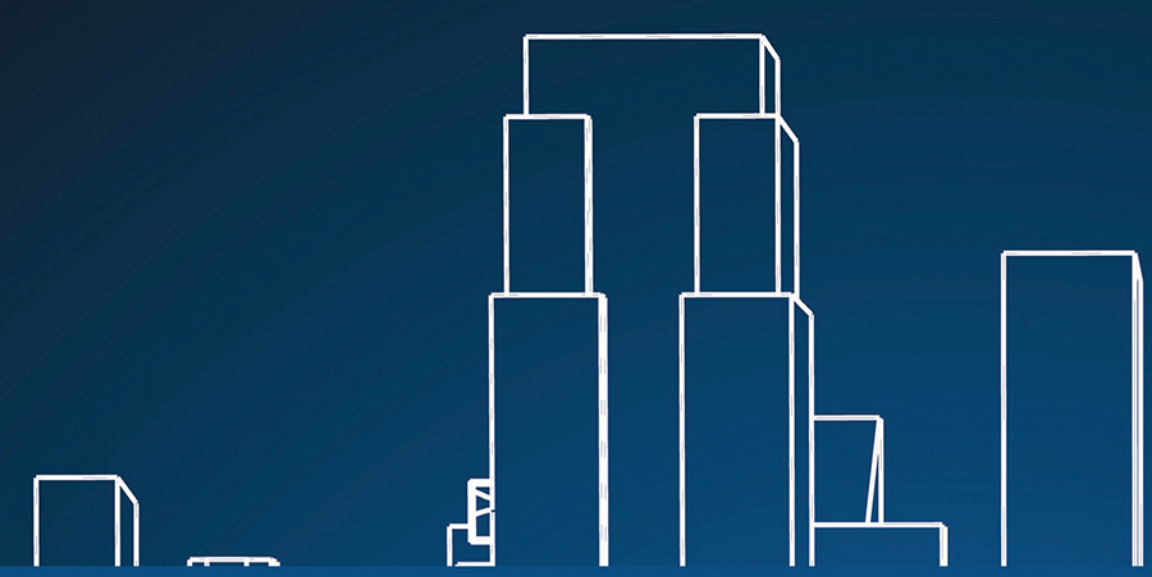

Routledge Studies in Nineteenth-Century Philosophy

THE CONCEPT OF PROPERTY IN KANT, FICHTE, AND HEGEL

FREEDOM, RIGHT, AND RECOGNITION

Jacob Blumenfeld

"How is it possible that anything can be understood as mine or yours at all? Challenging the dominant frameworks of legalism and economism in our attempts to understand and justify property, Jacob Blumenfeld persuasively argues that turning to the underappreciated tradition of classical German *Rechtsphilosophie* provides invaluable resources for understanding the metaphysical, normative, social, and material conditions of property relations. What results from Blumenfeld's expert and clear reconstructions of Kant, Fichte, and Hegel is the following: property relations mediate the complicated, conflictual, and ethically charged relation between practical freedom and social necessity. The question of what makes something mine is ultimately the question of how needy, dependent beings can live together as a free community of equals, a possibility that is fundamentally connected with how we understand the property relation. An important and timely contribution, Blumenfeld shows that turning to classical German philosophy may well prove to be indispensable for resolving some of the most pressing problems of the twenty-first century."

Karen Ng, *Vanderbilt University*

"Jacob Blumenfeld's new work makes a vital contribution to contemporary political philosophy and not just its history. Blumenfeld's stringently argued, nuanced, and irreplaceable book is a critique of narrow economistic and legalist conceptions of property, and an emergent broad concept of property as the switching station through which Kant, Fichte, and Hegel each develop increasingly elaborate accounts of self-conscious freedom and agency as normatively constituted through the property relation as one necessarily involving mutual recognition within a self-determining civil condition. On this account, property relations spell out the conditions for need satisfaction and freedom generally, with the failure to secure the goods property rights protect leading to *homelessness*, *unemployment*, *overwork*, and *poverty*."

J.M. Bernstein, *The New School for Social Research*

"Jacob Blumenfeld's original, insightful, and thoroughly researched study of the concept of property in Kant, Fichte, and Hegel challenges standard legal and economic justifications of property. Blumenfeld not only offers a penetrating historical reconstruction of the theories of property developed by Kant, Fichte and the early Hegel, he also creatively draws on key

insights from each to defend a social-normative framework for addressing property rights, one that attends to the moral injuries of the propertyless: homelessness, unemployment, overwork, and poverty. In sum, Blumenfeld's timely and important study calls for us to radically re-consider the normative function of property in our lives along more social, if not socialist lines."

Gabe Gottlieb, *Xavier University*

The Concept of Property in Kant, Fichte, and Hegel

This book provides a detailed account of the role of property in German Idealism. It puts the concept of property in the center of the philosophical systems of Kant, Fichte, and Hegel and shows how property remains tied to their conceptions of freedom, right, and recognition.

The book begins with a critical genealogy of the concept of property in modern legal philosophy, followed by a reconstruction of the theory of property in Kant's *Doctrine of Right*, Fichte's *Foundations of Natural Right*, and Hegel's *Jena Realphilosophie*. By turning to the tradition of German *Rechtsphilosophie* as opposed to the more standard libertarian and utilitarian frameworks of property, it explores the metaphysical, normative, political, and material questions that make property intelligible as a social relation. The book formulates a normative theory of property rooted in practical reason, mutual recognition, and social freedom. This relational theory of property, inspired by German Idealism, brings a fresh angle to contemporary property theory. Additionally, it provides crucial philosophical background to 19th-century debates on private property, inequality, labor, socialism, capitalism, and the state.

The Concept of Property in Kant, Fichte, and Hegel will appeal to scholars and advanced students interested in 19th-century German philosophy, social and political philosophy, philosophy of law, political theory, and political economy.

Jacob Blumenfeld is Assistant Professor of Philosophy at the University of Oldenburg, Germany, and member of the DFG collaborative research centre, "Structural Change of Property". He is the author of *All Things are Nothing to Me: The Unique Philosophy of Max Stirner* (2018).

Routledge Studies in Nineteenth-Century Philosophy

Interpreting Hegel's *Phenomenology of Spirit*
Expositions and Critique of Contemporary Readings
Ivan Boldyrev and Sebastian Stein

Nature and Naturalism in Classical German Philosophy
Edited by Luca Corti and Johannes-Georg Schülein

Nietzsche as Metaphysician
Justin Remhof

Kierkegaard and Bioethics
Edited by Johann-Christian Põder

Hegel and the Present of Art's Past Character
Alberto L. Siani

Schelling, Freedom, and the Immanent Made Transcendent
From Philosophy of Nature to Environmental Ethics
Daniele Fulvi

Schelling, Hegel, and the Philosophy of Nature
From Matter to Spirit
Benjamin Berger

The Concept of Property in Kant, Fichte, and Hegel
Freedom, Right, and Recognition
Jacob Blumenfeld

For more information about this series, please visit: https://www.routledge.com/Routledge-Studies-in-Nineteenth-Century-Philosophy/book-series/SE0508

The Concept of Property in Kant, Fichte, and Hegel

Freedom, Right, and Recognition

Jacob Blumenfeld

Routledge
Taylor & Francis Group
NEW YORK AND LONDON

First published 2024
by Routledge
605 Third Avenue, New York, NY 10158

and by Routledge
4 Park Square, Milton Park, Abingdon, Oxon, OX14 4RN

Routledge is an imprint of the Taylor & Francis Group, an informa business

© 2024 Jacob Blumenfeld

The right of Jacob Blumenfeld to be identified as author of this work has been asserted in accordance with sections 77 and 78 of the Copyright, Designs and Patents Act 1988.

All rights reserved. No part of this book may be reprinted or reproduced or utilised in any form or by any electronic, mechanical, or other means, now known or hereafter invented, including photocopying and recording, or in any information storage or retrieval system, without permission in writing from the publishers.

Trademark notice: Product or corporate names may be trademarks or registered trademarks, and are used only for identification and explanation without intent to infringe.

ISBN: 978-1-032-57518-6 (hbk)
ISBN: 978-1-032-57519-3 (pbk)
ISBN: 978-1-003-43974-5 (ebk)

DOI: 10.4324/9781003439745

Typeset in Sabon
by SPi Technologies India Pvt Ltd (Straive)

Contents

Preface *ix*
Acknowledgments *xi*
List of Abbreviations *xiii*

Introduction: Property in Legal Philosophy 1

Overview 3
Two Pitfalls of Thinking about Property: Legalism and Economism 5
Concepts and Theories of Property 7
Five Recent Shifts 10
Exclusion, Efficiency, Anxiety 15
New Paradigms 25
Conclusion 29
Notes 32

1 Kant's Metaphysics of Property 36

Freedom and Right: Metaphysical Foundations of Property 38
Mine and Yours: Normative Foundations of Property 51
Acquiring: Social and Material Foundations of Property 72
Conclusion 89
Notes 93

2 Fichte's Recognition of Property 102

Fichte's Foundations of Natural Right *103*
The Concept of Right 109
Transcendental Ground of Property 119
Normative Ground of Property 130

Applied Right 137
Conclusion 157
Notes 161

3 Hegel's Struggle for Property 170

Hegel's Criticisms of Kant and Fichte 172
System of Ethical Life *(1802–3) 183*
First Philosophy of Spirit *(1803–4) 209*
Second Philosophy of Spirit *(1805–6) 219*
Conclusion 236
Notes 238

Conclusion: The Social Pathologies of Property 246
Notes 256

Bibliography 258
Index 272

Preface

The Concept of Property in Kant, Fichte, and Hegel seeks to renew the political philosophy of German Idealism. The task of this book is to put the concept of property back in the center of the philosophical systems of Kant, Fichte, and Hegel and show how it remains tied to their conceptions of freedom, right, and recognition. I do this first through a critical genealogy of the concept of property in modern legal philosophy, followed by a reconstruction of the theory of property in Kant's *Doctrine of Right* (1797), Fichte's *Foundations of Natural Right* (1796/7), and Hegel's *Jena Realphilosophie* (1802–6).

Moreover, I hope to reawaken philosophical interest in property beyond the realm of modern legal philosophy and the liberal theories of justice which have dominated it. By turning to the tradition of German *Rechtsphilosophie* as opposed to the more standard libertarian and utilitarian frameworks of property, *The Concept of Property in Kant, Fichte, and Hegel* is able to explore specifically *normative* questions that property raises: What does it mean to call something mine? How is possible to obligate others to respect my claim to possess something as my own? How can it ever be right for me to exclude you from using something that you need or want? In other words, what is property? And why do we recognize its authority? These are the questions that motivate this book.

This book takes a normative approach to the concept of property with the help of the social and political philosophy of Kant, Fichte, and Hegel. Why them? Whereas dominant understandings of property tend to conceptualize it as either a legal right to exclusion grounded in negative freedom or an economic means for welfare maximization grounded in efficiency, I focus on the metaphysical, normative, political, and material conditions that make property intelligible as a social relation amongst free and finite beings on a shared planet. This approach to property finds its fullest expression in the political philosophy of German Idealism, which puts forth a particular view of practical freedom as grounded in the mutual recognition of human beings as dependent on each other for their own

self-identity as practical agents. Property plays a key role in this development, which I seek to show through a detailed analysis of key philosophical texts in the late 1790s and early 1800s.

I thus focus on Kant's *Doctrine of Right* (1797), Fichte's *Foundations of Natural Right* (1796/7), and Hegel's Jena *System of Ethical Life* (1802/3) and *Philosophy of Spirit* lectures (1803/4, 1805/6). These texts give robust metaphysical, political, economic, phenomenological, legal, and ethical accounts of what it means to possess, own, and acquire rights to things and deeds in the world for one's own ends yet in relation to the freedom of others. Against legalistic and economistic readings, they consider all the metaphysical, normative, political, and material conditions that authorize property as a social relation amongst free beings on a shared planet. Kant, Fichte, and Hegel take property to be *the* normative problem to be explained in any account of practical freedom, and that is why I focus on them.

In short, this book provides a new reading of the practical philosophy of German Idealism as centrally concerned with the question of property. This will be surprising both to scholars of German Idealism, who tend to neglect this topic, and to scholars of property, who tend to ignore this tradition. This approach, however, offers an alternative to the two main ways of thinking about property in Anglophone philosophy, namely Lockean libertarianism and utilitarian efficiency theories. Instead, with the help of German *Rechtsphilosophie*, I am able to formulate a normative theory of property rooted in practical reason, mutual recognition, and social freedom. In developing this line of thinking, this book provides some crucial philosophical background to 19th-century debates on private property, inequality, labor, socialism, capitalism, and the state, debates which have not ceased to be relevant.

Although Kant and the German Idealists are more known for their comprehensive theoretical systems and stringent moral philosophies, they have much to offer us in the realms of social, legal, and political thought. Through the lens of property, I am able to shine new light on their philosophy, and through their philosophy, I am able to shine new light on the meaning of property.

Acknowledgments

The first version of this book was completed in 2018 as a dissertation in philosophy for the New School for Social Research in New York. For invaluable help along the way, I would like to thank above all my advisors: Simon Critchley, Jay Bernstein, Rahel Jaeggi, and Dick Bernstein. Whether in the seminar room or at the bar, in the student occupation, or in the jail cell, Simon gave me the confidence and will to continue thinking, despite everything. I cannot thank him enough for that. Jay's courses on Hegel provoked me to go deeper into the unrelenting waters of German idealism. If I have not drowned, it is only because of him. I had the pleasure of being a student of Richard Bernstein, with whom I shared many afternoons discussing Marx, Hegel, and more. His frank criticisms of some of my early drafts helped me get back on track. Since I moved to Berlin, Rahel Jaeggi has hosted me at Humboldt Universität in her Social Philosophy colloquium, where I first tried out some of these ideas. I am greatly appreciative to her for giving me a home in the academic environment of Berlin. I would also like to thank all the other professors at the New School who have taught me in different ways, including Dmitri Nikulin, Chiara Bottici, Cinzia Arruzza, Alice Crary, Nancy Fraser, and Agnes Heller. Thanks also to Mitch Miller, who introduced me to the joys and pains of 19th-century German philosophy, and to Paul Mattick for giving me an outlet to continue writing throughout these years.

