petition. It is the existence of deliberative assemblies, not elections, that is at the heart of Schleiermacher's vision of representative democracy. Secondly, if Sieyes insists that sovereignty continues to reside in the people, who only choose to alienate a limited part of it to their elected representatives, Schleiermacher will conceive of it as residing in the interplay of the two separated powers. That is, in the spirit of Montesquieu's conception of the separation of powers as demarcating the various aspects of sovereignty, Schleiermacher offers a vision of acts of state that assumes that "sovereignty" is exercised in the reciprocity between people and authority, a definition that undermines the term's significance. Indeed, it is only the way that the king unites these two functions that allows them to symbolize the unity of the state – not by virtue of their own person or by being the head of government, but by virtue of representing the union of the cycle of legislative and executive powers.

Thus, in the 1814 lecture, Schleiermacher explicitly avoids using the language of sovereignty, noting in a footnote that, while he was not intentionally dismissing "the problematic [verfänglichen]

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[183] "It would, therefore, be an imperfect and hardly lasting aspect of this state if the kind were elected. For a kind of that kind has to be concerned about the existence of his family which has afterwards to return again to the people." Ibid.
[184] Sieyès's distinction is no doubt endebted to that of Rousseau, even if there nevertheless remain differences between the two.

expressions of sovereignty and sovereign [Souverain und Souverinität]", these concepts simply did not come up in the course of his exposition and lacked adequate scientific grounding, requiring further historical investigation before being appropriated for academic use.[185] Indeed, the language of "sovereignty" hardly appears at all in Schleiermacher's *Staatslehre* outside of a brief discussion of the idea of popular sovereignty, though he does make use of language of the head of state that can sometimes be translated by "sovereign" – i.e. Landfurst, Herrschen, etc. Indeed, a student transcript of the *Staatslehre* has Schleiermacher explicitly denying that the term "sovereignty" could apply in the context of Louis XVI's claim "L'etat c'est moi" precisely because "it [the State] connects both [people and authority], and no one can alone be the state."[186]

That Schleiermacher would reject the term ought to be unsurprising. By dividing the state into an interplay between authorities and subjects, he has effectively undermined one of the term's main usages, designating the person or body who serves as the court of final decision. Schleiermacher simply has no room for something like Hobbes' sovereign, a person authorized to represent the whole in abstraction from those he represents. That is because, in his conception of the right to petition and the necessity of deliberative assemblies, Schleiermacher has offered a fundamentally different picture of legislation and representation. Instead of a relationship between two mediated by a relationship of authorization or accountability in which the representative is given the authority to act on behalf of the represented, Schleiermacher posits a relationship between two parties who must already exist in a kind of unconscious unity and which rise to explicit consciousness of their unity through the reciprocal processes of legislation and execution. The

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[185] "I have not intentionally avoided the use of the problematic expression of sovereignty and sovereign, but the mere course of the argument was not able to lead me to them. It would, however, be important to trace the origin of this expression, which has not been doing sufficiently so far. For nothing spoils scientific investigations more than the use of such expressions which have neither arisen scientifically nor been coined scientifically; this act ought always to be based on a complete historical investigation." Ibid.198; KGA I/11, 121.

[186] Nachschrift Waitz, KGA II/8, 856. In the same section, Waitz records Schleiermacher repeating his claim that sovereignty "is a word that cannot be property explained and therefore no one dares to touch it." Ibid.

relationship of representation arises out of a process of the *internal differentiation* of a previously undifferentiated whole that rearticulates this whole in light of a new relation between private subjects and public authority.

In the *Ethik,* Schleiermacher will distinguish this account of representation from accounts of the state that see the state arising in either an original contract or by the subjugation of a people. For Schleiermacher, the problem with the contractarian position is that it either assumes the very power that it is supposed to explain (stable contracts), or it depends on the unstable agreement between individuals that characterizes the relation of commercial exchange and right.[187] The foundation of a state requires, not in acts of exchange and cooperation, but the possibility of a relation of command and obedience. Coordination can exist without the state; subordination cannot. At the same time, a one-sided act of conquest is not sufficient so-long as it remains one-sided: "if that opposition is a one-sided action on the part of the individual who sets himself up in authority, there remains posited within the masses a striving towards annihilation, so that what we have is merely a usurpation."[188] Rather, "we must be able to regard the formation of the opposition as a common enterprise."[189] Schleiermacher thinks that this is only possible if we therefore view both parties involved as caught up in a common natural movement that allows them to both exist in a kind of unconscious unity that can also maintain its naturalness even as it is developed into a conscious unity. The relation of representation is the product of a kind of internal differentiation of an organic natural whole.[190]

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[187] "That the state should arise through contract is an impossibility, partly because by definition contract only exists because of the state and is essentially conditional upon the state, precisely because there is something lacking in simple contractuality which would bring it up to the level of the state; partly because such a contract would have to arise by force of persuasion, but force of that kind can never be present in the individual where there is no urgent need." E 1812/13 71-72 (HG.III.89), 335.

[188] E 1812/13 72 (HG.III.91), 336.

[189] Ibid.

[190] Schleiermacher's theory of political representation thus has certain parallels with his account of epistemological representation. The emergence of subjective feelings and objects is, for Schleiermacher, likewise the product of a kind of internal differentiation of what was previously an undivided, immediate whole. In this regard, his account has affinities with post-representationalist theories which seek to move beyond attempts to point out instances of mis-representation by getting "behind" or "under" a representation to its purported original referent. Rather, the very referent of the representation arises in the midst of the differentiation that the act of representation itself enacts. Schleiermacher thus

Within such a scheme, one-sided acts by either the people or by the government do not constitute genuine acts of state. When discussing the possibility of constitutional change, for instance, Schleiermacher will again insist on a necessary reciprocity:

> Changes to the constitution must also be a joint action on the part of authority and subjects. For this to come about, however, they must also arise from a joint action. If they originate with the authorities and the authorities have made a mistake, this gives an appearance of tyranny; for this reason it is better for the authorities to acquiesce. If they originate with the subjects, this gives an appearance – until such changes become a joint action – of rebellion; and if they do not become a joint action and the subject's relationship to the authorities has been damaged by the undertaking, he can be punished as a rebel.[191]

Schleiermacher's emphasis on acts of state being the joint product of the people and the authorities acting together allows him to conceive of resistance and rebellion in quite different ways than Kant and Fichte. Precisely because he has not invested sovereignty in the government alone such that only their action can count as an expression of the general will, Schleiermacher is able to imagine a far more complex interplay of action-and-response between the authorities and the people.

Schleiermacher does reject a right to resistance in the sense that he rejects any attempt by the people to enact a one-sided change in the state. This is because this would amount to an attempt to dissolve the reciprocity of legislative and executive that defines the state dynamic. But Schleiermacher does not thereby counsel – as Kant does – passivity in the face of what one takes to be an injustice by the authorities. Rather, because

> the whole form of the state is negated if the authorities have violated the [state] contract… the only principle that can then be set forth is that everyone has a duty to assess the morality involved and according to one's conscience to restore the social condition in the most peaceable manner possible.[192]

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offers a very interesting way of offering an interpretation of what Pitkin will refer to as "acting-for" representation that emphasizes both a presence and absence of the represented subject and refuses to choose between a Madisonian emphasis on accountability and the Burkean emphasis on independence. For Schleiermacher, each would merely represent one pole of the legislative-executive cycle that must be completed for a genuine relation of state to arise. See ch. 6-10 of Pitkin, *The Concept of Representation*. For another attempt to describe representation in terms of a kind of internally differentiated "intra-action", see Karen Barad, *Meeting the Universe Halfway: Quantum Physics and the Entanglement of Matter and Meaning* (Durham, NC: Duke University Press, 2007).

[191] E 1812/13 77 (HG.III.124-125), 342.

[192] CS 90. One has to be careful about drawing arguments from Schleiermacher's Christian Ethics on account of the fact that here, he will be making arguments that are primarily pertinent to Christians in accordance with the principles set

In other words, precisely because one-sided actions on the side of the authority are just as bad as one-sided actions on the part of the people in that they likewise dissolve the state, citizens are enjoined not only to passively resist the authorities, but to actively act in such a way such that the state-relation can be maintained or restored. Indeed, even when the authorities act in ways that go against the direction that one thinks the state should be going, Schleiermacher does not merely counsel passivity. Rather, even if the state's very constitution is not at stake, by virtue of the fact that citizens play a constitutive role in the law-making process, Schleiermacher will counsel even private citizens to exercise their right to petition and to choose "representatives he knows to desire the same changes that he desires."[193] Indeed, Schleiermacher will describe "the genuine civic disposition" thus:

> if a man regards something as necessary to the general good, he should attempt to implement it even if this means staking his own existence on it. Momentary success does not always prove the morality of something; for there is much which can succeed for a moment because of its influence on the private advantage of a few individuals. Neither does momentary lack of success prove immorality. On the contrary, something may be necessary by way of preparation which can only later become real.[194]

There is, Schleiermacher insists, a key distinction between *apparent* rebellion and true rebellion.[195] The failure of an individual's attempts to influence the authorities in what they take to be the correct direction does not automatically make that individual's actions rebellious in that his failure to achieve a joint action may merely represent a case of temporary mis-recognition.[196] Though Schleiermacher

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forth by the Christian religion in particular rather than arguments about the state merely on the basis of the nature of the state. That said, in this particular case, the argument that he offers seems to represent a perspective that he would demand of all state citizens rather than just Christians in particular.

[193] Ibid., 88.

[194] E 1812/13 77 (HG.III.126), 342.

[195] The key factor for Schleiermacher is ultimately whether the individual is "right" or not about the nature of the nation. The language of truth or correctness may seem difficult for those used to liberal value-pluralism, but in positing that states are grounded in the organizing activity of definite natural wholes, Schleiermacher is ultimately a realist about there being (not merely objective, but objectively intersubjective) truths about political existence and judgments. Again, consider the discussion of personhood in the following chapter.

[196] In *Weird John Brown,* Ted Smith offers a provocative attempt to offer an interpretation of sovereignty, power, and political forgiveness as it pertains to the radical abolitionist John Brown's failed attempt at an armed rebellion against slavery at Harpers Ferry in Virginia. Smith draws on the work of Walter Benjamin to suggest that one can simultaneously condemn and valorize Brown's actions retrospectively by means of exercising the presidential pardon as an act of sovereign decision that carves out a political exception as a kind of negative way of attempting to witness to the

has significantly changed his conception of the state, he nevertheless is able to retain some continuity with his youthful critique of Kant's rejection of the right to rebellion.

e. Reinterpreting the Three Forms of State

Schleiermacher's revised conception of republicanism will also allow him to reinterpret the significance of the differences between democracy, aristocracy, and monarchy. Precisely because what makes a republic a republic is the degree to which there exists the distinction between private will and public spirit under the concept of a political unity, Schleiermacher will insist that the three forms of state refer to differing degrees of the perfection of this distinction between people and authority. Or rather, he will insist that this is the *true* significance of the terms even as he continues to make use of them to describe differing forms of government in the style of Kant. In order to address the potential confusion that may arise from the overlap between these terms, I will attempt to use Schleiermacher's alternative terminology of "lower state", "transition state", and "state of highest order" to refer to the three forms of state as Schleiermacher uses them to characterize the degree of public-consciousness present in the process of state-development. When this cannot be done, I will refer to these as democracy$_d$, aristocracy$_d$, and monarchy$_d$ respectively. This will allow me to reserve democracy (or democracy$_g$), aristocracy (or aristocracy$_g$), and monarchy (or monarchy$_g$)

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eschatological horizon of divine justice. Schleiermacher's alternative set of categories can provide for a different kind of analysis. On the one hand, one could interpret both Brown's actions and that of any potential presidential pardon as paradigmatic acts of rebellion and tyranny. Rebellion because, though his ends were commendable, Brown chose unacceptable means to enact them. Tyranny, because an attempt to enact a pardon that is not based on truth (i.e. the recognition that the state had made a mistake in condemning Brown as a rebel) but on the basis of sovereign authority would similarly be a one-sided overreach on the part of the government. On the other, one could also read Brown's actions as a failed attempt to properly respond to the state-dissolving tyrannical activity that was the government's ongoing sanction of black chattel slavery. In this case, a pardon would be warranted *on the basis that the government had genuinely failed to act as it should* in Brown's case. In the end, whether or not a pardon is appropriate must be grounded in an actual ethical and political evaluation of Brown's actions and the extent to which they do or do not give expression to the reality of American nationhood as it exists (even if only in an inchoate and unconscious form) in our midst. See Ted A. Smith, *Weird John Brown: Divine Violence and the Limits of Ethics* (Stanford: Stanford University Press, 2015).

for referring to when Schleiermacher is talking about the governmental form that has been adopted by a given state.

The true significance of the three different forms of state, Schleiermacher argues, is that they give expression to the three differing degrees to which the distinction between authority and subject is made manifest. The democratic$_d$ state is the lowest insofar as the division exists indeterminately within each and every citizen. The aristocratic$_d$ exists in a mediating position insofar as some will exist solely as subjects, but others will exist as both subjects and authorities. The distinction is thus clearer, but still mixed. The monarchical$_d$ state expresses the distinction with maximum clarity, with a singular authority set over and against a mass of subjects.

Schleiermacher's use of language here can be quite misleading, as what is at stake is not merely the degree of civic spirit, the clarity with which the distinction between public and private is mapped out, and the fullness of the cycle of legislative and executive activities. Rather, what is at stake is also Schleiermacher's developmental narrative about the gradual expansion of the state from the small, local city-state polities of ancient antiquity into the large, sprawling, multi-cultural territorial states of modernity. What makes the democratic$_d$ state of lowest order the lowest order is that it encompasses only one tribal ethnic group. What makes the aristocratic$_d$ state a transitional state is that it represents the situation in which one group rules over a polity that includes others. And what makes the monarchical$_d$ state of highest order the ideal goal of the development is that it represents a situation in which the government can raise itself above the ethnic divisions to serve as a genuine national government for all. Within each of these developmental forms of state, one can further speak of the degrees of popular participation and how responsive the subjects and authorities are to one another. Kant's "form of sovereignty" has been transformed in Schleiermacher to pick up on something akin to Schlegel's insistence on possible degrees of

republicanism, with the three forms picking out the way in which structural features about the relation of people-groups in the state affect these degrees.

If this were not confusing enough, Schleiermacher then layers the more familiar way of speaking of the three forms of state as forms of government on top of the first division. By virtue of their size and instability, the states of lowest order are capable of transitioning between democratic$_g$, aristocratic$_g$, and monarchical$_g$ forms of government. By virtue of their size, the "higher order" states cannot be governed democratically$_g$ because "a meeting of all citizens in one assembly does not take place."[197] Thus, the aristocratic$_g$ transition-state is capable of exemplifying only two forms of government, the aristocratic$_g$ and the monarchical$_g$. And by virtue of the uniformity of relations that the state of highest order must have to all its subjects, Schleiermacher will insist that its government must be able to recognize all executive authority as invested in one singular unitary structure and thereby be monarchical$_g$. Chapter six will consider the dynamics that Schleiermacher thinks characterizes this process of transition in greater detail.

For now, however, it is important to point out that the fundamental reason that Schleiermacher sees monarchy$_g$ in the context of the monarchical$_d$ state of highest order as representing the pinnacle of government by law is that he thinks it best represents the dynamics that characterize the pinnacle of what democracy$_g$ in the context of the democratic$_d$ state of lowest order is striving for. The development of the political consciousness that underlies the state-formation process can, for Schleiermacher, take shape in two ways. The "impulse for the awakening of the political consciousness… touches the mass of a people which is ripe to become a state, either in a uniform or in an unequal manner."[198] The first represents a situation in which the similarity of

[197] Schleiermacher, "On the Concepts of the Different Forms of the State", 189; KGA I/11, 112.
[198] Ibid., 186; KGA I/11, 109.

circumstances and the circulation of habits and practices allows it to be the case that a conscious sense of a people's unity can manifest itself as if spontaneously in all:

> In the former case [uniform awakening of political consciousness], that contrast [between subject and authority] is likely to develop in a uniform manner in all; in every person right and law will be formed and other activities will be separated from them. They will develop with everyone in an equally pure and strong fashion. Thus there will not be some who will rise exclusively as rulers and subdue others exclusively as subjects; but the opposition between authority and subject will exist in every citizen. All will be united in certain moments in order to represent authority and in others they will have to separate in order to show themselves as subjects: and this is democracy.[199]

Direct democracy$_g$ in the original democratic$_d$ state manifests the interplay of legislative and executive activity in the acts of gathering together for deliberation and decision-making and in the scattering to carry out the decisions of the community. Yet, Schleiermacher will insist that "public spirit and private interest are in conflict only in a weak manner, [and] similarly both are not blended intimately enough."[200] This is because "The citizen in the community does not forget the workshop and relates his deliberation to his work, the citizen in his workshop does not forget his community and relates his work to his political dignity."[201] The legislative-executive cycle exists, but in such a way that private and public interests remain mixed and confused such that the citizen will very often, in the assembly, advance their own private interest as the public's while, at work, they assume that their political dignity and ability to contribute to legislation depends on their capacity to labor. While there is certainly a sense in which the relation of right is characterized by one's position in the division of labor and the degree to which one lives up to one's role, Schleiermacher is keen to distinguish his account of "private" right and appropriation – particular *and* communal – from "public" right. Even if one's role in the division of labor shapes one's role in the community, it does not necessarily correspond with one's role in the state. The perspective from which the state

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[199] Ibid.
[200] Ibid.
[201] Ibid.

coordinates commerce and appropriation is to be distinct from the perspective from which private individuals are engaged in it. While it is possible for individual citizens to attempt to be conscious of the difference in their everyday endeavors and participation in the work of governance, Schleiermacher posits that the difficulty of maintaining these boundaries will lead to a condition where "the law vacillates, commerce is uncertain, and thus the whole state is weak."[202]

But direct democracy is not the only way that political consciousness can arise. The second, "unequal" development arises when the idea of national unity arises within one individual who then tries to impart it to those around them:

> Let us, however, consider the concept that the political development begins in one man: then, indeed, a person of that kind will be able to communicate to the others the consciousness which has arisen in him, provided that the others are mature for it. They will in turn certainly accept it because the natural instinct for political consciousness is latent within them; but since it has not originally developed with them, and since they are not able to continue its development from this point, they will be inclined to depend on and to be guided by that person, and that is the most original and most simple monarchy.[203]

If democratic$_d$ democracy$_g$ exemplifies the whole back and forth of legislative and executive activity in such a way so as to highlight the individual's contribution to the legislative process, democratic$_d$ monarchy$_g$ exemplifies the executive pole in the cycle. The success of this form depends significantly on the degree to which the original monarch is familiar with the customs and mores of those he commands, thus, on the implicit role that the way of being of the people he rules contribute to the legislative process. Thus, Schleiermacher considers that the process may be difficult – or even fail – if enacted by a foreigner, that an aristocratic$_g$ form could arise if the process of political consciousness-raising is gradual, and even that the original monarchy$_g$ could transition to a democracy$_g$ if uptake is immediate and complete.[204]

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[202] Ibid.
[203] Ibid., 187; KGA I/11, 110.
[204] i.e. "They [the people] would, of course, catch up more quickly if he was a native and more slowly if he was a stranger. And if this were so, would not this monarchy incline again toward a democracy and sooner or later change into one?" Ibid.

On the flip side, democracies are prone to change into aristocracies and monarchies when ideas for governance in light of greater conceptions of unity clash or develop unevenly among the populace. The origin of the old Polybian cycle of reflections about transitions between the different forms of government, Schleiermacher suggests, arises out of the instability of the original democratic$_d$ form in which the unevenness of legal and political development will result in corresponding shifts in governmental structure rather than having a more developed set of public institutions and culture that is able to adapt to the cycles of development and change that necessarily take place within a state. The goal of every democratic$_d$ democracy$_g$ – with its emphasis on legislation – is to incline towards becoming a democratic$_d$ monarchy$_g$ – with its emphasis on execution – and vice-versa. In this regard, even if Schleiermacher may not identify direct democracy with despotism, he will nevertheless see it as representing a less than ideal and unstable condition that cannot be improved without developing a greater degree of representation and separation between the private and public.

How does the state of lowest order transition into a higher level state? In 1814, Schleiermacher will suggest that it is the same process of the development of political consciousness that undergirds the lawmaking process that is at play. But when one is thinking about the coming together of various small states into a larger confederation or federation, Schleiermacher will deny that it is possible for a uniform development to take place (a direct leap from the state of lowest order to the state of highest order) and insist that one state must take the lead to unify the others.[205] This, he posits, will result in either an aristocratic$_g$ or monarchical$_g$ form of government that may similarly oscillate between one another depending on how the government relates itself to the ruling

[205] "For only by a miracle could the political instinct arise both simultaneously and uniformly in the whole mass of a people divided into many hordes and tribes; and only by such a miracle could an individual from a tribe in which that consciousness has awakened, exercise formative and subjugating influence on all separate hordes and tribes both simultaneously and uniformly." Ibid., 190; KGA I/11, 113.

classes of the individual small states now incorporated into a larger one.[206] The demands of larger states dictate more centralized governments that will ultimately, upon accession to the state of highest order, privilege the monarchical$_g$ form. This means, however, that for Schleiermacher, the task of developing republican government – the interplay of legislative and executive – in the modern state is not characterized by an attempt to effect a change in the form of government from monarchy$_g$ to democracy$_g$ (in its representative form), but towards the project of forming the requisite institutions that will be able to formalize the right to petition into the governmental apparatus.

IV. Conclusion: Forging a Participatory State

It has been a trend ever since Dilthey's biography of Schleiermacher to highlight the connection between Schleiermacher's thought and his life. Thus, scholars have long been aware of the tireless energy that Schleiermacher would dedicate to attempting to cultivate political responsibility and consciousness through his preaching, his efforts for educational reform, and even his forays into organizing grassroots resistance to French occupation during the Wars for Liberation. Preaching on Ephesians 2:19 – you are no longer foreigners and strangers, but fellow citizens – in 1802 and 1806, for instance, Schleiermacher would emphasize the obligation of citizens to state their

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[206] "The essentially aristocratic$_{[d]}$ intermediary state can, however, change outwardly into the monarchic$_{[g]}$ form. For just as a simple democracy$_{[g]}$ can pass into that petty monarchy$_{[g]}$ without changing its nature [as a democratic$_d$ state], so the ruling classes, who are democratically$_{[g]}$ associated among themselves, can place themselves under a supreme head from their midst… The state has then to be considered externally as a monarchic$_{[g]}$ form; but it has not changed its inner nature at all. The relationship of the ruled tribes to the ruling tribe remains the same, the king feels that he belongs intimately only to this latter, that his interest is connected with it and that it is more closely related to him than the ruled tribes. [clarifications mine]" Ibid., 192; KGA I/11, 114. Thus, Schleiermacher can consider a small state that is democratically$_{g]}$ governed that rules over other small states non-democratically as actually constituting an aristocracy$_{g]}$. Indeed, this is no doubt how Schleiermacher would have interpreted the Roman Republic if he had been willing to attribute its empire the status of a state – i.e. it was never actually a republic after it had begun its conquests precisely because non-Romans did not get to participate directly in its governance. In the *Staatslehre*, however, Schleiermacher would deny it even this status on account of his interpretation of Rome as a militaristic "robber state" that subsisted upon the systematic pillage of the wealth of other states which then collapsed when it attempted to make the transition into a genuine aristocratic transition-state. See KGA II/8, 88.

opinions, to effect what changes they can as individuals, and to contribute to the progress of the whole.[207] The sermons on Romans 13:1-5 "On the proper relation of the Christian to their authority" stresses that Christians are to owe their allegiance to their ruler not on the basis of fear, but on the basis of conscience, a ground that will allow the loyal citizen to – free of the fear of punishment – offer up opinions and insights to the government when they seem to be judging differently out of a lack of full knowledge.[208]

Yet when these activities are read only in terms of a generic nationalism or even as an expression of liberalizing reforms, the true significance of Schleiermacher's vision and the way in which it sets out a vision distinct from the later nationalism and the now-regnant political liberalism remains underappreciated. By situating Schleiermacher's arguments for the significance of national consciousness, monarchy, and deliberation in democratic life amidst broader post-revolutionary reflections on the nature of republican liberty and democracy in the context of the modern state, however, one can begin to better appreciate how the ways that Schleiermacher's positions do indeed conflict with many taken-for-granted assumptions about the nature of liberal democracy can be grounded in an alternative vision of what it means to be committed to democracy in modernity. Far from representing an unholy conjunction of liberal democratic and conservative monarchical values characteristic of the difficult path that Germany would take to democracy, Schleiermacher offers an interesting look into the possibility of an alternative non-liberal democratic vision.

In a context where debates between advocates of limited government clash with advocates of greater market regulation, where elected representatives are often more responsive to corporate monied interests than to their direct constituents, where non-elected government officials play key roles in shaping the direction of the nation, and where the ability of the populace to effect popular

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[207] See the outlines for the sermons preached on August 14th, 1802 and August 24th of 1806 in KGA III/3, 806-808 and 880-882.
[208] See "Ueber das rechte Verhältniß des Christen zu seiner Obrigkeit" in KGA III/4, 3-15.

changes are checked by constitutional courts exercising unaccountable authority in the name of centuries old law, Schleiermacher's alternative approach to republican government, representation, and the separation of powers may offer a creative impetus to spark reflections on new possibilities for democratic futures. If the early-modern and modern eras were characterized by the centralizing of power as great states arose out of the mixed principalities and privileges of the ancien regime under the title of sovereignty, Schleiermacher gestures us toward a future that moves beyond sovereignty.

Chapter 5: Between Real and Ideal: Schleiermacher's Philosophy of Race

"The piteous fate of the negro, torn from his loved ones and his native land, for base servitude in a strange and distant country, is daily meted out in the routine of the world to better men also, who, prevented from reaching the distant homeland where dwell their unfound friends, must waste away their inner lives ineffectually in surroundings that ever remain alien and barren to them."

Friedrich Schleiermacher, *Soliloquies* (1800)[1]

"And a mixture of the races [der Racen] has also begun, and if black slavery is now abolished and the Native Americans come to civilization, then the mixtures [Mischungen] will prevail, and this will promote becoming one and eliminate the ground for separate living."

Friedrich Schleiermacher, *Lectures on the State* (1829/33)[2]

I. Introduction: Schleiermacher and Race

The centrality of the idea of a nation in Schleiermacher's account of the formation of a state will also no doubt raise a number of important questions. While historians are quick to note that it would be a mistake to read the scientific racism and ethno-nationalisms of the late-19th and 20th centuries into the politics and science of the late-18th and early 19th, the question of how the relationship between race and nation might have been understood in the *Vormarz* – even if not necessarily a precursor of National Socialist ideology – certainly remains a valid one.[3] This is even more so given the renewed scrutiny that the philosophy of Kant has received under the impetus of figures such as Charles Mills and Robert Bernasconi, who have highlighted the key role that the sage of Königsberg may have played in the development of modern racism by his attempts to elevate the concept of race to a purportedly scientific status.[4] Building on Bernasconi's argument, Ted Vial has

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[1] Friedrich Schleiermacher, *Schleiermacher's Soliloquies: An English Translation of the Monologen with a Critical Introduction and Appendix,* trans. Horace Leland Friess (Eugene, OR: Wipf and Stock Publishers, 2002 [1926]), 54.

[2] "Und auch eine Vermischung der Racen hat begonnen, und wird jetzt die Sklaverei der Schwarzen aufgehoben und kommen die Ureinwohner Amerikas zur Civilisation, so werden die Mischungen Uberhand nehmen, und dies wird das Einswerden befördern, und den Grund des Gesonderten im Leben aufheben." KGA II/8, 850. Translation mine.

[3] Consider, for instance, the essays contained in *The German Invention of Race*, ed. Sara Eigen and Mark Larrimore (Albany: SUNY Press, 2006).

[4] See Robert Bernasconi, "Who Invented the Concept of Race? Kant's Role in the Enlightenment Construction of Race" in *Race*, ed. Robert Bernasconi,(Oxford: Blackwell, 2001), 11-36. See also Mark Larrimore, "Antinomies of Race: Diversity and Destiny in Kant" *Patterns of Prejudice* 42:4-5 (2008): 341-363 and Charles W. Mills, "Kant's *Untermenschen*" in *Black Rights/White Wrongs: The Critique of Racial Liberalism* (New York: Oxford University Press, 2017), 91-112. Pauline

attempted to give Schleiermacher a role in this story, suggesting that his turn away from the biological to the cultural and linguistic, rather than marking a rejection of racism, actually completes it by offering a mechanism by which Kant's emphasis on physical characteristics can be mapped onto the mental and moral capacities of human cultures.[5] Schleiermacher's conception of religion, Vial argues, acts in parallel with Kant's conception of race.[6] What some have interpreted as an embrace of multiculturalism,[7] Vial suggests, might just conceal racist logic in another form.[8]

Vial is certainly not alone in pointing out the ways in which race and religion may be entangled in modernity.[9] As an astute interpreter of Schleiermacher, he is even sensitive to the ways

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Kleingeld attempts to argue that a shift occurs in Kant's political philosophy such that by the 1790s, color ends up being irrelevant for moral purposes. See Pauline Kleingeld, "Kant's Second Thoughts on Race" *The Philosophical Quarterly* 57:229 (2007): 573-592. For Bernasconi's response, see Robert Bernasconi, "Kant's Third Thoughts on Race" in *Reading Kant's Geography*, ed. S. Elden and E. Mendieta (New York: SUNY Press, 2011), 291-318. See also Lucy Allais, "Kant's Racism" *Philosophical Papers* 45:1-2 (2016): 1-36 and, most recently, Huaping Lu-Adler, *Kant, Race, and Racism: Views from Somewhere* (New York: Oxford University Press, 2023).

[5] Theodore Vial, *Modern Religion, Modern Race* (New York: Oxford University Press, 2016).

[6] "The theological anthropology of Herder and Schleiermacher has been dubbed "expressionism" by Isaiah Berlin and "expressivism" by Charles Taylor. …I want to unpack this anthropology in some detail, because it is the hinge on which my argument swings (to paraphrase from Schleiermacher's second speech). It is this anthropology that creates the conceptual space for the modern category of race. It does this by linking who individuals essentially are to their group membership. And it is this anthropology that reshapes what we moderns mean by religion. …It is this anthropology, this set of assumptions we make about human nature – that humans are cultural beings, that participation in a cultural group is necessary for full humanity, that cultures differ in important ways from one another – that links race and religion, and makes religion a racialized category." Ibid., 172.

[7] Holstein's 1923 interpretation of Schleiermacher's position on race, for instance, distances his view from that of Kant by noting that Schleiermacher's emphasis on language and folk tradition alongside physiology and climate associates it with "spiritual [giestlich]" activity and not merely climatic difference. See Günther Holstein, *Die Staatsphilosophie Schleiermachers* (Bonn: Kurt Schroeder, 1923), 79-80. For other defenses of Schleiermacher as providing a more liberative account productive for rethinking how modernity approaches anthropology or the perception of space in the face of the colonial gaze, see Chad Wellmon, *Becoming Human: Romantic Anthropology and the Embodiment of Freedom* (University Park, PA: Pennsylvania University Press, 2010) and Steven R. Jungkeit, *Spaces of Modern Theology: Geography and Power in Schleiermacher's World* (New York: Palgrave Macmillan, 2012).

[8] "It is important to note that Schleiermacher, compared to other eighteenth- and nineteenth-century Europeans, is not particularly racist. …This makes him an even more important example. We have watched Schleiermacher carve out, differentiate, religion before our eyes. The category of religion he constructs has a certain appeal to modern Westerners. It coincides with our sense of human dignity, it is pluralistic. Schleiermacher celebrates diversity. And yet, as we read Schleiermacher on Jews and Australian aborigines, we see that this differentiated category is not neutral. And while Schleiermacher declines to use the language of race, what he has to say about these non-Protestant groups cannot but sound, to our ears, as if his language is inflected by race. Indeed, at moments it sounds racist." Vial, *Modern Religion, Modern Race*, 191-192.

[9] Consider, for instance, Hannah Arendt's attentiveness to race and anti-Judaism in *The Origins of Totalitarianism* (New York: Harcourt, Brace, and Co., 1951) or Michael Foucault's *Society Must Be Defended: Lectures at the College de France, 1975-1976* (New York: Picador, 2003). The connection between race and anti-Judaism has been developed in religious studies through the work of J. Kameron Carter in *Race: A Theological Account* (New York: Oxford University Press, 2008) and Willie James Jennings, *The Christian Imagination: Theology and the Origins of Race* (New Haven: Yale University Press, 2011). In the study of American religious history, see esp. Judith Weisenfeld, *New World A-Coming: Black Religion and Racial*

in which Schleiermacher's conception of religion has been misinterpreted along individualistic or non-conceptualist lines. Indeed, he even attempts to situate Schleiermacher's overall vision within the political context of the Prussian Reform Movement and the War for Liberation. These merits, however, are ultimately what make Vial's reading of Schleiermacher's purportedly racialized conception of religion instructive even if ultimately incorrect. In his concern to unsettle the inadequate ways in which the contemporary academy engages with the question of race, Vial wholly neglects Schleiermacher's actual reflections on race. He chooses instead to focus on his "expressivist anthropology" and the way in which this underlies Schleiermacher's conception of religion.