At the University of Oldenburg, I would like to thank Tilo Wesche and Niklas Angebauer, who read an early chapter of this book and discussed it with me in the context of our joint research project, *Die normativen Grundlagen des Eigentums*, for the SFB 294 research center, *Strukturwandel des Eigentums*, for which I am also thankful. I am looking forward to our many future collaborations. At the Freie Universität Berlin, many thanks to Stefan Gosepath and Robin Celikates, in whose colloquium I also shared some of this work early on. Thanks to the *What's Left of Philosophy?* crew, especially Lillian Cicerchia, for having me on to discuss the weirdness of property in German Idealism with them. Thanks to Mithra Lehn

for inviting me to share some of these ideas at the New York German Idealism workshop and to Gabe Gottlieb for commenting on an early draft. And thanks to Tom Vandeputte for inviting me to discuss Hegel's concept of property in his seminar in Amsterdam.

Thanks to all the anonymous reviewers, who improved this manuscript tremendously, and to Andrew Weckenmann at Routledge for taking on this book.

A very special thanks to Matthew Congdon for his early feedback on this project, which proved indispensable. I am also grateful to Karen Ng, Daniel James, Eva Von Redecker, Daniel Loick, Thomas Khurana, Pavlos Roufos, Steen Thorsson, Luhuna Carvalho, Felix Kurz, Nicole Whalen, and Blair Taylor for the deep and helpful conversations over the years. Thanks to Eric-John Russell for all the philosophical and practical adventures inside and outside the university. To John Clegg for his feedback and friendship and to all my friends and comrades in Berlin and New York who have supported me through thick and thin. To my students, thanks for teaching me. To my rabbi, my family, and my father, thanks for the faith all these years. To my kids, thanks for the joys of distraction. To Hilkje Hänel, I can't thank you enough.

A section from Chapter 3 was previously published as "The Freedom of Crime: Property, Theft, and Recognition in Hegel's *System of Ethical Life*" in the *British Journal for the History of Philosophy*, Volume 31, Issue 1, 2023, pages 103–26. A few paragraphs in this book were previously used in my essay, "Property and Freedom in Kant, Hegel and Marx", published in *From Marx to Hegel and Back: Capitalism, Critique, and Utopia*, edited by Veronica Fareld and Hannes Kuch (Bloomsbury Academic, 2020), pages 73–90.

This work was supported in part by the Deutsche Forschungsgemeinschaft (DFG) SFB TRR 294/1–424638267.

Abbreviations

Kant

DR	Doctrine of Right (1797)

Fichte

FNR	Foundations of Natural Right (1796–7)
CCS	Closed Commercial State (1800)
RL	Rechtslehre (1812)

Hegel

ETW	Early Theological Writings
GC	German Constitution (1798–1802)
D	Differenzschrift (1801)
FK	Faith and Knowledge (1802)
NL	Natural Law (1802–3)
SEL	System of Ethical Life (1802–3)
FPS	First Philosophy of Spirit (1803–4)
SPS	Second Philosophy of Spirt (1805–6)
JS	Jenaer Systementwürfe
PhS	Phenomenology of Spirit (1807)
NR	Lectures on Natural Right (1817)
VRP	Vorlesungen über Rechtsphilosophie (1818–31)
PR	Elements of the Philosophy of Right (1821)

Marx

MECW	Marx & Engels Collected Works

Taylor & Francis
Taylor & Francis Group
http://taylorandfrancis.com

Introduction
Property in Legal Philosophy

In 1842, a young journalist from Trier with a doctorate in philosophy penned a story for a newspaper in Cologne about legislative disputes over the legal status of fallen wood. Is it *wrong* to gather fallen wood from a forest on land that is owned by someone else? For centuries, the answer was no, it is not wrong. It is a *customary right* of common law that the poor can gather up the fallen wood of private forests for their own use. Once wood falls off the tree, according to the common law, it belongs neither to the owner nor to the tree but to those who *need* it. Yet, with the abolition of feudal property laws and the introduction of modern private property rights, this answer was no longer satisfactory. What was once accepted as a *customary* right of the propertyless is now considered to be a violation of the *legal* right of the propertied. The right to private property should grant individual owners the freedom to exclude *everyone else* from what they own, no matter how it affects anyone. Without the right to exclude others from one's property, so it is claimed, how else will owners efficiently manage their resources? The journalist covering this parliamentary debate was outraged, and so he argued that the "poor, politically and socially propertyless masses" of *every country* have a *customary* right to take what they *need* against the legal property rights of the landowning class.[1]

That journalist was Karl Marx, and writing this story spurred him to begin contemplating the contradictions of private property, a task that would torment him for the rest of his life.[2] Trying to wrap his head around the nature of private property rights, Marx asked himself, "By my private property do I not exclude every other person from this property? Do I not thereby violate his property right?"[3] This is the central normative paradox of property, the one that I will be exploring in this book. To put it differently, how is it possible to have something external as mine, to possess, own, and acquire property? I do not mean how is it *legally* or *physically* possible, but how is it *normatively* possible? That is, what makes it *right* or *wrong*? Do I not wrong others by excluding them from what they might need with my property right? Why do I have the right to deny the freedom

DOI: 10.4324/9781003439745-1

of others to use what I have claimed? By what principle is it even conceivable to *have* something without *holding* it? What gives me the authority to stake a claim on a piece of the world and tell others to back off?

Trying to answer these questions has taken me into strange and perplexing territory, for I approach this problem not legally or economically but philosophically. That is to say, I inquire about property not in order to better solve legal disputes or economic debates but to understand what is being done when someone claims to possess something at all. In effect, I am dumbfounded before the ordinary act of saying "mine" in relation to external things. Whom are we saying it to? And why? One can superficially avoid these metaphysical puzzles simply by asserting that God, nature, reason, necessity, or the state has given humankind the right to property; one could also claim that property involves not one but a bundle of divisible rights, including the rights to exclude, use, alienate, lease, and tax; finally, one can easily argue that property rights are justified because they protect individual freedom and promote economic efficiency. But all of that would only bury the problem deeper.

This book takes another approach. I claim that making sense of property requires a whole host of metaphysical, transcendental, social, and normative claims about practical freedom, rationality, community, needs, land, political economy, labor, recognition, injury, and exclusion. I argue that property relations are a way of mediating between individual freedom and social necessity. That is to say, property is a system of public rules for determining the distribution of freedom and needs within a community. Property *rights*, on this account, can be justified only within a political-economic framework that takes into consideration all the spatial, temporal, and social conditions of practical agency for finite persons on a shared planet. Furthermore, I claim that the right to property is normatively grounded in the reciprocal recognition of vulnerable subjects as mutually dependent on one another for their own self-identity. That is to say, what is recognized through property is not merely one's freedom but one's finitude. I make this argument quite *indirectly*, first through a genealogical critique of the concept of property in legal philosophy and then through a comprehensive reconstruction of the theory of property in Kant, Fichte, and the young Hegel. This renewal of classical German *Rechtsphilosophie* is motivated by the inadequate attention paid in modern legal thought to all the normative, political, material, and metaphysical conditions of possibility for the concept of property to be intelligible in the first place. These three thinkers not only illuminate the deep normative paradoxes of property but also emphasize in their own ways the particular *sociality* underlying all property relations, particularly private ones. The freedom expressed through relations of property, I will argue below, is always a freedom in and through others and thus conditioned and dependent on the freedom of

others as well. As Kant, Fichte, and Hegel are not constrained by our contemporary disciplinary boundaries, instrumental aims, or legal and economic prejudices, they can offer a fresh perspective on a problem that is still not resolved, namely the problem of how anything external can be mine at all.

Overview

In my Introduction, I provide a genealogy of property in legal philosophy. I argue that property tends to be conceptualized as a legal right to exclusion, an efficient means of welfare maximization, or some mixture of the two. I call these strategies *legalism* and *economism*. One sees the right to property as an inviolable condition of individual freedom, and the other sees it as an economic instrument for promoting efficiency. Neither takes property as a *problem* to be explored, but rather as a solution to be implemented. Such tendencies in narrowly thinking about property have been recently criticized by new legal scholars who formulate analyses attuned to social obligation, human flourishing, and other normatively pluralist, feminist, ecological, anti-racist, and critical lenses. Yet even those frameworks are constrained by the disciplinary need to produce applicable tools for resolving legal disputes between contemporary property owners. In order to unearth a more satisfying approach to the metaphysical, social, and normative foundations of property, I turn to the practical philosophy of Kant, Fichte, and Hegel, all of whom offered deep and systematic investigations into the relation between property, right, freedom, and recognition.

In Chapter 1, I present a social interpretation of the theory of property in Kant, focusing on the 1797 *Doctrine of Right* from his late *Metaphysics of Morals*; I trace in detail Kant's justification of intelligible possession as a *provisional* right and sketch some of its political and normative consequences (e.g., in relation to colonialism). I develop Kant's idea of the provisionality of private rights to property as a spatial condition for freedom of choice and argue that the very distinction between mine and yours remains unintelligible outside of a public order that can authorize rights to property for members of a shared community.

In Chapter 2, I reconstruct the transcendental and normative justifications of property in Fichte's 1796/7 *Foundations of Natural Right*; I focus on Fichte's account of *right* as a relation of recognition, I explain why property entails the right to live off one's labor, and I show how leisure is the true end of property for Fichte. That is to say, I try to make sense of Fichte's theory of practical freedom as conditioned by the reciprocal recognition of exclusive spheres of efficacy. Then I demonstrate how this cashes out practically as "property rights" to live off one's own labor and enjoy one's leisure time in a class-mediated social state.

In Chapter 3, I work through Hegel's 1802–3 *System of Ethical Life* and his lectures on the *Philosophy of Spirit* in Jena from 1803–4 and 1805–6; my aim in that chapter is to trace Hegel's phenomenology of possession and property within the ethical development of subjective consciousness toward objective spirit. I concentrate on the emergence of possession from material relations of need, exchange, labor, theft, and love; I claim that possession can be experienced as a moral injury by others; finally, I argue that struggles over this injury can produce an ethical awareness of one's vulnerable dependency on others for recognition of who one claims to be. This mediated self-knowledge underlies the normative capacity for individuals to recognize each other as *persons* capable of bearing *rights*, particularly rights to work and own property in a universal community of free and equal subjects. In doing so, I reinterpret Hegel's description of the struggle of economic subjects to assert their individual authority through claims to exclusive possession. In my reading, these claims fail without a deeper acknowledgement of the mutual desire to be recognized as morally vulnerable and materially interdependent persons.

In the Conclusion, I bring together all the threads of the books into a synthetic account of how to rethink the property relation given the insights gleaned from Kant, Fichte, and Hegel.

Together, these elements contribute to a theory of property in which the distinction between mine and yours is both indispensable for one's own self-conception yet impossible to settle on one's own. That is to say, rights to property are not private solutions to coordination problems or natural entitlements to exclude others but public summonses to members of a shared political community that pose the question of how it is we want to live together. I claim that the structure of property relations of any particular society at any particular moment provides the concrete answer to that normative question.

Overall, the aim of this book is both historical-intellectual and systematic-normative. On one the hand, I seek to reconstruct the core arguments about property and its conditions in the writings of Kant, Fichte, and Hegel. On the other hand, through this reconstruction, I hope to develop the elements of a robust social-normative account of property, distinct from legalistic and economistic, Lockean and utilitarian accounts, one grounded in the spatial, temporal, and ethical conditions for individual freedom to exist on a shared planet amongst finite human beings. As I will ultimately conclude, property can be seen as a provisionally binding relation of recognition between individuals in regard to how to act rightfully in relation to others, satisfy material needs, use external means to pursue free ends, and account for the vulnerability and inequality between laboring, possessing beings. The authority to claim, possess, and own something in the world does not come from oneself but is mediated through the recognition

of another's freedom and finitude. This *relational* theory of property, gained from my interpretation of German Idealist philosophy, offers a compelling and challenging perspective for how to think about property today.

Two Pitfalls of Thinking about Property: Legalism and Economism

In this Introductory chapter, I begin by laying out two common problems of thinking about property: *legalism* and *economism*. I then provide a brief methodological overview of different concepts and theories of property. I next give two different accounts of how the concept of property has been conceived in legal philosophy: one focuses on social and intellectual shifts in thinking about property over the 20th century, and another criticizes how the concepts of *exclusion* and *efficiency* have been used to justify property rights, in both legalistic and economistic ways. This leads me to review some promising new social-normative paradigms of property in legal philosophy. I conclude this chapter by suggesting that a deeper, more social approach to the metaphysical and normative quandary of property can be found within the practical philosophy of Kant, Fichte, and Hegel.

The dominant normative theories of property in the 20th century tend to run into two pitfalls, *legalism* and *economism*, both of which are symptomatic of an overly individualist account of property. Legalism takes property as a *right* above all, whether innate in human nature or acquired through the law. The right to property can mean the singular right to *exclude* others from my use of something; it can include the classic trinity of rights to possess, to use, and to alienate; or it can signify a loose bundle of legal tools.[4] The justification of property as a *right* above all usually appeals to the value of freedom in the sense of individual negative liberty. Whether property is conceived as a natural right or a result of positive law, legalistic accounts of property tend to focus exclusively on legal disputes of ownership in order to better understand what the concept means and how to apply it. To see this in detail, one need only peak at any major textbook on the theory of property, where case after case is presented as the primary source material from which the concept is explained.[5] In this framework, only particular cases, rights, disputes, and judgments are relevant. As Judith Shklar has argued, *legalism* reflects a structurally conservative outlook, one which includes

> [t]he dislike of vague generalities, the preference for case-by-case treatment of all social issues, the structuring of all possible human relations into the form of claims and counterclaims under established rules, and the belief that the rules are 'there.'[6]

The legalistic perspective relies on the appearance of accepted rules and established practices to judge between competing claims of mine and yours. But when a purely legalistic approach encounters a true conflict of rights between owners, the law is forced to appeal to non-legal considerations to settle the matter, to questions of morality or values. When right opposes right, there is no absolute rule on how to decide the case. A normative decision is needed, and this requires an extra-legal understanding of property.

Economism solves this problem by taking property primarily as an economic mechanism for efficiently maximizing utility and wealth. This mechanism can include rights, rules, contracts, liabilities, or anything that provides incentives to be productive and resourceful. Laws of property respond to the needs of rational agents pursuing their self-interest in competition with others. Efficiency constitutes the meaning of justice, utility sets the norm for morality, and wealth provides the purpose of law. The content of the concept of property emerges from economic disputes over how to best use our resources. Economistic readings of property assign different rules to different situations so as to best reduce transaction costs, internalize externalities, and maximize utility. Calabresi and Melamed, for instance, distinguish between property rules, liability rules, and inalienability rules, each a different strategy for how to protect entitlements in different situations depending on the transaction costs involved.[7] This turn toward economism as the normative solution to mediate property conflicts ends up sacrificing all other values on the altar of efficiency. The value of efficiency, however, depends upon a certain view of *what* in fact should be made more efficient in the first place. Economistic theories of law and property take this as a given: the relation to be rendered efficient is that between property owners and their individual preferences, and the market mediates between the two. The law protects private property rights so as to facilitate efficient exchange, and it steps into the market only to resolve private disputes. This assumes a context of rational individuals competing with others for scarce resources with full information so as to satisfy their preferences.

These two individualizing tendencies, legalism and economism, appear again and again in the philosophical discourse about the meaning, purpose, and value of property rights. Of course, these are ideal types, but by articulating their core features, we are able to observe and criticize their presence in all kinds of normative property theories, past and present.

If property is a *contested* concept, as Jeremy Waldron claims, then so is its history.[8] My aim in this chapter is not to cover the entire history of property,[9] nor is it even to provide a comprehensive account of legal debates on property. Rather, my focus is on how conceptions of property have swung between those that emphasize *freedom* to those that emphasize *necessity*—that is, between those that take property to be an

inalienable condition of individual freedom and those that take property to be a rule for managing economic needs. In so doing, I map out distinct threads in thinking about property that came together to create a broad consensus concerning *exclusion* and *efficiency*, law and economics. My argument does not trace all 20th-century conceptions of property but rather claims that a particular tendency in thinking about property is *dominant*: the tendency that succumbs to the pitfalls of what I call *legalism* and *economism*. That is, accounts which treat property either as a legal *right* above all (based on norms of freedom and exclusion) or as an economic *instrument* above all (based on norms of need and efficiency). These are not mutually exclusive; in fact, as I will argue, the dominant conception of property sees it as a right of exclusion which both protects individual liberty and motivates economic efficiency. I claim that these tendencies represent botched attempts at synthesizing the protection of private freedom with the management of social necessity; that is, they fail to treat individuals as both rights-bearing private persons *and* need-satisfying social creatures. Not only are these tendencies one-sided, they also rely on idealized conceptions of the individual, ahistorical and asocial theories of freedom, and ideological assumptions about the market.

My strategy, on the other hand, reactivates the tradition of classical German *Rechtsphilosophie* in order to analyze property as a metaphysical, normative, social, and material relation of right that binds rational, vulnerable human beings together in political communities of freedom and interdependent economies of recognition. This tradition, running through Kant, Fichte, and Hegel, emphasizes the sociality of property even in its most individual forms. This does not make property a solution to the problem of living in freedom with others; rather, it shows just how difficult that can be.

My aim in this Introduction is not only to rehearse the legalistic and economistic views on property but to show how both the various criticisms of them and the new theoretical developments away from them provide a *prima facie* case for a shift in paradigm toward a more normatively attuned, socially grounded, and metaphysically coherent picture of property. My genealogical survey of property in legal theory hopefully loosens the grip of the dominant account of property by revealing its historical contingency and by offering alternative frameworks. I now begin with some distinctions about various concepts and theories of property.

Concepts and Theories of Property

According to Waldron, the general *concept* of property is a "system of rules for governing access to and control of material resources" in a given society.[10] Such resources are *scarce* relative to need, and they primarily

consist in material *things*. There are many conceptions of the concept of property, and each conception signifies a different rule: *private* property dictates that each resource be tied to an individual owner, *collective* property means that a collective body acts as an owner, and *common* property leaves resources open to use for all.[11] A property system is the specific configuration of property rules in any given society. Although all systems are mixed, usually one conception of property dominates. For instance, private property is the norm in capitalist societies, collective property in socialist societies, and while common property management is not found in large-scale social formations, it is found in smaller social bodies.[12] Furthermore, within each system, there are certain objects that fall under other conceptions of property. In capitalist societies, for example, a car could be private, a military base collective, and a park common.

All conceptions of property depend on an idea of ownership, a concept with *its* own set of conceptions. Private ownership authorizes individuals to be owners, but it does not tell us anything about what the owner is authorized to do. Competing conceptions of ownership arise in both legal practice and theoretical jurisprudence, each with their own political, economic, and moral motivations. For some, it means the right to exclusive use; for others, it grants the power to possess, use, and transfer; for many, it is whatever the court says it is. One of the reasons why Waldron's definition of property is so widely accepted is that it avoids the metaphysical problem of trying to determining the *essence* of property. Instead, it pragmatically focuses on the *function* of property in society. The function of property *law* is then to reasonably allocate scarce, material resources according to rights. Not all material relations are property relations, and not all law concerning people and things is property law. This minimal, functionalist account allows one to add in whatever rights one thinks are necessary and whatever normative framework one thinks is valid to determine the substance and structure of the legal institution of property.[13]

This minimal account appears free of normative biases, but Jeanne Schroeder argues that Waldron's theory of property presupposes a certain vision of human nature.[14] By reducing the scope of property to the management of material things for survival, Waldron posits a *homo economicus* without symbolic orders, religious structures, or intangible goods. The figure of the owner emerges by logical necessity, functionally required for distributing things in a reasonable way. Scarcity is taken as a given, doing all the work of motivating a property regime to come into being. Yet scarcity is not a pre-political given; it is not a fact of nature but a result of the relation between social needs and all kinds of human and environmental factors like knowledge, tools, population, weather, and land. Scarcity does not "cause" property; scarcity makes sense only in relation to particular rules for organizing economic life. Otherwise, any resource can be scarce

or necessary given the proper social demand for it. Against Waldron, Schroeder argues that property can be modeled neither on objective things nor on subjective relations but on the *mediation* of both. What this means is that a normative theory of property is unavoidable, for even functionalist approaches tend to smuggle in certain views of human nature after all.

A normative theory of property evaluates property institutions in general, and usually the institution of private property in particular, since this is the dominant form of property relations in modern societies. Such a theory offers a justificatory or critical account of either private property in general or a particular distribution of property. It asks why private property—in general or in this specific manifestation—should or should not exist. This is different from a descriptive theory, which seeks to explain *how* private property functions in its capacity as a legal right or economic institution.[15] In this book, I will focus mostly on *normative* theories of property. There are at least two kinds of normative theories of property: formalist and instrumentalist. Whereas formalist theories take property to be intrinsically and morally valuable as a (legal) right, instrumentalist theories judge property consequentially as a means to a greater (economic) good.

The meaning of property in 20th-century jurisprudence has been shaped both by *normatively* motivated, rights-based, formalist approaches (i.e., Lockean libertarianism) and by *economically* motivated, efficiency-based, instrumentalist approaches (i.e., economic utilitarianism). According to the former, property names the legal right to *exclude* others from an owner's private use of a thing, thus protecting one's negative liberty; according to the latter, property rules provide an efficient means of maximizing economic welfare for all. Together, these two claims exhaust *most* of the theoretical spectrum of thinking about property, as I will show. In the first view, the right to property is a good in itself, exclusion is its essence, and negative liberty is its *raison d'être*; in the second view, the right to property is instrumentally good, exclusion is only one of many powers, and efficiency in satisfying needs and maximizing utility is its main justification.[16] I call the former 'legalism' and the latter 'economism,' and although they are distinct, they can be brought together in one generic conception of property as the *right to exclude others so as to protect liberty and maximize utility*.

Both morally motivated, rights-based formalist approaches to property and economically motivated, efficiency-based instrumentalist approaches to property are, however, inadequate for grasping the meaning of property. As Joseph William Singer argues, rights-based theories which ignore the material consequences of property on others are not so *moral*, and efficiency-based theories which think that all questions of justice can be reduced to questions of distribution are not so *just*. For "in choosing how to conceptualize and judge property rights and institutions," Singer

writes, "we are not only deciding how to maximize wealth and how to divide it up. Rather, *we are choosing what form of social life we want to have*."[17] This two-pronged critique brings out the defects of a purely *formal* approach to property (based on negative legal rights) and the limits of a purely *instrumental* approach to property (based on positive economic needs). By ignoring the "form of social life" that property relations foster, such theories downplay the moral and material significance that rights to property have for *everyone* in society, including those who have nothing.

In the next chapters, I will present a more nuanced understanding of property by reconstructing the legal and practical philosophies of Kant, Fichte, and Hegel; in my interpretation, these philosophers integrate normative accounts of property as a universal *right* with an awareness of the potentially harmful consequences of *not* having property. That is to say, they grasp that every property order is itself a "form of social life" and that individuality and sociality, freedom and necessity are mediated in particular ways through property and thus available for constant renegotiation. But before I get there, I will need to justify my claims about the poverty of legal philosophy when it comes to thinking about property. Thus, in the next sections, I will present two accounts of how and why legal conceptions of property have changed over time. First, I will give an account of five important recent shifts in the social and intellectual development of the legal concept of property. I will then elaborate on a few of these points concerning the duality of *political* and *economic* perspectives on property. After this, I provide a more detailed view of property in legal thought, specifically focusing on the roles of *exclusion* and *efficiency* in the justification of property rights. I conclude by discussing new legal paradigms that challenge the mainstream orthodoxy, paradigms more attuned to social obligations, normative plurality, and material conditions.

Five Recent Shifts

Here I present five recent shifts in thinking about property in the 20th century. The first and fourth points note social-historical shifts, and the second, third, and fifth points reflect shifts in intellectual history. They are roughly chronological.

First, forms of wealth changed in the 20th century, and this change required new theories to make intelligible what was already being done in practice. People went from owning land, slaves, and gold—all subsumed under classical ideas of property—to owning assets, shares, stocks, and capital—each with various rules and regulations. The majority of people's wealth by mid-century was no longer represented by bound, physical things but by "new property": immaterial titles in joint enterprises, various

claims on future returns, pension funds, government entitlements, insurance holdings, and stock options.[18] With ownership separated from control and property dissociated from individuality, the meaning of 'mine' becomes indistinct. This radically throws into question the established explanations and justifications of property rights, all of which took individual sovereignty over land as the paradigm case of ownership.

Second, but related to the first, theoretical jurisprudence moved away from unified accounts of ownership as the exclusive right to absolute dominion over things and toward a family resemblance concept without rigid boundaries.[19] This began in 1913, when Wesley Hohfeld revolutionized jurisprudence by breaking apart the concept of a *right* into sets of juridical relations.[20] These relations consist of *claims*, *duties*, *powers*, and *immunities*, each with their own opposites and corollaries. Instead of misdiagnosing property as a singular right to exclude, it could now be properly dissected into its adequate constituent parts for any legal situation. Hohfeld's framework set the stage for the eventual "disintegration of property" into a bundle of independent rights.[21] Owning property, on this account, denotes a broad set of possible rights, privileges, powers, and immunities, all of which can be reassembled and rearranged in indefinite ways amongst indefinite owners over indefinite objects with indefinite purposes for indefinite periods. This conceptual shift in property doctrine in the first half of the 20th century coincided with New Deal progressive lawyers seeking ways to regulate monopolies, tame the market, and redistribute wealth after the Great Depression. Eventually, this radical shift in understanding property became the new dogma in legal science, no matter what the layperson believed.

Third, the rise of economics as a modern science brought with it a host of analytic tools and theoretical frameworks that legal theorists utilized to make sense of all sorts of confusing property doctrines like externalities, nuisance, trespass, and tort. Unsatisfied with the baggage of natural and positive law perspectives, they developed a new framework called *law and economics* (or the economic analysis of law) that merged parts of rational choice theory, game theory, legal realism, utilitarian ethics, and neoclassical economics.[22] This perspective understood property rights to be the key element in the progress of human history.[23] The function of law, on this account, is to make property rights as clear and specific as possible, facilitating maximum investment, trade, labor, productivity, and wealth. A stunning conclusion of this approach is that the initial distribution of property titles in any given society is irrelevant from the standpoint of economic efficiency.[24] The goal of law, in this framework, is not to protect some property rights against unlawful incursions but to reduce the costs of making contracts so that the most efficient utilization of resources can be accomplished for the benefit of all, irrespective of who owns what.

Fourth, the slow decline of any viable alternative to capitalism in the second half of the 20th century severely damaged the critics of private property who called for redistribution of wealth, limits on commodification, regulations of the market, and less absolute forms of ownership in general.[25] Without a sparring partner, private property required less and less justification either as a general legal institution or as a particular distribution of wealth. This situation gave libertarians, neoliberals, and property rights enthusiasts a moral advantage over their opponents. The burden of justification in regard to private property shifted from those who previously had to defend gross inequality to those who now had to defend equality as a worthwhile goal at all.

Fifth, and finally, is the recent emergence of multi-disciplinary, pluralist theories of property which take into account contemporary research in ecology, psychology, anthropology, linguistics, feminism, ethics, and sociology. After philosophers and legal scholars declared property dead as a meaningful concept in the 1980s, it returned with a vengeance in the 1990s, 2000s, and 2010s.[26] Rejecting the disintegration of ownership into its various components and denying the Lockean libertarian and economic utilitarian justifications of property rights as the only ones available, legal philosophers began constructing new normative, formalist, and integrated theories of property. These include renewed looks at exclusion and exclusivity, pluralist and communitarian theories of value, feminist and psychoanalytic critiques of economic instrumentalism, Hegelian accounts of personality and freedom, Kantian defenses of private right and legal formalism, Aristotelian theories of human flourishing, deconstructive theories of possession, liberal theories of autonomy, ecological frameworks of sustainability, postcolonial criticisms of property law, and Marxist accounts of dispossession. A veritable explosion of thought has broken the straightjacket of property theory; what this means for the practice of law or the working of the economy is still unclear. Before I come to these new trends in thinking about property, I will develop some of the points I made above.