A closer look at what both Kant and Schleiermacher actually have to say about the subject calls into question Vial's suggestion that Schleiermacher – and expressivism in particular - somehow provides the key mediating step between Kant's racism and modern racism. Kant's conception of race *already* provides a bridge between the physical and the moral; and Schleiermacher does not provide a supplement to it so much as a counter-notion. If, for Kant, race is ultimately a kind of teleological hypothesis to make sense of fixed human difference despite a commitment to a singular account of human origins, Schleiermacher's concept of race suggests that debates over the singular or plural beginnings of humanity ought to be seen as attempts to make sense of the relations of peoples within the ongoing process of national formation. For Schleiermacher, race is to be recognized as a kind of transcendental limit-concept that relativizes the boundaries of nationality as it currently exists. Both represent two differing ways of making sense of race as non-empirical social constructions; but the latter can be made useful for contributing to antiracist analysis in a way that the former cannot. This is not to say that Schleiermacher's conception is not without its own

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Identity During the Great Migration (New York: New York University Press, 2017). See also, Rebecca Anne Goetz, *The Baptism of Early Virginia: How Christianity Created Race* (Baltimore: Johns Hopkins University Press, 2012), Joshua Paddison, *American Heathens: Religion, Race, and Reconstruction in California* (Berkeley: University of California Press, 2012), and Kathryn Gin Lum, *Heathen: Religion and Race in American History* (Cambridge, MA: Harvard University Press, 2022).

dangers, but the way in which it presents an alternative trajectory to typical liberal approaches to combating racism can be instructive for future efforts.

The complexities of race as a subject demand careful treatment. As such, this chapter will first begin with a quick survey of recent philosophers who have called into question the adequacy of approaches to race that simply dismiss it as having biological weight and how Vial's critique of Schleiermacher might be seen alongside this shift. Then, after a brief foray into Kant's conception of race, the chapter will focus its attention on a detailed exposition of the way Schleiermacher's conception of race is embedded in his account of human personality and how it differs from that of Kant. Most significantly, both Kant and Schleiermacher conceive of race as in some degree social constructions and work out complex ways of understanding how they operate as constructions. It is only by being attentive to these differences that one can understand that combating racism may require more than simply insisting that race is a social construction.

II. Beyond Race as a Social Construction

1. Race is Socially Constructed, Now What?

The condemnation of race as unscientific and thereby illegitimate is often taken both as a matter of course and as a key aspect of the refutation of racist politics. "Race," Dorothy Roberts writes in her study of race in contemporary genomic science, "is not a biological category that is politically charged. It is a political category that has been disguised as a biological one."[10] The statement is often made on purportedly empiricist grounds and argued for as an expression of the triumph of monogenist theories of human origin (which posit one single humanity stemming from one singular origin) over polygenist theories (which posit multiple original human groupings). Thus,

[10] Dorothy Roberts, *Fatal Invention: How Science, Politics, and Big Business Re-create Race in the Twenty-First Century* (New York: New Press, 2011), 4.

the 1950 UNESCO Statement on Race, for instance, begins with the affirmation that "Scientists have reached general agreement in recognizing that mankind is one: that all men belong to the same species, *homo sapiens*" and emphatically asserts that "These are the scientific facts" and that "'race' is not so much a biological phenomenon as a social myth."[11]

The pernicious staying power of racist categories and thought despite widespread attempts to characterize race as a social construction, however, have led many thinkers to call into question the adequacy of this strategy.[12] For one, being a committed monogenist or polygenist did not necessarily track with one's commitments to the politics of race.[13] Others have called attention to the shortcomings of colorblind or "race-abolitionist" approaches to race that have been satisfied with attempting to eliminate the concept on the basis of its being a social construction.[14] For Sally

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[11] United Nations Educational, Scientific and Cultural Organization, "Statement on Race (Paris, July 1950)" in *Four statements on the race question*, ed. Jean Hiernaux and Michael Banton (Paris: Oberthur-Rennes, 1969), 30, 31, and 33.

[12] Ann Morning notes, for instance, that biological conceptions of race remain quite prominent within the scientific establishment, although she suggests that this may be due to a lack of adequate dissemination of social-constructivist approaches to race as much as a reflection of an ongoing lack of consensus about race. See Ann Morning. *The Nature of Race: How Scientists Think and Teach about Human Difference* (Berkeley: University of California Press, 2011).

[13] Robert Kenny, for instance, shows how the advent of evolutionary theory ironically led to a situation among British anthropologists and ethnologists in which religiously-motivated monogenist positions which tended to emphasize human equality adopted a form of monogenism which, ironically, ended up advocating for human inequality. Robert Kenny, "From the Curse of Ham to the curse of nature: the influence of natural selection on the debate on human unity before the publication of *The Descent of Man*" *The British Journal for the History of Science* 40:3 (Sep 2007): 367-388. Nor was even religiously motivated monogenism necessarily correlate with a non-racial abolitionist politics. The Princeton Theology was heavily invested in defending a monogenist thesis in order to undergird the Scottish Common Sense approach to theology, yet their commitment to a form of moderate abolitionism often still presupposed a degree of racial incompatibility that required emancipated African slaves to return to Africa. Thus, Archibald Alexander, the founding professor of Princeton Theological Seminary, could present the American Colonization Society (ACS) as among the most manifest works of Providence in his time, writing that "Two races of men, nearly equal in numbers, but differing as much as the whites and blacks, in this country, by no human efforts, could be amalgamated into one homogeneous mass in a thousand years; and during this long period, the state of society would be perpetually disturbed by many contending factions. Either the whites must remove and give up the country to the coloured people, or the coloured people must be removed; otherwise the latter must remain in subjection to the former." Archibald Alexander, *A History of Colonization on the Western Coast of Africa* (Philadelphia: William S. Martien, 1846), 17. For more on the ACS, see Eric Burin, *Slavery and the Peculiar Solution: A History of the American Colonization Society* (Gainesville: University of Florida Press, 2008).

[14] Sally Haslanger, for instance, argues that socially constructed realities ought nevertheless be recognized as realities and advocates for the need for a critical analytic use of the concept for the purposes of changing the material conditions which make its application possible. See esp. ch. 7-11 of *Resisting Reality: Social Construction and Social Critique* (Oxford: Oxford University Press, 2012). For Robert Bernasconi, the strategy of rejecting a purported biological conception of racism by appeal to a distinction between nature and culture finds its roots in the overly simplistic formulation of the mid-century UNESCO declaration on race. See esp. ch.12, *Critical Philosophy of Race: Essays* (New York: Oxford University Press, 2023).

Haslanger, for instance, race is both problematic and unavoidable. It is irredeemably problematic because of its necessarily hierarchical use and application; unavoidable because of the ways in which it has and continues to construct reality. The best one can do in the meantime, Haslanger suggests, is develop a critical and analytical conception of race oriented towards its own abolition.

Justin E. H. Smith takes another, more historical angle, noting that the assumption that race is a product of non-intellectual rationalization has led to a failure to adequately understand the intellectual complexities which did accompany the rise of the race-concept.[15] Not only did this tend to elide politically-salient differences between various attempts to make sense of human diversity, it also led to the inability to recognize that a number of figures often cited as playing key roles in the development of race science – Smith highlights Kant and Blumenberg in particular – were, ironically enough, racial *antirealists*, demonstrating that a commitment to racial politics by no means tracks the distinction between a realist or antirealist about race.[16]

The recognition that the socially-constructed nature of race does not make it any less real thus demands a shift away from merely pointing out *that* race is socially constructed and towards a better appreciation of the *why* and *how*. As Huaping Lu-Adler argues in her recent attempt to reorient the conversation on Kant's racism, a focus on whether a particular thinker was or was not racist on the basis of what are otherwise treated as isolated statements about race is too individualistic an approach to a problem that is structural and ideological in character.[17] That European thinkers embedded within a context shaped by ongoing colonial and imperialistic practices would be shaped by the racialized tenor of the reports on which they based their reflections ought to be unsurprising.

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[15] Justin E.H. Smith, *Nature, Human Nature, and Human Difference: Race in Early Modern Philosophy* (Princeton: Princeton University Press, 2015).
[16] See esp. ch.9 of ibid.
[17] Huaping Lu-Adler, *Kant, Race, and Racism: Views from Somewhere* (New York: Oxford University Press, 2023).

The more important and pressing task is to better uncover exactly *how* they engaged the concept of race and the uses to which it was put.

If Haslanger attempts to construct a new "antiracist" definition of race on her own, Smith attempts to trace out an alternative conception of race which could also be interpreted along antiracist lines. Unlike Haslanger, however, Smith is less optimistic about the prospects of eventually overcoming the concept of race. For Smith, the modern concept of race came hand-in-hand with the rise of the biological sciences and naturalizing approaches to anthropology. The metaphysical dualist approaches that they would replace did indeed forestall the worst forms of racism for a time, but are also not a viable option for anyone who wishes to view humans as fundamentally in continuity with the animal world and thus a valid object for scientific inquiry. If one cannot eliminate the need for some concept of race, the challenge is instead to attempt to identify notions of it that are more compatible with antiracist politics.

Smith finds such an alternative conception in an alternative intellectual trajectory that begins with Leibniz and runs through Johann Gottfried von Herder, influencing the African philosopher Anton Wilhelm Amo. For these thinkers, Smith argues, "racial differences must not be understood as merely phenomenally given" and that "it would be more correct to affirm that such differences result from the ad hoc and a posteriori way one makes sense of a prior belief in the unbridgeability of the gap between two cultures or ethnicities." As such, "one will not perceive the need to go looking for these racial differences unless one has a prior commitment to deeper differences, a commitment grounded ultimately in the history and politics of relations between differing social groups."[18] For these thinkers, race is less a biological fact on the basis of which to ground political claims as a biological hypothesis annexed to and motivated by political claims about the limits and

[18] Ibid., 233.

bounds of group identity. Instead of trying to disprove race as a matter of empirical biology, one ought to turn to the dynamics of group identity and difference that undergird its use.

Smith's study ends with a reading of Herder in the closing decades of the 18th century, but someone extending his genealogy into the 19th century could very well see Schleiermacher as developing further upon this trajectory. Before seeing how this can be, however, we must first turn to Vial's very different evaluation of Herder and Schleiermacher's contribution to modern racial thinking.

2. *Vial on Schleiermacher and Race*

At a first glance, Ted Vial's analysis of Schleiermacher would seem to supplement such efforts. Rejecting accounts of Kant's theory of race that too quickly seek to isolate Kant's reflections on race from his broader contributions to philosophy, Vial adeptly notes that Kant does not characterize race as a simple biological fact to be proved or disproved on a simple empiricist basis. Instead, Kant's arguments for race are deeply connected to his convictions about the permissibility of the use of teleological principles, the result of the regulative use of reason, in scientific explanation.[19] Part of the perniciousness of the problem of modern racism, Vial suggests, is in the way that teleological thinking can continue to enact civilizational and social hierarchies between peoples even if one purportedly abandons the biological conception of race that Kant originally argued for. Turning away from the question of the empirical adequacy of the concept of race, Vial focuses on the way in which it is constructed and suggests that its hierarchical dynamics can be present even when it is no longer grounded biologically. For Vial, this is what makes Herder and Schleiermacher "unfamiliar sources of modern racism" despite the fact that they are far more focused on culture than biology. Indeed, Vial will insist that "Schleiermacher, compared to other

[19] See esp. ch.1 of Vial, *Modern Religion, Modern Race*.

eighteenth- and nineteenth-century Europeans, is not particularly racist" in order to suggest that "this makes him an even more important example."[20]

Where Smith turns to suggest that Herder represents the development of a different trajectory of race-thinking, Vial attempts to suggest broad continuity between Kant and Schleiermacher. Vial attempts to establish this claim on the basis of an analogy: in the same way that Kant uses teleological reasoning to establish a fixed and permanent connection between physical characteristics and group identity, Schleiermacher uses teleological reasoning to establish a fixed and permanent connection between religious commitment and group identity, a claim that Vial attempts to substantiate on the basis of extrapolations from Schleiermacher's writings on the religion of Australian aborigines and Judaism. Just like race, Vial suggests, the concept of religion is a construction of modern origin, and both race and religion share the same basic anthropological assumptions.[21] "Religion," Vial writes, "resembles Kant's 'germs' (*Keime*) that lead to the four races of humankind."[22] Vial then draws from the work of Talal Asad and Robert Orsi in an attempt to show how a similar teleological logic is purportedly present even in contemporary debates about the character of religion: religions are judged according to a hidden normative standard on the basis of how well they may conform to a teleological ideal of "free sociability" that befits the modern liberal state.

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[20] Ibid., 191.

[21] For a different approach which attempts to bring Sally Haslanger's approach to gender and race to bear on the relation of religion to racism, see Thomas Lynch, "Social construction and social critique: Haslanger, race, and the study of religion" *Critical Research on Religion* 5:3 (2017): 284-301. Like Vial, Lynch will suggest that the concept of religion carries within it an inherently hierarchical dimension that ought to be eliminated, though this is seen as akin to racism rather than an expression of it. While Schleiermacher does think that race is a social construction, he will have a realist conception of religion. And, as we shall see, where Haslanger thinks that one should work towards the abolition of race as a category, Schleiermacher's approach sees race as a key limit-notion that allows for the relativization of the current bounds of nationality and the imagination of differing arrangements of peoples. See also, Robert Bernasconi, "Racialization and the Construction of Religions" in *Critical Philosophy of Race: Essays,* 33-50.

[22] Ibid., 214.

Unlike Haslanger and Smith, Vial is less concerned with actively advancing an antiracist agenda by attempting to identify differing ways to approach race's constructed-ness. Instead, his primary concern is to expand the scope of what antiracist thought may have to confront. His goal is not so much to denigrate Kant, Herder, and Schleiermacher so much as to suggest that the task of combating racism may be far more expansive and complicated than merely rejecting a biological conception of race, but requires fundamentally challenging the anthropological vision that attempts to map personal identity onto group membership. While not denying that it may be possible to advance a "Kantian" position that adequately repudiates his racism, Vial does not think that it is as easy to separate out the way in which these and similar "racialized" views of human identity may be deeply intertwined with arguments for liberal values of freedom and equality.

Yet, as we have already seen, it is many of these very liberal values that Schleiermacher challenges in his advocacy of a different way of thinking about religion and politics (ch.1), rights and property (ch.2-3), and even the nature of the state (ch.4). Although Schleiermacher is certainly concerned with sociality and group membership, one of his most pointed criticisms of Kantian and Fichtean liberalism is that it advocates a conception of community that fails to have an adequate appreciation of individuality qua individuality. It is this concern (among others) that leads him to demand a shift from a negative and abstract conception of right to a positive and materially concrete one (ch.2), allows him to embrace a view of property and the self in which aspects of one's very body can be recognized as a "common organ" even as it always retains its individuality (ch.3), and a conception of the state centered around the peculiarities of a nation's economic life (ch.4). These concerns also manifest themselves in a very different attitude towards race and personhood, an account that Vial fails to consider by virtue of his focus on Schleiermacher's account of religion and language. That is to say, even if Vial may be correct about the way in which Schleiermacher may have been appropriated by later scholars of religion working mostly within a liberal political

paradigm, adequate attention to the details of Schleiermacher's political philosophy significantly calls into question any easy parallel between Kant and Schleiermacher's anthropological visions.

III. Kant's Philosophy of Race

1. Kant's Racial Monogenism: An Overview

Much has been written on the basic contours of Kant's forays into the philosophy of race. Over the course of several decades, Kant would lecture regularly on "Physical Geography" – a course that considered the physical and climatic conditions in which humans develops –, on "Pragmatic Anthropology" – a course which focused on the way in which human physiology intersects with human rationality –, and writes three essays attempting to apply the insights of his theoretical discoveries in metaphysics to the scientific study of human diversity.[23] The first, "Of the Different Races of Human Beings" (1775, 2nd ed. 1777) would set out the basic contours of Kant's theory of the four different races (Whites, Negros, Huns, and Hindu) and the way in which they arose. Each are taken to be the product of the interaction of certain in-built germs (*Keime*) built into the nature of human beings and the environment. Although humans are all posited to originate from a single common source, their gradual migration and adaptation to different climates would result in racial differentiation within the single species: white Europeans as a product of a humid cold climate, copper-red Americans (originally Huns) as a result of a dry cold climate, black Africans as a product of a humid and hot climate, and olive-yellow Indians (Hindu) as a result of dry heat.

Kant would develop upon and defend this basic picture in his following essays. In "Determination of the concept of a human race" (1785), Kant would attempt to clarify what he understood by the term "race", as a classificatory concept designed to track intra-species differences

[23] Many of the relevant texts can be found in English translation in Immanuel Kant, *Anthropology, History, and Education*, ed. Robert B. Louden and Günter Zöller (Cambridge: Cambridge University Press, 2007) and Immanuel Kant, *Natural Science*, ed. Eric Watkins (Cambridge: Cambridge University Press, 2012).

insofar as they were hereditary. Although linked to actual empirical study of human difference, Kant was careful to note that race is itself supposed to be an *a priori* conception used to guide the actual collection of empirical data rather than an *a posteriori* conclusion on the basis of data. In a third essay, "On the use of teleological principles in philosophy" (1888), Kant would respond to objections from the naturalist Georg Forster that his theory of race was far too theoretical and insufficiently empirical by attempting to further explain why metaphysical teleological principles are not only permissible, but actually necessary for the task of scientific classification despite being ultimately non-empirical in nature. Race, while not found *in* nature, is nevertheless grounded in the observation of nature. Importantly, even when empirical evidence is inadequate to provide decisive support of either the monogenetic or polygenetic hypotheses, Kant suggests that the meta-theoretical principle that one ought to minimize appeals to chance suffices to make his own approach preferable. Two years later, in the *Critique of Judgment*, Kant would develop his final language for speaking about the status of teleological principles. Although not *objectively* present and identifiable in the world, they can nevertheless be acceptable as *subjectively* necessary for the task of making sense of phenomena whose deep causes one yet remains uncertain about. Teleological principles such as the concept of race are to be thought of as *regulative* principles that are subjectively valid rather than *determining* principles that are objectively so.

2. Race as a Construct of Scientific Practice

Given the myriad ways in which Kant's philosophy of race intersects with his more well-known theoretical and practical reflections on the nature of the human understanding and the unfolding of reason in history, one could easily address the nuances of Kant's arguments in far greater detail than I have thus far.[24] For our purposes, however, it should be sufficient to highlight a

[24] See above footnote 4.

few points. Firstly, Kant's theory of race is a defense of a monogenist account of human origins. What it attempts to explain is how it is that humans can seem to possess stable hereditary differences while nevertheless belonging to a single species and sharing a single reproductive power. Kant's conviction that skin color appears to be something that is reliably passed down from parents to offspring *even when* transplanted into different climates leads him to reject both that it is reflective of original differences between separate human populations (the polygenist hypothesis) and that it is merely reflective of the product of the particular environment that humans happen to be in (the climatic hypothesis). Combining aspects of both theories, Kant suggests that racial differentiation takes place on the *occasion* of encounters with different climates without these climates being the ultimate determining cause. Instead, humans possess original germs that differentially develop on the occasion of being exposed to different climates. Thus, even if the climate plays a key role in differentiation, race tracks something *internal* to humanity which is activated once and for all by exposure to different external conditions.

The result is a providential narrative which accounts for humanity's purported fitness to live in vastly differing climatic conditions while beginning as one original population.[25] After one original migration, various populations adjust to their new environments once and for all, thus forming the races, passing down their now-activated traits to their offspring. The most obvious of these traits is that of skin color, but other traits – as long as they are unfailingly passed down hereditarily – are by no means excluded. Pace Vial, Kant's account of race has no need for supplementation in order to bridge the physical and the mental or moral: race just *is* that concept. Skin color is the accidental mark of humanity that Kant thinks most easily identifies it, but once the concept's usefulness has

[25] For an attempt to draw out the connections between modern reflections on providence and race, see Matt Jantzen, *God, Race, and History: Liberating Providence* (Lanham, MA: Lexington Books, 2021).

been demonstrated, one could just as well annex a whole host of other associations – including the mental and moral – with it.

A note in Kant's third essay on race, for instance, offers one (distasteful) example: citing what he took to be a fact that freed Negroes in America became "tramps" rather than "laborers", Kant notes that their indolence should not be attributed to the climate (which they now share with European Americans), but must lead one to "conclude from this that, in addition to the *faculty* to work, there is also an immediate drive to activity (especially to the sustained activity that one calls industry), which is independent of all enticement and which is especially interwoven with certain natural predispositions."[26] Here, the affinity for industry (even if not the capacity) is interpreted by Kant as clearly belonging among those inheritable characteristics which cannot be explained on the basis of external climatic factors alone.

One can find yet another example in the edition of Kant's lectures on physical geography. Here, Kant would express his judgment that racial differentiation ultimately effects the degree of human perfection attainable by each race:[27] "Humanity has its highest degree of perfection in the white race. The yellow Indians have a somewhat lesser talent. The Negroes are much lower, and lowest of all is part of the American races."[28] Reporting the observations of South American traveler and Spanish colonial administrator Don Ulloa alongside those of Montesquieu, Kant speculates on

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[26] Kant, "On the use of teleological principles in philosophy", 209 (8:174).

[27] To be more precise, whites are the most perfect for Kant because they most closely approximate the original form, from which all the determinate races have degenerated. For a more detailed account of the role that the concept of degeneration played in theories of race in the early modern era, see esp. ch. 5 of Smith, *Nature, Human Nature, and Human Difference*. For an attempt to situate Kant in particular vis-à-vis Buffon's theory of generation, see ch.4 of Lu-Adler, *Kant, Race, and Racism*.

[28] Kant, "Physical Geography" in *Natural Science*, 576 (9:316). Other variations of this four-fold hierarchical scheme can be found in various lecture transcripts for Kant's anthropology lectures. For a more in-depth discussion, see ch.4 of Lu-Adler, *Kant, Race, and Racism*.

the connection between heat and the indolence and mental laziness of the Indian and Negro races.[29] By contrast,

> The inhabitant of the temperate zone, especially in its central part, is more beautiful in body, harder working, more witty, more moderate in his passions, and more sensible than any other kind of people in the world. Consequently, these people have always taught the rest [of the world], and vanquished them by the use of weapons.[30]

This is, for Kant, not merely the result of the climate, but of the way that the one singular humanity adapts itself to the climate racially. "Europeans who live in the torrid zones," Kant notes, "do **not become Negros,** even after many generations, but retain their European form and colour."[31] There is one humanity and one singular human nature, but for Kant, this nature manifests itself differently and stably in different original climates as a racial expression of the original shared human predisposition.

Secondly, Kant's theory of "epigenesis" is primarily supposed to be a defense of monogenesis on non-empirical meta-theoretical grounds. That is, Kant does not present race as a concept that is the *a posteriori* product of reflection on empirical data about human difference, but as an *a priori* principle on the basis of which one ought to go about collecting empirical data. "It is of great consequence," Kant writes, "to have previously determined the concept that one wants to elucidate through observation before questioning experience about it."[32] Race is a non-empirical, but empirically-oriented concept, something constructed for the sake of empirical use but not itself

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[29] "The inhabitants of the hottest zone are especially indolent. In some cases, this laziness is tempered to an extent by the government and by force. …Montesquieu is right in saying that it is precisely this gentleness that makes death less frightening for the Indian or Negro, so that he is often more afraid of many things that the European can survive than he is of death [itself]." Ibid., 576 (9:316-317).
[30] Ibid., 577 (9:317-318).
[31] Ibid., 573 (9:313). Indeed, Kant is careful to distinguish between the skin coloration that is merely the result of the climate acting immediately on the skin and that which is to be attributed to heredity: "From all hitherto existing descriptions one cannot yet form a sure concept of the actual color of the South Sea Islanders. For while the color of mahogany wood is attributed to some of them, I still do not know how much of this brown is to be ascribed to a mere coloring from sun and air and how much to birth. Only a child conceived by such a couple in Europe would reveal without ambiguity the skin color that belongs to them *by nature*." Kant, "Determination of the concept of a human race" in *Anthropology, History, and Education*, 146 (8:92).
[32] Kant, "Determination of the concept of a human race", 145 (8:91).

empirically sourced. As an example of a regulative, rather than a determinative principle, it has no "objective" existence "out there" in the world, but rather is a concept justified by virtue of its usefulness for subjects in their attempts to organize what *is* "out there" in the world. In language more characteristic of contemporary debates about race, Kant's conception of race is a kind of social construction.[33]

That Kant the self-proclaimed "transcendental idealist" should have nuanced views on the constructed character of certain concepts ought to be unsurprising.[34] When it comes to teleological concepts like that of race, Kant would suggest that they are rendered valid for use on grounds that are similar to, and yet also different from other non-empirical cognitions such as the categories of the understanding or the idea of God. In the First Critique, Kant would execute an argument for why it nevertheless remains appropriate to ascribe concepts such as substance or cause to things in the world despite it being impossible to ever find them "out there" in the world. Despite being *a priori*, the categories of the understanding are necessary parts of the cognitive apparatus by which humans are able to cognize the world. They are thus objectively and universally valid despite being non-empirical. In the B-Edition of the First Critique, re-written and published in the years between Kant's second and third essay on race, Kant explicitly draws the parallel to biology by characterizing his views as akin to that of "a system of the epigenesis of pure reason" (B167). Akin to the way that Kant's theory of race bridges a monogenetic theory that sees differentiation as solely the product of external circumstances and a polygenetic theory that traces them back to innate differences, Kant

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[33] If one is to borrow the terminology of one particular theorist – that of Sally Haslanger – one could perhaps characterize Kant's conception of race as an example of a "weak pragmatic construction" in that, while partially constituted by social factors, *is* to some extent responsive to objective factors as opposed to a "strong pragmatic construction" that is wholly constituted by social factors. This distinction, however, is not the most useful for tracking the differing ways in which Kant thinks concepts can be made valid on *a priori* grounds; nor is it the most helpful for understanding the difference between Schleiermacher and Kant's conception of race. See esp. ch. 2 of Haslanger, *Resisting Reality*.

[34] Especially so for political theorists, for whom Rawl's classic account of Kantian constructivism would play a key role in the development of Rawlsian liberalism. See John Rawls, "Kantian Constructivism in Moral Theory: The Dewey Lectures 1980" *Journal of Philosophy* 77:9 (1980): 515-572.

would describe his account of the categories as bridging between an empiricist view that attributed the categories validity only by virtue of their arising from external experience and a rationalist position that saw them as innate ideas. Like Kant's racial germ, the categories arise out of external encounters, but have their root in human nature rather than the external things it encounters.

But unlike the categories, teleological principles like race are not conditions of the possibility of cognizing anything at all and thus objectively valid (applicable to all objects of experience) despite not being grounded in experience. In this regard, Kant likens them as akin to the idea of God.[35] Having denied the possibility of proving God on theoretical grounds, Kant does not thereby dismiss the idea as merely an illusory side-effect of the way humans happen to think about the world, but instead suggests that one can hold to the idea on practical grounds. That is, despite there being no way to actually prove God's existence on the basis of any amount of empirical evidence anywhere in the world, one can nevertheless be licensed to believe in God on the basis that doing so may be necessary for one to sustain the moral life.[36] The idea of God is thus held on the basis of practical, rather than theoretical reasons.[37]

In his third essay on race and in the Third Critique, Kant develops an account of teleological principles that grants them subjective validity on a different, non-moral, but still practical basis: the explanatory need to find ways to conduct research into the underlying laws of nature in lieu of clear

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[35] "Elsewhere I have shown that in metaphysics reason on the theoretical path of nature (with respect to the cognition of God) is not able to achieve its *entire* intention as wished, and that therefore only the teleological path remains for it – yet in such a way that it is not the natural ends, which rest only on arguments from experience, but an end that is given and determined a priori through pure practical reason (in the idea of the highest good) that may supplement the shortcoming of the deficient theory. In a small essay on the human races [the 1785 essay] I have attempted to prove a similar warrant, indeed a need to start from a teleological principle where theory abandons us." Kant, "On the use of teleological principles in philosophy", 195 (8:159).

[36] Andrew Chignell has argued that Kant ultimately develops three different versions of his moral argument for the existence of God. See Andrew Chignell and Alexander T. Englert, "Kant on the Highest Good and Moral Arguments" in *Oxford Handbook of Kant*, ed. Anil Gomes and Andrew Stephenson (Oxford: Oxford University Press, forthcoming).

[37] For a discussion and reconstruction of the various non-evidential ways that Kant thinks that beliefs can be held on subjective, rather than objective grounds, see Andrew Chignell, "Belief in Kant" *The Philosophical Review* 116:3 (Jul 2007): 323-360.

mechanical explanations or programs of research.[38] In other words, teleological principles are justified on the basis of their fruitfulness for driving scientific research, even if they may go beyond the evidence precisely because they offer alternative ways of seeking and organizing evidence; they are thus empirically conditioned, but not empirically grounded.[39] Rather than being something in the world, race – as well as other teleological principles – is to be recognized as a product of the classificatory scientific enterprise itself. Science does not discover race, but constructs it.

In her analysis of Kant's extended interest in the question of race over the course of his lifetime, Huaping Lu-Adler is very keen to note Kant's emphasis on the importance of taking the stance of a *Naturforscher*, an investigator of nature, over the course of his works.[40] Indeed, when pushed by Forster to consider whether his hypothetical approach to the question of race would have any practical effects on the plight of African slaves, Kant would sidestep the question altogether in order to continue his focus on expositing the "the philosophical mode of explanation" that he was advocating.[41] Kant's insistence on the purely theoretical character of teleological inquiry was by no means accidental. While many have situated Kant's essays on race between Buffon and Blumenbach

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[38] "In order to avoid even the least suspicion of wanting to mix into our cognitive grounds something that does not belong in physics at all, namely a supernatural cause, in teleology we certainly talk about nature as if the purposiveness in it were intentional, but at the same time ascribe this intention to nature, i.e., to matter, by which we would indicate (since there can be no misunderstanding here, because no intention in the strict sense of the term can be attributed to any lifeless matter) that this term signifies here only a principle of the reflecting, not of the determining power of judgment, and is thus not meant to introduce any special ground for causality, but is only meant to add to the use of reason another kind of research besides that in accordance with mechanical laws, in order to supplement the inadequacy of the latter even in the empirical search for all the particular laws of nature." Kant, *Critique of the Power of Judgment*, 254 (5:383).

[39] Andrew Chignell, drawing on Kant's discussion of the various ways that beliefs can be held on the basis of their objective or subjective sufficiency in the Canon of Pure Reason in the first Critique, thus distinguishes between what he will refer to as "practical beliefs" (which are held on the basis of a practical reason not incompatible with the moral law), "theoretical beliefs" or "doctrinal beliefs" (which are held on a hypothetical basis for the sake of a theoretical end), and "moral beliefs" (which are held on the basis of the necessary moral end). Using this vocabulary, one could say that race is commonly thought to be a mistaken version of a practical belief (for the immoral end of exploitation or domination), but on Kant's account, falls into the category of a doctrinal belief. Indeed, the example of doctrinal belief that Kant offers in the Canon of Pure Reason is of the hypothetical adoption of teleological principles by a biologist. Kant's account of teleological principles does shift between the first and the third Critiques, no doubt influenced by Kant's developing conversation about race, but the underlying epistemological principle seems to remain for the most part the same. See Andrew Chignell, "Belief in Kant" *The Philosophical Review* 116:3 (Jul 2007): 323-360.

[40] See esp. ch.3 and 4 of Huaping Lu-Adler, *Kant, Race, and Racism*.

[41] Kant, "On the use of teleological principles in philosophy", 204 (8:169).

in the context of the development of new, post-Linnaean classificatory schemes situating humans within natural history,[42] one could just as well situate Kant's concern within the context of the development of the modern research university. One of the reasons why Kant would be keen to emphasize the stance of a *Naturforscher* who could adopt teleological principles on a regulative basis solely for theoretical ends is no doubt connected to his hopes of carving out a space for a semi-autonomous faculty of philosophy within a university yet-dominated by the theology faculty and governed by state censorship.

Setting out his vision in the 1794 *The Conflict of the Faculties*, Kant's distinction between the higher faculties of theology, law, and medicine and the lower faculty of philosophy hangs on a distinction between whether inquiry is driven by considerations of utility or considerations of truth. Theology, law, and medicine are ultimately oriented towards the achieving of several determinate ends – one's eternal, civil, or physical well-being – and therefore subject to direction from a higher authority, whether that of God (through the Bible), the state (through legislation), or nature (mediated by a board of physicians); philosophy, on the other hand, is to be driven by theoretical concerns alone – its end is reason itself.[43] It is this lack of direct practical utility that, for Kant, justifies a sphere of freedom from government scrutiny for scholars to examine and critique any and everything that reason may demand.[44] It is thus to some extent an elite affair – "The faculties… put their objections and doubts only to one another, as scholars, and the people pay no attention to such matters in a practical way" – and has no pretensions to challenging any of the government's

[42] The thrust of Robert Bernasconi's instigating essay on Kant, for instance, attempts to present Kant as presenting the first scientific treatment of race by developing upon Buffon and preparing the way for figures such as Blumenbach. The accuracy and viability of the claim has been since much discussed and developed in the literature.

[43] "The lower faculty is the rank in the university that occupies itself with teachings which are not adopted as directives by order of a superior, or in so far as they are not so adopted." Kant, "The Conflict of the Faculties" in *Religion and Rational Theology*, 255 (7:27).

[44] "It is absolutely essential that the learned community at the university also contain a faculty that is independent of the government's command with regard to its teachings; one that, having no commands to give, is free to evaluate everything, and concerns itself with the interests of the sciences, that is, with truth: one in which reason is authorized to speak out publically." Ibid., 249 (7:19-20).

directives for one's well-being, instead only "a clearer insight into means for achieving the same end."[45] More than just a handmaiden to theology, philosophy is to have its own autonomy and task, a task whose practical demands can generate reasons to accept the regulative use of principles otherwise not empirically justified.