From the Political to the Economic

Let me briefly expand on the first two points of the last account: that is, the idea that forms of wealth have changed and that legal conceptions of property have changed with it. Putting those two together, one could say that the simple idea of *property* disintegrated because of lack of use.[27] The initial strength of the concept of *property* as a theory of *in rem* rights came from the paradigm case of land in societies transitioning to capitalism.[28] The concept of *property* made sense as a way to structure social relations in a world of political instability. Security of possession is of utmost importance in creating a stable *order*, the primary goal of the civil condition.

Property creates order because assigning ownership rights in land resolves individual disputes over territory through nonviolent means. This also allows for market exchanges, which create responsible citizens and, in turn, a healthy state. Now this model of rights functions as long as the primary purpose is explicitly *political*. By the turn of the 20th century, however, capitalism is a different beast, and property fulfills different, non-political functions. Rather, property law now consists in managing technical disputes over complex use-rights, intricate contracts containing a wealth of clauses concerning insurance, profits, inheritance, and so on. In short, although *property* was once useful as a term of art to describe what people owned (i.e., material things), today people own wealth in all kinds of immaterial ways, and the law makes sense of this through contracts and liabilities.[29] Property now fulfills an *economic* function, not a political one. The sovereign right to exclude has been replaced by a bundle of rights that bind.

At first, this model for understanding property was motivated by progressive jurists and legal realists who sought to break the stranglehold of absolute property rights tied to single owners.[30] Instead, they conceived of property as a bundle of *in personam* rights of contract and exchange, all of which allows for more possibilities of redistribution, regulation, taxes, welfare, and entitlements. As the century progressed, the disintegration of property accelerated under razor sharp economic analyses of law. The motivations shifted across the political spectrum as libertarians and neoliberals developed complex economic theories of property rights without property—that is, rights to credit, finance, liabilities, contact, use, and exchange—all adequate to modern capitalist social relations in which people do not own things but titles, debts, shares, and ideas. Property law, in this context, becomes a tool of coding value, not managing but creating wealth.[31] Redistribution, taxes, and takings became the enemies of modern property theory, not because they contradict some vague idea of liberty but primarily because they do not increase the wealth of society, the only acceptable universal value left.[32]

The meaning of property in the 20th century thus transitioned from a thing-based model of full ownership as the right to exclude to a person-based model of contractual ownership as a bundle of rights. Metaphysical tales and normative justifications lost their relevance as the necessity of property was universally proven by anthropological studies, historical reports, and economic data.[33] Like epistemology in the 20th century, property became naturalized, and the only task left for scholars was to update it with the latest descriptive, behavioral, and economic science available. This is not, however, the end of the story. Contemporary legal scholars have recently challenged this consensus from all sorts of angles, such as by retrieving property as an *in rem* right to exclusive use for new reasons,[34]

reinserting social obligation and normative pluralism,[35] reformulating the demands of distributive justice,[36] revitalizing legal formalism,[37] and returning to progressive accounts of property.[38] Thus, although the bundle-of-rights framework along with the libertarian and economic analyses of property are still dominant today, they are by no means the only choice.

Between the Political and the Economic

Let's try another angle. Instead of the function of property shifting from being originally *political* to finally *economic*, it is more likely that there never was just *one* concept of property. Rather, there has always been a struggle between an economic view and a political view of property, *at the same time*.[39] This is a more *dialectical* conception of property, one in which competing parties struggle to impose their view of the same relation onto others. On the one side, then, property signifies an economic good, a *commodity* to be valued, secured, and traded. It protects negative liberty, satisfies individual preference, and forms the medium of market exchange. Understanding property to be a commodity means embracing the market as the primary form of interaction between private individuals. The commodity view of property prioritizes the individual over the community, the market over the state, and the private over the public. For something to be mine, on this account, means that it is under my arbitrary will, such that I can use, abuse, and dispose of it as I choose. Limits on ownership are considered restrictions on individual freedom, and taxes, regulations, and takings are considered hindrances to maximizing the economic welfare of all. Justice, in this view, means respecting the authority of the property owner, enforcing contracts, remedying wrongs, and facilitating the utility maximization of consumer choice. In my reading, this account falls into the pitfalls of both legalism and economism.

On the other side, property signifies an eminently political good, a norm of *propriety* to be followed. On this account, "property is the material foundation for creating and maintaining the proper social order, the private basis for the public good."[40] Taking property as propriety means looking at individuals as inherently sociable beings with obligations to each other. Property rights here serve the functions of making better citizens, enhancing civic participation, and fomenting positive social relationships. This view takes property to be an essential, substantive good for the collective well-being of the polity and not just a formal opportunity for individuals to privately satisfy choices. Property relations are important in this perspective because they create ties of respect and dignity across boundaries, not because they increase individual wealth. The right to exclude, while still important, does not cover the breadth of inclusive relations that property actually enables. There is no ownership without interaction, and so

broadening our conceptual framework enhances the value of property for all. In my reading, this is more like the *social-normative* conception of property to be explored in the rest of this book.

These two perspectives on property—as private commodity or civic good—form two ends of a single spectrum. The more one view becomes dominant, the less does the other. The pendulum of property has swung back and forth, and the 20th century swung strongly toward the commodity view.[41] In my view, the conceptual battle over the legal meaning of property is not simply a theoretical endeavor but also a reflection of the material struggle over the role of property in social life.[42] It is thus not only a technical matter for lawyers, judges, and politicians to decide on whether or not to create, constrain, expand, or abolish the right to property in things such as health care, data, securities, bond swaps, body parts, drones, pensions, rivers, and seeds, but a question for society as a whole, one which may affect the survival and flourishing of our species and our planet.

Thus, any theory that purports to present an absolute concept of property (as simply a right, rule, resource, norm, etc.) has failed to grasp these competing tendencies within every property relation. For if property is a way of practically mediating between individual freedom and social necessity, as I will claim, then there is no way of getting around the economic *and* political aspects of property. As long as social interaction is permeated with normative conflicts over mine and yours, property will fall on both sides of the divide between politics and economy.

Exclusion, Efficiency, Anxiety

So far, I have presented some general tendencies and specific shifts in thinking about property, but I have yet to analyze the normative basis of theories of property in the present, namely their origins, functions, elements, and faults. In the next sections, I will lay out in more detail some of the normative arguments behind dominant pictures of property, along with their shortcomings. I will also go into more detail on alternatives to these pictures. I begin by focusing on property as the *right of exclusion*, one whose justification lies in *securing liberty* and *fostering efficiency*.

Exclusion and Efficiency

In the mid-1760s, Sir William Blackstone published his *Commentaries on the Laws of England*, a multi-volume tract that laid the theoretical foundations for much legal thinking on property to come. In particular, his focus on property as a right of *exclusive dominion* became central to jurists of the following centuries. To Blackstone,

> There is nothing which so generally strikes the imagination, and engages the affections of mankind, as the right of property; or that sole and despotic dominion which one man claims and exercises over the external things of the world, in total exclusion of the right of any other individual in the universe.[43]

Although Blackstone had plenty more to say about the intangibility, utility, and diversity of property, this statement of exclusive dominion reigns supreme in the imagination of those who followed him.[44] The idea of *exclusion* as the supreme principle of property is not Blackstone's original claim; it is already there in Grotius, Hobbes, and Hume. But Blackstone made exclusion explicit as *the* central aspect of the right to property for modern jurisprudence. Almost all arguments for adopting exclusion as the core of property rely on two claims: exclusion *guarantees individual liberty* and exclusion *motivates economic efficiency*. The first claim is backed by liberal and libertarian rights-arguments for property as an intrinsic good, and the second is supported by utilitarian economic-arguments for property as an instrumental good. Both provide powerful justifications of property and reasons for why exclusion is central to it.

According to legal scholar Thomas Merrill, there are three reasons for the primacy of the right to exclude in the conception of property. *Logically*, one can deduce all the other rights of property (use, transfer, income, abandon, etc.) from the right to exclude, but not vice versa; *historically*, the right to exclude is the first right to be found in property systems dealing with land, from the most primitive to the most complex; *systematically*, the right to exclude is a universal trait of all forms of property, whether private or public, material or intangible, fungible or inalienable.[45] The competitor theory to the exclusion-centric account of property is the "bundle of rights" view, which takes a looser and more positivist approach to what makes up the content of the right to property. According to this perspective, the various rights, liabilities, and prohibitions included in ownership can be assembled and disassembled in an indefinite number of ways depending on the case at hand.[46] For instance, a right to property in something can mean the right to gain income from it but not the right to sell it, or the right to use it but not the right to manage it, or the right to sell it but not the right to possess it. This view has the advantage of being more flexible and pragmatic for lawyers and judges when dealing with the diversity of actual cases in property law. The problem with this approach is that ownership is *experienced* not as a bundle of flexible legal tools but as a singular right between owners and their property, even if it not so juridically clear. The exclusion-essentialist view and the bundle-of-rights picture of property on my reading are both one-sided, and so each must be qualified by the partial truth of the other.[47]

In addition to the claim that exclusion enables liberty, the second major reason for making exclusion the core of property is to say that it motivates economic efficiency. The argument goes like this: without legally defined boundaries for what is mine and not yours (i.e., without private property), I would have no incentive to be resourceful with any goods, tools, land, or machinery, because I would have no reason to believe that the results of my labor would return to me. If I work hard to produce a lot in an efficient manner, other free-riders could just reap the benefits of my labor since everything is up for grabs anyways. If I am lazy and do nothing, then I could just take what others have made. Either way, the result is the same, so why work hard at all? Whether I am lazy or diligent will not matter if I cannot claim what is rightfully mine. Individuals in this situation have an incentive *not* to be productive since it is more rational to work less and gain more than work more and gain less. Collectively, however, this is irrational and makes everyone worse off in the long run.[48]

A similar problem with non-exclusive property is the so-called *tragedy of the commons*.[49] If everyone is allowed to benefit from using a certain common good, like a pasture, fishery, or park, then supposedly nothing would get developed efficiently because everyone would be depleting all the resources without concern for long-term sustainability. That is to say, while individuals would act rationally to maximize their private gain by consuming common resources for their own private benefit, the *overall* costs or externalities of such activities would make everyone's condition worse off.[50] On this approach, everyone would be better off if the resources were privately owned.

Those are a few of the economic arguments for adopting an exclusion-based approach to property. In short, the claim is that if I can exclude you from appropriating the product of my labor, then I will have a rational interest in taking responsibility for what is mine; and if I am excluded from taking whatever you produce, then I will be motivated to make myself productive. Thus, a system of excludable private property maximizes the utility of the resource for all and leads to a sustainable level of consumption. But if resources were originally held in common (as all these arguments presume) and if it is rational for each individual to overconsume and underproduce (as the tragedy of commons and free-rider problem presumes), then *how are rights to private property even possible in the first place*? Here, the 17th-century debate on how to justify private property from a condition of common ownership returns, but instead of looking to the great chain of being, the universal consent of all in a positive or negative community, or the natural right of labor,[51] the economic utilitarian approach to private property looks to rational choice theory and the analysis of externalities and transaction costs to explain why private property makes sense from an individual perspective. This perspective has

methodological roots in Bentham, but its conception of humankind is Hobbesian. It is a world of all against all, but the resolution comes not in the form of an authoritarian state which posits property rights from above but in the rational behavior of individuals who develop property rights from below. Basically, in this account, a system of private property balances the ratio of private gains to collective costs by internalizing the externalities that common ownership created. Making individuals responsible for their own resources incentivizes them to deal with the threat of overproduction and underconsumption through techniques of labor and resource management that otherwise would not have been rational for an individual to develop according to a strict cost-benefit analysis. Setting up such a system, however, itself has a cost, the transaction cost of negotiating property rights in the first place. But, according to proponents of this view, it will eventually be more expensive *not* to have a system of private property than to have one, and so individuals will rationally work it out.[52]

The argument of exclusion relies on some questionable premises and hidden assumptions. First, the actors in such dramas are always isolated individuals separate from each other instead of social beings bound by the moral obligations of families, religious communities, ethnic groups, political organizations, workplaces, and so on. Every free-rider story imagines a world of separate individuals with no ties to each other, fighting for their own welfare at the cost of others; survival unto death is their mantra. Economists, political scientists, and philosophers who tell such stories thus presuppose a political and moral framework in which humanity is at permanent war with each other. This should be unsettling. Perhaps, the individuals in such stories do have families and larger obligations to a community, but the normative framework here treats individual behavior as rational only insofar as it maximizes the benefits of each. But relying on the methodological fiction of the abstract individual is inadequate for justifying private property, for property does not exist apart from the interpersonal relations and obligations between people, as I will show in the following chapters.

Second, there are all sorts of non-exclusive uses of property which can be limited, shared, and regulated by others. As many contemporary legal philosophers have argued, property rights are not as exclusive as we want to believe.[53] Rather, such rights bind individuals to each other in particular ways with particular duties and responsibilities, even if some of those duties concern non-interference. To put it even stronger, there has never been an *absolutely* exclusive right to anything. As I will show in the following chapters, the obligation to non-interference and the right to exclusive use can function only if one's claim of possession is recognized as valid by others and incorporated into their behavior. This simply means that property rights are impossible without cooperation from others. Yet the property-as-exclusion thesis makes cooperation a mystery, not a necessity.[54]

Third, theories of property which focus solely on the right to exclude say more about non-ownership and the *non*-owner than about ownership and the owner.[55] In fact, they hardly say anything at all about the myriad duties of the owner toward others, toward themselves, toward what is owned, or toward the community at large. Such accounts are silent on what exactly makes up the *content* of ownership. Rather, the focus is on non-owners: how to treat them and how they should treat you. Logically speaking then, the exclusion theory has it backwards, placing the duties of the non-owner above and beyond the rights of the owner. But the non-owner exists only in relation to an owner, and exclusion tells us nothing about what an owner *is*. Larissa Katz argues that such theories mistake exclusion for exclusivity, the real core of ownership. The owner has the exclusive right to set the agenda of their property, not the right to exclude everyone else from their domain. Avihay Dorfman adds that exclusion-based perspectives are theories not of property but of possession. Such theories fail to understand the private-law form of ownership, its bilateral normative power, and the distinction between personal and private property.[56] Accordingly, a more Kantian-inspired approach focused on the normative relationships underlying the authority of private right is better attuned to grasping the specificity of property rights as a social form, as the next chapter will show.

Fourth, there are many open questions concerning the tragedy of the commons and free-rider story that motivates the economic utilitarian defense of private property as the right to exclude. On the one hand, these models make sense only given a certain convergence of conditions—that is, only when rational actors are using rivalrous resources in an unregulated way and are able to reap the full benefits and share the full costs of consumption.[57] Some scholars have recently challenged this model, showing how uncommon it is in reality; instead, commonly run resources like fisheries usually involve a whole host of implicit and explicit norms for how to use, share, possess, and sustain them.[58] Since the empirical conditions of many private property–justifying thought experiments are not actually present in most cases, it is more a *comedy* than a tragedy of the commons.[59] On the other hand, the theory of rationality that underlies these models is completely ahistorical and asocial, as mentioned in the first point. As some economic historians have argued, every historical system of property brings along with it a distinct set of rules and 'rational choices' of survival for those living within it.[60] For instance, under feudal property relations, acting like a rational actor according to the private property rules of market capitalism would be completely *irrational* and, in effect, suicidal. Efficiency in one setting has different parameters than in another, and there is no simple transition on the basis of rational choice as such. In short, there is no universal rule for how to be rational toward property

outside of any particular property system. These models project our current economic rationality of private property back onto the history of all social forms of property. This ignores the rationality of actors under different property rules; instead, it imagines an invariable soul of private property trapped in a body under irrational property systems, waiting to get out and realize its true essence. This is economic metaphysics, not history, and should be treated as such.

Finally, the role of the state is completely ignored or minimized in these arguments, as if private property rights could exist without state coercion. Without the public authority of the state, however, individual property claims lack legitimacy and protection. Property rights are supposed to grant one the authority to exclude all others from interfering with what one owns, but the state directly interferes with one's property, and it does so as part of its duty to *protect* property. The right to tax is the economic basis of any state, and taxation is nothing but the power to redistribute property, to override the right of exclusion. If property rights presuppose state authority, and if state authority presupposes the right to tax, and if taxes legally repudiate the exclusive use of property, then how can property rights be based on *exclusion* at all?

There is a compelling argument to be made that the obsession with *exclusion* in theories of property is a symptom of a deeper anxiety, one that fears asking questions of *distributive justice*. Theorizing property as the right of exclusion can then be understood as a way of changing the topic, of shifting the burden of justification of private possession away from *how much* is owned and *why* to *who* owns and *why not*. It is to this argument I now turn.

Ownership Anxiety

According to Carol Rose, theories of property that focus on *exclusion* and the rights of ownership blind us to questions concerning the *justice* or *injustice* of acquiring property rights in the first place.[61] To really understand Blackstone's axiom of exclusivity, and why it is adopted by so many, we should read it alongside his "ownership anxiety":

> And yet there are very few, that will give themselves the trouble to consider the original and foundation of this right. Pleased as we are with the possession, we seem afraid to look back to the means by which it was acquired, as if fearful of some defect in our title.[62]

In other words, the exclusivity of rights to property shields us from wondering about *how* individuals acquired such rights in the first place. Instead, the mere *fact* of ownership binds us to respect it, no matter how bloody its

origins. This deflection from the question of original authority hearkens back to a classic tradition of political thought. The idea is that the foundation of law itself is unfounded by law and cannot be held to the same standards of justice that the law dictates. Whether a noble lie or a necessary evil, the origin of states, law, and property is not to be discussed, debated, or even invoked.[63] To wonder about acquisition is to implicitly question the distribution of property, for why else bring up the past if not to question the present? Thus, one way of understanding 20th-century legal theories of property is to see them as very complicated ways of avoiding just these kinds of questions.

Rose distinguishes two strategies that avoid questions of justice in relation to the origin of property titles: *doctrinalism* and *utilitarianism*.[64] In my account, these two can be assimilated into the categories of *legalism* and *economism*. Doctrinalism (as one brand of legalism) is the conventionalist strategy of taking property rights as a historical given and letting the law sort out the mess of disputes. The only task of legal scholars is then to perpetually refine technical doctrines on use rights, ownership claims, infringement remedies, and so on until property rights are specified as much as possible. *Custom* is the rule, *land* is the model, and *stability* is the slogan. Plainly conservative, this textbook approach preserves the distribution of property through detailed explications of the myriad rights and duties that come with ownership in all sorts of particular cases. All normative questions are irrelevant, left to politicians and philosophers. The only justification needed for owning property is that it was acquired legally. And if it was not acquired legally, then it counts not as *property* but rather as *possession*. According to this legalistic strategy, positive law is the alpha and omega of any question concerning property.

However, like people, the law *changes*. It develops, adapts, and adjusts with every era. One form of property today is illegal tomorrow. The path to acquisition, the object of possession, the terms of contract, the limits of use, the forms of labor, the boundaries of control, and the means of sale—everything that makes up property rights changes with time. History is the least trustworthy witness to the legal justification of property, for norms at one moment are not the same in the next. The "doctrinalist deflection" maintains the illusion of permanent norms of justification so that the structure of property can appear firm while the ground beneath it shifts.[65] The doctrinal splicing of the property atom is a hopeless search for that invariant essence of exclusion in every claim to mine and thine. But the more it divides, the less identity property maintains as a right to exclude. More and more, property becomes a placeholder for whatever the law says it is and thus for whatever the owner says it is.

Against legal doctrinalism, utilitarianism (as one brand of economism) appears as a breath of fresh air. No longer can dusty collections of

customary laws accumulated through history tell us what property is or is not. Rather, let us decide for ourselves, according to our own *self-interest*. Our interest in owning property is simple: to maximize our individual welfare. In so doing, we raise the welfare of all. Modern utilitarian theories of property and law have taken a hard economic turn, so much so that there is now a whole school of thought based on it called *law and economics*, or the economic analysis of law.[66] The *law and economics* approach to property blatantly disavows the history of philosophy, classical jurisprudence, and modern normative theory. Instead, it looks to neoclassical economics, game theory, rational choice, behaviorism, methodological individualism, and, of course, utilitarianism as its progenitors.[67]

The economic analysis of law utilizes all these methodological novelties to make sense of property disputes concerning title, use, sale, waste, nuisance, harm, taxes, contract, entitlements, and more. Instead of perusing the arcana of common law doctrine and dividing rights into sub-rights with sub-sub-rights, the *law and economics* approach looks to standards of efficiency as the benchmark by which to adjudicate conflicts over property rights. Why efficiency and not first possession, desert, or security? All of those norms are fine on their own, but when rights come into conflict with other rights, there is no objective reason to prioritize one over the other. The utilitarian framework short-circuits the dilemma of normative decision by offering an objective, quantitative path through the legal quandary. The path to resolving conflicts consists in whatever property arrangement efficiently maximizes the individual welfare of all, cutting costs and increasing benefits along the way.

Efficiency is the quintessential liberal value, for it does not decide on the general good of society but rather presents a rule for how everyone can best achieve his or her own individual versions of it. This approach calculates how different arrangements of property rights contribute to maximizing individual welfare overall by assigning monetary costs and benefits to each context, thus allowing the most efficient distribution of rights to emerge as the ideal resolution. *Exclusion* remains the regulative ideal for what a property right should be, although how anyone actualizes exclusive use is now a question of individual preference. The right to exclude remains important (but not essential) from a *law and economics* point of view because without it, an inefficient use of resources is almost always guaranteed. Inefficiency, on this account, reduces the welfare of all, the only standard by which to judge. Thus, according to this perspective, inefficiency provides a *prima facie* ground for a loss of title.[68]

According to the *law and economics* perspective, private property rights historically emerge as the rational solution to the problem of *externalities*;[69] that means private property rights are a way of internalizing all the unforeseen social costs of private activities.[70] To incorporate externalities, the trick

is to reduce *transaction costs*—that is, the costs of making economic exchanges, of using the market, and of determining the right price to buy, sell, or trade.[71] Transaction costs can be understood as all the time and information required for making the best, most efficient bargains. By creating stable property rights, individuals are able to shortcut all the effort, violence, knowledge, and luck required for a good deal to be made. Property rights, in this perspective, allow for reasonable and consistent judgments on the value and cost of goods, labor, land, resources, information, and so on. This provides incentives for maximizing the utility of what one owns, since the future benefits of improving one's property can now be guaranteed against the losses of time and effort spent currently working on it. Exclusion of others from freeriding or stealing my lot secures this promise.

This economistic narrative, like the legalist one, soothes worries about the ownership anxiety. Whether or not one has a moral right to occupy land, expropriate territory, enclose commons, contract wage labor, sell drugs, or buy slaves is a non-starter. One percent of the population owning ninety-nine percent of the resources in a given society does not pose any moral difficulties. It is a question not of *rights* but of *utility*. The right to own, in this perspective, is really justified only if one makes productive and efficient use of what one owns. If you do not own anything now, it is probably because you did not make a productive use of anything before; if you own a lot now, you must have made a productive use of it.[72] If there is a conflict over some piece of property, then the solution should involve a distribution of rights such that the most productive use of property is rewarded. The law achieves this goal by reducing transaction costs, internalizing externalities, and providing incentives and deterrents through assigning monetary compensation and fines. All those vague ideas about morality, rights, and justice are left in the dust by the technical precision of the economic analysis of law.[73]

Yet property is not just a number to be bargained, a value to be calculated, or a resource to be traded at will.[74] The economistic approach to property eliminates any normative connection between the person and the thing owned, treating it as merely a placeholder for cash to be traded. If money is the universal equivalent of all value and if property is just one value among others, then the *law and economics* perspective is justified in its cavalier approach to ownership. But if property rights signify something *other* than money, if they reflect a non-economic form of value, then such an approach fails to do justice to the normative and social meaning of property as a right. Treating property rights as a means of maximizing efficiency ends up mostly transferring wealth upwards, as if that was somehow the universally accepted normative purpose of law and not a particular political project in itself. Rather, such a legal strategy is itself a disavowed form of redistribution, one which appears to be simply technical and

politically neutral but in fact reinforces the inequalities of the market. The value of efficiency is taken as a self-evident, universal good, although it may lead to very immoral outcomes, depending on who or what is considered inefficient. And perhaps the distribution of some goods *should* be inefficient from the perspective of the market, like childcare, education, transportation, and natural resources. To consider the ownership and distribution of these goods only from the standpoint of economic efficiency is thus to neglect a plurality of other, non-economic criteria of value—at great human and ecological cost. In short, the productivist bias toward property in the *law and economics* approach is unfounded. Just as there is no intrinsic connection between property rights and economic value, there is no intrinsic connection between ownership and efficiency. These are social norms imposed onto the property relation, which are then considered to be natural.[75]

The *law and economics* approach to property has the goal of eliminating transaction costs in order to allow for the most efficient use of resources possible. The ideal situation is a perfect market in which everyone fluidly trades whatever he or she wants for maximum gain without making anyone worse off. The best way to do this is by creating a framework of property rights so precise that no matter who owns what or how much, everything can be exchanged to a point at which every resource is utilized to its optimal efficiency. This perfect market is, of course, a fantasy. But fantasies reveal a lot about the dreamer. Transaction costs signify all the gaps that stand between individuals and their desires. These costs include the information that people do not know, the space separating people from each other and from things, and the time that it takes to acquire information and bring people and things together. To remove all these "costs" of interaction between people and their world is to eliminate the very basis of subjectivity: finitude.[76] For all of these gaps provide the space in which *desire* occurs. Without them, there would be no desire to *own* anything in the first place, for objects take on the quality of being *mine or yours* only if they are not always immediately available for everyone. The idea of a perfect market—in which every object, every relation, and every piece of knowledge can be owned and perfectly exchanged with full information simultaneously everywhere and anywhere—ultimately renders the distinction between self and other meaningless. This is because the differences of knowledge between individuals as well as all the spatial and temporal gaps separating individuals from each other are constitutive for one's self-identity. Human beings are not exclusively individual property owners who calculate the costs and benefits of every choice before acting with others; that would be neither desirable nor feasible for finite, vulnerable, sometimes rational, and mostly free creatures like us. Rather, human beings are inextricably bound to each other through numerous commitments,

relations, and communities, all of which infuses property rights with social and normative content beyond economic efficiency and libertarian exclusivity. To show this, I now turn to new paradigms which emphasize the social and normative content of property over its legal and economic form.

New Paradigms

In response to the poverty of legalistic doctrinalism and economistic utilitarianism, a new wave of critical, historical, and normative analyses of property emerged in the late 20th century which brought together a number of objections to the dominant paradigms.[77] Critical legal scholars challenged the perceived neutrality of the state in legal affairs, the economistic and conservative tendencies in legal analysis, the minimal engagement with questions of justice, the indeterminacy of legal reasoning, and the atomism of legal theories. In relation to property in particular, they attacked the idea that property is pre-social, that the evolution of private property is natural or rational, that descriptive theories are separate from normative accounts, and that norms of ownership are separate from the values and goals of society as a whole. In short, the meaning of exclusion has been reinterpreted, the bundle picture has been upset, and the narrow legalistic and economistic perspectives have been strongly criticized by accounts which focus on the social norms and ethical obligations underling property ownership.

One example of the pivot toward social-normative frameworks in legal theory is the work of Joseph William Singer, who advocates for a shift in perspective from an *ownership* model of property to an *entitlement* model of property.[78] When property is identified with ownership, the question to settle all disputes is simply, *who is the rightful owner?* The individual owner is the sovereign subject of a bundle of rights concerning things they can exclude from others. Boundaries are set up between people, and the state is nothing but an external enforcer. Singer's entitlement perspective asks a different question: *who is entitled to property?* Property on this view is about obligations between people concerning the use of resources and the kinds of social relationships they want to foster. Entitlements can be shared and distributed in all sorts of ways, with the state playing a key role in reinforcing those commitments to each other. There is no individual owner standing in a bubble outside the state, against the community; there are only community members with different entitlements to things, different responsibilities to each other, and different ways of solving their problems together.[79] The law does not stand in for the voice of a community; it is rather only one expression of a community's self-understanding, one that should be responsive to the demands of that community and interwoven with other social norms and practices.