For Kant, race as a teleological principle – unlike the concept of God – is not at all to be understood as valid in relation to practical ends. As a social construction, it is to be the product and purview of a new, independent kind of scholarly praxis that exemplifies – in a stark departure from Forster's concerns – an indifference towards practical questions such as one's stance toward race-based chattel slavery. It is the demands of the practice of purportedly impartial and distinctly rational philosophical inquiry that provides the warrant for the use of the race-concept. For Kant, it is the *scientific* utility of the concept that precedes any consideration of its practical utility.

From an antiracist perspective, it can be tempting to view Kant as merely offering a rationalization, but the ways in which the basic contours of Kant's vision for the academy have since come to fruition, even if with modifications, ought to give one pause. If race is not an empirical concept to be directly proved or disproved on the basis of evidence, but a kind of regulative principle whose reality is grounded in its usefulness for setting forth a scientific research program, it cannot simply be countered on the basis of a pronouncement of its empirical unreality. The effect of Vial's charge – even if not his particular account of Herder and Schleiermacher's role in it – can be even be reframed: what is at stake is not just whether or not *race* as a teleological principle is empirically viable or not, but whether or not the Kantian vision of the regulative use of teleological principles continues to legitimate the adoption of race-like principles which are given reality by the very practice of the academy itself.[46] The basic structure of Kant's "germ" as a postulate to organize

[45] Ibid., 256 (7:29).
[46] This can give rise to the awkward situation in which even purportedly antiracist uses of the concept of race may inadvertently construct a new form of racism. Consider, for instance, Steven Epstein's contention that attempts to

information about human diversity can thus be maintained while denying that skin color is the most relevant marker of unfailing heredity. Pushing back against race thus may require not just a rejection of a biological classification of human diversity, but a questioning of teleological principles and *how* they operate as socially constructions.

The third and final point I wish to make about Kant's philosophy of race is to echo the suggestion of various commentators that one should not take it as obviously incompatible with or extraneous to the purportedly more central concerns of the critical project. Whatever the status of the contemporary debate over the compatibility of Kant's ethics with his views of race, his immediate contemporaries certainly saw no necessary tension between his moral and political philosophy and his commitments to racial hierarchy. Fichte, for instance, raises a question regarding the conditions of applicability of the categorical imperative:

> Kant says: act so that the maxim of your will can be the principle of a universal legislation. But then who is to be included in the kingdom governed by such legislation and thus share in the protection it affords? … Now someone will say to me: it is obvious that we are speaking only of beings that are capable of representing laws, and therefore only of rational beings. With this, I admit, I have replaced the first indeterminate concept with another, but I certainly do not have an answer to my question. For then how do I know which particular object is a rational being? How do I know whether the protection afforded by that universal legislation befits only the white European, or perhaps also the black Negro; only the adult human being, or perhaps also the child?[47]

The problem with the formula of universalizability is that it is a purely abstract and formal principle without clear conditions of applicability. For Fichte, this means that in itself, Kant's formula does not adequately specify whether it may or may not have a racialized application. In order to fill this perceived gap, Fichte would attempt to provide an a prioristic deduction of the physical form of the human body – its possession of an upright posture, two eyes, a mouth, an expressive face –, arguing

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account for racial disparities in medical research by emphasizing diversity in clinical research trials have not only not led to better health outcomes for racialized groups, but even contributed to their ongoing marginalization. See Steven Epstein, *Inclusion: The Politics of Difference in Medical Research* (Chicago: The University of Chicago Press, 2007).

[47] J.G. Fichte, *Foundations of Natural Right*, 75.

that "the human shape is necessarily sacred to the human being."[48] It is, for Fichte, the encounter with a being with a particular kind of physical body that immediately triggers the act of recognition central to Fichte's account of freedom and right.

What Fichte attempts to accomplish on an *a priori* basis, Kant attempts to work out empirically. The physical geography (which gives the physical conditions of humanity) and the practical anthropology (which offers an account of humanity as embodied rational beings) thus represent attempts to work out the material conditions under which Kantian ethics are to find their fullest manifestation. Kant's reflections on rational history might then be seen as his considered judgments about how, through the "cunning of reason", the ideals he has set forth in his theoretical and practical philosophy are to manifest themselves in history.[49] Most significantly, Kant is insistent that "In the human being (as the only rational creature on earth), those predispositions whose goal is the use of his reason were to develop completely only in the species, but not in the individual."[50] The mixed nature of history has led Kant to conclude that one is not to expect that every individual will be capable of manifesting the ideals that he has set forth. And given his convictions about the way in which climates have affected the capacities of various races to actually achieve human perfection, Kant's vision of the full development of reason leads him to the conclusion that it is only through the white race from which one can expect the adoption of the institutions which make for perpetual peace. Indeed, in responding Pauline Kleingeld's suggestion that the Kant of the 1790s would become more consistently egalitarian via his criticisms of slavery and colonialism, Huaping Lu-Adler would argue that Kant's attitudes are merely a reaffirmation of his racial vision: "given the political realities of the 1790s, he [Kant] became concerned about their potential to impede human

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[48] Ibid., 79.
[49] See esp. Immanuel Kant, "Idea for a universal history with a cosmopolitan aim (1784)" and "Conjectural beginning of human history (1786)" in *Anthropology, History, and Education*.
[50] Kant, "Idea for a universal history with a cosmopolitan aim", 109 (8:18).

progress by indirectly worsening intra-European power struggles and dimming the prospect of perpetual peace."[51] Kant's concern for the apotheosis of reason at the level of the species meant that his concern was less an expression of one's duty to treat the non-white races as ends rather than means and more a concern for the future of those (European) peoples whom Kant alone thought capable of incarnating the ideals set down by the moral law.[52]

IV. Race as "Original Given": Schleiermacher's Philosophy of Race

Unlike Kant and Fichte, Schleiermacher and his fellow Romantics would put the realization of the individual – not of the species – at the center of their visions for human formation and development. Or, more accurately, the development of the species could only be furthered, not through the "cunning of reason" by which the flaws and faults of various individuals canceled one another out and made possible the self-enforcing mechanism of the liberal state, but through the cosmopolitan and reciprocal inspiration of exemplary individuals. This focus on individuals and, in the wake of Herder, the peculiarities of nations and languages, however, did not necessarily lead to non-racial and less Eurocentric view of human history. The concern that Schleiermacher would express for the plight of the victims of the Transatlantic slave trade in his 1800 *Soliloquies*, for instance, was less a full-throated call for abolition and more an attempt to use black chattel slavery as

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[51] Huaping Lu-Adler, "Kant and Slavery – Or Why He Never Became a Racial Egalitarian" *Critical Philosophy of Race* 10:2 (2022): 269. See also Inez Valdez, "It's Not about Race: Good Wars, Bad Wars, and the Origins of Kant's Anti-Colonialism" *The American Political Science Review* 111:4 (2017): 819-834.

[52] Kant's discussion of peoplehood in his Anthropology, for instance, discusses only five nations in detail: the French and the English – whom Kant considers the most civilized –, the Spanish, the Italian, and the German. Russia is spoken of as not yet having developed a national character, Poland as having missed the opportunity, and Turkey as incapable of achieving it. Although Kant advocates caution in his sketches, what he is attempting to grasp are the "hereditary maxims, or those which have become, as it were, second nature through long usage, as well as those maxims grafted upon them which express the sensibility of a people" as "the *varieties* in the natural tendency of entire peoples, and more empirically for geographers than according to principles of reason for philosophers." Kant is concerned with the dimension of the character of peoples that arises out of their geographical and physical determinants: "since the question here is about innate, natural character which, so to speak, lies in the blood mixture of the human being, not characteristics of nations that are acquired and *artificial* (or spoiled by too much artifice), one must therefore be very cautious in sketching them." Kant, "Anthropology from a pragmatic point of view", 408 and 414 (7:312 and 319).

an example to illustrate the ways in which the unrelentingly commercialistic and materialistic economic dynamics of the day throttled the free association that Schleiermacher saw as necessary for the proper ethical and cultural development of "better men".[53]

Like many others of his time and place, Schleiermacher was ensconced within a Prussia which, even if it did not participate directly in colonialism, nevertheless participated in the formation of "colonial fantasies" mediated through a racialized travelogue literature that presented selective information about what went on and viewed the world through a Eurocentric lens.[54] And like many others of his day, his philosophical endeavors included reflections on the nature of race. What makes Schleiermacher's views on race interesting, however, is less whether they mark him as merely a man of his time, progressive, or even regressive from our contemporary perspective, but *how* Schleiermacher understands race to serve as a social construction. If Kant's philosophy of race defends a racial monogenism that sees race as a teleological principle useful for the purposes of empirical investigation, Schleiermacher would suggest that debates over monogenism and polygenism ought to be situated within the ongoing recognitive dynamics concerned with the question of national formation and belonging. In this regard, Schleiermacher can be situated as a continuer of the trajectory that Smith has identified in Leibniz and Herder, where racial differences are not phenomenally given but reflect deeper commitments about the history and politics of differing social groups.

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[53] See the first epigraph of the chapter. Schleiermacher, *Schleiermacher's Soliloquies: An English Translation of the Monologen with a Critical Introduction and Appendix*, trans. Horace Leland Friess (Eugene, OR: Wipf and Stock, 2002), 54.

[54] For an attempt to illuminate how German-speakers engaged imaginatively with colonialism despite not being directly tied up in the enterprise until later, see Susanne Zatrop, *Colonial Fantasies: Conquest, Family, and Nation in Precolonial Germany, 1770-1870* (Durham, NC: Duke University Press, 1997). For an account of the ways in which the British Empire in particular deliberately destroyed evidence of native genocide and/or found euphemistic ways to discuss atrocities so as to systematically mislead about the violent dynamics of colonization, see Caroline Elkins, *Legacy of Violence: A History of the British Empire* (New York: Knopf, 2022). Even in the face of this, however, Chad Wellmon argues that Schleiermacher sought to get beyond the biases by not merely taking travelogue literature for granted but also attempting to situate it within the broader dynamics of intra-European politics. Yet without access to native witness and testimony, one can only go so far. See esp. ch. 5 of Wellmon, *Becoming Human*.

As we have seen in chapters 2 and 3, Schleiermacher's emphasis on the intellectual and linguistic conditions of recognition led him to treat questions of right, property, and even embodiment in a way that both built on, but departed from the accounts of Kant and Fichte. Critical of the abstract and formalistic ways in which Kant and Fichte approached the issue, Schleiermacher's rejection of a transcendental derivation of right and corresponding emphasis on the concrete material and economic conditions which structure the division of labor lead him to a theory of natural right that allows him to affirm that "right extends over the whole earth; but is not necessarily an equal relationship of each to all."[55] In the 1816/17 version of the *Ethik*, Schleiermacher will develop this idea by more carefully spelling out the account of personhood that comes alongside this judgment. It is in the context of this discussion that Schleiermacher also offers a discussion of race.

1. Schleiermacher on the Person and Personality

That race is no accidental part of Schleiermacher's thought is apparent from the attention that Schleiermacher dedicates to the subject in the 1816/17 version of his *Ethik*. On the third pass through his mature systematic ethics, Schleiermacher would dedicate a new section to the question of the nature of personality.[56] The basic lineaments of the argument, however, are already present in the 1812/13 *Lectures*[57] and hints of the position exist even in the earlier *Brouillon*. The 1816/17 version, however, contains the most detailed version of the argument and the deepest discussion of race. Additional marginal notes on the manuscript show that Schleiermacher continued to

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[55] E 1816/17, 193 (DG.I.56), 592.
[56] While much of the material from proposition 35 on in the "Basic Outline" of the Doctrine of the Good constitutes a substantial reworking and representation of material from the "General Overview" section of the 1812/13 discussion of the Highest Good, propositions 63-71 includes material that is substantially new, even as it picks up on a number of prior themes.
[57] The 1816/17 edition can be seen as revisiting the account of personhood worked out in E 1812/13, 18-25 (HG.I.16-72), 265-273.

experiment with his presentation, but the basic contours of the position remain for the most part the same as that formulated in 1816/17.[58]

At stake in the argument is Schleiermacher's innovative account of personality, a conception, as we have seen, that does not actually presuppose a fundamental equality among all who attain to the status of persons. Indeed, for Schleiermacher, equality cannot possibly be part of the status of personality precisely because it is a notion that is grounded *neither* in any quantitative *or* qualitative identity, but in acts of self-positing and recognition within the context of community. Personality, Schleiermacher insists, is a distinctively *moral* kind of identity that can be distinguished from both mere numerical identity and particularity precisely because it involves acts of self-understanding and definition.[59] Things can be numerically distinct without being qualitatively distinct. A piece of rock can be broken off from a bigger rock and be numerically distinct without being qualitatively any different.[60] Pace Fichte, the mere possession of a distinct spatial-temporal separateness and form is too insufficient a designation of what is involved in recognizing the existence of personality. Perhaps more controversially, however, Schleiermacher is also insistent that qualitative distinctiveness is insufficient as a demarcation of personal identity:

> We ascribe particular existence to every genus and species of animal, but we do not ascribe perfect personality [Persönlichkeit] to individual specimens, partly because we consider their individual particularity to be more the result of external circumstances than any internal principle, partly because their consciousness cannot entirely break through to that particular object which is the only means of distinguishing themselves from others and positing others alongside themselves.[61]

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[58] In 1827, Schleiermacher notes an attempt to offer an abridged version of the argument by changing how he presented a few terms. E 1816/17, 198n38 (DG.I.63), 599n1.

[59] "The concepts of person and personality [Person und Persönlichkeit] are thus dependent solely upon the moral domain, and on the manner of being individual and many within it; for the positing of others along oneself is as essential to the concept as is the distinguishing of oneself." E 1816/17, 203 (DG.I.71), 604.

[60] "But a piece of rock that has splintered off from the rest is numerically diverse from its complement, although it is exactly the same in qualitative terms, because what is manifold about it does not relate to the same unity of space and time." E 1816/17, 202-203 (DG.I.71), 604.

[61] E 1816/17, 203 (DG.I.71), 604.

Mere membership in a particular genus or species is not a sufficient differentia for personhood, as it does not adequately grant grounds for understanding why individuals of that species ought to be respected *as the individuals that they are*.

Schleiermacher's definition is oriented towards excluding non-rational animals from possessing the status of persons, but it also provides grounds for understanding why mere belonging to the human species is not enough. The critique ought to be a familiar one by now: Schleiermacher is interested, not in a merely negative account of one's rights by virtue of some merely formal feature, but a positive appreciation of individuals for the very individuals that they are and the ways they can be recognized as both participating in a larger common sphere of activity and possessing peculiar qualities in their own right.[62] Attempting to attribute personality to humans by virtue of some shared attribute that sets them apart as a species – i.e. rationality – is thus insufficient to the extent that it fails to actually address the questions of the very different ways in which this rationality may manifest and express itself.[63]

This emphasis, not just on individuals, but on individuality is one of the aspects that sets Schleiermacher apart from Kant and Fichte alike. The contrast can be set out in the differing ways in which they understand the role of nations in the drama of human rationality. For Kant and Fichte, the rational rules that set out the conditions of the ideal community are *a priori* and universal. One

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[62] See chapters 2 and 3.

[63] One way of characterizing Schleiermacher's critique of "qualitative" approaches to personality is to see it as emphasizing its eminently *relational* character, as being established in a relation of reciprocal recognition that involves at least (though by no means limited to) two persons. Despite superficial similarities, however, it is important to recognize how this differs from "relational" accounts of human personhood that see relationality, not as opposed to the mere possession of a *quality*, but to a view that sees humans as "substances", a move that has been quite popular among some advocates of theological anthropology. See, for instance, David Kelsey, *Eccentric Existence: A Theological Anthropology* (Louisville: Westminster John Knox Press, 2009). Where these differ is that Schleiermacher *can* nevertheless be seen as affirming the classical insistence that humans are set apart by their rationality, but insists that what differentiates persons is not their possession of a generic, abstract rationality, but *the very particular way* in which they may act as an "organ of reason" in setting forth their own self-conception. The emphasis on one's personality being grounded in, say, one's relation to God, would be, for Schleiermacher, just another variation on "qualitative" identity to the extent that "related-to-God" can just be read off third-personally as a predicate rather than, to borrow Darwall's language, a matter of second-personal address and recognition.

only has to be concerned with nations and their differing characters to the extent that they provide the necessary material conditions under which the ideal can be realized. The differences between them can thus be attributed to the contingent and accidental features of the environment that happen to have shaped them into the peoples that they are, but are by no means an expression of the rational ideal. For Schleiermacher, on the other hand, human rationality ultimately expresses itself linguistically and therefore nationally. The differences between nations are not ultimately to be seen as contingent differences on the basis of geography or climate, but as what it means to be a particular kind of human, each of which exists in a distinct and unique way. Personality, for Schleiermacher, needs to take into account particularities that are *not* shared by all.

Abstract liberal conceptions of personhood can indeed guarantee individual rights, but only on the basis of treating every individual exactly the same. While this can indeed be quite beneficial for many, the point that Schleiermacher is trying to make is that it will also necessarily fail those who do not fit into the one-size-fits-all mold, a point that (third wave) feminists, queer theorists, and disability advocates have since brought to the fore.[64] To the extent that we *actually* do demand respect not merely as humans, but *as the very particular kind of human we are* – as men or women, as gender non-conforming, as deaf –, Schleiermacher thinks that his moral framework for understanding personality does a better job of understanding the kind of relationship that is being enacted than an account that assumes abstract equality, say, behind the veil of ignorance, and then seeks to identify ways in which this equality is adjusted to account for supposed non-universal

[64] Consider, for instance, the common accusation that liberal conceptions of abstract personhood often take for granted a white, cis-gendered, abled male subjectivity. Dean Spade, for one, thus calls into question the degree to which appeal to rights which often take for granted the liberal conception of personhood may be a profitable strategy for trans activism. See Dean Space, *Normal Life: Administrative Violence: Critical Trans Politics, and the Limits of Law* (Durham: Duke University Press, 2015).

contingencies.[65] Schleiermacher is concerned with the ways in which many of these supposed contingencies may be appreciated as non-accidental aspects of who someone is.

But Schleiermacher's rejection of the sufficiency of qualitative distinctions is not grounded in his embrace of the importance of particularity alone. In true post-Kantian fashion, what really sets humans apart as rational beings for Schleiermacher is not their mere possessing of the property "rational" in discrete quantitatively distinct bodies, but the fact that we are conscious of ourselves – not just as a rational being – but as a rational *individual*.[66] What makes personality a moral and not a quantitative or qualitative concept for Schleiermacher is that it has to deal with internal and not merely external individuality: "a personal existence distinguishes itself from others and posits others alongside itself, and must for this very reason also be inwardly distinct."[67] It is not enough to be able to attribute personality to someone on the basis of their possessing the necessary qualities. This would merely be an external distinctness. One must recognize oneself as a person and set it forth for others to recognize it. In order to do so, one must not only be self-aware, but aware of one's distinctiveness as an individual alongside others who are different from oneself. As such, "the

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[65] Schleiermacher, one could say, does not believe in the problem of moral luck. Or rather, he demands a different approach that does not see that which looks arbitrary from the perspective of the liberal egalitarian as actually arbitrary. Instead of imagining abstract individual persons who can be abstracted away from their various talents and characteristics, we are to view talents as part and parcel of their personality. "For if individuals must vary, not only according to space and time but also as a unity of the general and the especial… then the action of reason which proceeds from each individual, if each one is entirely active, that is [acting from] his own peculiarity, must necessarily vary too. What has been organized is organized for just this diversity, and what has been symbolized also leaves the imprint of this same diversity. Every taking of moral action is thus entirely bound up in such diversity, and what it can be is only complete in relation to it." E 1816/17 181-182 (DG.I.36.2), 578.

[66] For a parallel argument that similarly chronicles the failures of attempts to attain to a concept of human personhood on the basis of identifying some shared "human" attribute, but reaches a different conclusion as to the virtue of the "qualitative distinction", see Anne Phillips, *The Politics of the Human* (Cambridge: Cambridge University Press, 2015). For Phillips, the failure of attempts to ground the quality of human personhood ought not to result in the abandonment of equality as an ideal, but in an *unconditional* affirmation of its worth. See Anne Phillips, *Unconditional Equals* (Princeton: Princeton University Press, 2021). For Schleiermacher, the affirmation of equality as the highest good would still miss out on a key aspect of what makes humans human – their expressed self-presentations of themselves as the person that they are alongside other persons. Because this may differ from person to person, there is no guarantee that *equality* would characterize even a society which had achieved a kind of equilibrium when it comes to acts of mutual recognition. As Phillips notes, unconditional equality does not necessarily mean that there is no such thing as diversity and difference. For Schleiermacher, however, the only justification for such differentiation needs to arise from these acts of presentation and recognition if they are not to be merely a contingent ranking of values.

[67] E 1816/17, 202 (DG.I.71), 604.

positing of others alongside oneself is as essential to the concept [of personality] as is the distinguishing of oneself."[68] It is this *inward* distinctiveness that posits one's individuality in the context of a broader community that includes others distinct from oneself that makes personality a distinctively moral concept for Schleiermacher.

But what is the relationship between the *inward* distinctiveness and *external* qualitative distinctiveness? Are there limits to the way that one can posit oneself? Or is any self-conception that can find a recognitive response valid? Schleiermacher's answer attempts to find a middle way between the realist response which would make valid internal individuality contingent on its conformity with external qualitative difference or the idealist response which would allow any self-conception to be recognizable. That this would be the case ought to be unsurprising given Schleiermacher's conception of the formation of the state around the idea of a nation discussed in the previous chapter. Schleiermacher is concerned with the ways that the very act of positing plays a constitutive role in making real that which is posited, and in giving an account of how this is so, he echoes aspects of Kant's account of teleology.[69]

Teleology, for Kant, brought together the internal end-directed way that humans thought in terms of purposes with the external mechanistic way that nature was supposed to operate. In the Third Critique, Kant would set forth the only way he could think of anything in the world as a natural end: "if it is cause and effect of itself."[70] In other words, only self-sustaining organisms whose causality can be recognized as oriented towards their self-perpetuation can be the proper subjects of teleological thinking. Kant, as we have seen, would then apply this to posit races as naturally self-perpetuating hereditary sub-units of humanity, though only on a regulative basis.

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[68] E 1816/17, 203 (DG.I.71), 604.
[69] The fact that Schleiermacher speaks often of "organizing action" already ought to signal the deep ways in which Schleiermacher would be in conversation with the conception of organization developed by Kant in the Third Critique, a full discussion of which goes beyond the scope of this dissertation.
[70] CPJ 5:370-371.

For Schleiermacher, the positing of personality can also only be non-arbitrary if it possesses the property of being a natural end, a self-perpetuating individual alongside other self-perpetuating individuals as part of a broader self-perpetuating whole. Thus, Schleiermacher would ultimately define personality as follows:

> the positing of reason which is always the same and always like itself as an especial [aspect] of existence within a definite, measured [bestimmten und gemessenen] natural whole, one, that is, which exists relatively in its own right, and which [positing of reason] is thus both inculcating and signifying, both the center of its own sphere and linked to community.[71]

As a distinct moral existence, a person must be a self-sustaining being that exists within a greater (non-arbitrary) whole within which *other* moral self-sustaining beings can be recognized as existing alongside. As a self-same being, personality thus marks out a specific location amidst the various forms of ethical activity in which it can participate: political and economic activity, socializing activity, knowledge-producing activity, and artistic and religious activity. One's material existence must be able to be sustained in accordance with a corresponding cognitive conception, and that concept must be responsive to one's material existence; there can thus be relative stability in the way in which a given individual navigates the way in which their being and activities are recognizable as something common and as something peculiar.

2. The Necessity of Measure: The Bounds of Personality

The fact that personality is grounded on inward distinctiveness, and inward distinctiveness requires a non-arbitrary self-posit of one's identity alongside others is what brings Schleiermacher to insist that persons exist as relatively self-subsisting individuals "within a definite, measured [gemessenen] natural whole."[72] Given Schleiermacher's emphasis on the political-economic basis of right, the reason why the whole is needed should be self-evident. In the context of a complex

[71] E 1816/17, 202 (DG.I.71), 604.
[72] Ibid.

division of labor, a person "exists relatively in its own right" only insofar as they give and receive what is due to and from the rest of the community. And in order for this whole to be able to sustain the "relative" existence of the individual persons embedded within it, it itself would need to be a self-sustaining and self-perpetuating unit, thus a *natural* whole. As with Kant, it will be in reference to these natural wholes that Schleiermacher introduces the concept of race.

One important thing to note at this point is that, as Schleiermacher has defined it, the status of personhood is by no means restricted merely to individual human beings, but can also apply to collective entities, as long as they exemplify the kind of relative self-existence and positing alongside internally-differentiated others within the context of a broader natural whole. Individuals, Schleiermacher notes, can be part of families, and families part of tribes [Stamme], and tribes part of hordes [Horde], and hordes part of nations [Volk], each representing a kind of dynamic unity-in-diversity which exemplify a kind of relatively stable identity alongside others of its type, each capable of recognizing the other in accordance with their self-presentations of the way in which they understand themselves to be distinct from others.[73] What may be seen as a collective at one level can be seen as individuals at another level. Thus a family is a collective entity vis-à-vis the reciprocally-recognizing individuals that make it up; yet the family can be seen as an individual unit vis-à-vis the "tribe" – a collection of families – of which it is a part. "Hordes" is the term that Schleiermacher adopts to designate a united collection of tribes; and "nation" the term to designate the largest stably-unified level of collective human life and activity.

This is one of the places where Schleiermacher's emphasis on the individuality of individuals separates his account of personhood most starkly from that of someone like Fichte, whose account of mutual recognition and right could otherwise be read as also placing an emphasis on "internal"

[73] Holstein suggests that it is only after Schleiermacher becomes more acquainted with Ernst Moritz Arndt and his "Versuch in vergleichender Volkergeschichte" after 1808 that Schleiermacher begins to adopt the language of races, hords, and tribes for discussing the various levels of personhood. See Holstein, *Die Staatsphilosophie Schleiermachers*, 79-80.

differentiation. Because Fichte is merely concerned with recognizing others as *rational beings* (rather than the individuals they are), recognition can be triggered by the purportedly universal property of possessing a human physiognomy. The play of recognition thus takes place between individuals within the *one* community of all human beings.

By contrast, because Schleiermacher's communities are constituted by the way that individuals within it recognize one another, they represent a kind of dynamic unity-in-diversity in which every individual action has communal implications, which in turn may have individual implications again. When these communities are, in-turn, viewed as individuals in relation to even greater spheres of community, keeping track of the various implications of each action requires attention to "vacillation".[74] The situation of unity-in-diversity within natural measures means that individuality and communality constantly exist in dialectical relation, and all the more so because the very character of personhood can undergo greater determination and development. Thus, as we discussed in the previous chapter, a nation can develop itself by forming a state, differentiating between people and government, and this in turn can develop further, requiring changes in the constitution and adjustments in the form of rule. In a way, Schleiermacher's insistence that persons exist within natural wholes is just a reference to the fact of this dynamic interrelationship between individual and community.

But what is this insistence on it being a "measured [gemessenen]" natural whole? Let us first begin with the argument for the necessity of measure [Maaß], before moving to how the concept of race gets connected to it. The concept of measure arises out of Schleiermacher's insistence that

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[74] In the 1812/13 edition of the *Philosophical Ethics*, Schleiermacher makes use of the language of the "oscillation of personality [Oscillation der Persönlichkeit]" to characterize this dynamic back-and-forth. "[P]ersonality, in positing itself [sich sezt], does so with its whole being and thus also with its tendency to supersede itself [sich aufhebt], and in superseding itself also does so with its tendency to posit itself, every positing must therefore be a positing which supersedes, and every superseding a superseding which posits." In a marginal note added in 1824, Schleiermacher translates this into the language of 1816/17: "Since both activities run parallel both in the domain of identity and of disparity, a twofold measure is required. Derivation determines the common element in particularity. Climatic adjustment determines the particular element in community." E 1812/13 23 (HG.I.55), 271.

personality capture the particularity of the individual. Indeed, Schleiermacher likely draws the term from Herder, who would advocate – against the concept of a universal measure or standard – for the idea that every nation possessed its own "measure".[75] What Schleiermacher adds to the analysis is his sensitivity to the kind of complementary identity-in-difference that manifests itself within a complex division of labor. That is, measure is that necessary point of comparison that makes the communal sphere of activity and possession that we have discussed in previous chapters possible. Without a shared measure, Schleiermacher argues, the activities of those standing in varied relations to one another

> which necessarily belong together and complete each other, will to some extent cancel each other out…. [T]he concept of accord in activity proceeding from various points, that is, the unity of reason in the moral process, ceases to be real if that essential singleness is not incorporated in it, for without it accord will always remain something individual, occurring by chance.[76]

A scattered diversity of activities may occasionally line up and form a kind of coordinated activity, but this will be a mere contingent accident unless there is something shareable that can serve as a point of comparison for a mass of otherwise differentiated tasks.

Within a nation (or tribe or family), measure serves to make sense of the fact that relationships of right, belief, sociability, and revelation are not necessarily relationships of equality: "The inequality of all community relationships for the individual formative points requires a measure [bedarf eines Maaßes] which will be constant for each person with regard to the others."[77] This is

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[75] Consider, for instance, Herder's own (brief) discussion of race in Letter 116 of his *Letters for the Advancement of Humanity* (1793-7): "The nature-investigator presupposes no *order of rank* among the creatures he observes; all are equally dear and valuable to him. Likewise the nature-investigator of humanity. The negro has as much right to consider the white man a degenerate, a born albino freak, as when the white man considers him a beast, a black animal… The original form, the *prototype of humanity* hence lies not in a single nation of a single region of the earth; it is the abstracted concept from all exemplars of humanity in both hemispheres. …Each nation must therefore be considered solely *in its place with everything that it is and has* – arbitrary separatings, slingings into a confused jumble, of individual traits and customs yield no history… Least of all, therefore, can our *European culture* be the **measure** [emphasis mine] of universal human goodness and human value; it is no yardstick or a false one." Herder, "Letters for the Advancement of Humanity (1793-7) – tenth collection" in *Philosophical Writings*, ed. Michael N. Forster (Cambridge: Cambridge University Press, 2002), 394-396.
[76] E 1816/17, 199 (DG.I.63), 599.
[77] E 1816/17, 198 (DG.I.63), 599.

merely a more generalized version of the argument for nationhood we have briefly discussed in the previous chapters and a working out of how rights can be just even if unequal.[78] Non-equal relationships can be recognized as in accordance with reason if they can be seen as parts of an *complementary* whole. Instead of an abstract formal equality, individuals can be recognized as parts of an organically unified whole and appreciated as distinct individuals in light of this position within this common whole – the concrete role that they play within the division of labor. Measure [Maaß] is simply that by which one is able to recognize and navigate differences not merely as contingent accidents, but as necessary parts of a greater whole *in which each plays a distinct role*.[79]

There is a sense in which Schleiermacher's conception of measure is quite simple: it can be very hard to launch a spaceship without a shared way to account for the lengths, widths, heights, or electrical resistances at play. The condition of any non-accidental coordination is thus the existence of a common measure to which each can compare and according to which each can adjust their activity.[80] As with the notion of *moral* individuality (as opposed to quantitative or qualitative), however, Schleiermacher seems to be after the commonalities in accordance with which *persons* (rather than extended things or things with qualities) can play a role in collective enterprises where the activity of differing individuals do not overwrite each other but complement one another.

What is the character of this measure of moral individuality? Schleiermacher makes two points: firstly, that it must be something pre-moral, even if it ultimately develops alongside the

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[78] The deepest roots of this argument can be traced as far back as Schleiermacher's discussion of the necessity of a "measure" in his 1798 publication "Toward a Theory of Sociable Conduct." i.e. "Every individual society must have a determinate measure [Maas] of this essence, and only exists as *one* individual insofar as it has this." KGA I/2, 170. Translation mine. Although not situated within a tiered account of personhood as in the later ethics lectures, the basic contours of Schleiermacher's view can nevertheless already be discerned. "Someone is a member of a society, not in so far as they possess this or that individual property or cognition or somehow to a particular class, but because they have their individuality, their peculiarity to offer." Ibid., 172.

[79] "Above all, a measure [is required] which will determine the difference." E 1816/17, 198 (DG.I.63), 599.

[80] As the study of metrology has shown, however, attaining precision and uniformity in measure is by no means an obvious or simple task. See, for instance, Joseph O'Connell, "Metrology: The Creation of Universals by the Circulation of Particulars" *Social Studies of Science* 23 (1993): 129-173 or the essays found in *The Values of Precision*, ed. M. Norton Wise (Princeton: Princeton University Press, 1995).

moral.[81] As the condition of possibility of coordinated moral action and the very unity of reason itself, it could not be something that is itself moral in character.[82] Schleiermacher thus insists that measure must proceed from something "originally given." At the same time, however, Schleiermacher also insists that it cannot be based in nature *alone*, as this would reverse the direction of causality that is supposed to characterize the relationship between nature and reason.[83] Schleiermacher thus reaches the conclusion that measure must be something naturally given *prior to* any moral activity, but at the same time has the potential for a development alongside moral activity.[84] It is therefore a concept inseparable from the essential unity between reason and nature, but one which is hypothetically given as a part of nature *prior to* the unity, a prior which can never actually be witnessed because every actual action of reason already presupposes an original unity. Indeed, the very thinking of it already reflects the already-having-begun of the process of the unification between reason and nature. This is, as we have already seen, exactly how Schleiermacher thinks about the formation of law out of what was previously unconscious habit.

As complicated as this may seem, this is what Schleiermacher thinks is necessary to make sense of the ways in which personality is tied up with the act of self-positing. For personal self-positing not to be something completely arbitrary, it must be measurable by something that pre-exists voluntary human activity: one must put forward something that *really is true about oneself* in one's relations to others. On the other hand, however, the act of positing is supposed to be in some part also constitutive of that which is posited, such that what is posited *would not have been true if it had not*

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[81] "Measure, then, must likewise proceed from something originally given, before all moral activity, and must continue to develop within the progressive unification of reason with nature." E 1816/17, 199 (DG.I.64), 599.

[82] This is, as we have seen in the previous chapter, the same argument that underlies Schleiermacher's rejection of the theory of social contract. The state of contractuality cannot arise from an original contract, but requires reference to a pre-contractual given that provides the grounds for mutual recognition.

[83] "If it [measure] had its basis entirely in nature, reason, whose activity is conditional upon it, would itself be suffering in the moral domain because of nature." Ibid.

[84] Schleiermacher reaches this conclusion by means of a kind of transcendental deduction: considering and then rejecting the possibilities that measure could be identified wholly with either nature or reason, he concludes that it must involve both. Nevertheless, nature must be prior because it is what is originally given rather than reason.

been posited as such. In other words, measure is also somewhat of a social construction. It would not be what it is apart from the moral activity of humans.

Schleiermacher's second point is to suggest that measure requires not just one, but *two* "original given" as elements. Schleiermacher's reason for this is simple: as that which is supposed to provide a basis for judging unity-in-difference that exists *prior to* but also alongside the moral unity-in-difference that characterizes the relationship of individuals in community, measure must contain an element of identity as well as an element of diversity.[85] What is something that is "originally given", that nevertheless develops alongside morality, and which provides a basis on which to understand similarity between humans? The act of procreation. For Schleiermacher, the fact that "new life arises through procreation as part of a life that already exists" implies that

> not only is it [the new life] bound up with that life [that already exists] from the very beginning, and therefore only gradually becomes detached from it, but the same dependence is repeated in the life of each sibling springing from the same source, regardless of the fact that each will develop a particular life of its own.[86]

That human beings – pace Hobbes – do not spring out of the ground like mushrooms nor originate as autonomous beings, but are given birth to and raised within the context of an existing way of life (i.e. that of the family unit) serves for Schleiermacher as an "originally given" fact that accounts for a kind of natural identity and principle of unity among human beings. For no matter how *different* any given human may be, there is at least a degree of similarity that necessarily exists by virtue of the fact that they are related to their parents (and siblings).

It is, however, an "originally given" that can be recognized as developing alongside the activity of reason in that, as Schleiermacher notes, "procreation seems admittedly only to rest on a moral act, that is, on something that has itself become moral."[87] In more contemporary terms, sex,

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[85] "It is something twofold that we require since the extent of what is similar and what is diverse is mutually determined" E 1816/17, 200 (DG.I.67), 601.
[86] E 1816/17, 201 (DG.I.70), 602.
[87] E 1816/17, 201 (DG.I.70), 603.

parenting, and even the notion of the family are thoroughly socially conditioned. Indeed, the idea of procreation as an "original given" wholly apart from the activity of ethical modification is merely a hypothetical one, even as we necessarily posit it: "it is indeed a moral act, but its results appear to be entirely physically conditioned, given that it is quite independent of the power of choice and will no doubt always remain so."[88] There remains an indeterminate aspect of procreation that ultimately does seem to remain beyond human control no matter how much it has been moralized as an action.[89] At the same time, however, we have no access to this original given outside of the historical and social contexts in which it takes place.[90] There is a sense in which procreation is a "biological" act, but the kind of similarity that characterizes familial identity is not merely "biological", and it is not always obvious where nature or nurture end or begin.[91]

Something similar can be said of "climatic variation", the "originally given" element that provides a principle by which human diversity can be understood:

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[88] Ibid.

[89] This would remain the case even if technological advancements radically transform the context of human procreation. As long as humans are incapable of creating designer babies with an absolute level of control such that there is *no* aspect of the baby's existence that can be viewed as in any way involuntary, Schleiermacher's point remains.

[90] Schleiermacher seems to make a parallel argument in the *Christian Faith* when he denies the historical character of the creation narratives on the basis that "all attempts to form a historical picture of the early beginnings of human existence are necessarily bound to miscarry… because just as no absolute beginning is given to us in general, all analogy is also lacking to us whereby we could make an absolute beginning of rational consciousness intelligible to ourselves." Further: "we are able to present the currency of our concept of the first human beings only within the shared being of earlier and later generations. There, human existence would begin in a manner that is a given for us, and that in its development rests on a human process of transmission from generation to generation." One has to posit some kind of original given, but one's views are grounded in and reflect more the process of their transmission to us than the given itself. CF §61.3 and 4, 367 and 370.

[91] Consider, for instance, the phenomena of surrogate motherhood, in which a third party carries and gives birth to a child which may – in one sense of "biological" – belong to another couple which – especially in the case of same-sex relationships – may also not be identical with the couple who seek recognition as the legal guardians of the child. As complicated as the physical and legal relationships may be, there is simply no way for the eventual guardians of the child to completely eradicate the physical role that the biological parents (and possibly even the surrogate mother, if the process of gestation turns out to play a key role in influencing genetic expression) play in providing the physical substrate of the child, however minimally significant this may be. This example certainly goes beyond the conception of the nuclear family that Schleiermacher likely had at the center of his conception of family and procreation, but demonstrates the broad flexibility of Schleiermacher's basic categories for the analysis even of very differing ways of structuring "family". Indeed, the ways in which the complex realities of surrogacy cut against traditional conceptions of the family is often what has made legal and ethical evaluation of the relevant relations difficult. Consider, for instance, Rachel Wexler, "Artificial Reproductive Technology and Gendered Notions of Parenthood after Obergefell: Analyzing the Legal Assumptions that Shaped the Baby M Case and the Hodge-Podge Nature of Current Surrogacy Law," *Tulane Journal of Law & Sexuality* 27 (2018): 1–32.

> In the same way [as identity is bound up in procreation], with regard to commerce and the community of thought, people from different folk traditions [Volksthümlichkeit], or who speak different languages, and to an even greater extent people of different races [Race], find themselves separated in a way that is specifically different to any other.[92]

No matter how similar people may be, Schleiermacher posits a natural limit placed on this similarity on the basis of the way people dwell in different climates.

> The stamp of filial and fraternal kinship is to be found in a similarity and imitation which precedes all truly moral activity. Similarly, folk tradition and, in fainter outline, racial character [der Charakter der Race] is a steadfast natural type which can be recognized in the form of the physique as well as in certain limitations in the capacity for language formation.[93]

If procreation always serves as an upper limit to how humans can be different from one another, aspects of humanity that Schleiermacher sees as linked to climatic variation – folk tradition and race – serve as a kind of upper limit to how similar humans can be to one another. By virtue of the fact that humans live in differing environments, Schleiermacher posits that there will be differences in peoples and physiques which can never entirely be overcome.

As with procreation, Schleiermacher is cognizant of the social conditioning of what might be otherwise seen as the natural product of climate:

> In the same way [as procreation] folk tradition, once it has emerged, creates the conditions for every individual existence in its domain; yet this too we see arising historically. For most historical peoples to be encountered in the present day only came into being out of differing elements, and developed their folk tradition only gradually. Yet this can never be brought about deliberately, either; on the contrary, the fusing of differing elements into a single people [Volk] can only come about where it is physically predetermined, only ever, no doubt, within the confines of the race; for a people [Volk] has never yet been formed from half-breeds.[94]

Humans are shaped by the national cultures within which they live. Despite the fact that these national cultures can be recognized as having a history and even the product of a great aggregate of moral actions, there remains a sense in which their evolution and character remains not entirely

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[92] E 1816/17, 201 (DG.I.70), 602.
[93] Ibid.
[94] E 1816/17, 201-202 (DG.I.70), 603.

within human control. That aspect of diversity which cannot be attributed to moral action, which can only be seen as the product of some degree of physical predetermination by the climate, Schleiermacher designates by the concept "race".

3. The Indeterminacy of Race

At first glance, it could be tempting to see in Schleiermacher's positing of a close connection between physiology and linguistic capacity a confirmation of Theodore Vial's characterization of Schleiermacher as reflective of a racist anthropology that connects physiology with language and culture. A closer look, however, shows how misleading such a characterization would be and, indeed, how radically it does differ from Kant's approach to the subject. As we have seen, Kant's theory of race is tied up with his attempt to offer a monogenist account of human origins that can nevertheless account for longstanding hereditary difference. Furthermore, Kant's conception of race is a teleological principle whose validity is grounded in its serving as an *a priori* hypothesis for the sake of scientific inquiry. Schleiermacher, however, will fundamentally reject both of these moves. The first thing to note about Schleiermacher's account of race is that, unlike Kant's, it is not linked to the theoretical enterprise of explaining human diversity. Rather, it is introduced in a moral context, as tied to one of the two originally given measures required to make sense of human personality. The practice it is embedded in is not the scientific task of making sense of human difference, but the on-going back-and-forth activity of self-positing and recognition.

This results in a very different way of understanding how race operates as a marker of human difference. For Kant, the task of physical geography and practical anthropology can be conducted independently of the task of moral philosophy, as providing the material conditions of possibility for the realization of the moral. By contrast, Schleiermacher will insist on the necessary intertwining of the moral and the physiological; measure, although originally given in nature, always

develops alongside moral development. Schleiermacher's emphasis on *internal* differences means that physiological differences alone – when viewed from the perspective of an outside observer – are by no means sufficient to differentiate persons. The way in which a particular nation conceives itself is just as important a part of the development of its natural peculiarities as any supposed natural conditioning. Purported natural features thus carry meaning that develops historically and is constantly subject to revision and transformation as nations seek to situate their self-understanding vis-a-vis others around them.[95]

This insistence on the interpenetration of reason and nature is precisely what led Schleiermacher to reject Kant's project in the *Anthropology* as early as 1799. In a review of the book published in the *Athaneaeum*, Schleiermacher sarcastically lauds it, "not as an anthropology, but as a negation of all anthropology, as simultaneously an assertion and proof that something in accordance with the idea set forth by Kant and with his way of thinking is not at all possible."[96] Namely, "the opposition between a physiological and pragmatic anthropology that is grounded in Kant's thought and set in place here makes both obviously impossible."[97] This is because "physiological and pragmatic are one and the same, only in different directions."[98] Race may be the original physical given that purportedly lies beneath the national peculiarities that underlie folk traditions, but it is not discerned by means of a study of physiology abstractable from history and cultural development. The problem with Kant's treatment of "the characteristics of peoples [Charakteristik der Völker]" is that it "smacks of the joy of the table" – it seems too much to represent an attempt to fit purportedly empirical observations into an *a priori* categorial scheme. Yet this was precisely how

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[95] In Sally Haslanger's language, one could say that race is "the social meaning of physiological difference" on account of place.
[96] Friedrich Schleiermacher, "Review of Immanuel Kant: Anthropology" in KGA I/2, 366. Translation mine. For an account of Schleiermacher that attempts to extrapolate from Schleiermacher's approach to anthropology to the (very limited) excerpts from his work on the colonization of New Zealand, see Chad Wellmon, "Poesie as Anthropology: Schleiermacher, Colonial History, and the Ethics of Ethnography" *The German Quarterly* 79:4 (Fall 2006): 423-442.
[97] Ibid.
[98] Ibid.

Kant had developed race as an *a priori* hypothetical empirical principle. Schleiermacher's insistence on the necessary entwining of the physiological and the pragmatic, by contrast, is an insistence that race is something which has its significance within the ongoing play of the relations between individual or collective persons. The human "is a physical person only inasmuch as he is a moral one, and such beings are also only moral persons inasmuch as they are physical ones, that is, definitely measured natural wholes that are relatively self-contained."[99]

Situating race within the back-and-forth of recognition, Schleiermacher is very keen to emphasize the instability and constant "vacillation" to which ascriptions of measure are subject. For Schleiermacher, neither procreation or climatic difference alone are to account for the kind of unity-in-diversity that characterizes the relationship of mutual recognition between persons. Rather, he insists that the element of unity (procreation) and the element of diversity (climatic difference) are "mutually determined."[100] As measures, familial kinship and climatic variations serve as the natural limits within which the unity-in-diversity of personality take shape. But depending on whether one is focusing on the self-positing of a personality or its co-positing others alongside, one or the other of the measures comes to the fore to account for those aspects which seem indeterminate from a moral perspective even as every single case is actually some combination of both. The mutual determination of the two measures, added to the fact that they are only given as intertwined with the moral leads Schleiermacher to insist that "both elements are only relatively fixed."[101] That is, when one recognizes another as other, one can never be entirely sure whether their otherness is a

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[99] E 1816/17 203 (DG.I.71), 605. Schleiermacher's main point in this passage is to explain why it is that the concept of personhood also cannot be restricted merely to that of individuals, but can be attributed to any collective entity (i.e. families, tribes, nations) which possesses the personal character of internal self-differentiation alongside co-posited others. For Schleiermacher, the alternative conception wrongly conceives of individuals as somehow privileged by virtue of being uniquely physical. Schleiermacher then refers to "what has been said above" in reiterating the mutual intertwining of the natural and the moral.

[100] "It is something twofold that we require [for measure] since the extent of what is similar and what is diverse is mutually determined, and it cannot be rooted in the diversity of moral activity." E 1816/17 200 (DG.I.67), 601.

[101] E 1816/17 202 (DG.I.70), 603.

reflection of the way in which they differently express a similar identity (because they are more alike than they first appeared) or rather similarly express a very different identity (because they are more different than they first appeared).[102] As such, recognition can never be final, but always stimulates further activity that seeks to discern and strengthen individuality or communal identity. It is never clear, for instance, whether any action is merely striving to maintain and develop the individuality of a given family or attempting to adapt it in light of its relationship to its tribe or nation. "Vacillation [Schwanken] of this kind," Schleiermacher writes, "is necessary, however, because otherwise on the one hand there could be no moral development of the [concept] of measure, which consists precisely in perception of such vacillation [Schwankens] and gradual determination of it."[103] If Kant's conception of teleology grounds the fixed and hierarchical conception of race as located in an a priori germ, Schleiermacher's emphasis on the teleological development of personhood serves to emphasize race's dynamism.

The vacillation that constantly characterizes the practice of interpersonal recognition means that Schleiermacher fundamentally relativizes any attempt to scientifically ground human identity and difference in a fixed manner. Thus, even as Schleiermacher does grant that there are conditions which require "a physical investigation" to clarify, he also insists that this "can only ever be brought about by approximation" because perfect knowledge of how the combinations may take place is

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[102] Schleiermacher's argument for this takes the form of a transcendental deduction. What can account for the unity-in-diversity of personality? Schleiermacher insists that positing one or the other measure alone as fundamental and attempting to then account for the remaining aspects of personality via moral activity is insufficient. If all differences were merely the reflection of different ways of expressing the same natural foundation, the otherness of others posited alongside would not genuinely be other, but merely different by a matter of degree from the self. Likewise, one would be unable to make sense of the unique individuality of the individual, as all differences are just variations on the same. Schleiermacher does not explicitly then consider the other position – that diversity is fundamental and all identity is conditioned on moral activity – but the argument is clearly implied (and repeated in Schleiermacher's argument about polygenism). Having considered both these options, Schleiermacher then concludes that the "only possibility" that remains is that both measures are originally given. "For this [the diversity of moral activity] cannot reinforce the particular way in which the one varies from the other, since it is itself only a gradation of more and less; neither can it enhance the singleness of nature, since it is only a difference in the activity of the same. The only possibility that remains, therefore, is that both are something originally given." Ibid.

[103] E 1816/17 202 (DG.I.70), 603.

only the product of the perfected knowledge that only comes at the end of all epistemic striving, a regulative ideal that is never actually fully achievable under the conditions of finitude.[104] It is with this conviction that Schleiermacher revisits the question of monogenism and polygenism:

> This vacillation is limited by two opposing end-points, from which one is always thrust back without the possibility of lingering. The one is namely the endeavor to trace the whole human race back to a single family, regarding the characteristics of races and peoples as something that has come about gradually and by chance. This [point of view] seeks to establish the general uniting of humankind exclusively upon a natural element, tracing the subordinate divisions back more to what is moral. The other end-point is the endeavor to depict the diversity of the human races as characteristics that have been there from the beginning, which cannot be taken back to a common act of procreation and explained on the basis of later climatic influences. This [point of view] seeks to trace fixed divisions predominantly back to the natural element, and general unification, on the other hand, exclusively back to the moral one.[105]

Schleiermacher's commitment to measure having not one, but *two* elements is what leads him to relativize the status of both approaches to the question of human origins. The relative validity of both arises out of the fact that one does have to focus on either one or the other at any given moment in light of the oscillating character of personality. What they lack, however, is a recognition that *both* elements are originally given, with each positing either unity or diversity as natural and the other element as the moral achievement. For Schleiermacher, neither position is ultimately stable as they necessarily reflect a particular moment of vacillation in which what is *really* at stake is the attempt to redefine the relations between a particular set of persons. As with Kant, one could say that race is a social construction. But as opposed to one grounded in theoretical attempts to

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[104] "Even in the case of measure, then, there is a unity in it of what is reasonable and what is natural, which is never complete, and which we can only ever point to; and its singleness in everyone is also only really given in approximation." E 1816/17 199 (DG.I.65), 600. Also, "How the conditions of both seek to be a single entity once again [requires] a physical investigation, which can only ever be brought about by approximation, however, given that perfect cognition of the points where such bonds occur must be exclusively the province of world-wisdom [weltweishheitlich]. For this reason we keep to first one and then the other [form of] determination, depending on which is more clearly to the fore in any given phenomenon." E 1816/17 201 (DG.I.70), 602. Also, "Connected with this is the fact that both elements are only relatively fixed. For at one moment we see only the immediate coexistence of parents and children as family and no longer recognize the specific relatedness in the further distance; yet at another moment, that immediate coexistence appears conversely to be only a part, and the natural whole of kinship appears much greater." E 1816/17 202 (DG.I.70), 603.

[105] E 1816/17 202 (DG.I.70), 603-604.

understand human diversity teleologically, Schleiermacher's conception of race grounds itself in the on-going attempts to make sense of the ways in which one's actions are to be interpreted as identical or analogous – expressions of a deeper similarity or deeper difference than previously recognized. As with Smith's conception of Leibniz and Herder, conceptions of racial difference are rooted in deeper convictions about the relationship between persons, individual and collective, a relationship that is grounded in the unfolding of their social and historical interactions. Race serves to clarify these, rather than the other way around.

4. Beyond Kant: Race and Nationality

Unlike Kant, then, Schleiermacher is not a defender of a racial monogenism. Neither does he understand race to be a social construction whose use is justified on the basis of its usefulness in pursuing empirical research into human diversity. Rather, as a social construction, it exists as a limit-concept that plays the role of *relativizing current conceptions of personhood* in the on-going drama of social-cultural development and recognition. It is with this in mind that we can now revisit Schleiermacher's earlier statement about the physical predetermination of language and *Volk* not being formed out of half-breeds. Race, as the "natural whole" which measures the concept of nationality, plays the role of *both* relativizing the current bounds of a nation *and* affirming the reality of national differences. By insisting that there *are* bounds to national inclusion, Schleiermacher is able to emphasize that, even if a lot of what a nation may currently conceive as constituting its identity may be up for revision, national identities are not entirely arbitrary. Yet because the bounds of the race extend beyond the current bounds of the nation, there also remains a sense in which the nation as it currently exists can yet be changed or expanded (or even split up) in ways yet unforeseen.

What it is important to note here is that Schleiermacher conceives of the nation [Volk] – and not race – as the highest level of actually-existing human collective personality. That means unlike the other subordinate levels of human collective personality in relation to their constituent individual members – i.e. tribes in relation to their constituent families – race does not serve as an existing "community" in relation to which nations can be conceived of as individuals. Thus, even if Schleiermacher, like many of his Romantic and post-Kantian Idealist contemporaries, may embrace a *realist* conception of teleology against Kant's insistence that teleological ideas are merely subjective regulatory principles, race nevertheless does not operate like the other notions of collective human identity in that its reality cannot be linked to an actually existing racial community, but only to the ways in which nations may or may not imagine their development. It is not a "fixed" quantity which can serve to guide such development, but rather arises as a kind of ex-post-facto explanation for why a particular union of peoples may or may not be fortuitous. It is not the conception of race that drives the union or disunion, but the national union or disunion that drives the concept of race. By insisting that race is a social construction tied to the moral task of developing personality, Schleiermacher offers a devastating critique of those who would see it as first and foremost a scientific conception abstractable from practical dynamics: they are attempting to do politics by other means.

It is something like this conception of race that will allow Schleiermacher to offer this analysis of American politics in his 1833 lectures on the doctrine of the state. In his transcript of the lectures, Georg Waitz would record Schleiermacher offering reflections on the current state of state-development across the world, in anticipation for the day in which the borders and national identity of states would eventually more closely approximate their natural bounds – though Schleiermacher is quite to note that this is a matter of *historical* development out of the dynamic of vacillation

[Schwanken].[106] After speculating about the possibility of a inter-nationally united Europe that arises out of the ways in which the various linguistic and national peculiarities are scrambled about in new combinations through trade and scientific discourse, Schleiermacher points to America as an example of where this activity was already beginning to transform earlier ideas of racial difference: "And a mixture of the races [der Racen] has also begun, and if black slavery is now abolished and the Native Americans come to civilization, then the mixtures [Mischungen] will prevail, and this will promote becoming one and eliminate the ground for separate living."[107] Acknowledging the ways in which conceptions of race have structured and justified segregationist practice in America, Schleiermacher can nevertheless imagine the formation of a new kind of national identity in which the various national traditions of Europeans, Africans, and indigenous Americans mix in new ways in accordance with the possibilities that the natural differences allow: "These natural differences [Naturunterschiede] can, however, mix up the differing national differences [Volksdifferenzen] and bring about a unity of purpose."[108] Separations between people thought to be grounded in nature – i.e. between black slaves, European settler colonists, and indigenous Americans – are seen as reflections of historically-developing national traditions which, even if grounded in nature, are also capable of new combinations on account of that nature.[109] There is a sense in which Schleiermacher's basic vision does fall into the kind of "expressivism" that Charles Taylor identifies

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[106] After talking about ongoing vacillation between confederate and federal forms of government in various European states, Schleiermacher will write that: "Das müßte sich also geschichtlich entwickeln – allein wohl nie vollkommen wird die Geschichte den natürlichen Indicationen folgen, da diese selbst nicht rein feststehend, sondern beweglich sind. ...Also eine Zeit zu erwarten, wo alle Staaten die Naturgrenzen der Menschen haben, ist eitles Hängen an der Theorie, ebenso but als Naturgrenzen des Territoriums zu erwarten." KGA II/8, 848-849.

[107] Ibid., 850.

[108] "Diese Naturunterschiede könnten allerdings die verschiedenen Volksdifferenzen vermischen und eine Einheit der Zwecke herbei führen." Ibid.

[109] Given that radical abolitionism only began to become more widespread in the US in the 1830s, the fact that Schleiermacher was already able to imagine a post-slavery future in which relations with indigenous tribes had been normalized and integrated is quite extraordinary, given that many American abolitionists were yet laboring under the illusion that the only possible future for freed slaves was for them to return to Africa. In Euro-centric fashion, however, Schleiermacher did seem to imagine that much of this transformed America would be characterized by European civilization, though he does retain a space for the ways in which the natural characteristics of African and native Americans would transform how this may manifest itself.

and Vial is so wary about, but it leads to a fundamentally different kind of racial politics than that of Kant.

We should be wary, however, of reading too much into Schleiermacher's speculations.[110] There is no reason to suspect, for instance, that he is abandoning the concept of race altogether. The reason why the European languages and peoples could profitably mix is, presumably, because this would yet avoid producing any racial "half-breeds". In America, mixing could certainly transform the bounds of peoplehood, but it is by no means clear that one must interpret Schleiermacher as thinking that *one* unified people will be the product of such mixtures. Or rather, if one unified people *is* the product, it could only mean that they were all members of one race after all. Another perfectly plausible interpretation would be to think that, while the bounds of existing peoples are re-scrambled (and maybe even new peoples created), the failures to attain to a single unity would be variably attributed to both moral (for those differences that may yet be overcome and subject to new re-scrambling) and natural causes (i.e. racial or irreconcilable folk traditions). Precisely because the product of such mixing is always potentially subject to future expansion or transformation, the concept of race thus remains central to Schleiermacher's vision. What matters, however, is that for Schleiermacher, it is ultimately the actual existence of determinate peoples that governs the use of race as a category. On Schleiermacher's terms – unlike Kant's – any purported impossible racial mixture can be empirically debunked by the creation of an actual new people.

[110] Apart from being found in Schleiermacher's lecture transcripts rather than his manuscript proper, there is also the question as to whether or not Schleiermacher has shifted his views at this late stage. Given that he continued to make use of the 1812/13 and 1816/17 manuscripts of the *Ethik* lectures even in these latter decades, this seems unlikely. But by suggesting the possibility of a kind of international European union, Schleiermacher does seem to depart from his early rejection of Kant's vision of a federal union. Further exploration of this question would have to pay more attention to the development of Schleiermacher's views on international relations than this dissertation has thus far.

V. Conclusion: Beyond Racial Abolitionism

Vial's identification of Schleiermacher as an originator of modern racism is founded on the assumption that Schleiermacher presents a picture of human development and difference that merely differs from Kant's racism on account of replacing physiological markers such as skin-color with cultural markers such as language and religion. Our survey of Kant and Schleiermacher's philosophies of race, however, has revealed that although both understand race teleologically, they do so in fundamentally different ways, calling into question Vial's narrative. What for Kant is a hypothetical subjective regulative principle useful for advancing a monogenist account of human origins in the context of scientific practice is resituated in Schleiermacher as a kind of transcendental limit-concept that both relativizes and bounds conceptions of national identity in its ongoing development. In its emphasis that conceptions of racial unity and difference are to be situated within the historical and social back-and-forth of the formation of personal identity, Schleiermacher's conception of race can be neatly situated in the Leibnizian- and Herderian- trajectory that Smith has already identified in his study of early modern philosophies of race.

Indeed, in its emphasis on the importance of the way that personal identity develops historically, Schleiermacher's conception of race can even be leveraged to motivate a critique of scientific racisms (Kantian or otherwise). By suggesting that scientific monogenism or polygenism can be understood as one-sided attempts to make sense of the current recognitive relation between certain peoples, it can motivate counter-efforts to identify instances of misrecognition or alternative accounts of the trajectory of national development.[111] At the same time, however, Schleiermacher's

[111] Given Schleiermacher's heavily economic conception of national unity (see ch.2 and 4), relations of intermarriage and participation in a shared division of labor always can provide grounds to posit different ways of understanding existing relations of difference. Schleiermacher's relational approach to personality privileges paying attention to the ways in which identity is structured relationally rather than just as a simple expression of identity or difference. Instead of attributing the purported backwardness of Africa to the inherent inferiority – physical, cultural, or otherwise – for instance, one could pay attention to the role that the exploitative nature of the economic relations that have structured the Europe-Africa relation have affected the conditions for African national development. Consider, for instance, Walter

approach is not without its dangers: it can also legitimate variations of racism to the extent that it sees the kind of unity or division it is enacting as in accord with a particular conception of peoplehood. That this should be the case ought not to be unexpected: to the extent that Schleiermacher's conception of race emphasizes the back-and-forth of the individuality of personal development and recognition, there is no transcendental way to step out of the "vacillation" to assert a global and self-evidently valid conception of universal humanity. One's only response to a conception of the nation that one thinks of as misguided is to offer an alternative conception of that nation and attempt to raise political consciousness on that basis, grounding one's case in the way in which existing similarities and differences can be seen as reflections of deeper unities or divides which can be overcome or which justify further separation. We shall have more to say about this in the following chapter.

Against approaches which would seek to eliminate the conception of race altogether, Schleiermacher's account of how it could operate as a social construction offers an intriguing argument for why one may wish to retain something akin to the conception of race: it is only with something akin to this concept – so Schleiermacher believes – that one can take seriously the differences between individuals, families, tribes, and nations in a non-arbitrary way. The somewhat eschatological status of the final boundaries of peoples and states allows the concept to play a significantly relativizing role in the meantime: there is no guarantee that the current boundaries will be those that will eventually come to be, though there will be *some* relation between the two.[112]

Rodney, *How Europe Underdeveloped Africa* (London: Bogle-L'Ouverture Publications, 1972) or Ruy Mauro Marini, *The Dialectics of Dependency* (New York: NYU Press, 2022).

[112] Can Schleiermacher's conception of race survive a situation in which differing tribes mix and match to form peoples in such a way such that a single "tribe" can be recognized as falling into more than one "race" on account of their being incorporated into two differing incompatible nations despite sharing common ancestors? (i.e. even if there *are* physical bounds to nations, they simply do not all line up or cohere in such a way so as to be summarize-able within a single category to be designated by a singular notion of "race"?) For all of Schleiermacher's criticisms of Kant's Anthropology as exemplifying the "joy of the table", Schleiermacher's dynamic approach to logic nevertheless still carries something of the Aristotelian spirit that wants to be able to subsume all concepts under neat, non-overlapping and comprehensive categories and sub-categories that can near-exhaustively map reality. That is, even if there are multiple ways of doing so

Against liberal conceptions of personhood which focus on the abstract individual and a one-size-fits-all conception of the state, Schleiermacher is keen to present his account of personality as an alternative which is capable of recognizing deviations from the norm not just as contingencies to be adjusted for, but genuinely new and interesting expressions of humanity.[113]

Schleiermacher's concern for the particularities of local culture and peoples in the drama of national formation was not merely the consequence of an abstract reflection on the nature of the relationship of individuals to communities. Rather, it was forged as a response to the very different vision of modernity that Napoleon's France was at that time enforcing on Europe. Indeed, in the violent way that the metric system was being adopted in France so as to forcibly integrate towns and their local industries into the broader national economy, one can perhaps discern the operation of a very different conception of "measure", one which drew on the authority of science to justify a purportedly universal standard by which to unify what had been a disparate morass of local and customary measures.[114] By contrast, Schleiermacher's emphasis on the integrity of the local and the particular would lead him to posit a different account of state and national development, the subject of the next chapter.

(i.e. differing languages) and some aspects of reality remain outside of strictly empirical investigation (i.e. transcendental concepts), Schleiermacher still wants to think of all families as situated within tribes, as situated within hordes, as situated within peoples, and as situated within races. One way to challenge Schleiermacher's conception of race, then, would be to challenge the way in which Schleiermacher yet remains beholden to this older conception of classificatory logic. But there is a sense in which a constructive reappropriation of Schleiermacher may wish to further distance his conception of "measure" and the significance of "climactic variation" from the way in which the language of "race" is often used to designate specific physical or mental characteristics to be associated with people groups. That is, even as it may remain useful to think of nations as being naturally bounded, what these bounds actually are in the final eschatological state may have almost nothing to do with anything that we at the moment associate with the notion of "race" as it is often currently used.

[113] It may be tempting to categorize Schleiermacher's critique as a variation of an ethnic nationalism, seen in opposition to the advocacy for a civic nationalism. The importance of nationality as an *internal* difference rather than a simple ethnic given complicates the picture. Indeed, to the extent that the opposition between civic and ethnic is usually constructed along "voluntary" versus "natural" bounds, it may actually replicate precisely the structure of approaches to race that this chapter has been calling into question.

[114] See Ken Alder, "A Revolution to Measure: The Political Economy of the Metric System in France" in *The Values of Precision,* ed. M. Norton Wise (Princeton: Princeton University Press, 1995), 39-71.

Chapter 6: Rethinking Teleology: Schleiermacher on the Development of States

> "This is only an intermediary form; its external character is the political co-existence of a ruling tribe or tribes [Stämme] where it is quite accidental whether this co-existence has arisen through peaceful settlement and persuasion or through war and subjugation. It is here quite accidental whether only a few tribes of a people [Volkes] are united or all the tribes. The latter, however, is not probable; for a young people on a lower level will not be able to exercise such a great power. What, however, is going to be the inner character and the inevitable history of this form of the state? The common endeavour of all members of the governing tribe will be directed towards the continuation of its rule, whilst those who have been subjected will gradually show more desire to participate in government. Thus the rulers become mistrustful towards their subjects, and in order not to compromise themselves they are careful not to conduct themselves in too democratic a manner. Thus they conduct their negotiations in an exact fashion. The external character and that inner character, the double relationship which exists among the ruling class itself and which connects it both among its own members and with the class of the subjects, the serious and measured gravity of the rulers and their increasing mistrust of the political education of the subjects, both characters in their necessary interrelation form the essence of true aristocracy. And thus the intermediary state which is now seen will again be as essentially aristocratic, as the state of the lower order was essentially democratic."
>
> Friedrich Schleiermacher, "On the Concepts of the different Forms of the State"[1]

> "What is involved is neither a simple variant of traditional European nationalism (to which it is sometimes assimilated) nor a mysterious political project unfolding in some alien theoretical space (as in the mutually opaque language games postulated by postmodernism). The unifying conceptual space within which *both* orthodox white moral/political philosophy *and* unorthodox nonwhite moral/political philosophy are developing is the space that locates the (mythical) social contract on the same plane as the (real) Racial Contract, being predicated on the translation of "race" into the mutually commensurable and mutually intelligible language of personhood, and thereby demonstrating that these are contiguous, indeed *identical*, spaces - not so much a *different* conceptual universe as a recognition of the dark matter of the *existing* one."
>
> Charles Mills, *The Racial Contract*[2]

I. Introduction: Beyond Hegel and Marx

Modern politics has a race problem. Despite lofty promises of liberty and justice for all, constitutional protections, and theories of justice, it is hard to deny the claim that, in the words of Charles Mills, "white supremacy is the unnamed political system that has made the modern world

[1] Schleiermacher, "On the Concepts of the differing Forms of State", 191; KGA 1/11, 114.
[2] Charles Mills, *The Racial Contract* (Ithaca, NY: Cornell University Press, 1997), 111.

what it is today."[3] For Mills, the racial character of modern politics raises a challenge for the inheritors of the theorists of social contract who have played a key role in the formation of the modern nation-state: how is one both to account for and to overcome the apparent contradiction that the institution that is supposed to provide the conditions for equality and justice seems also to have been structured by a fundamental injustice, the exploitation of those marked as racially other? Mills question is not only diagnostic, but prognostic. What matters is not so much the extent to which a particular thinker's vision may have been racial in character, but the kinds of resources that their thought may provide for offering an interpretation of and solution to the dilemma.