Similar to Singer, legal theorists Gregory Alexander and Eduardo Peñalver understand community to be central to the meaning of property.[80] Against the utilitarian and contractarian reductions of community to an instrumental value for the individual, they take community to be ontologically prior to the individual; it is a necessary and positive aspect of what it means to be a human being. Any theory of property that ignores or instrumentalizes the role of community misidentifies the purposes that property serves. Adopting an Aristotelian perspective, Alexander and Peñalver take community to provide essential capabilities for *human flourishing*—the pluralist purpose of law and property. Dependence on others is not a problem that the law aims to solve via property rights; on the contrary, dependency conditions the very possibility of property, for without people depending on each other to respect their entitlements, nothing like mine or yours could ever get off the ground. Without the competition and cooperation that come with social interaction and interdependent lives, property would not even make sense as a norm. For what is the point of owning things if everyone can get along on their own already? It is only because people are bound to each other as social beings—for survival, recognition, happiness, and love—that property works, whether as a space of private freedom, a rule for social cooperation, a mechanism for efficient resource management, or an instrument of power. All the rights, norms, rules, and laws that a system of property entails hang on the mesh of values, relations, desires, and goals that a community embodies. Law may formalize values about ownership into a set of authoritative rules, but it does not exhaust the conditions of possibility for property to exist. It is these social and normative conditions of property that law presupposes but cannot explain which motivates my transition away from legal theory proper and toward social philosophy. In particular, I believe that the social-theoretical analyses of property in Kant, Fichte, and Hegel—to which I turn in the next chapters—can provide a richer and more systematic way of understanding what it means to call something *mine*. For these thinkers, property is not simply a legally authorized private right to an external thing but a provisional, reciprocal, and even contested relation between freely associated individuals in terms of how they want to live together on a finite planet and how they want to pursue their material ends both together and apart from each other, to recognize each other, and to validate each other as distinct and dependent, morally vulnerable members of a political whole.

Summing up the trend toward normative pluralism and social obligation is the "Statement of Progressive Property," a two-page manifesto written by Gregory Alexander, Eduardo Peñalver, Laura Underkuffler, and Joseph William Singer in 2009 for the *Cornell Law Review*.[81] I will present the main points below as theses for how to think about property today. The

first point is *that understanding property as the right to exclude does not capture the experience of property as a social practice*. To formulate a better understanding of property, one must look at the experience and effect of ownership on people themselves. This can help clarify the kind of values that property actually serves and the kinds of social relationships that property actually fosters. This is what I call the *phenomenological* thesis. It is phenomenological because it eschews doctrinal formalism and conceptual analysis and instead focuses on the experience and practice of possessing, owning, exchanging, consuming, and all other aspects of the property relation. This strategy would illuminate the bonds and obligations that property institutes amongst people across space and time. One problem for this account of property is *incoherence*. That is, one could look at the world of property relations and conclude that it is just a random allotment of rights and duties with various rules and justifications which follow no rhyme or reason.

This motivates the second point: *property serves plural, incommensurable values* such as self-interest, community, economic efficiency, liberty, welfare, and justice. There is no single metric. No utilitarian, libertarian, personalist, formalist, or recognition-based theory can decide once and for all what the ultimate value of property is for every case. This is the *pluralism* thesis. But a plethora of values can lead to contradictory rules for how to adjudicate property disputes. How should one decide which has priority? Philosophers and economists call this the index problem.[82] This motivates the third point: *conflicts over property entitlements are unavoidable, and so there needs to be a way to prioritize some values over others when deciding how to resolve disputes*. There is no algorithm for this, only reasoned judgment, public deliberation, fairness, and trial and error. This is the *democratic* thesis. There are many challenges to a democratic strategy, including legalistic doctrinalism and economistic utilitarianism. Those frameworks resolve property disputes not through democratic methods but rather through formal rules, technical doctrine, and cost-benefit ratios. Such methods appear to be morally neutral, yet they end up reinforcing immoral and unequal distributions of property.

This leads to the fourth point: *property is a form of power*. Property relations determine how material needs are produced, distributed, shared, and sold; they are rules of reproduction for a specific social order. Without owning property, individuals cannot participate in society in any meaningful way; they are powerless to act, unfree. If everyone has equal value as a person, then a just legal order would see to it that everybody has the ability to acquire whatever property they need to live in a dignified manner. This is the *egalitarian* thesis. The challenge to an egalitarian account of property is *libertarianism*. Libertarian theories of property minimize duties toward individuals, claiming that everyone is an island unto themselves. Against

this stands the last point: *property shapes the structure of communities*.[83] Property can foster positive interactions based on trust and respect or enable relations of envy and exploitation. Property laws should thus help communities become more democratic, not more polarized. There is no individual without the community, and no community without a structure of property binding individuals to each other. This is the *communitarian* thesis, the challenge to which is *individualism*. The way to counter individualism is to incorporate it into the plurality of values that property serves.

Together, a progressive vision of property would be *phenomenological*, *pluralist*, *democratic*, *egalitarian*, and *communitarian*. That is to say, such an account would look to the plural and somewhat incommensurable values that property actually serves in a political community and would democratically try to resolve disputes in such a way that recognizes the equal value of owners and non-owners alike as well as the relations of power and inequality that accompany ownership in modern society. This vision of 'progressive property' combines elements of democratic theory, legal realism, political liberalism, institutional economics, virtue ethics, and pragmatism into a new paradigm of what property can be. A few approaches already share the ideals of progressive property: social relations theory,[84] social-obligation theory,[85] the human flourishing theory of property,[86] and, most recently, Hanoch Dagan's liberal theory of property.[87]

Compared with the previous century of legal and economic theories of property, this is quite a shift. What are we to make of it? There have already been a few responses to the call for progressive property, not all of which are positive.[88] What is unique about the "Statement on Progressive Property" is how it tries to walk the line between those who heavily criticize private property and those who defend its absolute necessity. Instead of dismissing private property as an instrument of domination, it tries to accommodate the critique by demanding the law to be conscious of its power. Instead of enshrining property as a natural right that protects individual liberty and fosters economic efficiency, it incorporates the values and functions that property serves without making any one dominant. Against the consensus, private property is considered to have as much social as individual value, as much moral as economic purpose, as much wrongful uses as right. In short, progressive property means that a purely legal perspective on property is not enough, that it cannot make sense of its object without a more systematic social and political philosophy. But whose? It is my task in the rest of this book to bring out the social, normative, and political aspects of property with the help specifically of Kant, Fichte, and Hegel, whose philosophical analysis of property goes beyond superficial accounts of individual rights and economic efficiency. As opposed to other perspectives on property, they provide systematic

theories of the role, value, and limits of property rights and relations in modern life, such that individuality and sociality are mediated in highly complex ways that are not reducible to exclusion or efficiency. The goal is to go beyond the dominant libertarian and utilitarian, formalist and instrumentalist accounts of what it means to call something mine, yours, theirs, or ours. To understand our distorted relation to property in the present, it helps to look at alternative ways of conceptualizing it in the past.

Conclusion

In 1954, Felix Cohen asked the following question:

> Can we all agree at this point that essentially this institution of private property that we are trying to identify in outline is not a collection of physical objects, but rather a set of relationships—like our conversation or our differences of opinion?[89]

If only it were that easy. To most lawyers, laymen, and legal scholars, private property is not a conversation or a difference in opinion but an established institution of law governing the efficient allocation of resources to individuals and authorizing owners to exclude non-owners from use. Liberty and wealth are its ideals, and law and economics are its domains. As long as exclusion and efficiency are central to its meaning, property rights can be disaggregated, ownership can be dispersed, and entitlements can be fragmented. The market remains its home, the state its enemy, and the individual its ideal. This legal-economic view does not come out of nowhere. It is one response to the changes in the legal and economic architecture of society in the previous century. The paradigm case of an individual owning land has given way to multiple people owning limited titles with varying rights, duties, privileges, and liberties concerning mostly intangible assets. The *right to exclude* has gone from being the essence of property to being marginal to it to now being something in between. The political function of property as a bulwark of order and liberty has been displaced by its economic role in fostering growth and wealth. The conceptual shifts in legal theories of property are expressions of the institutional shifts in actual property relations.

But this view on property is not the only one, and the institutional shifts in property relations are not so definitive. In the early part of the century, legal realists sought to incorporate ideas of coercion, power, and social relations into the meaning of property itself.[90] By doing so, they were able to create a legal basis for redistributing property to the propertyless through taxes, public works, and social welfare. Since property already implies power and coercion, there is nothing wrong with channeling that

power into progressive goals. Later in the century, property's power was rechanneled into maximizing the wealth of owners via a legal framework that considered taxes theft, redistribution rape, and equality slavery.[91] The market became the *sine qua non* of property relations as classical liberalism transitioned into deregulated neoliberalism. Legal theories of property supposedly abandoned explicitly political and ethical approaches for a technical fix to solving utility and efficiency problems case-by-case, or they adopted wholesale libertarian philosophies which turned property rights into an unassailable pre-social right against the state.

In response to the ideological success of the economic and libertarian readings of property, critical legal scholars, feminists, egalitarians, Hegelians, Kantians, and Aristotelians at the end of the last century and beginning of this one constructed more nuanced views of the ties between property, normativity, community, and social obligation. Feminists have challenged the legal ideology that treats women as property in marriage;[92] anti-racists have argued that the very idea of a right to own things as property is historically modeled on the right to own people as slaves; Marxists have considered private property to be both an expression of human alienation and a step toward social redemption; ecologists have claimed that private property rights deform our understanding of nature while enabling destructive behavior to our shared environment. After the long shadow of Locke and Bentham, some legal philosophers have turned to Kant, Hegel, and Aristotle among others for new inspiration on how to rethink property in terms of freedom, personality, recognition, and human flourishing.[93] In addition, new legal, critical, and postcolonial perspectives on private property have challenged the justifiability of the concept as such, given its roots in racialized, gendered, and capitalist forms of domination.[94]

Following this trend, I argue that there is a particularly useful and underdeveloped framework for thinking about property, freedom, right, and recognition in the classical German philosophy of Kant, Fichte, and Hegel.[95] Their accounts predate the modern pitfalls of legalism and economism that plague property theory. Kant, Fichte, and Hegel do not overly focus on positive law, bundles of rights, exclusion, or efficiency, although all of those aspects are touched upon. Rather, they make explicit the metaphysical, normative, social, and material conditions of possibility for rights to property to exist with legitimacy, and they do so through systematic accounts focusing on practical freedom, mutual recognition, and social conflict. Kant's normative theory of right and possession, Fichte's transcendental theory of property and labor, and Hegel's social theory of conflict and recognition each offer compelling, holistic visions of what it means to say *mine* in the modern world. In the following chapters, I will reconstruct each account of property in depth, offering novel interpretations along the way.

By laying out the various conceptions of property in legal philosophy and their limitations, we are now better able to appreciate the depth of systematic thinking about property and its conditions of intelligibility in the chapters that follow. The next chapters are indeed very different in style than this one; they offer close readings of difficult German philosophical texts from over two hundred years ago. They require more patience and willingness to accept at first abstract metaphysical claims about freedom, self-consciousness, and ethical life. But as the chapters progress, such claims become substantiated and fulfilled in the concrete theories of property developed. While the thinkers that follow overcome the major limitations of the accounts presented above (i.e., reducing property to a legal right or economic tool), they do not settle all the contradictions of property once and for all. But neither do they avoid them. Rather, they take seriously just how difficult it is to ground anything like a rightful claim to mine or yours, to spell out the kinds of social institutions it requires, the subjects it presupposes, the objects it determines, the relations it forms, and the world it envisions. That is, they confront head-on how my claim to possess something can have authority over you, even though it is nothing without your recognizing it as authoritative. That is, they show how one's individual freedom, one's very status as a practical agent in the world, must be grounded upon the freedom and recognition of others, even and especially if it excludes them, limits them. This normative paradox of property as an inclusive relation of exclusion, an exclusive relation of inclusion, comes to the fore in the perspectives below. Having worked through the narrow conceptions of property in mainstream accounts, we are in position to contrastively see the significance and subtlety of the philosophical frameworks below.

I have suggested that the dominant legalistic and economistic frameworks of property are one-sided and that they are limited, among other things, by individualistic and asocial conceptions of freedom, by narrow conceptions of right and welfare, and by reductive views of liberty and utility. While the bundle-of-rights model and the exclusion model, for instance, are useful for discussing property in pragmatical legal contexts, they are both constraining as conceptual frameworks for grasping the social-normative aspects of property that transcend private relations between formal rights-bearing subjects. This in itself grants us reason to approach property anew, to grasp it as a problem and look into its metaphysical, normative, social, and material conditions of possibility. The reason we should turn to Kant, Fichte, and Hegel in particular, and not just any philosophy of property, is that they uniquely and systematically offer a genuinely *social* or *relational* account of property, one that mediates individual freedom and social obligations in complex political, economic, and ethical forms.

What distinguishes the three authors I turn to next is the fact that they do not simply reject the nexus of property and individuality. They accept it but at the same time suggest that property requires an intricate mediation between individuality and sociality. In the conclusion, I identify a genuine paradox of property that Kant, Fichte, and Hegel have brought out with specific clarity. To claim something as mine is to exclude others but at the same time to appeal to these excluded others to constitute a community of mutual recognition with myself. Property socializes us by individualizing us and individualizes us by socializing us. It reveals individuality as a social institution and sociality as dependent upon individualization. This problematic, which appears for the first time in Kant, Fichte, and Hegel, offers a fresh take on property, one that can help overcome the limitations of the legalistic and economistic paradigms. In other words, Kant, Fichte, and Hegel do not just compensate for the one-sidedness of the legalistic and economistic paradigms, they do so in a way that overcomes the individualism of both. The individual subject underlying property relations is, as I will argue, always incomplete (Kant), a reciprocal concept (Fichte), and a result of a social struggle (Hegel). Kant, Fichte, and Hegel together provide an approach to property as one dialectically developing response to the question of how free and finite human beings can rightfully live together on a shared planet as mutually dependent, morally vulnerable, needy creatures. It is this problem which the concept of property tries, and perhaps fails, to solve.