The way that many of the classical theories of social contract focus predominantly on the character of the transition between the pre-civil and the civil condition and the character of the state after that transition often leaves them with little to say about Mill's racial contract. Rather, the failure to guarantee the equality or security that state citizens are supposed to enjoy is often just taken as a sign of the imperfect or incomplete instantiation of ideals that are still worth progressively striving for.[4] Yet in the face of a consistent gap between the stated values and the reality, many have turned towards approaches which posit the state less as a finished product than as the product of a dialectical becoming. Thus, despite various ways in which these theorists themselves may not have been the most sensitive to race or gender as a structuring principle, many black, Asian, and post-colonial thinkers have turned to the theories of Hegel or Marx for inspiration in articulating a vision of modern state inequities and how to overcome them. Hegel's master-slave dialectic and Marx's vision of a revolution of the proletariat have provided models by which to understand the

[3] Mills, *The Racial Contract* (Ithaca, NY: Cornell University Press, 1997), 1.
[4] Or, alternatively, some have turned to insist that there is nothing fundamentally inconsistent with a state existing in part to enforce relations of subordination between an elite group and others within the polity. The question of how these hierarchical relations are to be overcome are then interpreted not as inherent to the formation of a state, but to the relationship of the state to a theory of justice. See Phillip Pettit, *The State* (Princeton: Princeton University Press, 2023).

conflictual processes that continue to structure the contemporary state.[5] Indeed, disagreements about the degree to which one ought to focus on the categories of ethnic or racial identity or on the category of class and economic exploitation continue to characterize contemporary debates over the kind of solidarity required to resist and transform structures of white supremacy.[6]

In this regard, Schleiermacher offers an intriguing alternative approach to the issue. In a way that is both similar to, but different from figures like Hegel and Marx, Schleiermacher's conception of the formation of the modern state sees it as necessarily passing through a phase which is structured by inequality. When combined with the intriguing way that Schleiermacher's political philosophical vision is both deeply sensitive to issues of political economy and the division of labor as well as questions of national and ethnic identity, what emerges is a vision of nation-state formation and transformation that brings together idealist and materialist elements that are otherwise separated in Hegel- or Marx-inspired arguments. Against Hegel, one could say, Schleiermacher insists on the political-economic basis of relations of right; against Marx, Schleiermacher is cognizant of the limits of class solidarity as a principle of oppositional social organization. Insisting neither on top-down reform from above nor on one-sided revolutionary activity from below, Schleiermacher's emphasis on coordinated activity from both the populace and the government thus offers an alternative set of categories by which one can attempt to analyze the political situation.

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[5] Franz Fanon's 1961 *Les Damnés de la Terre* serves as a classic and influential example of a Hegelian-inspired post-colonial critique of modern politics that highlights the psychological significance of relations of mis-recognition in global politics. See Franz Fanon, *The Wretched of the Earth*, trans. Richard Philcox (New York: Grove Press, 2004 [1961]). See also Charles Taylor, "The Politics of Recognition" in *Multiculturalism*, ed. Amy Gutmann (Princeton: Princeton University Press, 1995), 25-73 and Gillian Rose, *Hegel Contra Sociology* (Atlantic Highlands, NJ: The Athlone Press, 1981). Against the focus on recognition and identity, the Black Marxist tradition has sought to interpret racism in terms of economic-material exploitation. See, for instance, Cedric Robinson, *Black Marxism: The Making of the Black Radical Tradition* (London: Zed Press, 1983).

[6] i.e. Asad Haider, *Mistaken Identity: Mass Movements and Racial Ideology* (London: Verso Books, 2018); Jonathan Tran, *Asian Americans and the Spirit of Racial Capitalism* (New York: Oxford University Press, 2022).

Unlike many theories of state, Schleiermacher's vision of the formation of the modern state sees it as necessarily passing through a hierarchically structured, aristocratic$_d$ form which is fundamentally characterized by the rule of a dominant ethnic group which enjoys a kind of inter-group "equality" in that its members jointly enjoy a superior status vis-à-vis subordinate groups within the state, even as they may actually stand in relations of great political and economic inequality vis-à-vis one another. The key task of modern politics, Schleiermacher suggests, is not just the establishment of a state, but figuring out how one will be able to affect a transformation from such transitional states to "states of the highest order". Indeed, to the extent that this transformation will necessarily require changes in the constitutional structure of a nation, an overweening focus on the form of the state and the abstract rights of citizens purportedly set out in a bill of rights may actually detract from the task at hand.

In what follows, I will attempt to outline the way in which Schleiermacher adapts the traditional three-fold schema of the different forms of state for his account of modern state development. In its original context, Schleiermacher's concern for being able to maintain the local linguistic and cultural particularities of regional and ethnic sub-groups served as a vision of ("Protestant") German modernity that would contrast with the top-down, homogenizing ("Catholic") reforms of Napoleon's France. Although the limitations of the highly formulaic trajectory of development from democracy$_d$ to aristocracy$_d$ to monarchy$_d$ were already apparent even to Schleiermacher himself later in his life – in his later *Staatslehre*, Schleiermacher would puzzle over the ways in which America seemed to challenge the adequacy of his model – his concern with how lack of ethnic unity may spur ongoing oscillations between confederate and federal forms of government presents an intriguing different angle from which to interpret the modern political situation. In the final section, I will argue that, although it would be a mistake to uncritically adapt categories originally framed with post-Holy Roman Empire Germany most in view in order to try to

make sense of a very different settler-colonial context, Schleiermacher's teleological approach to state formation nevertheless offers the basic contours of an alternative approach to imagining antiracist futures that ought to receive greater consideration. At the very least, Schleiermacher provides a political and moral language for making sense of why Marxist-inspired emphases on economic inequality and class solidarity have consistently run into problems of racial division.

II. Schleiermacher's Theory of State Development

1. The Different Forms of State as Different Stages of State Development

In chapter 4, we have already considered one of the key themes of Schleiermacher's important 1814 Academy lecture "On the Concepts of the different Forms of State", the redefinition of republicanism around a different version of the doctrine of the separation of powers. Instead of focusing on maintaining checks and balances between branches of government and protecting civil liberties by means of judicial review, Schleiermacher opts for an alternative way of understanding the distinction between executive and legislative that sets the interaction between a people and its government at the center.[7] Alongside the post-Rousseauian consensus, Schleiermacher saw the practices of direct democracy as ultimately impracticable in the context of modern nation-states.[8] What might have been possible within the context of small city-states was no longer feasible in polities which gather together a number of different lands and tribes – collections of families – under a single government. Yet his attempt to coordinate popular participation and governmental power represents an alternative way of charting out an alternative to the Sieyes-ian

[7] More recently, Martin Loughlin has also called into question the profitability of the constitutional idea and the focus on limited government, the separation of powers, and judicial review. See Martin Loughlin, *Against Constitutionalism* (Cambridge, MA: Harvard University Press, 2022).

[8] "This question becomes simple for us as a result of the consideration that democracy, as the highest form of a state which comprises a great nation, is not possible because a meeting of all citizens in one assembly does not take place." Schleiermacher, "On the Coccepts of the different Forms of the State", 189; KGA I/11, 112.

and American focus on the role of an independent judiciary focused on adjudicating specifically constitutional questions in the wake of populist threats in the aftermath of the American and French Revolutions.[9] It is this alternative that allows Schleiermacher to better countenance what he takes as to be the necessary constitutional changes that will accompany the growth and development of the modern state.

In chapter 4, we discussed how Schleiermacher reappropriated the classic schema of the three forms of state to characterize three stages in the development of a state as it transitioned from encompassing the small unities of individual tribes into a larger entity that includes multiple territories and people groups within its bounds. Democratic$_d$ states of lowest order could be governed democratically$_g$, aristocratically$_g$, or monarchically$_g$ but their fundamental structure is dictated by an indeterminate distinction between the relation of authority and subject, public and private, executive and legislative powers. That is, the flexibility in governmental structure is by virtue of the ease by which citizens can step into and out of public life depending on the circumstance, a fluidity that Schleiermacher characterizes as essentially democratic$_d$ in character. By contrast, the aristocratic$_d$ transition state, by virtue of encompassing various people groups, is characterized by a partial differentiation: some (in the ruled groups) serve only as subjects, but others (in the ruling group) serve as both subjects and authorities.[10] By virtue of their larger size, direct democratic governance is no longer possible. Finally, the monarchical$_d$ state of highest order exemplifies the

[9] See esp. Richard Tuck, *The Sleeping Sovereign: The Invention of Modern Democracy* (Cambridge: Cambridge University Press, 2016).

[10] "It is distinguished from the first by the fact that it does not comprise one but several hordes or tribes, that it is based in its whole mass not on a uniform but on an unequal development of the political instinct, in which a part of the whole is preponderantly active, whilst the other part of preponderantly passive, and therefore the political conflict is much more tense, not all people together are at the same time subjects and legislators, but only simultaneously some govern and others are governed. Others, however, oppose them as pure subjects and finally this second order can move only between the monarchic and aristocratic; the democratic form is quite excluded here." Ibid., 192-193; KGA I/11, 115-116.

distinction between authority and subject most determinately: one preeminently public person is to stand over and above their subjects.[11]

It is important not to confuse Schleiermacher's advocacy for the monarchical$_g$ governance of the monarchical$_d$ state of highest order with the conservative defenders of the *ancien regime* and its associated hierarchies. What is at stake for Schleiermacher is not whether a state is ruled by one as opposed to many, but whether or not there is a clear distinction between the private and public realms. What makes the monarchical$_d$ state monarchical is not the trappings of royal power or the inherent dignity of royal blood (these, Schleiermacher will associate with the aristocratic$_d$ monarchy$_g$), but the fact that the public functions of government are clearly distinguished from the private activity of individuals. What makes the government monarchical$_g$ is not its lack of responsiveness to the people, but its fair engagement with all the peoples incorporated into the state. Here, Schleiermacher's preference for a hereditary monarchy is linked to his worry about the ways in which elected monarchs may remain subject to the pressures of private interests and not an outright rejection of the possibility of presidential systems. In principle, it is the existence of a singular governmental structure under a unitary executive and expressive of a nation's public life that is at the core of the vision. The introduction of multiple loci of authority – an aristocratic$_g$ government – is inappropriate precisely because it would necessarily result in uneven treatment that, depending on the authority, may be more or less amenable to the legislative activity of various groups of people. It is in this sense that Schleiermacher's conception of monarchy$_g$ *does* stand at odds with a vision of republicanism that emphasizes checks and balances and interprets the separation of powers as

[11] "Furthermore, just as in the lowest state the political opposition was weakest when everyone was equal or could be ruler as well as subject, in the second state, however, it was more tense, since only some united both functions, whilst others, however, did not do so, then this opposition will be at its most tense in the highest state. Only a tension of that kind will be able to hold so great a mass together. Thus the king alone will be able to rule; he alone will have the activity which forms right and law. No other activity, however, will be his; the totality of the citizens will face him as mere subjects." Ibid., 196-197; KGA I/11, 119-120.

designating differing offices *within the governmental structure*.[12] For Schleiermacher, not only does this not actually protect against tyranny, but is also is reflective of the imperfect state of the union.

Schleiermacher's insistence that states develop in their form thus sets him somewhat at odds with the classical theorists of the social contract and their emphasis on understanding the legitimacy and form of existing states. At the same time, however, it puts him in a better position to make sense of why modern states might still be characterized by significant inequality along racial lines. Alongside the degree of publicity that a particular state exemplifies, Schleiermacher also insists on one final dimension on which the development of states is to be measured: size. The democratic$_d$ states of lowest order are understood to be small in character and can be characterized by a kind of ethnic homogeneity that Schleiermacher will not attribute to either the aristocratic$_d$ or monarchical$_d$ state. What set the latter two apart from the former is that they are to be recognized as encompassing more peoples and territory than the city-states that had launched Greek reflection on political forms. That this should be the case ought to be somewhat unsurprising. It was grappling with the fact that the kind of direct democracy that had characterized the city-state was no longer appropriate to the larger states of the day that had led Rousseau and other modern democratic theorists to reconceptualize the nature of republican government in the first place. Yet Schleiermacher departs from many of these theorists in taking seriously the way in which the modern state would have to grapple with the kind of linguistic and cultural tensions that may continue to exist within such larger "states of higher order". What makes the state of highest order the most perfect form of state is not merely that it exemplifies a perfected relation between a people and its government, but that it does so while maintaining a dynamic unity-in-diversity among the various regions and subgroups that feed into the nation's identity. It is precisely the challenge of overcoming inter-ethnic conflict that leads Schleiermacher to posit the necessity of the aristocratic$_d$

[12] Again, see the discussion of Schleiermacher's version of republicanism in ch.4.

transition state, a condition of qualified inequality in which one people group exercises power unequally over the others subordinated to it in the state.

2. The Aristocratic Transition State

In the Academy lecture, Schleiermacher would first consider and then reject the possibility that a state of a higher order could arise immediately out of a pre-civil condition. For a fully-formed unity-in-diversity of a number of differing ethnic groups to simultaneously and uniformly arise was simply asking for too much of a miracle.[13] As such, Schleiermacher concludes that states of a higher order must necessarily result out of some kind of amalgamation of already-existing smaller states. And in an analogy to his account of how states may be imagined as forming out of the deliberation of individuals in a democratic assembly, Schleiermacher suggests that the formation of larger states follows a similar pattern: one of the people groups which constitute a small state must develop an idea of the greater political unity of the whole and unite the rest under that idea – whether by persuasion or violence.[14] Thus, just as that individual who takes a lead in the democratic assembly takes on the role of the governmental authority in relation to the rest of the people, "one tribe will govern, as one individual is king there [in the democratic assembly], and the other tribes will be governed as the other individuals are governed there."[15]

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[13] "For only by a miracle could the political instinct arise both simultaneously and uniformly in the whole mass of a people divided into many hordes and tribes; and only by such a miracle could an individual from a tribe in which that consciousness has awakened, exercise formative and subjugating influence on all separate hordes and tribes both simultaneously and uniformly." Schleiermacher, "On the Concepts of the different Forms of State", 190; KGA I/11, 113.

[14] "Thus the great state does not arise originally, but the small state must have preceded it. We can, however, imagine this very easily and completely by analogy with the original appearance of the small state: when among a people consisting of small tribes, all without a civil unity, the form of the state has arisen in one of them, whether it be democratic or monarchic, the young state will then quite easily exercise a similar influence on one or other of the still formless hordes if the hordes are in sufficient contact with each other, whether friendly or hostile, and if other favourable circumstances prevail. This influence resembles that exercised on his horde by an individual in whom political consciousness first develops on his becoming king. This influence, too, can become either friendly or violent." Ibid.

[15] Ibid.

Schleiermacher's "transitional state" [Uebergangsstaat], then, is essentially aristocratic$_d$ in the sense that, apart from the ways in which the various incorporated people-groups may be internally organized among themselves, *one* of these groups stands in a position of superiority over the rest by virtue of their initiative in seeking greater unity. A political analysis of these transitional states requires paying attention to this two-fold form of their internal organization: the internal self-constitution of the individual constituent people groups and the internal self-constitution of the transitional state as a whole. Regardless of how hierarchically structured the ruling group may be internally, by virtue of their position vis-à-vis the other groups, the individual citizens of that group may nevertheless be recognized as possessing a democratic$_d$ character in that "in ruling [the other peoples] they hold among themselves the same character in that each connects in his person the ruling activity which shows itself in the whole to [the activity] directed towards the private interest which indwells the individuals."[16] The group thus constitutes an aristocracy vis-à-vis the other groups, manifesting their collective superiority towards these others even as they pursue what would otherwise have been merely private activities. They alone, among the various peoples collected within the aristocratic state, bear public personages.

In contrast to approaches which focus on the formal conditions of statehood, Schleiermacher's attempt to discern the teleological contours of state-formation leads him to conclude that relations of inequality between various people-groups within a state are simply a part of the development of the modern state. As a meta-descriptive account of the state, Schleiermacher was no doubt most concerned with the possible fate of German-speaking lands in the aftermath of Napoleon's dissolution of the Holy Roman Empire in 1806 and the situation in which Prussia found itself in the final years of the Napoleonic Wars leading up to the negotiations at the Congress of

[16] Ibid.

Vienna.[17] Faced with the prospect of massive territorial realignment, Schleiermacher grappled with the possibility of the coherence of a greater Prussian-led German state which would incorporate multiple German-speaking peoples under one polity. In a June 12th, 1813 letter to his former roommate and friend Friedrich Schlegel (who, by this time, had renounced Romanticism and embraced Catholicism), Schleiermacher laid bare his "political confession of faith [Glaubensbekenntniß]":

> I am not at all completely against the giving of Saxony, Brandenburg Austria, and Bayern. The tribal diversities [Stammesverschiedenheiten] as well as the traces of the old individual political growths, which, of course, do not always coincide exactly with the former, have made too strong an impression on the Germans for one to want to destroy them. Only they should not dominate over the greater national unity and the people, for their sake, should not again fall into a loose polycoria [πολυκοιρανιη][18] and come to the edge of the abyss. That is why after the [wars of] liberation, my highest wish is for one true German kingdom, powerful and representing alone to those outside the entire German people and land, but also on the inside allows for much freedom to the individual lands and [allows] their leaders to build up and to govern according to their peculiarities.[19]

The unnamed, but implicit alternative that Schleiermacher had spent much of his time during the reform period polemicizing against was the heavy-handed, top-down homogenizing liberal reforms of the French. Against the imposition of a uniform (Napoleonic) code which would abolish local traditions and particularities, Schleiermacher's vision for the formation of a German state sought a kind of unity-in-diversity that could maintain the distinctive personality of various distinct tribes [Stammes] situated in the various regions while nevertheless bringing them within one unified nation [Volk]. When faced with the possibility that Austria could serve as the ruling tribe of the new federation, Schleiermacher would express doubts as to whether or not it "were liberal enough to ground such an empire as we need in our contemporary time."[20] Prussia, so Schleiermacher hoped,

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[17] For a more detailed account of Schleiermacher's writings and activities during this period, see Matthias Wolfes, *Öffentlichkeit und Bürgergeschellschaft: Friedrich Schleiermachers politische Wirksamkeit* (Berlin: Walter de Gruyter, 2004).
[18] A pathological condition in which there are multiple pupils in the eye. Presumably, Schleiermacher uses it metaphorically to refer to a lack of single-visioned focus.
[19] KGA V/11, 439. Translation mine.
[20] Ibid., 440.

would be the ruling group that would bring the German people into a greater form of developmental unity than they had previously experienced.

But though the Prussian experience no doubt served as the primary locus of Schleiermacher's hopes for the formation of a "higher order state", it was by no means the only example that he wanted to make sense of. However artificial the developmental schema may appear, Schleiermacher was intent on presenting it as profitable for making sense of history. In his later 1829-1833 manuscripts on the doctrine of the state, for instance, Schleiermacher would cite Switzerland, North America, France, and even historical "Asiatic states" as potential examples of states exemplifying the transitional form.[21] Thickening his categories to account for the oscillation that may take place in a state as a stable collective unity of a higher order struggles to emerge, Schleiermacher suggested that the drive towards a transitional status can be identified in the movement between the formation of a more democratic *confederation* (Staatenbund) between smaller states and a more aristocratic or monarchical *federation* (Bundesstaat). In a sweeping summary of the centralization of power in post-Revolutionary and post-Napoleonic France, Schleiermacher would characterize France as once a "confederate state", but which now is "with predominant aristocracy, a monarchy in a greater sense such that the individuality of the small unities in the state-form soon almost disappeared."[22] For Schleiermacher, France was then going through the transition process in such a way that, despite a brief transition-period in which one group dominated over others, the resulting monarchical form had now wiped out the diverse groups whose preservation was so important for Schleiermacher's own vision for Germany.[23] Switzerland, on the other hand, remained

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[21] KGA II/8, 80-81. Translation mine.

[22] Ibid. See also, "We observe how in France the concept of representation has developed through the revolution, thus there is there a more perfect contrast to our own development. It is only a numerical relationship and without relation to earlier smaller unities, and furthermore first arises after the destruction of these. The earlier self-standing states are dissolved, and representation is grounded on an arbitrary division of the population." Nachschrift Waitz, KGA II/8, 801.

[23] Although Schleiermacher would focus here on what seemed to be relatively recent events, he would elsewhere suggest that the transition into a state of higher order would begin with the monarchy of Louis XIV. "Thus France and

a "composite confederacy" in which the smaller unities continue to dominate over the sense of the greater unity.[24]

Particularly intriguing is Schleiermacher's interest in applying the categories of his analysis not only to contemporary examples, but also to historical ones as well.[25] Having already characterized the Greek city-states that Aristotle engaged with most directly as democratic$_d$ in character, Schleiermacher would also look for hints of the transitional aristocratic$_d$ state. With the exception of Alexander the Great's Macedonian empire, Schleiermacher would suggest that "only temporary beginnings towards a confederacy" among the Greeks, instead suggesting that "the greater unity came to stand in the asiatic states under a mostly aristocratic form."[26] Schleiermacher is likely commenting on a classic locus of Western orientalism, Aristotle's description of Asiatic barbarians as living under a form of legal and hereditary tyranny on account of their "more servile" character in *Politics* III.[27] While not entirely escaping the orientalist trope of early progress and later stagnation – Schleiermacher would suggest that " there [in the asiatic states] the political principle has not further developed itself and penetrated the masses" –, reinterpreting what Aristotle had attributed to natural slavery as actually an incomplete step towards a higher level of political development.

Schleiermacher's attempt to be empirically sensitive also manifests in his attempts to account for deviations from what he takes to be the ideal developmental path. Indeed, Schleiermacher

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Germany – both were earlier aristocratic states of higher order. Ludwig [Louis] XIV wished to destroy the aristocracy in order to form a monarchy, but at the same time reached beyond his borders and united German territory with its people." Nachschrift Waitz, KGA II/8, 793.

[24] Ibid., 80.

[25] "If after a filling of all the fields we now compare the results [of our analysis] with the historical present, we must say that, on the whole, history corresponds to it." KGA II/8, 81.

[26] Ibid.

[27] See Aristotle, *Politics* 1285a17-28. Taking their departure from Aristotle, the contrast between Oriental despotism (now with additional anti-Islamic connotations) and European monarchies would become a standard trope in Enlightenment political thought. See esp. ch.3 of Michael Curtis, *Orientalism and Islam: European Thinkers on Oriental Despotism in the Middle East and India* (Cambridge: Cambridge University Press, 2009).

actually suggests that the European example is abnormal on account of the fact that "the great predominance of monarchy" stands at odds with Schleiermacher's ordinary schema about the transition-states being primarily aristocratic$_d$ in form. Schleiermacher then attempts to explain this phenomenon as the product of an excessive militarism which made it the case that the aristocratic transition-form would be distorted by the way in which the *internal* organization of the ruling group – a monarchy$_g$ – would attain to an exaggerated importance and take a hereditary – rather than elective – form.[28]

a. Schleiermacher on "The North American Free States"

America would also constitute an exceptional case, as the "North American free states" seemed to provide an example of the emergence of a federal union that was not characterized by inequality between the member states. Schleiermacher would attempt to account for this by suggesting that its formation out of an amalgam of former colonies rather than independently developing smaller states made a difference.[29] It is by virtue of a shared revolutionary experience, Schleiermacher suggests, that it was possible for a quasi-monarchical$_d$ – rather than aristocratic$_d$ – form to emerge among the states. Rather than a union in which one of the more populous and powerful states – say, New York or Virginia – dominated the others, the federal republic that took

[28] "The great *predominance of monarchy* remains yet unexplained since we cannot develop it out of confederate states and federal states in general. They evidently emerged from the point of the transition-states, especially when, in the process to a highest unity, a rapid, armed development was necessary from an aristocratic king. All the great European states once found themselves at this point. The partial states are now already hereditary, so will also the dignity of the [monarchical] first among equals continue to be hereditary as if clinging to the soil, otherwise elective monarchy would be the most natural." KGA II/8, 84-85.

[29] "Other relations, however, enter when the state arises not out of the pre-civil condition, but rather in a secondary way, as is the case in those states forming themselves out of colonies. Because now this question almost entirely concerns the New World, so we must see what arises here differently." Ibid., 83.

the place of the Articles of Confederation had taken great pains to preserve a relative equality among the various member states.[30]

But this was not to say that America had achieved the ideal unity-in-diversity that was supposed to constitute the state of highest order. Cognizant of various ways that American federalism could yet fail, Schleiermacher would speculate about a number of differing possible trajectories for former colonies united in resisting their former motherland:

> [Either] a confederation or a federation is possible here, and from there, [either] a going back [to a confederation] or a climbing up to complete unity (the North American free states still exist in a vacillation [Schwanken], which can end either way). … The latter question concerning the development of a complete unity depends on the relationships of the population. If they are a single population (North American Free States), a [federal form] will be easier. If an aristocratic relationship is established between colonists and the native population, the mediating links must first gradually perfect themselves and the European culture uniformly distribute itself.[31]

The United States, Schleiermacher suggests, still exists within the state of "vacillation" between confederate and federal forms of government that characterizes the aristocratic transition state, even if, technically speaking, the smaller constituent states exist in relations of relative equality to one another. Whether or not a state of highest order will emerge out of this transitional state still depends on "the relationships of the population". The ex-colonial states that make up the United States may not correspond one-to-one with people groups in the way that they are assumed to in Schleiermacher's other examples, but the question of how to achieve inter-ethnic unity and equality remains the benchmark of whether or not the unity-in-diversity of the states of highest order is achieved.

In the various versions of his lectures on the state, Schleiermacher imagined a few possibilities based on the various ways that the differing populations in America could interact. In

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[30] It should nevertheless not be forgotten that the Constitutional Convention did start off with the Virginia Plan, which would have ensured the greater influence of states such as New York and Virginia had not delegates from New Jersey presented a counterproposal defending the rights of the smaller states.
[31] Ibid., 84.

1829, Hess and Willich would record Schleiermacher's attention as focused on what we may recognize as the "settler colonial"[32] option in which European colonists would form a national culture without attempting to integrate the remaining native American nations in any meaningful way into the union. Here, the challenge would be to integrate European colonists of different ancestries [verschiedener Abstammung] at differing degrees of remove from their motherlands – of European birth [Kolonisten von Europäischer Geburt], of colonial birth [von Europäischer Abstammung, aber Konoistischer Geburt], and of mixed birth [vermischte Abstammung] – into a single people.[33] In this scenario, Schleiermacher would note, "European culture would necessarily drive the decline of the necessarily originally subordinated culture of the original population" in order to bring about the kind of "even formation of the whole" that would allow a perfected state to arise.[34]

In his 1833 discussion of oscillation among aristocratic transition states, however, Schleiermacher is more cognizant of the ongoing existence of native American nations, noting that they were faced with the question of how they were to develop themselves politically: "Whether the Europeans will drive them back and they remain limited to war, or whether they will assimilate themselves to the European [forms of state] cannot be foreseen."[35] Waitz's limited notes can make it difficult to discern Schleiermacher's precise meaning, but given the passage's embeddedness in a

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[32] The distinction between "colonial" and "settler colonial" approaches may very well characterize the differences between Schleiermacher's 1829 and 1833 speculations about the trajectories of America. The former term is used to designate a condition in which some distinction between colonizer and colonized is retained (and thus resistance consists of insisting on equality); the latter, to a condition in which the colonizers actively operate according to an eliminationist paradigm (in which resistance requires emphasizing difference). For a discussion of terminology, see Lorenzo Veracini, "Introduction 'settler colonial' studies" *Settler Colonial Studies* 1:1 (2011): 1-12.

[33] KGA II/8, 559. See also, "The question: whether here such a unity arises as [can be] a true natural unity is here the next in importance – [though] one sees no reason against it –. Just as well as the colonists have formed the individual colonies despite their differing ancestries into one true unity, even so will there also be no hinderances in the belonging-together and unity of the whole." Ibid., 560. For a more in-depth discussion of the significance of the unity being a "natural" one, see the discussion of Schleiermacher's philosophy of race and the role that the concept plays in allowing him to relativize existing national identities and imagine the possibilities of new mixtures of peoples in the previous chapter.

[34] Ibid., 560.

[35] KGA II/8, 849.

section about the necessity of state-development, Schleiermacher seems to be raising the question of whether or not the natives would attempt to develop in trajectories that would be more or less compatible with the European-inspired principles of the United States.[36]

Given what we now know about what happened even to tribes who sought to deal in good faith with the American government, Schleiermacher may seem somewhat naïve in being able to imagine the formation of an aristocratic$_d$ relation in which native states are brought into the union; but it nevertheless illustrates the degree to which Schleiermacher's vision for state development is shaped by a sensitivity to inter-ethnic relations. Taking inspiration from what he perceived to be the beginning of significant international interactions and transformations in Europe in which "the natural differences of nations in commerce and language continue to diminish so that the folk peculiarities [Volksthümlichkeiten] approach dissolution and common mixed languages [Mischsprachen] arise," Schleiermacher would in 1833 imagine a very different possible trajectory for the United States: "And a mixture of the races [der Racen] has also begun, and if black slavery is now abolished and the Native Americans become civilized, then the mixtures will prevail, and this will promote becoming one and eliminate the ground for separate living."[37] The formation of the American "state of highest order" would only be accomplished once European, African-American, and native peoples achieved a new kind of synthesis that would reflect a different kind of unity-in-diversity.

Until the United States could find a vision of nationhood that could adequately incorporate the various differing people-groups in its midst, the way that these differences would manifest themselves politically and economically would lead to continuing vacillation between the confederate

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[36] This ignorance of the violent and increasingly settler-colonial approach of the colonies, while perhaps non-culpable on Schleiermacher's part, does not necessarily exonerate the overall project to the extent that suppression of information about the violence of the settler colonial project was part and parcel of the British imperial legacy. See, for example, Caroline Elkins, *Legacy of Violence: A History of the British Empire* (New York: Knofp, 2022).
[37] KGA II/8, 850.

and federal form. Under these circumstances, the attempt to use federal power to resolve ongoing disputes within or between the states risked a dissolution of the union itself: "In a compound state, if there are different interests among the individual states and the higher power is subject to the persistent suspicion of partiality, a separation of the whole according to the different interests will arise (North America, north and south)."[38] The question of the internal political economy of the individual states, the question of the future of slavery and the enslaved, these would have to be resolved for the Americas to cease its oscillation between advocates of states' rights and advocates of federal power.[39]

b. Overcoming Aristocracy: The Transition to the State of Highest Order

Rather than a performative contradiction, Schleiermacher thus offers an account of how it can be that the liberal language of the fundamental equality of persons touted by American jurisprudence can be seen as perfectly compatible with relations of racial-ethnic subordination. Although the colonial context deviates from Schleiermacher's base case in which the relations of subordination are clearly mapped out along the lines of the smaller component states incorporated into a new federal system, what fundamentally characterizes the aristocratic$_d$ transition state is the existence of inequality between various people groups.

> What, however, is going to be the inner character and the inevitable history of this form of the state? The common endeavour of all members of the governing tribe will be directed towards the continuation of its rule, whilst those who have been subjected will gradually show more desire to participate in government. Thus the rulers become mistrustful towards their subjects, and in order not to compromise themselves they are careful not to conduct themselves in too democratic a manner. Thus they conduct their negotiations in an exact fashion. The external character and that inner character, the double relationship which exists

[38] Ibid., 104.

[39] Schleiermacher does not explicitly mention racial slavery, but the context of the discussion makes it hard to imagine anything else that may be at stake given that slavery was at the center of disputes about sectional interests. And if American Christians were able to delude themselves that the debate was about whether or not slavery was to be understood as biblical, Mark Noll has argued that European Christians were far more attentive to the racial contours of the debate. See ch. 4 of Mark Noll, *The Civil War as a Theological Crisis* (Chapel Hill: The University of North Carolina Press, 2006).

> among the ruling class itself and which connects it both among its own members and with the class of the subjects, the serious and measured gravity of the rulers and their increasing mistrust of the political education of the subjects, both characters in their necessary interrelation form the essence of true aristocracy. And thus the intermediary state which is now seen will again be as essentially aristocratic, as the state of the lower order was essentially democratic.[40]

Schleiermacher describes a dynamic which he takes to be essentially characteristic of the transitional state: there is a certain reinforcing and re-entrenchment of the aristocratic relation among the ruling group even as inclusion in the greater union naturally leads the subordinate groups to seek greater participation in its governance. A certain kind of inter-ethnic solidarity among those who would not otherwise be equals within the ruling group steps in alongside a certain kind of action that is supposed to reinforce the subordinate relation of those outside that group. Schleiermacher is not thinking in terms of racial exclusion – what he most likely had in mind is the relationship of Prussians to the new territories Prussia was likely to acquire in the aftermath of the Congress of Vienna –, but he provides a vision and vocabulary that provide a different angle into the issues.