Notes

1 Marx (1842) MECW 1: 230.
2 See Marx (1859) MECW 29: 261–2.
3 Marx (1842) MECW 1: 228.
4 On the standard bundle of rights to property, see Honoré (1961). See also Waldron (1988) and Christman (1994).
5 See, for instance, Burke and Snoe (2016).
6 Shklar (1964: 10).
7 Calabresi and Melamed (1972).
8 Waldron (1988: 51).
9 For a survey of debates over property throughout history, see Garnsey (2007).
10 Waldron (1988: 31).
11 *Ibid.* 38–42.
12 On common property, or "common pool resources," see Ostrom (1990).
13 For good introductions to property theory in the philosophy of law, see Waldron (2010) and Alexander and Peñalver (2012).
14 Schroeder (1994).
15 As we will see with Hegel (and Marx), certain kinds of descriptive theory can themselves be normative insofar as a description of a property institution can reveal its own normative standards, which can then be used to evaluate the institution from within, so to speak.

16 For overviews of these perspectives, see Merrill and Smith (2010: 1–16) as well as Alexander and Peñalver (2012: 11–56). That said, there are also Hegelian ("personality"), Kantian ("independence"), and Aristotelian ("human flourishing") theories of property; see Alexander and Peñalver (2012: 57–101). I will come back to these. Such perspectives, however, are not dominant in any way. Suffice to say, Lockean-libertarian and economic-utilitarian theories of property continue to prevail in law and culture.
17 Singer (2000: 107, emphasis mine). For a rich discussion of the meaning of a "form of life," see Jaeggi (2018).
18 Berle and Means (1932), Berle (1965: 3), and Reich (1964).
19 Grey (1980), Becker (1992), and Katz (2011).
20 Hohfeld (1913).
21 Grey (1980).
22 Posner (1973) and Calabresi and Melamed (1972). For a critical overview, see Merrill and Smith (2001).
23 Demsetz (1967) and North and Thomas (1973).
24 Coase (1960).
25 See, for instance, G.A. Cohen's (1995) extended and perhaps futile struggle to criticize libertarianism.
26 After Grey (1980) announced property's demise, many new legal theories of property emerged in, for instance, Waldron (1988), Munzer (1990), Radin (1993), Schroeder (1994), C. Rose (1994), Harris (1996), Penner (1997), Alexander (1997), Merrill (1998), Singer (2000), Katz (2008), and Purdy (2010).
27 Grey (1980), Becker (1992), and Merrill and Smith (2001).
28 *In rem* rights signify rights to a thing against the entire world. This is in contrast to *in personam* rights (i.e., rights in relation to specific persons only). The former usually refers to *property* rights, the latter to *contract* rights. This ancient roman legal distinction is often applied to modern legal discourse, for better or worse. See Merrill and Smith (2010: 8–9).
29 On the reduction of property to contract, see the classic text by Calabresi and Melamed (1972).
30 See the critical writings on property by Hale (1923), M. Cohen (1927), and F. Cohen (1954).
31 Pistor (2019)
32 For instance, in Posner (1973) and Epstein (1985).
33 Becker (1992).
34 Merrill and Smith (2001).
35 Alexander (2009, 2011), Alexander and Peñalver (2009), Singer (2000), Purdy (2010), and Dagan (2010).
36 Christman (1994), Harris (1996), and G.A. Cohen (2000).
37 Weinrib (1987, 1995, 2010), Ripstein (2009), and Dorfman (2010).
38 Dagan (2021); Alexander, Peñalver, Singer, and Underkuffler (2009); Katz (2008); and Underkuffler (2003).
39 For the historical argument behind this thesis, see Alexander (1997).
40 Alexander (1997: 1).
41 This is the argument of Alexander (1997). Similar arguments have been made by Nedelsky (1990), Radin (1993), and C. Rose (1994, 1998). In different ways, each has argued that competing political interests have struggled and changed the meaning of property over time, at least in America.
42 On the relation between social struggles over property and property law, see Peñalver and Katyal (2010). On the more philosophical relation between struggles over needs and property right, see Chapter 3 of this book.

43 Blackstone (2016: 1), cited in C. Rose (1998: 601).
44 For more critical readings of Blackstone, see Schroeder (1994) and C. Rose (1998).
45 Merrill (1998: 740–53).
46 For the classic bundle, see Honoré (1961). For a critique, see Christman (1994).
47 See Merrill and Smith (2010: 1–16).
48 On the so-called 'free rider' problem, see Olson (1965).
49 On the 'tragedy of the commons,' see Gordon (1954) and Hardin (1968).
50 For an overview of these problems, see Alexander and Peñalver (2012: 19–25).
51 These, in short, were the arguments of Filmer, Grotius, Pufendorf, and Locke, respectively. See Garnsey for an overview (2007: 134–54).
52 See Coase (1960), Gordon (1954), Hardin (1968), Demsetz (1967), and Posner (1973).
53 Alexander (2011) and Dagan (2021).
54 See C. Rose (1998: 622) on the "mystery of niceness."
55 Katz (2008: 277).
56 Dorfman (2010: 2).
57 Alexander and Peñalver (2012: 23).
58 See Ostrom (1990) and Ellickson (1993).
59 On the "Comedy of the Commons," see C. Rose (1994: 105–62).
60 On the distinct kinds of economic rationality appropriate to different property regimes, see Brenner (2007).
61 C. Rose (1998: 609). See also Loick (2023).
62 Blackstone (2016: 1), cited in Rose (1998: 604).
63 See Kant 6: 318–9 (1996b: 461–2), for example.
64 C. Rose (1998: 613–23).
65 *Ibid*. 602.
66 See Posner's classic text on the economic analysis of law (1973). On property in particular, see the blend of utilitarianism and libertarianism in Epstein (1985).
67 For an overview of the school, see Patterson (2010: 299–326). For a critique, see Schroeder (2004).
68 On efficiency analysis, see Singer (2000: 118) and Alexander and Peñalver (2012: 18–23).
69 On the history of the world as the history of private property, see North (1973). On externalities, see Gregory and Alexander (2012: 20): "Economists use the term *externality* to refer to the consequences of an actor's choices that are not included in (i.e., that are external to) the actor's private cost-benefit analysis."
70 On the "problem of social cost," see Coase (1960).
71 On property and transaction costs, see Demsetz (1967).
72 Although this argument relies on the fallacy of *denying the antecedent*, it does not matter to those who propagate it. It is thus more of a *rationalization* than a syllogism.
73 In Coase (1960), Demsetz (1967), and Posner (1973), for example.
74 As Felix Cohen (1954: 364) argues, "Property may exist without value; value may exist without property; private property as a function of privation may even have an inverse relation to wealth; in short, property is not wealth."
75 For a thorough critique of *efficiency* as a norm for justifying the legal institutions of private property and contract, see Kennedy and Michelman (1980).
76 For a similar but more Lacanian-inspired approach, see Schroeder (2004: 83–148).

77 See, for example, Horwitz (1977), Kennedy and Michelman (1980), Nedelsky (1990), Mackinnon (1991), Ellickson (1993), C. Harris (1993), Radin (1993), Christman (1994), C. Rose (1994), Schroeder (1994), Weinrib (1995), J.W. Harris (1996), Penner (1997), Alexander (1997), Merrill (1998), Singer (2000), Merrill and Smith (2001), Underkuffler (2003), Katz (2008), Ripstein (2009), Dagan (2010), Purdy (2010), Alexander and Peñalver (2009), and Dagan (2021). In addition, there has been a wave of recent critical perspectives on property law *as such*; see Bhandar (2018), Nichols (2019), Pistor (2019), von Redecker (2020), and Loick (2023).
78 Singer (2000: 91).
79 Singer (2000: 94): "Ownership is not a boundary that protects individuals from the obligation to account for the effect of their actions on others."
80 Alexander and Peñalver (2009: 128): "[W]henever we discuss property, we are unavoidably discussing the architecture of community and of the individual's place within it."
81 Alexander, Peñalver, Singer, and Underkuffler (2009). For a more recent, normatively rich account of property from a liberal pluralist perspective, see Dagan's "autonomy-based theory, in which property is founded on the three pillars of carefully delineated private authority, structural pluralism, and relational justice" (2021: xiii).
82 Alexander and Peñalver (2012: 98). See also Anderson (1993).
83 See also Singer (2000: 61): "Property law is about *entitlements and obligations, which shape the contours of social relations*."
84 On "property as social relations," see Munzer (2001: 36–75). See also Hale (1923), M. Cohen (1927), F. Cohen (1954), Macpherson (1962, 1978), Nedelsky (1990), and Kennedy (1991).
85 Alexander (2009). See also Radin (1993), Singer (2000), Dagan (2010), and Purdy (2010).
86 Alexander and Peñalver (2012: 80–101) and Alexander (2018).
87 Dagan (2021).
88 Smith (2009), Bray (2012), Rosser (2013), Mulvaney (2014), and Macleod (2015).
89 F. Cohen (1954: 361).
90 Hale (1923), M. Cohen (1927), Berle and Means (1932), and F. Cohen (1954).
91 Friedman (1962), Nozick (1974), and Epstein (1985).
92 On feminist critiques of standard theories of property, see Mackinnon (1991), C. Harris (1993), Radin (1993), C. Rose (1994), Schroeder (1994), and Underkuffler (2003).
93 For Kantian approaches, see Weinrib (1987), Dorfman (2010), and Ripstein (2009); for Hegelian approaches, see Cornell et al. (1991), Radin (1993), and Schroeder (1994, 2004); for Aristotelian approaches, see Alexander (2009, 2018) and Alexander and Peñalver (2012).
94 See Bhandar (2018), Nichols (2019), Pistor (2019), von Redecker (2020), and Loick (2023).
95 As this book goes to press, another book on property in classical German philosophy has recently appeared: James (2023). While our books overlap in theme, our perspectives and focus are thankfully different. I hope to engage with this exciting contribution in future work.

1 Kant's Metaphysics of Property

How is it possible for something external to be mine? That question motivates this chapter, a question Kant took very seriously in his late *Metaphysical Foundations of the Doctrine of Right* [DR], the first part of his *Metaphysics of Morals*.[1] This question was mostly ignored in my Introduction on property in modern legal philosophy. Twentieth-century legal philosophy tended to conceptualize property, on the one hand, as a right of exclusion which guarantees individual negative liberty or, on the other hand, as an economic means of welfare maximization for all. I diagnosed these tendencies as *legalism* and *economism*. Whether together or apart, these tendencies exhausted most of the analytic frameworks for how to think about the meaning of property. Even though there has been some progress toward a politically transparent, normatively pluralist, and socially embedded understanding of property in recent years, such trends remain constrained by the confines of legal discourse.

Hence, I will now step back from those discussions and take a more philosophical approach to the question of property as a *social* relation by looking at its metaphysical, normative, and material conditions of possibility. This approach is not new, yet it has not been so popular. It is my contention that retrieving such an approach from the dustbins of late 18th- and early 19th-century German *Rechtsphilosophie* will be a rewarding endeavor. This chapter thus begins my comprehensive reconstruction of the theory of property in Kant, Fichte, and (the young) Hegel. Many scholars have taken up their political and social philosophies, but rarely has anyone have focused so closely on their concepts of property.[2] This is, in itself, strange since property and possession are *central* to their entire frameworks, not only their legal ones. That is to say, understanding their theories of property helps to better understand their practical philosophies as a whole. My aim is to carefully and systematically bring out the subtleties of their contributions to the philosophical understanding of property and, in so doing, to reveal some consequences for the understanding of freedom, recognition, law, politics, community, land, labor, class, crime, and conflict.

DOI: 10.4324/9781003439745-2

I begin with Kant, who attempts to deduce the validity of intelligible possession of external objects according to *a priori* concepts of right. This is part of Kant's larger philosophical strategy of deducing general laws for the coexistence of external freedom for human beings on an enclosed planet. This chapter has three parts, each of which gradually adds more complexity and concreteness to the concept of property in Kant. In the first part, I lay out Kant's background metaphysics of practical freedom that guides the discussion of property to come. This part introduces Kant's overall conceptual framework for understanding external freedom, right, and coercion. Two key elements of this section are the analyses of Kant's *universal principle of right* and the *innate right of freedom*. In the second part, I reconstruct Kant's argument in DR §1–9 for how it is possible and rightful to have something external as my own. I work through Kant's deduction of intelligible possession, explain the juridical postulate of practical reason, interpret the permissive law, and provide some general reflections on the conceptual and normative conditions of possession. I then lay out the so-called *antinomy* of possession, which leads into Kant's argument for why concepts of *private right* (like intelligible possession) alone are not enough to authorize claims of mine or yours for external objects of choice. The merely provisional status of property outside certain social-normative relations leads me to conclude that one's self-conception as separate from others is itself a provisional status dependent on certain social-normative relations. In the third part of this chapter, I examine DR §10–17, in particular, the problem of how one can originally and unilaterally *acquire* rights to property without constraining the freedom of another. This takes me into thorny discussions of original possession in common, the primary role of land and space, and what I call the "unchosen conditions of freedom." The problem of the provisional status of property arises here again, but this time in relation to acts of acquisition. I use this opportunity to discuss Kant's postulate of public right and his late critique of colonialism. I conclude by reviewing Kant's theory of property as a whole, developing some surprising consequences for what it would take for something to truly be mine.

Let me state my general findings of this chapter up front. According to Kant, owning property has the force of obligation not because of any consequentialist or positivist reasons but rather because it accords with a metaphysical account of the social and normative conditions necessary for practical agency to coexist amongst a plurality of human beings cohabiting a finite planet. This agency, or external freedom, is one aspect of our practical reason, a capacity that reflectively provides principles for authorizing the use of external means for individual ends in a shared framework of right. While this framework deduces *a priori* concepts of private right to justify how external objects can be mine or yours in accordance with the

freedom of all, it cannot conclusively authorize rights to property without appealing to social and normative principles beyond the *a priori*, namely the united will, the limits of the earth, original possession in common, and public right. Thus, the distinction between mine and yours, the fundamental condition of possibility for the coexistence of external freedom, is itself normatively, socially, and materially conditioned. I now turn to the main argument.

Freedom and Right: Metaphysical Foundations of Property

In this section, I introduce Kant's *Metaphysics of Morals* in general and the *Doctrine of Right* in particular. I focus on the concepts of *freedom* and *right*, as they form the metaphysical background to Kant's theory of property, which I then outline.