Schleiermacher's critique of figures like Kant and Fichte reflects a deep skepticism of the effectiveness of attempts to apply the categorical imperative or some other formal, abstract, universalistic principle as a counter to the inequalities that essentially characterize the aristocratic$_d$ state. Indeed, his account of the transition-state can be characterized as an attempt to offer a broader description of the kind of inter-group dynamics that formalist approaches to politics and their universalistic and egalitarian claims have simply elided in light of the ways in which the history and culture of peoples are seen more as accidental conditions for political activity rather than central to the political task itself. At the same time, however, it would be a mistake to see the aristocratic$_d$ transition state as merely a descriptive attempt to characterize the dynamics of modern politics. As a

[40] Schleiermacher, "On the Concepts of the different Forms of State", 191; KGA I/11, 114.

transitional state, Schleiermacher's teleological vision for the development of the state demands that one move beyond its aristocratic character to attain to the status of a state of "highest order".

The first thing to note about Schleiermacher's account of the transition between the aristocratic middle state and the monarchical states of the highest order is that the latter cannot be conceived of as a mere "extension [Erweiterung]" of the former. Rather, it is a "fully new evolution and an absolutely higher level of the political consciousness and striving in which everyone has a part, on account of the great extent to which everyone's activity is intertwined."[41] No amount of attempt to expand state influence, to incorporate more previously unengaged peoples under its sway, changes the fundamental fact that "the ruling tribe does not therefore cease to rule according to its private interest, and no one can say that then the unity of the whole people is the living principle of the state."[42] There is a certain degree of discontinuity between the states of higher and states of highest order on account of the fact that there is a basic difference in the fundamental organizing principles. By virtue of the fact that the aristocratic state represents a transition from small states to a greater unity on the basis of the initiative of *some* group, no amount of incremental expansion – either of the number of peoples included under the overall union or of the internal character of the ruling group ultimately affects the fundamental aristocratic$_d$ structure of the state.[43]

Indeed, in his attempt to canvass the ways in which the transition could take place, Schleiermacher could not imagine an entirely non-violent possibility. In an echo of his discussion of the necessary reciprocity between a people and their government, Schleiermacher surveys three

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[41] KGA I/11, 116. Translation mine.
[42] Ibid., 117. Translation mine.
[43] Schleiermacher himself focuses more on the possibility of expanding the reach of the state over the number of peoples included in it – i.e. he probably has in mind the possibility of Prussian expansion to include more German lands under its wing. But the point would seem to equally apply to attempts to expand the limits of those who can join the number of the ruling group – i.e. more routes for others to become Prussian. In other words, attempts to make the ruling group *more inclusive* do not fundamentally change the hierarchical character of the state even if it *were* possible to create new hybrid-people-identities precisely because the (relative) equality enjoyed by those in the ruling group is predicated on their superiority to the ruled, and this cannot be changed without fundamentally dissolving the state as it then exists.

differing approaches. The first involves the attempt to form a "republic of the higher order" by means of a representative assembly of the individual states brought together under the transitional state. Any such assembly will ultimately be unable to attain to the state of the highest order insofar as, for Schleiermacher, there is no way for the majority to not be "inspired primarily by the private interest of their particular states which they are accustomed to consider as independent."[44]

There is, for Schleiermacher, no way to the state of the highest order that arises solely out of the various bound-together peoples, without appeal to that which subordinates them. The most that arise out of this condition is, for Schleiermacher, either "one state of unequal formations and in certain limits still independent parts" – an aristocratic$_d$ state of sorts – or "instead of a federal republic only a confederation, an indeterminate union of several states for as long as their views do not further diverge" – an unstable unity that remains precarious and always contingent on the ability to form an ongoing coalition of aligned interests.[45] The people alone lack the capacity to transcend their individual interests so as to attain to a principle of absolute political unity. This would require "the higher political principle [to] acquire a pure organ in a monarchical element, which has the power to reject the provincial and cantonal interests in fixed limits and subordinate them to the unity of the whole."[46] With the American federalists of the 1780s and non-Jacobin revolutionaries in the 1790s, Schleiermacher's republicanism was wary of the problem posed by too much democracy and the threat that populism posed to legislative assemblies. The solution, Schleiermacher posits, is not a system of checks and balances that continued to distribute authority aristocratically$_g$, but the creation of a single centralized government with enough distance from the particular interests to stand above the fray. The legislative activity of a people striving for a higher unity has to find an appropriate complement in the executive activity of the government.

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[44] Schleiermacher, "On the Concepts of the different Forms of State", 195; KGA I/11, 118.
[45] KGA I/11, 118. Translation mine.
[46] Ibid.

But neither is the desire for a state of the highest order among the rulers of the individual states sufficient for effecting the transition. In many ways, this merely replicates the dynamics of the aristocratic$_d$ form out of which it arises. The efforts of the leaders or leader cannot but have a greater effect on their own peoples as opposed to others, thus reinscribing the relation of inequality that is characteristic of an aristocratic$_d$ transition state. Indeed, if the rulers who have been captured by the ideal of a higher unity are *not* of the existing ruling peoples, Schleiermacher will insist that "either the effort will be exhausted before the full extent is reached, or the quiet existence of the whole will always be interrupted by the struggle of the individual nations for the rule of the whole."[47] Instead of transcending the aristocratic$_d$ form, the unilateral action of opposition leaders hoping for a greater unity will only result in variations upon the same theme, reestablishing a new transitional state with different, but still aristocratic$_d$ dynamics.

That leaves, for Schleiermacher, only one way: a coordinated development that arises out of *both* the people *and* the ruling government of the aristocratic$_d$ state:

> The subjugated tribes must already have been politicized to such an extent over time, and their culture must balance that of the ruling tribes so that a longer persistence of the political inequality appears unnatural. Further, the state must have a monarchical form which is established and instills trust – since in the aristocratic the mistrust can never be overcome to such an extent that all forces are united in the great task – and the idea must especially animate the aristocratic king. …He can raise himself sufficiently under these circumstances over the private interests of the ruling tribe in order to grasp the idea, and he is equipped with enough power in order to realize it; and the closer his power is to being absolute, the easier [it is to ground a state of the highest order], and the more difficult it is the more intertwined he is in the interests of the ruling tribe through a type of dependence. And this appears to be the truth in the saying that a king must be absolute [unumschränkt] in order to give his people freedom, since the freedom of all is only in the fixed unity of the whole.[48]

Schleiermacher's commitment to a hereditary monarch seems to be linked to his conviction that this is the only way for an effective transition between the aristocratic$_d$ transition state and the state of highest order to take place. On the one hand, the desire and ability of all the peoples – including the

[47] Schleiermacher, "On the Concepts of the different Forms of State", 195; KGA I/11, 118.
[48] KGA I/11, 118-119. Translation mine.

subjugated groups – to participate in their own governance must exist. Without this striving for participation in the legislative activity of the state, any one-sided governmental action would merely be a rearrangement of the aristocratic$_d$ relation around a different set of leaders with a different set of uneven proximities to the various peoples. On the other, however, Schleiermacher posits that the government of the transition state must possess a monarchical$_g$ rather than aristocratic$_g$ form. The latter, by virtue of its possession of multiple loci of authority, will similarly have problems transcending the existing socio-economic and partisan divisions that may characterize the transition state. The former, however, is no better as long as they remain ensconced within private interests and concerns.

But in an interesting echo of Kant's suggestion that the autocratic government of an enlightened despot is the most administratively efficient, though prone to the possibility of despotism, Schleiermacher will argue that it is precisely the despotic potential that makes the aristocratic$_d$ monarch$_g$ capable of effecting a transition to the state of highest order. This is, however, not on account of their ability to act unaccountably (which would work to dissolve the state), but their ability to potentially *transcend* the sole accountability to the ruling group to become a ruler for all. This will have the appearance of despotism on account of the fact that the head of state's actions will necessarily clash with the status quo and no doubt meet with significant pushback from members of the ruling group. But if this action is able to meet up with the rising consciousness of the subordinated groups, a new political form can arise.

The requirement that the transitional leader transcend the particular dynamics of his own political base is what leads Schleiermacher to believe that only a hereditary monarch and not an elected head of state is capable of effecting this transition. The monarchical$_d$ monarch$_g$ needs to be able to act in such a way so as to be essentially divested of all material interest by being concerned with solely the *form* of the state rather than its *matter*. The problem with any elected official,

Schleiermacher posits, is that they remain necessarily tied, not only to their political base, but to the fact that they will one day have to leave office and be concerned with commercial activity again.[49] Yet it is only by betraying the particular interests of the faction that might have elected them and transcending their own concern for their own material well-being that will allow for the transition to take place.

Schleiermacher's hopes were no doubt tied to his particular historical circumstances. The breaking of the power of the landed aristocracy with the abolition of the serfs and the gradual shift towards a commercial society certainly excited him with the vision of a united Germany centered around a renewed Hohenzollern monarchy that could transcend its specifically Prussian background and historical and material ties to the aristocracy. Schleiermacher's hopes would not come to fruition in his lifetime. And when pushed to make changes in 1848, the king would side with the aristocracy rather than the rising tide of democratic sentiment. It would not be until the reign of Wilhelm I under the influence of Otto von Bismarck that the union of Germany would be effected, and this under terms that Schleiermacher would no doubt still recognize as aristocratic$_d$ in character. Indeed, one wonders whether Schleiermacher would even attribute the achievement of a monarchical$_d$ monarchy$_g$ to the Germany of the present day, as influenced as it is by a liberal constitution.

At the end of the day, one wonders if hoping that a hereditary monarch would transcend their aristocratic background or personal commercial interests is any less quixotic than hoping for a

[49] "Therefore, if the whole is to be governed according to the principle of the unity of a people, the regent must be entirely free of any private interest. He must not be entangled in the business activity of the ruled; otherwise he will become involved in a special opposition with one part, and he who ought to be present everywhere will find one locality closer to his heart than another. Only for the aristocratic king is it seemly to carry on trade; as long as the ruling class knows how to retain him in this necessity the development of the state to the higher stage is made infinitely difficult. The regent, therefore, and this distinguishes him definitely from all his subjects, has no personal property. … It would, therefore, be an imperfect and hardly lasting aspect of this state if the king were elected. For a king of that kind has to be concerned about the existence of his family which has afterwards to return again to the people. But only the hereditary king is the right one. His successor becomes each time the head of the family which is raised above all trade activity and all cares." Schleiermacher, "Of the Concepts of the different Forms of the State", 197; KGA I/11, 119-120.

democratically elected leader to rise to the occasion.[50] The key shift seems to be whether a centralized government built for rule on behalf of a minority can transcend these limitations and to rule on behalf of all. Extraordinary individuals – both among the populace and among the government – would be required for such a change. Indeed, whether one finds Schleiermacher's ideal of a monarchical$_d$ monarchy$_g$ an attainable (or even a desireable) ideal at all is no doubt linked to whether one thinks such a perfectionistic conception of the state is at all achievable or whether a liberal constitution with checks and balances may be the best that one can get in a context where the union of morality and legality exists beyond the eschatological horizon. But for those dissatisfied with the status quo and the inequalities that may continue to structure it, Schleiermacher's insistence that lasting change can only come from a coincidence of forces from above and below remains an intriguing option.

III. Conclusion: Teleology and Critique

1. Schleiermacher Between Hegel and Marx

It is the teleological character of Schleiermacher's vision of state-development, not an account of the formal conditions of equality, that provide the critical edge of Schleiermacher's vision of the state. In this regard, there is much akin between Schleiermacher and other teleological thinkers such as Hegel and Marx who, in their own ways, have called into question the adequacy of liberal legal reforms which take for granted civil society or the material conditions of existence. The way in which these thinkers have been critical of classical liberal approaches to politics have made

[50] In an interesting "democratic" parallel to Schleiermacher's argument, Frances McCall Rosenbluth and Ian Shapiro have argued that it is the degree to which party leaders can be insulated from popular dynamics that make them effective leaders able to address the questions of governance with longer-term interests in view. Here, the idea of a political party takes the place of the hereditary monarch, but the basic concern that the executive functions of government have to be distanced from the immediate vagaries of partisan politics and the dictates of referenda and ballot initiatives can be discerned. See Frances McCall Rosenbluth and Ian Shapiro, *Responsible Parties: Saving Democracy From Itself* (New Haven: Yale University Press, 2018).

them ripe sources for appropriation by thinkers concerned with those whom liberal ideals have failed. Thus, even if Hegel and Marx did not explicitly use race as an analytic in their accounts of the dialectical evolution of consciousness or of relations of production and exchange – and in Hegel's case, can even be seen as actively building on Kant's racialized philosophy of history[51] – their thought has often been appropriated for antiracist ends.[52] Indeed, ongoing tensions between advocates of the politics of identity and those who center class in their analysis often renew the tensions between idealist and materialist approaches to history and philosophy.[53]

It is important to note that, like Hegel and Marx, Schleiermacher cannot be said to be a straightforwardly anti-racist theorist. While Schleiermacher's theory of race and personhood and account of state development can certainly provide inspiration for those interested in combatting racism, the fact remains that they were formulated first and foremost in the context of Schleiermacher's hopes for a new German nation in the aftermath of the dissolution of the Holy Roman Empire, even if he also hoped to offer a general theory of state-formation that sought to incorporate as many contemporary and historical examples as he could. At the end of the day, however, there is a world of difference between attempting to unite the regional peculiarities and customs of differing German-speaking principalities and dealing with the brutal aftermath of eliminationist settler-colonialism and race-based chattel slavery that remains the task of the

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[51] Consider, for instance, Robert Bernasconi, "With what must the philosophy of world history begin? On the racial basis of Hegel's Eurocentrism" *Nineteenth-Century Contexts* 22:2 (2000): 171-201.

[52] The panoply of thinkers is vast, but the most well known are likely Franz Fanon (Hegel) and W.E.B. Du Bois and C.L.R. James (Marx).

[53] Most recently, this has found its manifestation in the rise and critique of critical whiteness studies within the context of post-Floyd antiracist discourse, challenging thinkers to attempt to clarify their understanding of the relation between race and class as analytic categories. Consider, for instance, David R. Roediger, *Class, Race, and Marxism* (New York: Verso Books, 2017). Iyko Day and Jonathan Tran reiterate variations of a Marxist emphasis on political economy against identitarianism in the context of thinking about Asian-American racialization (the latter from a MacIntyre and Hauerwasian-inspired reading of Marx). See Iyko Day, *Alien Capital: Asian Racialization and the Logic of Settler Colonial Capitalism* (Durham, NC: Duke University Press, 2016) and Jonathan Tran, *Asian Americans and the Spirit of Racial Capitalism* (New York: Oxford University Press, 2021).

American politics.[54] Schleiermacher began the work of trying to adapt his theory for the colonial context, but one is left here mostly with tantalizing hints and fragments rather than a full-fledged theory. It is by no means clear, for instance, how Schleiermacher would seek to theorize the way aristocratic relations of subordination and equality between people groups do not map onto the legal boundaries between individual states, but racialized people groups. And, at the end of the day, even if Schleiermacher was willing to imagine the possibility of a new "mixed" race American national identity, he could only do so on the assumption that this would be along "European" principles.[55]

That said, the basic contours of Schleiermacher's theory of state development do offer a unique angle into the issues by virtue of the way that his political theory incorporates elements that are often otherwise on different sides of the idealist-materialist divide. With Hegel, Schleiermacher's emphasis on the dynamics of identity and recognition leads him to be especially sensitive to the challenge of incorporating ethnic differences within the modern state; but with Marx, relations of right are not to be seen as inhering in individuals qua abstract persons, but as crucially linked to their role in the division of labor.[56] Schleiermacher's concern for the proper interaction between legislative and executive functions and their embodiment in institutions thus takes seriously the ways

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[54] That said, there are interesting resonances between Schleiermacher's description of the dynamics of the aristocratic transition-state and the way that Mahmood Mamdani has attempted to characterize the way that the modern nation state constructs permanent minorities. See *Neither Settler nor Native: The Making and Unmaking of Permanent Minorities* (Cambridge, MA: Harvard University Press, 2020).

[55] This could, for instance, be given a rather settler colonial interpretation.

[56] If Schleiermacher can view Kant and Fichte's formalism as unduly abstracting away from the tribal / ethnic dynamics of their actual application, Marx's *The German Ideology* characterizes it as ignorant of the material class conflicts at play. There are, of course, further differences that differentiate Schleiermacher's version of the historical dialectic from teleological politics that are more Hegelian in character. Schleiermacher's overall teleology begins from a state of minimal determinateness and differentiation to a state of maximal unity-in-diversity, with a transitional state of inequality in-between. Although conscious grasping of the higher unity is grounded on previously unconscious activity, it is conscious attempts to realize the higher unity that is central to the politicization that brings about state transitions. For Hegel, the main difference between the Greek and modern states is not one of size, but of the degree of reflective self-consciousness involved, with a transitional state of self-alienation. Because reflection always to some extent follows upon previously unconscious activity, the idea is always something that is recognized in retrospect rather than playing the key role in organizing political activity. Marx, of course, picks up the basic narrative (although alienation is now conceived of materially in terms of the failure to enjoy the products of one's labor), but flips the script when it comes to the degree of conscious activity required to bring about the transition. Like Schleiermacher, a recognition of previously unconscious social dynamics is now supposed to play a key role in perfecting and bringing about the political change.

in which legislative assemblies and governmental offices need to be sensitive to the distribution of ethnic groups and economic interests rather than just the population taken as a mass of individuals.

With uncanny foresight, Schleiermacher's insistence on the way in which aristocratic transition states oscillate between confederate and federal forms of government offers a distinct perspective on the racially-tinged way in which advocates of "state's rights" and advocates of "civil rights" have continued to battle over the course of American history.[57] Indeed, it also presents a diagnosis of why the oscillation did not cease after passage of the 13th and 14th Amendments in the aftermath of the Civil War: mere legal pronouncements and constitutional guarantees cannot substitute for the task of actually forging a new conception of a nation, a task that Lincoln self-consciously recognized himself as engaged in, but which was cut short by his death.[58]

In a surprising resonance with W.E.B. Du Bois' discussion of the "wages of whiteness,"[59] Schleiermacher's account of the character of the aristocratic transition state also offers an account of how subordinate status *within* a ruling group could nevertheless remain compatible with an aristocratic status towards those *outside* the group. Schleiermacher's insistence that the boundaries of peoples with their distinctive histories and identities cut across the dynamics of class solidarity and conflict offers a challenge to Marxist-inspired attempts to interpret racism as merely epiphenomenal to practices of capitalist extraction. For Schleiermacher, mere shared participation in the division of

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[57] Much revolution historiography, for instance, presents the seeds of abolition as being laid in revolutionary principles even if its actuality was not achieved until the post-Civil War Amendments. See, for instance, ch. 5 of Gordon Wood, *Power and Liberty*. The persistence of racial slavery is thus seen as an unfortunate shortcoming that is nevertheless grounded in the same constitutional principles that launched the American project. By contrast, a Schleiermacherian approach would push us to see racial subordination as actually part and parcel of the accomplishment of European colonial emancipation and the ongoing conflict between advocates of states' rights and federalism as an expression of the ongoing aristocratic character of the polity, a condition that is to be overcome by a *new* conception of nationhood that will allow a corresponding transformation of the constitutional structure.

[58] For a recent history of nation-building in the Civil War era that draws particular attention to the political-economic dimensions of nation-building that Schleiermacher was especially keen to be attentive to, see Roger Lowenstein, *Ways and Means: Lincoln and His Cabinet and the Financing of the Civil War* (New York: Penguin Press, 2022). For an account of how post-War radical Republican attempts to forge a new multi-racial conception of Protestant nationhood failed, see Joshua Paddington, *American Heathens: Religion, Race, and Reconstruction in California* (Berkeley: University of California Press, 2012).

[59] W.E.B. Du Bois, *Black Reconstruction* (New York: Harcourt, Brace, and Co., 1935).

labor is too insufficient a basis for political organization to the extent that personal identity requires the recognition of *some natural whole* – the family, the tribe, the horde, or the nation – within which one's economic activity can be situated. For Schleiermacher, these inter-people dynamics structure both discussions of race and the experience of class.

Yet, at the same time, Schleiermacher does not abandon the categories of political economy: the ability of individuals and groups to demand recognition and rights is nevertheless grounded in their participation in the division of labor rather than as abstract individuals. Schleiermacher thus side-steps the internal tension between the demand to be recognized as an equal and the demand to be recognized as an individual that Charles Taylor identifies in his Hegel-inspired account of the politics of recognition.[60] The demand to be recognized as an individual is fully compatible with being recognized as standing within a relation of right by virtue of that individual's place within the division of labor. Indeed, a significant dimension of antiracist activism today is centered in demanding proper recognition and compensation for the role that racial minorities *have already played* in making the nation what it is.[61]

Where Schleiermacher most differs from both Hegel and Marx, however, is the way in which his teleology is *positively* rather than *negatively* driven. It is not by means of the negation of the negation that one makes the leap to the infinite, but by means of improved insight and recognition of a reality that had previously only been unconscious. It is the coordinated activity of insightful leaders and loyal followers united by a shared idea of nationhood, not the improved application of

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[60] See Charles Taylor, "The Politics of Recognition" in *Multiculturalism*, ed. Amy Gutmann (Princeton: Princeton University Press, 1995), 25-73.

[61] Consider, for instance, Ta-Nehisi Coates' influential case for reparations and its attempt to re-narrate the history of African American life in a Chicago neighborhood as an instance, not just of racial animus, but of *theft*. While he ultimately calls for something more than just material recompense, the ability to recognize past behavior as an injustice is important because it then implies that there was already *implicitly a union* that was misrecognized that is now being brought to light rather than simply the creation of an entirely new entity. See Ta-Nehisi Coates, "The Case for Reparations" *The Atlantic,* June 2014. https://www.theatlantic.com/magazine/archive/2014/06/the-case-for-reparations/361631/ accessed on 12/25/2023.

ideals of liberty and equality, nor the resisting or revolutionary activity of a people or class purely defined by their oppression in the face of these ideals that is the central task of transformational politics.

The teleological orientation of Schleiermacher's vision means that, even if he ends up seeing the aristocratic state as a necessary transitional form in the development of a nation, the failure to transcend its dynamics *can* nevertheless be recognized as a moral failure and condemnable as such within the context of social movements which can plausibly be recognized as attempts to achieve the higher form of state. Instead of a *formal* critique which focuses its energy on achieving abstract gains in the form of purportedly guaranteed constitutional rights without attention to the degree of actual sociological uptake, or an *oppositional* critique that focuses primarily on the grievances of a group left behind by those rights, Schleiermacher advocates an *ethno-economic* critique that ultimately demands a grappling with the concrete histories of the various peoples brought together within a polity and their inter-relatedness as part of a shared division of labor.

Indeed, it is in part the possession of a *history* that distinguishes a state of the highest order from the smaller states from which they arise and are composed.[62] The ability to narrate how differing families and tribes gathered together into a particular geographic locale, developed economic and linguistic ties, and were able to intermarry and recognize one another as part of a greater national whole is key to the work of forming the state of the highest order. Indeed, it is precisely within the context of this task that the concept of race enters in as a limit-concept to help mark the indeterminate upper limits of national inclusion.[63] In the context of an aristocratic state, it will almost certainly be used in such a way so as to preserve the privilege of the ruling group. But

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[62] "The question may arise as to whether this state of highest order should be looked upon as going back into the primitive form, as if size alone can make no difference. I believe that no one would make this claim, but that everyone will admit a big difference. This rests partly on its having a history, and that the uniform togetherness of all parts is firstly a result of this history, and partly in that this condition is necessarily given alongside a manifoldness of external relations from which we can abstract when it comes to a primitive state." KGA II/8, 82. Translation mine.

[63] For more discussion of Schleiermacher's conception of race, see ch.5.

precisely because it is not the *driving* concept, but one brought in as part of an attempt to explain why a particular relation does not seem to work out in a context where moral explanations seem to be lacking, it remains always defeasible in the occasion that a moral explanation *does*. Indeed, the possibility of transcending the aristocratic relation demands a reshuffling of the possibilities of union that almost certainly requires a transformation of how one understands peoples, their histories, their relations, and their possible futures.

It is the active search for this way of narrating and re-narrating national identity that is potentially Schleiermacher's most intriguing contribution to the discourse on overcoming the racial contract. The challenge of incorporating the stories of those formerly enslaved, of native peoples whose lands and livelihoods were snatched away, and the immigrants seeking new possibilities into a unified narrative that recognizes the ways in which all stand in relations of economic inter-dependence, is the task of identifying the determinate conception of American nationhood that can transcend the dynamics of the aristocratic transition-state.

Unlike Hegel, Schleiermacher's owl of Minerva does not only spread its wings with the coming of the dusk. Both thinkers begin their political reflections with the Greek city-state, but the very different lessons they draw from it are reflective of their differing teleological trajectories. For Hegel, Greek ethical life was unified, but unreflective. Its lack of reflection would give rise to a reflective, but alienated condition. The task of political philosophy is to enact a kind of reflective reconciliation with one's place and place in the modern state by understanding the rationality of its actuality.[64] By contrast, Schleiermacher's focus on the Greek city-state focused on the fact that it was small, and constituted only but one sub-unity that ought to be eventually incorporated into a larger unity-in-diversity. Each of the moments of transition – from a pre-civil to a civil condition, from a

[64] For a more in-depth exploration of Hegel's social vision, see, for instance, Molly Farneth, *Hegel's Social Ethics: Religion, Conflict, and Social Rituals of Reconciliation* (Princeton: Princeton University Press, 2017).

smaller democratic$_d$ state to a larger aristocratic$_d$ state, and from the aristocratic$_d$ transition state to the monarchical$_d$ state of highest order – is mediated, for Schleiermacher, by the setting forth and being adopted of a new conception of nationhood that not only makes explicit what was merely implicit about the ways in which a people is related, but actively plays a role in bringing that conception to reality by reconfiguring individual sub-identities vis-à-vis the collective one (which, in turn, may reconfigure the collective identity in light of the new individual ones).

2. Revisiting Vial's Critique of Schleiermacher

There is much that can be said in criticism of Schleiermacher's views. Even if race remains an indeterminate limit-concept linked to the ongoing negotiation of peoples among one another, Schleiermacher's commitment to an ultimate *natural* plurality of nations will no doubt still sit uneasily with of more cosmopolitan persuasion. Indeed, even for committed nationalists, aspects of Schleiermacher's vision may seem oddly committed to a final arrangement in which nations are determinately bound to particular territories and particular languages by a kind of final destiny, even if there may be significant room for dynamic mixing over the course of history itself on account of widespread confusion and mis-recognition of the actual bounds of nationality and race.[65] The adequacy of Schleiermacher's account of the aristocratic transition state for the theorization of modern anti-black racism and settler colonial violence may also certainly be called into question.[66]

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[65] Justin Smith, despite his advocacy of the way in which Leibniz and Herder relativize the concept of race, notes a similar deficit in which the two seem to conceive of human cultures as ultimately "windowless" monad-like entities which are eternally connected to fixed geographic regions. See esp. ch.9 of Smith, *Nature, Human Nature, and Human Difference*. To Schleiermacher's credit, his account of free sociability presents a more dynamic view of inter-cultural interaction over the course of history, but these interactions are nevertheless occasions for particular languages and cultures to develop their own individuality rather than genuine influences. Schleiermacher, like his predecessors, seems not to have imagined migration at the scale which now characterizes late-modernity; though, to his defense, his political-economic vision – in the wake of Fichte's – was in part oriented towards eliminating the kind of economic pressures that play a key role in instigating the kind of mass economic migration one witnesses today.

[66] It is important to note, however, that Schleiermacher does not quite as easily fall victim to criticisms of attempts to treat race in the terms of the challenges of multiculturalism or identitarian politics insofar as Schleiermacher's approach to ethnicity is inextricably tied with political-economic relations in a way that many of these approaches are not. The fact that Schleiermacher's state is built upon his innovative conception of collective property and action to some degree

One can also wonder whether Schleiermacher's account of slavery and colonial relations as characterized by non-reciprocal treatment of the other as mere raw-material for the use and consumption of their masters as an insufficient characterization of the nature of anti-black violence.[67] Whether career and hereditary politicians are superior to elected ones at avoiding entanglements of public and private is also very much up for grabs.

Yet while these and many other challenges may certainly remain, it should nevertheless be recognized that an engagement with Schleiermacher's unconventional way of approaching the question of race demands a far deeper engagement with fundamental political-philosophical commitments than has often been broached. Indeed, the way in which Schleiermacher's approach can offer an account of the racialized dynamics of modern politics means that, unlike many other Enlightenment thinkers, he is not subject to Mill's criticisms of the epistemological ignorance that surrounds the racial contract in modern political thought. Indeed, not only does Schleiermacher have a more complicated account of race than Vial seemed to let on, it also fundamentally calls into question the adequacy of Vial's terms of analysis. This threatens to undermine one of the most important aspects of Vial's argument: his attempt to use Schleiermacher's thought to make the case

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insulates his view from more standard Marxist criticisms of (Hegelian) identitarian approaches to the problem of recognition.

[67] Afropessimist thinkers have done much to emphasize that it is anti-black racism in particular, and not a mere generic racial animus, that has played a key role in structuring modern politics. That is, though Schleiermacher certainly attempted to provide an alternative to visions like Kant's theory of race, an adequate analysis of modern politics now needs to take into account the ways in which theories like that of Kant did become quite dominant and played a key role in the development of the modern state. In such a context, one may wonder whether Schleiermacher's account of the integration of tribal groups into nations can adequately account for the ways in which certain "national groupings" (i.e. African slaves) were generated not out of an *internal* violent grouping, but of an *external* violent grouping that means that their shared history and identity was more often than not foisted upon them rather than constructed in continuity and explicit appreciation of a shared history and culture. And to the extent that this violent subordination was made, not an accidental, but an explicit feature of the dominant power's shared identity, one can call into question whether or not Schleiermacher's aristocratic$_d$ transition-state is an adequate characterization of the American polity or whether something more akin to how Schleiermacher attempted to characterize the Roman republic as a failed robber state would be more accurate. At the very least, any attempt to move beyond the mere sketch that I have offered here to actually attempt an appropriation of Schleiermacher for contemporary racial politics today will have to grapple with these and other questions.

that one cannot talk about modern religion without engaging in a conversation about race and vice-versa.

What does religion have to do with race? Vial sets forth a number of closely related arguments about the racial character of religion in Schleiermacher. Firstly, Vial sees Schleiermacher's account of religion and language as representing a cultural complement to Kant's theory of racial germs. He then attempts to establish this claim by suggesting that Schleiermacher's account of aboriginal and Jewish religion measures both against a standard set by a teleological and hierarchical view of religion that finds both wanting.[68] Finally, Vial presents Schleiermacher as one of the original proponents of a view of religion that seeks to separate it from the state, while secretly allowing it to be nevertheless subject to the control of the state. Schleiermacher's language of freedom and tolerance with regard to religion thus serves to conceals the way that the operations of power do continue to shape the modern conception of religion.[69]

We can address each of these points in turn. Firstly, Schleiermacher, having rejected Kant's germ-theory of race, by no means adapts a version of it in his theory of religion. Indeed, one reason that he insists on the separation of religion from the dynamics of the state is *precisely* to distinguish its social dynamics it from the dynamics of the formation of peoples and nations and their divisions.[70] Religion's ability to transcend the division between peoples is what allows Schleiermacher to account for the cross-cultural permeability of religion. Indeed, if political unity always finds its upper limit in Schleiermacher's conviction that there will always be a plurality of nations on account of climatic variations, his account of religious cannot be similarly structured precisely because of his theological

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[68] Vial, *Modern Religion, Modern Race,* 214-215.

[69] See Talal Asad, *Genealogies of Religion: Discipline and Reasons of Power in Christianity and Islam* (Baltimore: The Johns Hopkins University Press, 1993) and Robert Orsi, *Between Heaven and Earth: The Religious Worlds People Make and the Scholars Who Study Them* (Princeton: Princeton University Press, 2005).

[70] Simply put, Schleiermacher sees states and academies ultimately limited to nations at their most general on account of the fact that they are grounded on shared commonalities. The sociality of religion, on the other hand, is on the basis of shared particularity, something that remains extendable to every individual precisely on account of their individuality.

commitments to the absoluteness of Christianity.[71] That is, even as he may insist on the necessary plurality of religious forms, religious consciousness – unlike national consciousness – is capable of attaining to unity with all humanity such that it remains *possible* for all humans to share in a religion in a way that it is not possible for all humans to share in a nationality.[72] Indeed, although determinate religious formations will necessarily lack the ability to be completely universal, Schleiermacher explicitly rejects that their social limits are demarcated by race: "individual churches… can only enjoy a productive and reproductive life if they remain within a certain mass; this mass, however, certainly cannot be determined by unity of race [Raceneinheit]."[73]

Nor is Schleiermacher's insistence that religion be separated from the state an attempt to create a realm free from the operations of power; one can only come to such a conclusion if one has accepted the (albeit common) assumption that human sociality only finds its expression in the state, an assumption that Schleiermacher rejects.[74] Unlike liberal accounts of religion which seek to characterize it as a private and individual affair, Schleiermacher's eminently social account of religion does not side-step questions of politics and power, but instead insists that it possesses a set of power-dynamics of its own that are both independent of (even if also overlapping with) those of the

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[71] One may be led to believe that Schleiermacher posits a parallel limitation in the possibility of religious interchangeability when he insists that "We must therefore posit, as something given by nature, several schematisms of feeling which are particular to great masses." E 1812/13 90 (HG.III.202), 360. Schleiermacher's insistence that *natural* religions may be limited to differing groups of people by nature, however, is qualified by his distinction between natural and rational religion, with his account of the latter transcending the limitations of the former. Indeed, far from merely superseding them, however, Schleiermacher insists that the rational religions actually incorporate the natural into themselves. Thus, although there are ways in which the teleological character of Schleiermacher's account of religion may be problematic, it is *not* the case that it exists in complete parallel to his account of race.

[72] This assumption underlies Schleiermacher's doctrine of universal human sinfulness *and* his Christological commitments about the significance of Jesus' God-consciousness in *The Christian Faith*. Indeed, he will explicitly distinguish the concept of "good" defined by the God-consciousness in explicit distinction from the concept of civil righteousness which will characterize the relative goodness that is the highest achievement of human national unity. See, for instance, *GL* §70.3.

[73] E 1812/13 89 (DG.III.196); 359.

[74] The influence of Hegel on the interpretation of Schleiermacher has led to the common misunderstanding that Schleiermacher likewise embraces a kind of religious individualism. See Andrew Dole, "The Case of the Disappearing Discourse: Schleiermacher's Fourth Speech and the Field of Religious Studies" *Journal of Religion* 88:1 (January 2008): 1-28. Vial recognizes religion's sociality, but does not recognize the ways in which Schleiermacher adapts his political philosophy for the purposes of characterizing the internal power-dynamics of religion.

state. Indeed, Schleiermacher will adapt the account of state authority and the distinction between authorities and their subjects to give an account of the structural power-relations that characterize religious organizations, an account that underlies his political-theological reinterpretation of what is at stake in the Reformation and its aftermath.

It is in Schleiermacher's account of aboriginal and Jewish religion that Vial's claims nevertheless possess some merit. For even if religion possesses a social dynamic independent of that of the formation of the state, the necessary overlap of the domains nevertheless leads him to conclude that situations can arise in which differences in the degree of political-economic development makes the establishment of a colonizing relation necessary for the communication of religion between two differing peoples.[75] Furthermore, Schleiermacher's insistence on the separation of church from state will also lead him to interpret Judaism as the prototypical anti-modern religion which refuses to separate the two.[76] If one moves beyond Vial's particular framing of the issue, one can situate Schleiermacher's views as intersecting with two relatively recent narratives about the relationship between religion and race: firstly, one which seeks to trace a transition in which the significance of the baptized-heathen distinction morphs into a racial one;[77] and secondly, one which seeks to trace the dynamics of racial modernity back to a problematic theological commitment to anti-Jewish supersessionism.[78]

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[75] "It is natural that those who want to disseminate a higher religion must also disseminate a higher level of development. It is for this reason that mission only genuinely flourishes where true colonization has taken place." E 1812/13 94n104 (HG.III.227), 365.

[76] "If individual churches do not go beyond the limits of national unity, that is partly because they have not properly detached themselves from the state (the Jews, who made a naturalized citizen of everyone who professed their faith, represent an extreme here)…" E 1812/13 89 (HG.III.197); 359.

[77] See, for instance, Rebecca Anne Goetz, *The Baptism of Early Virginia: How Christianity Created Race* (Baltimore: The Johns Hopkins University Press, 2016); Catherine Gerbner, *Christian Slavery: Conversion and Race in the Protestant Atlantic World* (Philadelphia: University of Pennsylvania Press, 2018); and Katheryn Gin Lum, *Heathen: Religion and Race in American History* (Cambridge, MA: Harvard University Press, 2022).

[78] See especially J. Kameron Carter, *Race: A Theological Account* (New York: Oxford University Press, 2008), Willie James Jennings, *The Christian Imagination: Theology and the Origins of Race* (New Haven: Yale University Press, 2010), and Terence Keel, *Divine Variations: How Christian Thought Became Racial Science* (Stanford: Stanford University Press, 2018).

In presenting race as an issue that has a specifically Christian-theological backdrop, these and other related works challenge the adequacy of attempts to characterize modern religion and race as independent phenomena. Schleiermacher's political-theological vision, however, offers yet another way to approach the issue, one that frames the problem in terms of the ongoing significance of the Reformation divide between Protestants and Catholics rather than in terms of a transition from the religious to the secular. Indeed, the implicit polemical other in his criticism of abstract formalism is not limited to a distinction between French and German approaches to modernity, but specifically French-Catholic and German-Protestant approaches. Paying attention to Schleiermacher allows us to reinterpret the apparent connection between supersessionism and race identified by figures like Jennings and Carter as more a side-effect of ongoing Reformation polemics rather than the precipitating mistake. As one can imagine, this requires a significant revisioning of what one understands by modernity and its relationship to Christian theology, a project to which Schleiermacher's political-theological vision certainly could contribute a great deal.

Conclusion

I. The End of the Road?[1]

On April 6th, 1831, Schleiermacher would publish in the *Allgemeine Preussische Staaszeitung* a denial of the French journal the *Messager des Chambres* that he was a leading member of the political left. Insisting that the categories of right, left, right-center, and left-center did not apply to the situation in Prussia as they did in France, he would profess his loyalty to the king. While he technically did not repudiate any of the positions for which he had vehemently argued over the course of his career, the article certainly struck a significantly different, more conciliatory tone. Schleiermacher was now increasingly aware that his time was limited, writing to his wife in September the next year that "It makes me very melancholy, after such wonderful hopes and aspirations, to have to leave behind our German world in such an unsettled condition."[2] Things did indeed remain unsettled, though Schleiermacher would not live to see their end. Though his friends would be able to celebrate a small victory a year after his death in 1835 when the king agreed to allow the Reformed churches of the newly acquired Rhenish provinces to enter into the state church with their presbyteries and synods for the most part intact, it was now looking increasingly unlikely that the church would be able to continue in the moderate path that it had walked between the conservative advocates of the Restoration and the democratic hopes of radical liberals.

The rise of the Hengstenberg faction in the wake of the Awakening movement had created a new neo-Pietist coalition between aristocrats and pious rural pastors that sought a revival of the Throne and Altar arrangement that Schleiermacher had vehemently opposed throughout his life.[3]

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[1] I have drawn much of this narrative from ch.5 and the Epilogue of Robert M. Bigler, *The Politics of German Protestantism: The Rise of the Protestant Church Elite in Prusia, 1815-1848* (Berkeley: University of California Press, 1972).

[2] Friedrich Schleiermacher to his wife, September 5th, 1832 in *Aus Schleiermachers Lebel. In Briefe,* vol. II (Berlin: Georg Reimer, 1858), 439. Translation mine. Cited in Bigler, *The Politics of German Protestantism*, 171.

[3] For an in-depth account of the rise of this movement, see David L. Ellis, *Politics and Piety: The Protestant Awakening in Prussia, 1816-1856* (Leiden: Brill, 2017) and Laura Claudia Achtelstetter, *Prussian Conservatism, 1815-1856: Ecclesiastical Origins and Political Strategies* (Cham: Springer, 2021).

Over the course of the 30s and 40s, they would become increasingly organized and began to exercise greater sway over academic and pastoral appointments through their influence on the king. On the other side, the new rationalist Friends of Light would seek to use popular pressure to demand complete intellectual freedom and the wholesale transformation of the church into a fully democratic *Volkskirche* in which parishioners possessed absolute freedom over the appointment of pastors and the governance of the church. If Schleiermacher and similarly-minded clergymen and professors – C.I. Nitzsch, Friedrich Lücke, K.H. Sack, and Richard Rothe – had been among the foremost advocates of reform in the first two decades of the 19th century, the developments of the 1830s now placed them decidedly in the center alongside the Right Hegelians. After a failed attempt by Philip Marheineke to forge an alliance between the Right Hegelians and the Hengstenberg faction to combat the "materialism" of the Left Hegelians, the fragmentation of the reform-minded clergymen and professors in the face of conservative consolidation would be a foreboding portent of things yet to come.

On June 2nd, 1846, Frederick William IV would convene the first long-awaited General Synod of the united Prussian church. Nitzsch would work tirelessly to forge a compromise between Pietist demands for mandatory subscription to full orthodoxy and rationalist expectations for lenience while advancing moderate reforms. After managing to convince the majority of the clergy to support a simplified version of the Apostle's Creed alongside a proposal that would provide for the organization of presbyteries among the congregations, Nitzsch and his supporters would find themselves attacked by the Pietists and the Friends of Light alike, the former objecting to the deciding of theological matters by majority vote and the latter to any sort of confessional standard whatsoever. At any rate, the king would refuse to consider any of the Synod's recommendations and dismissed the assembly on August 29th, indirectly siding with the Pietists and the opponents of reform.

With the failure of the synod came the end of hopes that the relative distance between church-political and state-political matters that Schleiermacher had hoped to effect could be achieved. The fate that Schleiermacher had foreseen and warned Lücke about in his letters *On the Glaubenslehre* seemed to have come to pass: the advocates of religion and the advocates of science had decisively parted ways. At the onset of the revolution two years later, the ascendent Hengstenberg faction, having consolidated their hold on the church by dismissing and silencing those seen to be too radical, would mobilize the church alongside the old "Junker" aristocrats in support of the monarch in the face of republican and radical calls for the complete separation of church and state, binding the fate of the church to the king for many more years to come.

In the aftermath of the failed revolution and the conservative turn of the church, Schleiermacher would still be read and appreciated among theological academic circles, but it would no longer be for political-theological purposes. Rather, under the influence of figures such as F.C. Baur and Eduard Zeller, Schleiermacher would be appropriated as a key theorist in a Hegel-inspired project in the philosophy of religion.[4] The *Reden*, once a theo-political manifesto setting forth a distinct trajectory for reform in modernity, was now read by professors increasingly more connected with the state and the king than to the church as offering an innovative definition of religion that could undergird a program for its academic and scientific study.[5]

[4] For an account of this development in the 19th c., see esp. Johannes Zachhuber, *Theology as Science in Nineteenth-Century Germany: From F.C. Baur to Ernst Troeltsch* (Oxford: Oxford University Press, 2013).
[5] See esp. ch. 5 of Thomas Albert Howard, *Protestant Theology and the Making of the Modern German University* (Oxford: Oxford University Press, 2006).

II. Schleiermacher Today?

1. A Recap of the Argument

Over the course of six chapters, I have attempted to lay out an interpretation of Schleiermacher's political vision that both allows for a better appreciation of why he may have acted the way that he did and how his approach both picked up on and contrasted with the approaches of a number of his contemporaries, some of whom are still regularly studied for political-philosophical purposes today. By focusing on Schleiermacher in his context, I aimed to demonstrate how misleading it can be to attempt to interpret Schleiermacher in light of the categories that often structure contemporary conversations today by virtue of the dominance that certain versions of political liberalism have since achieved since Schleiermacher's time. That is, while Schleiermacher's comments about the separation of church and state and the privatization of religion may make him sound like a "liberal", his claims about the necessary interconnection between individuals and community like a "communitarian", his commitments to hereditary monarchy like a "conservative", his insistence on the centrality of the concept of nationhood like a "nationalist" or even a "racist", a deeper dive into the logic of his arguments reveals the attempt to carve out a very different way of thinking about modern politics and the trajectory that it could take in a time when the triumph of liberalism was far from settled.

That is to say, at least as important as Schleiermacher's actual arguments is the space of conversation that it opens up by virtue of the very different framing with which he approaches many of the foundational questions of modern political philosophy. One can take seriously Schleiermacher's emphasis that the internal organization of churches or other religious communities must be analyzed along lines that do not simply reduce them to voluntary organizations without committing to his particular vision of "Presbyterian" political theology. Indeed, in light of some of the historical developments that have taken place over the past two centuries – i.e. the massive

expansion and development of the conception of the corporation, the significant shift that the Catholic Church takes after Vatican II, etc. – reappropriating Schleiermacher's ideas for contemporary use is itself a task that would require additional historical and philosophical attention and development.

Having dedicated most of the dissertation to a conceptual exposition of Schleiermacher's political theology with a view to his immediate historical and conceptual context, I wish to conclude with a few reflections on the possible significance of what I have uncovered, not only for our understanding of Schleiermacher, but for those concerned with politics more broadly.

3. Reorienting Schleiermacher Studies

For a long time, Schleiermacher has primarily been read through two primary lens: through his influence in theology / religious studies and through his influence on the hermeneutic tradition. A renewed focus on Schleiermacher's pre-1848 significance, however, can shed new light on texts that have long been appropriated through late-19th c. and early-20th c. debates between the liberal and dialectical theologies of Wilhelm Hermman, Ernst Troeltsch, and Karl Barth as well as the trajectory that is often traced from Wilhelm Dilthey through Martin Heidegger to Hans-Georg Gadamer.

a. Republicanism and Property in the Glaubenslehre

For one, a closer look at the theological texts – the *Reden*, the *Kurz Darstellung* (Brief Outline), the *Glaubenslehre* and the *Christliche Sittenlehre* – quickly reveals the extent of the influence of Schleiermacher's political philosophical reflections on Schleiermacher's project. The *Christian Faith* opens, for instance, with Schleiermacher "borrowing" the concept of "church" from the discipline

of "ethics", by which he clearly means the subject he covers in his *Ethik*.[6] Much attention has been placed on the propositions that immediately follow, which set forth Schleiermacher's famous discussion of feeling, piety, and the feeling of absolute dependence in particular. Karl Barth, for one, would famously dismiss Schleiermacher's entire theological project as necessarily compromised by its anthropological starting point on the basis of his interpretation of this portion of the introduction.[7] But if one side-steps Barth's critique for the moment to focus on what one might learn about how Schleiermacher thinks about the concept of "church" by going to the *Philosophical Ethics*, one quickly realizes that the account of "church" and "individual cognizing" under which the category of religion in general falls has many parallels with the concept of the "state" and the dynamic of free sociability – "individual organizing" – to which it is coordinate. We have already gestured towards this near the end of ch.1, but we are now in a better position to understand the political-philosophical resonance of Schleiermacher's terms.

In the *Ethik*, for instance, Schleiermacher will claim that "The essence of the church lies in organic unification of a mass of people of the same type for the purposes of subjective activity of the cognitive function under the opposition of clergy and laity."[8] That is, if the state is to exist as an organic union of a nation united under the opposition of authority and subject, the church seems to represent a parallel "subjective cognitive" version that is focused on the circulation of religious feeling rather than the circulation of exchangeable goods in commerce. If the parallel presence of the language of "organic union" and "opposition" were not enough, Schleiermacher will explicitly discuss the contrast between legislative and executive activity in church government in both the *Glaubenslehre* and the *Kurz Darstellung*.

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[6] GL §2.2, 5.
[7] See Karl Barth, *The Theology of Schleiermacher: Lectures at Göttingen, Winter Semester of 1923/24*, ed. Dietrich Ritschl, trans. Geoffrey W. Bromiley (Eugene, OR: Wipf & Stock, 1978).
[8] E 1812/13 91 (HG.III.209), 361.

Thus, in his discussion of church government under the heading of the kingly office of Christ, Schleiermacher will write that "On account of its coexistence with the world, there exists in the church a legislative and administrative power that flows as an essential element from the kingly power of Christ."[9] While he is keen to distinguish the acts of command-and-obedience in the state from the kind of executive activity that operates in the church, it is nevertheless clear that Schleiermacher's treatment of the matter is deeply shaped by his efforts to make sense of republican government.[10] Indeed, in his emphasis that not only the clergy but also the laity are to participate in the church's legislative activity, one gets a familiar picture of the cycle of legislation and execution that Schleiermacher claims characterizes every legitimate government:

> That is, a given communal body exercises it [the power of the keys] not only indirectly, in that the body arranges for and distributes the officeholders to whom legislation and judgment are formally transferred but also, in an originative and informal way, in which each individual member does actually practice the office of passing judgment through one's forming judgments concerning what happens in the communal body and through forming one's corresponding praise or blame. …Moreover, each individual not only practices in this way but also practices legislative activity through everything that can contribute to forming public opinion, which must always be the living spring from which express acts of legislation flow. Exactly taken, the latter, in turn, are nothing but the distinct manner in which such public opinion is brought to recognition in matters of the church.[11]

The functions of legislation and judgment are formally exercised by representatives – officeholders – but individuals are to participate in it by developing their own views on the matter and then by attempting to shape the public discourse so that it can be taken up in these formal processes. That is, more than just an account of the operations of theological language and how concept-use can "go on in the same way" as Christ – to borrow the language of Kevin Hector –,[12] Schleiermacher is also

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[9] GL §144, 917.
[10] "This response [in the form of the exercise of executive power] arises not in any sort of external manner after the pattern of civil power, for an external feature lacking in an internal counterpart from which it sprang has not even the slightest value for the church. Rather, it happens by virtue of the natural ascendancy of the common spirit over merely personal existence, just as those who belong to a community have a sense of such a common spirit, viewing it as something which everyone has freely acknowledged." GL §144.1, 917.
[11] GL §145.2, 926.
[12] See Kevin Hector, *Theology Without Metaphysics: God, Language, and the Spirit of Recognition* (Cambridge: Cambridge University Press, 2011).

concerned about the power-dynamics that characterizes the government of the church. Indeed, as with the account of the separation of powers in the state, Schleiermacher will insist that these activities must necessarily be separated insofar as they refer to the organized community of the church, even if "Christ's own activity preceded this formation".[13] What results is a creative rejection of Catholic arguments for the church as an *incarnandus elongatus*: to the extent that the distinction between legislative and executive powers is a necessary condition of the Spirit's mediation of Christ's activity in the church, there is a fundamental distinction between Christ's activity and that of the church. Instead of an unconscious original national unity underlying the unity that will be made explicit by the formation of law, it is the original unity of Christ that grounds the church's legislative and executive activity. Tyranny, so it seems, is not the problem that it is in religion as it is in politics, and it is exercised by Christ alone, not any vicar of Christ. This is precisely the position that one would expect given Schleiermacher's emphasis on Christ's perfectly-potent God-consciousness, but it is only by picking up on the political-philosophical resonances of Schleiermacher's argument that one can key in on it.

Nor is Schleiermacher's account of republican government the only political-philosophical borrowing that can be discerned in his theology. Echoes of Schleiermacher's account of personal and collective property can also be found. Schleiermacher's claim in §5 of *Christian Faith* of the necessarily communal character of piety, for instance, explicitly draws the parallel between it and other forms of human sociality:

> As is true of every essential feature of human nature [i.e. commercial activity, sociability, and science], in the development of religious self-consciousness it necessarily becomes

[13] "In this context, however, we are less able to call this process a continuation of Christ's activity, because this differentiation between legislative and administrative activity essentially refers to an organized community, but Christ's own activitypreceded this formation. Hence, if this difference does not emerge in him, then, in the strictest sense, whenever the office of the keys is bifurcated in this way, it cannot be called the continuation of his activity, though it does simply develop further the basic features of life shared in common that Christ sketched out, without importing anything alien from elsewhere." GL §1454.2, 919.

> community as well, and indeed community that is, on the other hand, uneven and fluid, and, on the other hand, distinctly circumscribed – that is, church.[14]

The interplay of individual religious consciousness becoming community thus begins to look a lot like Schleiermacher's emphasis on the interplay between individual and community in his account of commerce and free sociability.[15] And just as each of these relations must be understood as connected to the appropriation of corresponding forms of property, the Schleiermacher of the *Ethik* will insist that the interplay of religious feeling is linked to the use of the artistic objects that characterizes a given church's cult of public worship:

> The highest tendency of the church is a formation of a collection of art treasures which enables each person to form his own feeling and in which each can deposit his own finest feelings and the free depictions of how he feels… To the extent that the collection of art treasures forms a mass which has real existence it is accessible to anyone at any time. Depiction which takes ephemeral forms, however, requires the assembly of a group which expresses and nurtures common life; it is for this reason that a particular mode of public workshop [Cultus] is added to [the life of] the church.[16]

If sociability involves the relation of hospitality mediated through personal moral property, commerce involves shared production through communal organs, and science involves shared organs of knowing, Schleiermacher's account of the expression and communication of religious feeling is also mediated through a kind of collective material formation – that of religious art. Debates over Schleiermacher's conception of feeling and immediate self-consciousness have long focused on the degree to which it may or may not be conceptually structured. How might this debate have been conducted if it was taken seriously that, for Schleiermacher, the communication of feeling can take place by means of meditation on an altar-piece or through acts of congregational

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[14] GL §6, 38-39.

[15] The parallel between the realm of commerce (identical organizing), sociability (particular cognizing), faith [Glaube] (identical cognizing), and revelation (particular cognizing) is even more obvious in the 1816/17 *Ethik*. i.e. "Revelation [Offenbarung] is the relationship of individuals to one another in the separateness of their feeling, or the way in which the non-transferability and relatedness of feeling are conditional upon each other…Revelation, too, is a relationship which extends throughout humankind, but it is not necessarily an equal relationship of all to each." E 1816/17 196-198 (DG.I.61-62), 596-598.

[16] E 1812/13 92 (HG.III.213, 215), 362.

singing?[17] When combined with Schleiermacher's account of legislation and execution in the church, one gets less the picture of religion as isolated mystical experience and more an account of lived religion in concrete embodied practices.

These themes are even more evident in the *Brief Outline*. The discipline of practical theology, after opening with a discussion of the distinction between the clergy and the laity,[18] divides itself into the subtopics of church government and church service. The latter concerns itself with, among other things, Schleiermacher's theory of art-objects: "Since common worship falls within the domain of art and is composed from elements of artful activity, in general the theory of common worship is one of religious technology [Kunstlehre]."[19] The former, on the other hand, deals with the interplay between "ecclesial power" and "free power", a distinction that seems to roughly correspond to the different kind of power that is exercised by state authorities as those who command and by complementary players in the division of labor as those who can use persuasion.[20]

A full account of Schleiermacher's theory of religion cannot avoid having to deal with the ways in which belonging to the "cognitive" rather than "organizing" functions effects his understanding of the dynamics at play. Schleiermacher also consistently seems to distinguish church legislation from civil legislation, at the very least by insisting that the former addresses not only

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[17] In his study of Schleiermacher's philosophy of religion, Peter Grove has helpfully attempted to situate Schleiermacher's account of feeling and the "intuition of the infinite" alongside Kant's discussion of regulative and constitutive principles in the third *Critique*. The focus on consciousness, however, can sometimes make it easy to forget that Kant (and Schleiermacher) are talking about ways that interactions with actual sensible objects can help us conceive of otherwise supersensible realities. See Peter Grove, *Deutungen des Subjekts: Schleeirmachers Philosophie der Religion* (Berlin: de Gruyter, 2004).

[18] KD §267-270.

[19] KD 1811 §4, 106. Also, "The theory of common worship has, in part, to determine what style is religious in using any art form and, in part, to determine how common worship, the religious art work taken as a whole, is to be formed out of it." KD 1811 §5, 106.

[20] "Accordingly, Evangelical Church government consists of two features: the binding feature, expressed in the formation of a basic contrast within any given complex, and the discretionary feature, expressed in any free influence upon the whole, which any individual member of the church may undertake who believes oneself called to do so. …These two features can only have the same aim: to represent the idea of Christianity more authentically within the Evangelical Church according to that church's distinctive conception of it, and to gain increasing support for this idea. The organized element, that is, the ecclesial power or – more correctly – authority, is in a position to serve this aim by means of ordinance or restriction, however, while the unorganized element or free spiritual power can operate only by means of stimulus and warning." KD §312, 116.

external behavior but also internal conscience. But a proper understanding of key aspects of Schleiermacher's vision of theology and religion requires paying attention to the way in which he adapts political philosophical categories to give expression to a parallel phenomenon.

b. Dogmatics as a Political-Theological Project

Understanding what is at stake in Schleiermacher's conception of the relationship between church and state also leads to a better understanding of what is *politically* at stake in Schleiermacher's envisioning of the task of dogmatic theology. At first glance, Schleiermacher's definition of dogmatics as a "science concerned with the interconnection of whatever doctrine has currency in a given social organization called a Christian church at a given time" may just seem like the setting out of a claim about the contextual character of theology.[21] But when his attempt to set out a unified theology of the Evangelical Church – the product of the union of the Reformed and Lutheran communions and of the supernaturalistic and rationalist factions within Prussia – is situated against the backdrop of his attempts to separate the church from the state, the normative contours of his dogmatic choices come more to the fore.[22] What is at stake for Schleiermacher is the genuine existence of the church as a social dynamic independent of that of the state (and the academy) and possessing its own *intellectual-doctrinal* dynamic by virtue of that independence. Thus, theology is to be conceived as a positive science compared to the philosophical disciplines on account of the fact that it is to be driven by a different social dynamic – that of this church.[23] If the process of state-

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[21] GL §19, 131.

[22] For the church-political relations, see Albrecht Geck, *Schleiermacher als Kirchenpolitiker: Die Auseinandersetzung um die Reform der Kirchverfassung in Preussen (1799-1823)* (Bielefeld: Luther-Verlag 1997); for supernaturalism-rationalism, see Kevin Vander Schel, *Embedded Grace: Christ, History, and the Reign of God in Schleiermacher's Dogmatics* (Minneapolis: Fortress Press, 2013).

[23] "Theology is a positive science, the parts of which join into a cohesive whole only through their common relation to a distinct mode of faith, that is, a distinct formation of God-consciousness. …Christian theology, accordingly, is that assemblage of scientific information and practical instruction without the possession and application of which a united leadership of the Christian church, that is, a government of the church in the fullest sense, is not possible." KD §1 and 5, 1 and 3.

formation is governed by the ability to narrate nationhood, the process of church-formation seems to be governed by a parallel ability to narrate church-hood.

The existence of this unified Prussian church could not be taken for granted in Schleiermacher's own day. Elements within it – the Old Lutherans who would eventually emigrate and constitute the Missouri Synod in the United States, for instance – continued to commit to an understanding of theology as centered around knowing rather than feeling; likewise, other elements – the Hengstenberg faction and the Friends of Light alike – would see a far closer or separate connection between ecclesial and political organization than Schleiermacher would be willing to countenance. The unity of Schleiermacher's relatively-separate church thus depends in a large part on the ability of Christians in a given state to maintain a dynamic that remains relatively-separate from the broader political dynamics of the state in that its unity does not merely stem out of the state's unity nor vice-versa.[24]

Nor does this dynamic always require complete visible unity. Indeed, when interpreted in this light, Schleiermacher's section "Regarding the Plurality of the Visible Church in Relation to the Unity of the Invisible Church" becomes perhaps one of the most significant segments of Schleiermacher's mature dogmatics. Theology's necessary contextuality does not merely justify an ever-increasing number of communions and theologies, but demands that "The total suspension of

[24] "Yet, he [Christ] is both apex and end only inasmuch as that separation [between spiritual and civil government] persists, for it belongs to the purity of his spiritual might, thus also to its perfection, that in no way should sensory motives cooperate therein. This is why Christianity is neither a political religion nor a religious state nor a theocracy. The first two things consist of religious communities that are regarded to be institutions of a distinct civil union and that are based on the presupposition that religion would proceed from civil legislation or would be conducted as a subordinate stimulus that belongs to the same higher impulse that would initially have engendered the civil condition. On this view, the result would be that, for the sake of the civil union, those associated with it would also be bound to the religious community as well, and thus this community would be animated by the common spirit of the civil union and by the love of the fatherland, which, according to the sense given them by Scripture, are motives of the flesh. In contrast, theocracies are religious communities that have as such brought the civil union under their control. ….Christ, therefore, makes an end to both political religions and theocracies, this by the spiritual dominion of his God-consciousness. The more firmly established and extended his reign is, moreover, the more definitely are church and state sundered from each other." GL §105.3, 678-679.

community among the various parts of the visible church is non-Christian"[25] and that "All divisions in the Christian church continue to exist only as temporary ones."[26] That is, even as Schleiermacher imagines the actual existing church to be existing in a state of great visible division, the unity of its overall dynamic continues to rest in the way in which the drives to unity and separation manifest themselves in the various relationships between communions. Schleiermacher thus sets out a normative sociology of the church that is supposed to serve as a kind of guide for navigating the differences in church life even as it is to maintain a social dynamic independent from that of the state and the academy.[27] To the extent that other positions may seek to maintain a unity on the basis of intellectual or political conformation, Schleiermacher describes a theological task that must actively seek to set forth or enact a different kind of religious consciousness.

c. Schleiermacher and the Politics of Knowledge

The church, however, is not the only non-state form of sociality that Schleiermacher would adapt his political-philosophical categories to describe. Standard narratives about the "social turn" in the history and philosophy of science often point to the key influence of Thomas Kuhn's *The Structure of Scientific Revolutions* and, to the extent that they look behind Kuhn, to the role that ideas such as Gaston Bachelard's focus on the laboratory and Ludwig Fleck's conception of the "thought collective" played in overturning regnant concepts of the unique "objectivity" of science regnant in the wake of the Vienna Circle.[28] More than a century earlier, however, Schleiermacher was already

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[25] GL §151, 947.
[26] GL §152, 950.
[27] The concern for the drive for unity even in separation can also be discerned in Schleiermacher's emphasis on the discipline of polemics within philosophical theology in the *Brief Outline*. It also highlights the significance of Schleiermacher's interest in ecclesiological arrangements of various differing churches in the subdiscipline of church statistics. Schleiermacher's lectures on this subject have been collected and published in KGA II/16.
[28] Consider, for instance, the narratives contained in Naomi Oreskes, *Why Trust Science?* (Princeton: Princeton University Press, 2019) and Hans-Jörg Rheinberger, *On Historicizing Epistemology: An Essay*, trans. David Fernbach (Stanford: Stanford University Press, 2010). Interestingly enough, Rheinberger points out Wilhelm Dilthey's approach to the

writing, not only about the dynamics of language-formation and use within different "circles of language",[29] but also, as we have already seen, about the formation of scientific instruments for the purposes of knowing.[30] When combined with Schleiermacher's contention that the "national community of knowing" is likewise structured by an opposition – that between scholars and publics –, the basic contours of a Schleiermacherian "political philosophy of science" comes more to the fore.[31] Indeed, Schleiermacher will explicitly emphasize the parallel between the authority-subject relation and the scholar-public relation:

> The apparently great difference between the two [state and national community of knowing] notwithstanding, the authority of scholars rests on the same principle as that of the [political] authorities (the latter having its definitive basis only in the force of opinion in exactly the same way), namely on the conviction [felt by] those who have an interest in the national type that it finds expression here.[32]

Just as the relationship between authority and subject represent a cycle of legislation and execution that requires the formation of deliberative assemblies for the formation of public opinion, Schleiermacher will insist that there is a certain responsibility of scholars to their respective publics. Knowledge, rather than an objective production of a set-apart elite entirely abstractable from the subjective conditions of its production, is likewise the product of an immanent differentiation within a community.

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humanistic sciences as preempting the shift that would take place after the first World War in Bachelard and Fleck, implicitly drawing a connection back to Schleiermacher.

[29] The term "circles of language" [Sprachkreis] is explicitly used in Schleiermacher's prepared Introduction to his lectures on *Dialectic* (found in KGA II/10.1), though the concept exists as far back as the 1805/06 *B*.

[30] Schleiermacher's emphasis on the sociality of knowing and on the important place that scientific instruments specifically developed for the purposes of observing things that wouldn't otherwise be observable play in the scientific process thus allows him to be situated as an anticipator of the "experimental" turn in the philosophy of science. Indeed, the centrality of his reflections on the concept of the "schematism" and its role in knowing and doing can be recognized as preempting contemporary discussion of the key place that models and model organisms have in the modern sciences. See, for instance,

[31] "The opposition which is denoted by the terms "public" and "scholars," however, in such a way that the former corresponds to the subjects, the latter to the authorities, should not be taken to imply that scholars are people who can write and the public people who cannot write, for writing serves every interest, even those which are foreign to the cognitive function as such." E 1812/13 83 (HG.III.157), 350.

[32] E 1812/13 85 (HG.III.173), 353.

While a full account of this "political epistemology" would require a deep dive into Schleiermacher's epistemological, hermeneutical, and pedagogical writings alongside his political ones, highlighting the political dimensions of Schleiermacher's philosophy of language opens a new angle into a subject that has long been dominated – in the wake of Dilthey and Gadamer – by an approach to Schleiermacher that sees his hermeneutics as laying the foundations for a general theory of interpretation.[33] It also highlights a new dimension to the oft-studied role that Schleiermacher has played in the establishment of the University of Berlin and the age-old question of the status of theology as a science within the modern research university. If Schleiermacher's "nationalism" cannot merely be assimilated to that of later nationalist movements but is founded in a unique attempt to realize republican liberty in the modern world and attain to a unity-in-diversity between differing sub-groups in a new federal, national unity, his emphasis on the university as an institution centered on the achieving of the unity of knowledge takes on a new light. Indeed, if the formation of national identity is crucially tied to the ability to formulate an adequate conception of the nation, a particular conception of academic work would then turn out to be quite important to Schleiermacher's conception of nation-building.

At the very least, Schleiermacher's language of "circles of language" and the role of the university in seeking to find ways to collect and unify them can begin to provide categories to better make sense of the pluralistic and multiple-ways-of-knowing that have been introduced into the academy by the irruption of black, Asian, feminist, Marxist, indigenous, queer, and crip scholars and activists that have since entered the university and the alternative communities-of-knowing that they represent. Reevaluating the role that scientific practices have played in the construction of modernity and the ways in which past scholarship has often been blind to its power-dynamics is important for

[33] For a classic refutation of this Gadamer-inspired reading of Schleiermacher, see Günther Scholtz, *Ethik und Hermeneutik: Schleeirmachers Grundlegung der Geisteswissenschaften* (

being able to address pressing political issues of our current day. Indeed, as early as the 1805/06 *Brouillon*, Schleiermacher was already quite cognizant of the kind of power dynamics operative in scientific work, writing that "here too one finds efforts to make conquests and to form a system of colonization."[34] Influenced by Foucault, a recent trend in religious studies has taken aim at the purportedly academic neutrality of the academic study of religion, insinuating that behind the veneer of academic respectability lies the pernicious power-dynamics of an ongoing Eurocentricity.[35] Although Schleiermacher often comes up for critique as one of the purported founding figures of the modern study of religion, his reflections on the sociality of knowing might actually provide directions for pushing beyond mere self-reflexive critique to think about the kind of institutional shifts that might be required to effect structural transformation.

Attention to Schleiermacher's account of the politics of knowledge also opens up a new way of understanding his goal, stated in his open letters to Lücke *On the Glaubenslehre* to establish an "eternal covenant between the living Christian faith and completely free, independent scientific inquiry, so that faith does not hinder science and science does not exclude faith" in his *Christian Faith.*[36] Often read as a methodological proposal about the place of theology in the modern world and academy,[37] the work of scholars like Daniel Pedersen have attempted to recenter the

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[34] BE 116; 172.

[35] In addition to Theodore Vial, whom we engaged in ch. 5, one can consider Tomoko Masuzawa, *In Search of Dreamtime: The Quest for the Origin of Religion* (Chicago: University of Chicago Press, 1993), Grace M. Jantzen, *Power, Gender, and Christian Mysticism* (Cambridge: Cambridge University Press, 1995), and Russell T. McCutcheon, *Manufacturing Religion: The Discourse on Sui Generis Religion and the Politics of Nostalgia* (New York: Oxford University Press, 1997).

[36] OG 64.

[37] Consider, for instance, Andrew Dole, *Schleiermacher on Religion and the Natural Order* (Oxford: Oxford University Press, 2010) and Brent W. Sockness and Wilhelm Gräb, *Schleiermacher, the Study of Religion, and the Future of Theology: A Transatlantic Dialogue* (Berlin: de Gruyter, 2010). This "methodological reading", however, could be said to have existed as far back as the 19th c. appropriation of Schleiermacher for the purposes of the philosophy of religion, culminating in the work of Troeltsch, and to which Karl Barth reacted with a corresponding methodological response. For a recent attempt to evaluate this debate, see Christine Helmer, *Theology and he End of Doctrine* (Louisville: Westminster John Knox Press, 2014). This debate persists through much of the mid-20th c., only becoming eclipsed (or supplemented) by the rise of the Yale School and religious studies, which offered alternative methodological proposals. In the mid-century, however, defenders of Schleiermacher against Barth still often focused on epistemological and methodological questions, i.e. Gerhard Spiegler, *The Eternal Covenant: Schleiermacher's Experiment in Cultural Theology* (New York: Harper & Row, 1967).

conversation on the material content of the dogmatics itself.[38] What often goes unnoticed, however, is Schleiermacher's emphasis in his letter that "the basis for such a covenant was already established in the Reformation."[39] Even more suggestive is Schleiermacher's swipe at the "speculative" approach to safeguarding faith from science, suggesting that establishes a distinction between "esoteric and exoteric doctrine" and a "hierarchy of speculation with its overtones of Romanism" from which the church must be protected.[40]

What could Schleiermacher be referring to? A hypothesis quite easily emerges when read in light of a sensitivity to Schleiermacher's broader political-theological vision and his account of the politics of knowledge: Schleiermacher is concerned about the coordination of a Protestant account of the priest-lay relation (as opposed to a Catholic version of the relation) with his account of the scholar-public relation.[41] The problem with the "Romanist" speculative approach is that it makes faith a matter of speculative knowing and replicates the Catholic ecclesiological model (in which the faith of the laity is mediated through that of the clergy) by collapsing the distinction between the clergy-lay and the scholar-public relation.[42] Indeed, these concerns are no doubt why Schleiermacher

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[38] Daniel Pedersen, *The Eternal Covenant: Schleiermacher on God and Natural Science* (Berlin: de Gruyter, 2017). Kevin Vander Schel's book focuses on the relationship between the historical sciences and theology more so than natural science, but similarly puts an emphasis on the dogmatic content of Schleiermacher's theology. Vander Schel, *Embedded Grace.*

[39] OG 64.

[40] Ibid.

[41] Schleiermacher consistently offers an ecclesiological account of the difference between Protestantism and Catholicism rather than a doctrinally-conceived one on account of his insistence that presentations of doctrine can vary significantly without thereby changing their religious content. i.e. "Hence, particular doctrines may be differently conceived in dogmatic treatments produced at the same time, and they may also read differently at different times, while in obth cases no difference presents themselves in their religious contents. …In the same manner, propositions may appear similar the religious contents of which are nevertheless more or less different. It is not only differences in detail between various theological schools of the same church that can be concealed behind identity of scientific terminology. Protestant and Catholic propositions can also appear equivalent, especially when they are somewhat remote from the main point of the creedal symbols." KD §215-217, 81. For this reasons, it seems that interpreting Schleiermacher's emphasis on the Reformational grounding of his eternal covenant would better refer to the way he attempts to coordinate authority in the Protestant church vis-à-vis church, state, and academy rather in, say, the classical Protestant polemic against Catholic miracles.

[42] Here, Schleiermacher is primarily concerned about the relation of faith to theology, but one could also very well see a different criticism of the rise of sociology as a scientifico-political force in history with its vision of the technocratic transformation of society that seeks to collapse the scholar-lay and the magistrate-subject distinction. Consider, for instance, Auguste Comte, "Plan of the Scientific Work Necessary for the Reorganization of Society" in *Comte: Early Political Writings,* ed. H.S. Jones (Cambridge: Cambridge University Press, 1998), 47-144.

spends so much time and energy in the discussion of church government in the *Brief Outline* explaining how, in the Evangelical Church, the contributions of individual theological scholars can interface with the doctrine of the church acting as "free spiritual powers" while maintaining the unity of the church.[43] A full vindication of these claims would no doubt require far more than the vague sketches being offered here, but doing could contribute to a reading of the *Christian Faith* that better accounts for the unity of its form and content.

4. Political Theology and the Fate of Liberal Democracy

But beyond the world of Schleiermacher studies, there remains potential for Schleiermacher's political thought to play a role in the reinvigoration of contemporary debates about the future of liberal democracy. Throughout the dissertation, I have gestured towards potential ways in which Schleiermacher's thought may offer different perspectives by contrasting it to other thinkers whose impact on contemporary conversations has been far more evident. That is, in addition to the work of Kant and Fichte, I have occasionally moved to highlight the potential significance of Schleiermacher's ideas vis-a-vis figures such as Hegel, Marx, or – somewhat anachronistically – the political theology of Carl Schmitt. Because these comparisons tended to focus on differences in philosophical argumentation, however, the broader implications may have been more alluded to than explicitly worked out. That this would be the case might be expected, given that most of this dissertation operated at the level of political *philosophy* rather than politics

[43] "Recognizing, on the one hand, that the Evangelical Church as an organization has arisen with the contention – or almost out of it – that no given authority is competent either to establish or to alter the church's body of doctrine and recognizing, on the other hand, that, irrespective of the plurality of Evangelical Church organizations, which tend to follow different rules, we still acknowledge the existence of one Evangelical Church and one doctrinal community attesting this unity, we find ourselves in a position to set our task only in the following manner. Noting that changes in doctrinal propositions and formulations may result from the study of individuals only when such changes have been received as part of the conviction of a congregation, it is to be determined how the ecclesial authority of each organization may serve to enable free spiritual power to have influence and yet at the same time hold fast the unity of the church in accordance with its originating principles." KD §323, 121.

proper. As the project winds to a close, however, I would like to make a few of the potential implications a bit clearer.

a. Political Theology Beyond Secularization

Debates over the place of religion in politics have tended to implicitly adopt a particular conception of secularization that assumes a sharp disjuncture between theological and secular reason. From Leo Strauss's declaration of a fundamental tension between philosophy and revealed religion to John Rawl's insistence on the non-religious character of public reason; from the insistence of Stanley Hauerwas and John Milbank that the church constitutes a *polis* of its own apart from the state to Carl Schmitt's thesis about modern political concepts as secularized theological ones, distinguishing between the church (or religion) and the state (or politics) has become a standard feature to be affirmed, denied, combatted, or deconstructed.[44] Hovering in the background is often a story about modern secularization – originally used to speak about state repurposing of church property, but now often used to speak of a general process of the diminishment of the place of public religion in political life.

Although Schleiermacher's account of the separation of church and state might initially seem to run along similar lines, I have argued in chapter 1 that assimilating Schleiermacher's account to the standard liberal narrative would miss out on the *positive* way in which he attempts to characterize both church and state in the separation and interaction. Over the course of the next five chapters, I have then sketched out in more detail how Schleiermacher then reworks – in conversation with thinkers such as Kant and Fichte – a number of common political concepts that, in liberal political

[44] The language of "political theology" has been broadly used to characterize a broad number of discourses about religion and politics. For an attempt to categorize and identify a few distinct strands of conversation, see Eric Gregory, "Christianity and the Rise of the Democratic State" in *Political Theology for a Plural Age*, ed. Michael Jon Kessler (New York: Oxford University Press, 2013), 99-107.

philosophy, are often negatively defined. In chapters 2 and 3, I showed how Schleiermacher's approach to right and property both allowed him to affirm a positive notion of individual right and private property, but alongside a positive sphere of communal activity and collective property. Then, in chapter 4, I showed how Schleiermacher's conception of the state – although prototypically "communitarian" in emphasizing an account of the common "national" good that binds the whole – nevertheless reflects a creative attempt to pick up on the redefinition and rethinking of republican liberty in terms of the separation of powers in light of the non-practicability of direct democracy in modern states with higher populations and greater territorial scope. Rather than a sharp disjuncture that sees church and state as incompatible and competing social dynamics, they are to exist in simultaneous separation and interconnection.

What does this look like? While a fuller account of Schleiermacher's account of the relationship between church and state would require a greater in-depth study of the way he saw the interests of both intersecting and overlapping in the work of charity and education, the basic contours of Schleiermacher's strategy can already be discerned in the *Lectures on Christian Ethics*. Here, Schleiermacher is concerned, not just with generic participation in the life of the state between subjects and authorities, but *Christian* participation in particular. Christian commitment, rather than standing inherently at odds with the "secularity" of the state or having been supplanted by it, can motivate particular ways of acting so as to be in accord with *both* Christian commitment and the demands of citizenship. How is this possible? Schleiermacher will, in accordance with his account of the state as being defined as the opposition between authorities and subject, give an account of how Christians ought to act in accordance with their station. As subjects, Christians ought to advocate for legislation that will lead to the abolition of un-Christian actions; as magistrates, Christians ought to exercise their discretion when permitted to avoid un-Christian actions, but cannot unilaterally change the law when public opinion has not yet shifted.

To provide an example, Schleiermacher will reach the conclusion that the death penalty is to be recognized as un-Christian as it does not aim towards the rehabilitation of the criminal, but their annihilation.[45] Positing that it arises out of "a condition of barbarism" as an expression of petty interpersonal revenge or an unstable condition of the state where it has yet to establish itself firmly, Schleiermacher then reaches the conclusion that "along with the formation of the state, the effort to abolish the death penalty must grow, and along with the Christianization of the state, the consciousness must grow that the death penalty is not only superfluous and unnecessary, but also immoral."[46] Schleiermacher, however, posits a differential activity on the part of subjects and on the part of authorities. Subjects are to act as subjects by attempting to change public opinion, in accordance with their role as those who begin the act of legislation.[47] Authorities, however, are to act in accordance with their role as the beginning of execution. When they are able to legally exercise discretion, "They should thus begin by approving no more death sentences and always substitute another penalty for the death penalty, in order to abolish it legally."[48] But if it still remains a minority position in the state, they are not thereby empowered to overstep their bounds as authorities and one-sidedly change the law. Rather,

> [P]rinces of course do not act as individuals but feel themselves bound to the whole and consequently believe that the authority of law may not be transgressed when a law's abolition is demanded by only a few at first, and when the law provides a kind of security for the majority.[49]

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[45] CS 86-87. In the *Lecture on Christian Ethics*, this is grounded on the basis of reasoning about the purpose of penal legislation. Precisely because the goal is to compel obedience to the law – rather than, say, to give to the criminal their retributive due –, Schleiermacher concludes that the death penalty is at odds with the goal of penal legislation. A full discussion of Schleiermacher's adoption of a rehabilitative rather than retributive theory of justice will have to engage with his doctrine of atonement in *Christian Faith*, but because my goal in this section is less to make a case for Schleiermacher's rejection of the death penalty and more to show how he thinks Christians should go about engaging Christianly in the state, this further argument will be skipped over. It is sufficient for our present purposes that it is clear *that* Schleiermacher thinks Christians ought to work for the abolition of the death penalty in whatever state they live in.

[46] CS 87.

[47] Schleiermacher is not as explicit about this in the section on capital punishment, but sets out his principle more clearly elsewhere: "In any other area they [authorities] can only have influence in the way that any other person would, by advocating publically for their views, but never by means of disobedience or resistance." CS 93.

[48] CS 87.

[49] Ibid.

Even if a Christian prince may believe a law to be immoral, they cannot overstep the bounds of their authority and must maintain the rule of law. Schleiermacher offers the concession that "the guilt remaining from the death penalty is collective and not individual, but that does not mean that it can be seen as justified."[50]

In speaking of the Christianization of the state, Schleiermacher is thereby advocating for an interaction between religion and politics in which the civic spirit can ever more penetrate the members of a church (so that they play their role as subjects and as citizens informed by their faith) but also that the habits and practices of the church also penetrate the life of the state as more and more unconscious habit is turned into explicit law. But this is a process that is to be accomplished by means of persuasion and the transformation of public opinion in keeping with the reciprocal dynamic of legislation and execution. The formation of a shared common sphere is not merely to be taken for granted, but the product of reciprocal acts of recognition and communication that allow for the emergence of shared convictions, practices, and norms. If any Christian conviction is to become law, it must first exist in the form of shared habit.

There are no doubt many questions that still must be answered before Schleiermacher can be said to have offered a theory of religion in the state that adequately deals with the conditions of pluralism that one dwells in today.[51] But as I have already noted in the conclusion of ch.1, what Schleiermacher adds to the conversation is an insistence that the process of negotiating the dynamics of modern politics *also* includes negotiating the status of post-Reformation ecclesiological questions

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[50] Ibid.

[51] For starters, it is not clear that Schleiermacher would obviously accept the secularity of the West. His critique of religion's cultured despisers includes an argument that they nevertheless are still working within the orbit of Christianity even as they have distanced themselves from it. To the degree that the West has not yet – though new forms of religiosity are indeed beginning to arise – completely severed its historical connection with Christianity, See, i.e. the Epilogue of the 2nd or 3rd edition of the *Reden*. Furthermore, though Schleiermacher was able to affirm the inclusion of Jews as Prussian citizens without demanding their conversion to Christianity (thus affirming the separation of church and state), his interpretation of Judaism as inherently theocratic consistently led him to doubt that Jews would be able to effect the same kind of shift in their religion that he was demanding of Christianity as part of his vision of the differentiation of religion and the state.

in their relation to the state. Schleiermacher's account of Christian engagement in the state does not abstract away from the conditions which shape the church, but has a corresponding ecclesial project that seeks to keep the church free of undue political influence as a key part of his vision. That is, Christian ecclesiology is not to be set over and against a purportedly secular political as it is in Hauerwas or Milbank, but seen as complementary spheres of differentiation and interpenetration whose bounds will require constant attention and negotiation.[52]

Indeed, it is Schleiermacher's insistence that there can be a Christianization of the state while insisting on a firm distinction between church and state that may incur the most skepticism from those shaped by the categories of liberal political theory. But this kind of blurring of sharp dualisms between religious and secular reason is precisely the kind of conversation that Schleiermacher pushes those interested in the future of religion and democracy to have. Indeed, in a few scattered and offhand comments throughout his *Ethik* and the *Lectures on Christian Ethics*, Schleiermacher would make the perhaps unexpected suggestion that he is engaged in the task of "Christian philosophy", similarly breaching what may often be assumed about the bounds between the church and the academy.[53] Karl Barth dismissed Schleiermacher for having too anthropological a starting

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[52] There are ways in which it can be said that Ernst Troeltsch seems to pick up on this dynamic, although his situation in the academy leads him to offer a far more sociological evaluation of the church rather than the kind of somewhat partisan, but normative vision that Schleiermacher seems to provide. See Matthew Ryan Robinson and Evan F. Kuehn, *Theology Compromised: Schleiermacher, Troeltsch, and the Possibility of a Sociological Theology* (Minneapolis, MN: Fortress Press, 2019).

[53] In a marginal note appended to the 1812/13 *Ethik*, for instance, Schleiermacher addresses the question of the relation of his account of the virtue of love to Christian affirmations about the importance of loving God. Cognizant that he has suggested that "nature" is the object of love, Schleiermacher then writes: "This would appear to demolish the schema of "love for God," and yet the exposition of our concept ought to express the Christian basis of our philosophy. The solution is this: just as there is no exclusively fulfilling consciousness of God, neither is there any exclusively fulfilling urge towards God. Love for nature is only ethical if understood as love for God, love for God is only true if understood as love for nature." E 1812/13 109 (DV.L.1), 387. And in speaking of and rejecting a Christian right to rebellion – we have considered this briefly in ch.4 – Schleiermacher would also suggest that the reason it continues to be held to is that "even political theory itself is still contaminated today with pagan vestiges and holds fast to pagan models" and that "a true Christian political consciousness was not to be found in that time [the Middle Ages]" and that "A right judgment about this matter was first established with the Reformation." CS 90-91. Schleiermacher thus seems to posit that the development of the rejection of the right to rebellion – even in Kant! – was itself the product of a slow process of the Christianization of the state which was only now beginning to manifest itself in political philosophy as well. Schleiermacher famously also broaches this topic in his *Lectures on Dialectic*, where he notes that the concept of God does play a role in his philosophy, but is there established on grounds other than that of religion, which gets there on the basis

point and for allowing "philosophy" to determine the content of theology, but his critique assumes the existence of a sharp disjunction between theology and philosophy that Schleiermacher does not seem to accept. What happens to this criticism if what is borrowed from is supposed to be "Christian philosophy"? Just as Schleiermacher seems to be able to imagine the possibility of separation and overlap in the state, he seems to be capable of imagining the possibility of separation and overlap in the academy.

What does it mean to speak of "secularization" in this context? Standard narratives have tended to focus on differentiation and separation, but not on the interpenetrations – i.e. the rationales that religious persons do adopt in making sense of their participation in practices now often taken to be "secular". Debates over Rawlsian public reason tends to assume a disjuncture between "religious" and "public" reasons that may be just as complicated to parse out as the complexities of the relationship between church and state.[54] What Schleiermacher provides is a conceptual vocabulary that attempts to allow one to keep track of these multiply-intersecting dimensions at once.

b. Political Theology Beyond Sovereignty

Being able to imagine multiple overlapping, but non-identical spheres of human behavior, fundamentally begins to undermine the usefulness of the concept of sovereignty that has, in the

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of feeling: "If now the feeling of God is religion: thus it appears that religion stands over philosophy, as many also claim. It is, however, not so. We have arrived here without having gone out from feeling, on a purely philosophical way." §215.2 in KGA II/10.1, 143. Translation mine.

[54] Consider, for instance, the famous back-and-forth between Richard Rorty and Nicholas Wolterstorff on this topic. Richard Rorty, "Religion as Conversation-stopper" in *Philosophy and Social Hope* (New York: Penguin Books, 1999), 168-174. Nicholas Wolterstorff, "An Engagement with Rorty" *The Journal of Religious Ethics* 31:1 (Spring 2003), 129-139. Richard Rorty, "Religion in the Public Square: A Reconsideration" in *The Rorty Reader*, Christopher J. Voparil and Richard J. Bernstein, eds. (Malden, MA: Wiley-Blackwell, 2010), 456-462. Akeel Bilgrami, by contrast, offers a more historically sensitive justification of secular reason that specifically singles out Christian religious discourse for pushback from the secular state on account of its historical connection with authoritarianism and colonialism, rather than simply by virtue of its being "religious". Akeel Bilgrami, "Secularism: Its Content and Context" in *Secularism, Identity, and Enchantment* (Cambridge: Harvard University Press, 2014), 3-57.

wake of Carl Schmitt, often been a mainstay of political theology and critique of liberal politics. Often associated with the Westphalian compromise, the use of the term to designate supreme authority within a territory is the culmination of a long process of centralization and consolidation of the late-medieval era's multiple-overlapping jurisdictions and authorities under a unified state apparatus.[55] There is a sense in which Schleiermacher's conception of the state continues this trajectory – his conception of the state as the ultimate guarantor of property, the most fundamental of which is land, necessarily ties it to the question of territory. And his emphasis on the unification of authority under a singular chief executive in the monarchical state of highest order – even if it is to exemplify a kind of unity-in-diversity that maintains something of the peculiar characters of distinct regions and cultures – maps quite well on the trajectory that begins with Bodin, is picked up by Hobbes, modified by Pufendorf, and reaches Schleiermacher through the mediation of Rousseau and Kant.[56]

But, as we have seen in chapters 1 and 4, there already exist ways in which, though Schleiermacher is by no means advocating a return to the medieval world of feudal estates, guilds, and regional privileges, the concept of sovereignty nevertheless begins to be undermined. Firstly, there is the fact that Schleiermacher's conception of state authority depends on an oscillating cycle of joint actions of authorities and subjects together. Sovereignty, which Bodin would emphasize could not be divided, is split between legislative and executive actors such that no one can be said to act in a one-sided manner. Even if a significantly scaled down version of it can be developed to speak about the role of the authorities as public official in maintaining the state, the way in which their actions are necessarily constrained by their responsiveness to the state's citizens and the law of

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[55] For a classic pre-history of the early modern notion, see Ernst H. Kantorowitz, Brian Tierney, or Oliver O'Donovan. See esp. Ernst H. Kantorowitz, *The King's Two Bodies: A Study in Mediaeval Political Theology* (Princeton: Princeton University Press, 1957).

[56] Consider, for instance, Richard Tuck, *The Sleeping Sovereign: The Invention of Modern Democracy* (Cambridge: Cambridge University Press, 2015).

the land makes it hard to speak of a singular unified supreme authority even as one can still speak of territorial integrity.

But secondly, Schleiermacher's emphasis that there are multiple non-statist and independent social dynamics – that of religion, science, and even free sociability – which all intersect with the state while remaining ultimately independent of it further undermines the suggestion that the state can be the ultimate locus of authority even within its own territory. For Schmitt, as with many of the early modern theorists of sovereignty, defending sovereignty was as much a question of rejecting the claims of the church as establishing the rights of the sovereign. Thus, the Hobbes of the *Leviathan* had to take on the "indirect power" of Cardinal Bellarmine and the Hobbes of the *Behemoth* would take aim at the instigations of the Presbyterian divines. In defending his vision of the significance of Presbyterianism, Schleiermacher stands in a long tradition of Reformed political theology that advocated the independence of the church from the state, even as he rejects the Monarchomachist willingness to countenance resistance against the state when it fails to adequately establish right religion.

But in offering an ecclesiologically-oriented definition of the Protestant tradition, Schleiermacher also offers a version of Reformed public theology that differs significantly from the other advocates of a separation of church from state in that – unlike figures like John Witherspoon or Abraham Kuyper – Schleiermacher offers a non-confessionalist vision of Reformed Christianity. Indeed, if what makes a church distinctively Protestant is the extent to which its laity can actively play a role in shaping the life of the church through the exercise of "free spiritual power" rather than its commitment to the Reformed and Lutheran confessions, Schleiermacher's vision of church unity and division could present a significantly different evaluation of the contemporary ecclesial landscape. If, in keeping with Schleiermacher's revised republicanism, Presbyterianism does not correspond to an aristocratic government vis-à-vis the congregational government of the Baptists or

the monarchical government of the Methodists or Episcopalians, but to the way in which legislative and executive authorities interact, Schleiermacher presents both a damning evaluation of why the 20th century ecumenical movement may have ultimately fallen short (it remained too focus on attempting to reconcile confessional statements rather than paying attention to the political-theological dynamic of their ecclesial practices) and a vision for a renewed 21st century approach.[57] Indeed, the ability of the church to extricate itself from a dynamic where conservative or liberal political commitments do more to shape the bounds of ecclesial life than internal ecclesial concerns may be important for the health of church and state alike.

c. Political Theology Beyond Constitutionalism

That liberal democracies are currently under a significant amount of strain is almost a matter of course. Apart from the wide swath of books criticizing liberalism as a philosophy from the right and the left alike, the past decade has seen a significant number of unprecedented challenges to basic assumptions about the political order.[58] The rise of Christian nationalism raises fundamental questions about the separation of church and state, populist rejections of the norms of established party-politics, and movements for the abolition of police and the prison system push beyond the bounds of "progress as usual". In the face of growing economic inequality, looming environmental disaster, and heightening geo-political tensions, political debates are no longer merely about policy, but also about whether the institutions and assumptions of liberalism are adequate to the challenge.

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[57] The rationale for many denominational polities, for instance, originally arose in situations where their theological warrant and grounding arose in part from the fact that all of the congregations within a particular locale would be united under the jurisdiction of a single governmental structure. One convention, presbytery, synod, or bishop would therefore represent the congregations of a particular town, city, or region. Under the conditions of modernity, however, churches currently experience a situation where any given locale can be said to be represented by multiple ecclesial governing bodies, even among denominations and congregations that are supposedly in communion with one another. The problem of parallel ecclesiastical organizations, for instance, is an explicit subject of concern for Orthodox Christians in America. Consider, for instance, John Meyendorff, *Vision of Unity* (Yonkers, NY: St. Vladimir's Seminary Press, 1987).
[58] Consider, for instance, Patrick Deneen, *Why Liberalism Failed* (New Haven: Yale University Press, 2018).

In this regard, Schleiermacher's fundamental revisioning of the nature of democracy in the modern era is no longer the outlier that it would have been in an era when the ascendency of liberal political and economic policies was all but taken for granted. In a time when milestones in civil rights', women's, and LGBT history were indexed to *Brown v. Board of Education*, *Roe v. Wade*, and *Obergefell v. Hodge*s, to call into question the value of judicial review as a mechanism for the protection of liberty in the state may have sounded absurd. But in an age where the politicization of the Supreme Court seems all but complete, such sentiments may even begin to seem prescient. How much liberty is really present if legislative and executive judgments about the future of the republic are subject to the review of a small cohort of unelected justices *who do not see themselves as primarily responsible to the people*, but to a purported document once enacted by the people?

Indeed, in the face of a renewed movement for black lives and an emboldened white supremacist discourse, Schleiermacher's charge that merely a negative focus on abstract individual rights cannot adequately ground a political community may sound more relevant than ever. If, indeed, the modern nation-state is "aristocratically$_d$" structured, what may be most needed is not so much an affirmation of abstract civil rights and a discourse of representation and inclusion, but a fundamentally new conception of American nationhood that can adequately incorporate the histories and narratives of a broader set of peoples into a new American story, starting, perhaps, with those of the native peoples.[59] A disciplining of external relations without addressing the

[59] Trying to push back against the academic trend towards micro-histories and anxiety towards metanarratives that allows broader popular histories of America to be dominated by conservative retellings, Jill Lepore has taken the admirable step of attempting to narrate the history of America with greater attention to the ways in which it has fallen short of its own ideals. Although one may be skeptical of whether a reaffirmation of those founding ideals (and the value of truth in particular) will be sufficient to forge a new national coalition, it is nevertheless more projects like this that are necessary for the raising of the new kind of national consciousness necessary for a renewed republic. See Jill Lepore, *These Truths: A History of the United States* (New York: Norton, 2018). See also Howard Zinn, *A People's History of the United States, 1492-Present* (New York: Harper & Row, 1980). One temptation of the activist and academic left is to redo narratives from a primarily critical perspective. The *New York Time*'s *1619 Project* for instance, sets up what might be called a "negative" history which, while sparking conversation around the importance of historical narratives for political consciousness, does not provide the conditions for the transformation of that consciousness.

fundamental hearts and passions of those who, consciously or not, yet owe allegiance to a white supremacist vision of American life cannot bring lasting racial justice.[60] Nor does it address the ongoing ways in which American churches which have played a key role in the establishing and maintaining of anti-black and anti-Asian racism in society can continue to hide behind the veneer of religious liberty. If the United States is to move beyond its racialized present and past, it will need to reckon more concretely with the ways that the racial and the theological have been and continue to be entangled in visions of American nationhood.[61]

For Schleiermacher, these questions of identity cannot be completely separated from questions of political economy. Re-narrations of shared identity must be capable of bringing to greater consciousness the ways in which groups have always been far more economically entangled and mutually dependent than many have been willing to recognize. What Schleiermacher opens up on this front, however, is that progress may depend not only on better attending to and responding to calls for reparations on the basis of past mis-recognition of contribution and the willingness to countenance what would now be considered systematic theft,[62] but also on addressing the philosophy of ownership that allows the collective efforts of many to be privatized into the exclusive property of individuals rather than recognized as being able to constitute a collective sphere of ownership.

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[60] Consider, for instance, Eddie Glaude's rejection of a mere reassertion of existing values in light of the ways that America has fallen short. The persistence of a "value gap" points not to the need for further progress, but to the need for a fundamental transformation in the democratic project. Eddie Glaude, *Democracy in Black: How Race Still Enslaves the American Soul* (New York: Broadway Books, 2016).

[61] This has long been a contention of black liberation theology, but has seen renewed uptake more broadly in the wake of the Black Lives Matter movement and the death of George Floyd. See James Cone, *The Cross and the Lynching Tree* (Maryknoll, NY: Orbis Books, 2011); Robert P. Jones, *White Too Long: The Legacy of White Supremacy in American Christianity* (New York: Simon & Schuster, 2020). It has also been a theme of studies of black religion in American history. See, for instance, Judith Weisenfeld, *New World A-Coming: Black Religion and Racial Identity during the Great Migration* (New York: New York University Press, 2016). See also, Sylvia Wynter, "1492: A New World View" in *Race, Discourse, and the Origin of the Americas: A New World View,* ed. Vera Lawrence Hyatt and Rex Nettleford (Washington: Smithsonian Institute Press, 1995), 5-57 and Willie James Jenning, *The Christian Imagination: Theology and the Origins of Race* (New Haven: Yale University Press, 2010).

[62] Consider, for instance, Ta-Nehisi Coates, "The Case for Reparations" *The Atlantic,* June 2014. https://www.theatlantic.com/magazine/archive/2014/06/the-case-for-reparations/361631/ accessed on 12/25/2023.

In a context of the corporate capture of political interests and a conception of corporate governance and ownership that sees companies as being governed by managers who work on behalf of external shareholders,[63] liberal and socialist efforts at state-effected redistribution and Marxist-inspired efforts at the organization of laborers have sought to ameliorate the inequalities brought about by market economies. Working in the wake of Fichte's critique of Adam Smith, however, Schleiermacher offers a fascinating different angle to approach the issue by challenging us to rethink the way we understand the relations of right and ownership in the context of collective labor. While Schleiermacher no doubt would have had a hard time imagining the extent and scope of multi-national corporations today, his account of collective property and the morality of right can contribute towards a reimagining of the categories by which we understand employment and corporate governance, pushing for a transformation from within that moves beyond voluntaristic understandings of the nature of contract and class-based approaches to organizing that take for granted the relationship between management and labor.

Indeed, in an age where the decisions made by large corporations may be just as impactful upon the lives of state citizens as the decisions made by state agencies, Schleiermacher insistence on citizen participation in the reciprocal cycle of legislation and governance might be just as useful in redescribing how effective feedback gets translated into company policy and moves from promulgation to application. In this regard, one might say that there is a certain affinity in Schleiermacher's thought towards the efforts that worker cooperatives have put into trying to reimagine how corporate governance can operate in such a way so as to be primarily responsive to those who actually make up the corporation and share in its collective activity.[64] If democratic life is

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[63] Caitlin Rosenthal, *Accounting for Slavery: Masters and Management* (Cambridge, MA: Harvard University Press, 2018).

[64] Consider, for instance, the work of the US Federation of Worker Cooperatives and the Democracy at Work Institute. In his attempt to make a case for worker cooperatives as an alternative to capitalism and state-socialism alike, Richard D. Wolff nevertheless continues to draw from Marx in order to frame the political economic problem in terms of whether or not capitalists external to a corporation or the workers that make up the corporation benefit from the "surplus value" that is generated by labor. Criticized for having an inadequate account of power or of race, one can quickly get a sense

not to be found simply in the right to elect representatives, but the degree in which representatives are responsive to petition and co-operation in the work of legislation, transformation of American political life cannot simply focus on the election of officials who will be attentive to the regulation of corporate activity, but also the internal life of corporations themselves. This is, in keeping with Schleiermacher's vision of simultaneous bottom-up and top-down transformation, a transformative endeavor that will necessarily involve not just changes in the law, but also changes in corporate culture. If rights language does not only focus on the abstract rights of the citizen outside of the context of their life in civil society, what is needed beyond merely enforcement of contracts thought of as binding by virtue of the way in which they bring together freely consenting individuals, but greater appreciation of the common goods for which they are forged and the divisions of labor that they effect. Beyond mere enforcement of contracts thought of as formal agreements in abstraction from their content, what will be required is the effecting of legal transformations that can more accurately make sense of the kind of complementarity already at work in corporations that cannot simply be described in terms of consent and the alienation of the use of one's body in exchange for monetary compensation.

Schleiermacher was situated at a key shift in Prussian history when the abolition of serfdom and the rise of commercial society was beginning to transform the landscape of economic and political life, a time when the smaller principalities and local cultures were being increasingly incorporated into larger territorial polities. In many ways, one could say that the transition that Schleiermacher and his contemporaries were seeking to theorize has not yet been completed. Indeed, to the extent that liberal political philosophy represents just one – perhaps flawed – way of

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for how Schleiermacher's conceptual vocabulary may serve to offer a different articulation for what internal governance of a corporation could look like (on the basis of complementary relations of right, given the force of law by the government), though exactly what that may look like would demand a significant amount of reconstructive work that goes beyond the scope of this dissertation. See Richard D. Wolff, *Democracy at Work: A Cure for Capitalism* (Chicago, IL: Haymarket Books, 2012).

attempting to effect these changes, despite the gap in time, Schleiermacher's political theology may yet remain far closer than we may have been accustomed to think.