Metaphysics of Morals

Kant's 1797 *Metaphysical Foundations of the Doctrine of Right* is largely an investigation into the normative structure of property. The central problem of the text is to figure out why anyone should respect my claim to have something as my own. If Kant can justify the specific form of obligation underlying property, then he has solved the problem of *right*. Right, or law, according to Kant, is a form of practical reason which legislates over the external freedom of choice of rational beings in relation to each other (6: 230). As a form of practical reason, right systematizes the ways in which rational beings are constrained to act in accordance with universal "laws of freedom."[3] To be more precise, right is the general norm under which embodied rational creatures like ourselves must act if we are to maintain the freedom we impute to ourselves as persons. Freedom for Kant comes in two forms. On the one hand, freedom signifies the capacity to extricate oneself from natural causality, to resist the force of sensible inclination and physical determination when forming purposes to carry out in practice. This negative idea of freedom can be labeled *independence*. On the other hand, freedom means the ability to form new ends in line with the rules of reason we set ourselves, rules that conform to our rational, spontaneous nature as self-determining beings. This positive idea of freedom can be called *autonomy*. Acting autonomously for Kant presupposes our independence from natural causality. Together, these two ideas of freedom constitute the essence of morality.[4]

Kant associates the term *Wille* with freedom in the sense of autonomy. Usually translated as will, this term signifies the ability to determine the content of our ends in accordance with self-authorized dictates of reason. The will commands us according to the moral law, and our obedience to

this higher law proves our freedom, in both the negative sense (in that we are choosing independently of natural causality) as well as the positive (in that we are acting according to our own self-authorizing reason). Kant associates the term *Willkür* with freedom in the sense of independence, in both a theoretical and practical sense. While this term has resonances of arbitrariness and caprice, in the *Doctrine of Right* it means something more like the *faculty of choice* or the ability to set and pursue ends without coercion from others. The freedom of choice is *external*, outwardly directed and socially mediated. Such freedom refers not to the inner motivations behind individual choices but to the external form of choice in relation to others. If one's choice can in principle coexist with the choice of others without hindering their freedom, then the form of one's choice is *right*. Freedom as *independence from another person's choice* is the normative principle underlying the *Doctrine of Right*, and the basis upon which property must be justified.

In the *Doctrine of Right*, Kant provides a systematic account of the metaphysical, normative, political, and material conditions required for external freedom to exist equally amongst human beings living on an enclosed planet with scare resources. *Metaphysically*, rational beings must be capable of applying pure concepts of right to external objects of choice, of subsuming empirical deeds under intelligible norms of possession; *normatively*, individuals must be capable of having and acquiring external things without hindering the freedom of others, that is to say, they must be capable of legitimately obligating others to respect unilateral claims of possession; *politically*, human beings must be capable of forming a united will with the authority to recognize and render provisional property claims legitimate for all; and *materially*, any determination of the extent and validity of particular property rights must take into account the necessary spatial conditions of practical agency for all. All of this should become clear by the end of this chapter.

The *Metaphysics of Morals* presents universal laws of action for free rational beings. These laws concern either external choice in a system of right or internal duties in a table of virtue (6: 214; 6: 219). The former laws are valid irrespective of one's intentions and hence can be instituted coercively, whereas the latter depend on one's will and thus cannot be enforced. These two kinds of laws—legal and ethical—cover the totality of human action that can be rationally legislated. To foreshadow Kant's argument: if we take ourselves to be rational persons capable of acting independently of the choices of others, then we necessarily bind ourselves to follow universal laws that determine the rightful *form* of free interaction between persons in regard to the use of external means for private ends; this form of rightful interaction between persons is structured as a *property relation*, and it can be authorized only by a united will in a civil condition of public

laws. In the *Doctrine of Right*, Kant first attempts to prove this claim *a priori* and then he fleshes out some of the normative consequences for how to organize laws, states, and the world accordingly. If he is right, then Kant would have provided a universal theory of justice based on the human capacity for practical reason and the social conditions for external freedom. The end result is a universal standard for judging the progress of the present: an ideal republic bound by private and public right pursuing perpetual peace in a cosmopolitan framework. It should not be forgotten that all of this theoretical and practical work is required in order to finally settle the dispute over the distinction between mine and yours.

Kant's *Doctrine of Right* brings the freedom of practical reason down to earth and situates it in a social and material context of desire, choice, and conflict. The very first sentence of the main text starts with a conflict over what is *mine*.[5] It asks, how can I act if I do not know what is mine and what is yours? Freedom under these conditions leads to conflicts over the means of freedom itself. This precarious condition pushes reason to develop practical laws for resolving conflicts between wills as they each seek to use external things for their own conflicting ends. Since laws of reason are self-legislated, there must be a formal solution to conflicts of freedom universally valid for all practical reasoners. Kant's solution for harmonizing the form of choice of all in a system of equal freedom is the *universal law of right* in general and the acquired right to *property* in particular.

Kant's entire philosophy of right depends on the ability to ground the claim that something can be mine. If Kant can achieve this, then the concept of *right* is justified from reason alone in the practical sphere. What this means is that purely from an exposition of the inferences of practical reason, one can deduce the juridical categories that constitute the core elements of private and public law that together comprise the civil condition based on freedom. This civil condition is the modern political state, wrenched from the state of nature, which can secure the legal framework for rightful interaction between human beings as free persons. Freedom of the individual is both the presupposition and goal of this political order; without it, the whole structure crumbles.[6]

Laws of Freedom

As opposed to a metaphysics of natural science which lays bare the *a priori* principles through which theoretical knowledge of experience is possible, a metaphysics of morals contains the *a priori* principles that govern our practical knowledge of freedom. While both must exhibit necessity and universality in their structure, moral laws cannot be verified in experience since they give us not theoretical but practical knowledge. Hence, any

experiential criteria for moral rules, such as happiness, welfare, or pleasure, are preemptively disbarred from entering into consideration. Such concepts can enter into our moral anthropology as measures to bring our human natures in line with our rational duties, but they are contingent on context and hence unbinding (6: 215). Practical philosophy deals not with nature but freedom, particularly the freedom of choice [*Willkür*]. Such philosophy *requires* a metaphysics of morals as its foundation, a rational system of universal rules and concepts for organizing practical action according to the principle of freedom. This metaphysical system of moral concepts is present within every human being by virtue of our rational and free nature, but it is "obscured" because of our sensible, pathological condition. Kant's goal is to make these principles explicit so as to better guide us in living according to our true nature as free, rational beings (6: 216).[7]

Kant's moral metaphysics hinges on the distinction between our capacity to act as rational beings and our condition of living as sensible creatures. Moral laws, according to Kant, are directed from ourselves to ourselves across this threshold. Our particular social, cultural, biological, and psychological attributes provide the raw anthropological material that can be formed to act in accordance with the laws of freedom we give ourselves as moral beings. All too human, we cannot help but fail to live up to the demands of reason we place upon ourselves, a demand only a god can fulfill. But in so striving, we bring some heaven down to earth and realize, albeit imperfectly, a system of worldly freedom: the rule of law (6: 217–8). Through the categorical imperative, the moral law shows us how to live in accordance with our status as rational agents. But since we are not only rational and not only free, acting morally does not occur by necessity. *Duties* constrain our will from sensible impulses and help us act in accordance with reason and thus be moral. The *Metaphysics of Morals* presents the *a priori* principles for duties in the external domain of right and the internal domain of virtue.

In the introduction to the *Metaphysics of Morals*, Kant foregrounds the faculty of desire as a causal power to determine the object of one's concepts by means of one's concepts. That is to say, desire aims toward an object already mediated by concepts; the ability to act in tune with these desires and concepts, according to Kant, is *life* itself (6: 211). One reason that Kant starts his inquiry here is to stress how the freedom bound by right and secured in property begins not from the highest abstraction of the moral will in unity with itself but from the active desire of living reason in conflict with others. This faculty of desire at the base of life expresses itself through various representations of objects that it desires: choosing and wishing are two distinct ways to relate to such an object. To choose is to connect the object of desire with the consciousness of one's ability to act so as to bring it about; to wish is to desire without the consciousness of the ability to act.

To will, however, is not to cause action *per se* but to provide a ground for action within reason alone. The will determines choice, or in other words, the will is practical reason. Acting solely from the rational will would make us completely free, whereas acting solely from sensible inclinations would make us completely animals; the faculty of choice is caught between these two, responsive to both sensibility and reason (6: 213).

The faculty of choice, as independent from sensible determination, is *negatively* free. Yet this freedom is incomplete from the standpoint of reason. It is not enough just to negate one's urges; to be fully free, one must choose according to self-authorized norms of reason. To actualize the *positive* freedom of choice, the grounds of action must meet the standard of practical reason: universality and lawfulness (6: 213–4). This is impossible when it comes to determining the particular objects of choice that the faculty of desire brings about, for these are wholly subjective. But, as with the categorical imperative, choice can be subject to practical reason in terms of its *form*. The form of the freedom of choice thus serves as the material for the *Metaphysics of Morals*.[8]

This form has both an internal and external domain, each with its own kind of laws. These laws invite separate doctrines to make sense of their normative structures: a doctrine of virtue for internal laws and a doctrine of right for external ones. The former are ethical duties directed at our inner reasons for action, and the latter are juridical laws directed at our outer conduct *in relation to the conduct of others*. Both are *moral laws* since they are laws of freedom or, as Kant puts it, "pure practical laws of reason for free choice generally."[9] In each case, freedom is considered in different forms of expression: the external use of choice and the internal ground for action. Whereas the legality of an action is measured by its conformity with outer juridical laws, its morality is judged in relation to our inner, ethical duties.[10]

On Right and Coercion

Kant's theory of property falls under the concept of *right* [*Recht*], and right is discussed in two ways: first, as the general concept of legality and, second, as a specific term for an individual legal norm. General right comprises the totality of principles for legal relations between persons. The legal norms and relations that arise from these principles can be formalized into specific rights that individuals are obligated to recognize in each other by virtue of their status as free persons. To get there, we need some guidance into what constitutes a legal or rightful principle and norm. Unfortunately for us, empirical legal cases do not help.[11] Simply put, positive laws cannot be the only basis of justification for positive laws, for that leads to a vicious and empty circle. The laws that legislators create, jurists

interpret, and lawyers debate must have a deeper basis in the normative principles based in the concept of freedom. External freedom, or freedom of choice in relation to others, provides the ground of right and the constraints for any possible law. The concept of right covers not all social relations but only those with consequences for external freedom.

According to Kant, there are three conditions for applying the concept of right. First, right concerns practical relations between *persons* whose *deeds* can influence one another; second, these must be reciprocal relations of *choice*, not wish or need; and third, it is not the content of the choice that matters but its *form*—that is, whether or not it can be considered *free* in relation to the freedom of another. "Right," as Kant summarizes, "is therefore the sum of those conditions under which the choice of one can be united with the choice of another in accordance with a universal law of freedom" (6: 230). In other words, right covers the entirety of norms for structuring individual choices such that each can coexist with the freedom of another.

Right concerns persons *only in so far as* their actions affect other persons. There is nothing here about the individual will in existential conflict with the moral law; right cares only about the choices one makes in the world and how those choices interact with other people's choices. By focusing on the form of choice, Kant supposedly eliminates material questions of welfare, happiness, or the good from entering into consideration when determining what is right. Legality, in other words, has nothing to do with whether I am satisfied in my life, whether I am suffering or hurting in general, or whether my wishes and needs are met; it concerns only *whether my choices are formally consistent with another's freedom of choice*. Although this position seems straightforward, it becomes increasingly more complex as the conditions for ensuring equal freedom expand into social and political institutions. While the objects of one's choices are irrelevant from the standpoint of right, the formal possibility of carrying out one's purposes in harmony with others places normative constraints on the material conditions within which one chooses. For instance, universal access to health care, public education, and guaranteed housing may be necessary for the rightful coexistence of freedom among individuals. For without them, one could argue, many individuals would be incapable of choosing and pursuing their ends without interfering with the freedom of others. Whether Kant's theory of right implies a minimal state, welfare state, or other political-economic formation depends on how much one thinks the institutional structures that condition individual choice should also be bound to ensure the coexistence of equal freedom.

According to right, my *particularity* as a moral subject is irrelevant. Right is universal, and hence only the form of practical relations of choice between persons can come into consideration. Neither material issues of

need nor distributive claims of justice matter to strict right—that is, *unless they can be characterized as questions of freedom*. Homelessness, for instance, can be seen not only as a situation in which basic needs are lacking for an individual but as a condition that directly interferes with the freedom to use space to pursue one's ends. This reframing of issues of need and equity (both "ambiguous rights" for Kant) as problems of freedom carries with it real duties toward others that otherwise would not be there, particularly duties concerning the right to property.[12]

Following this exposition of the concept of *right* in general, Kant provides a formula for identifying right in particular. The *Universal Principle of Right* states that "[a]ny action is *right* if it can coexist with everyone's freedom in accordance with a universal law" (6: 230). Or, in imperative form as the *Universal Law of Right*: "So act externally that the free use of your choice can coexist with the freedom of everyone in accordance with a universal law" (6: 231). What is the basis of this principle, and what does it command? For one, it does not oblige us to make this principle the *motive* for action; it only states what it means for any action to be right—that is, to exist under the conditions of equal freedom posited by practical reason. As practical reasoners, we already act *with* or *against* this constraint, and hence our actions can be deemed right or wrong, no matter what we think or intend by our actions. This principle is a "postulate incapable of further proof," as Kant boldly proclaims (6: 231). What this means is ambiguous, but like the categorical imperative, it most likely refers to the universal principle of right's practical status as a *final ground* and not its theoretical status as an apodictic truth.

The universal principle of right is a political analogue to the categorical imperative: it tells us not *what* to do but only *how* and *how not* to do what we already choose.[13] Basically, any action is right insofar as it does not interfere with another's person's faculty of choice, no matter what the goal, desire, or purpose. Interfering with another person's faculty of choice means dominating their independent capacity to choose their own life; it means subjecting another to your will and rendering them dependent on your freedom by usurping or destroying theirs.[14] This liberal principle contains the kernel of the modern ideal of law, in which respecting negative freedom is akin to treating everyone as formally equal and free to choose their own ends; this basic right of self-determination and individual dignity normatively grounds the rule of law and acts as a criterion by which to judge and criticize the actions of individuals. For an action to be *wrong*, it must as a rule hinder my ability to coexist with the freedom of others (6: 231). What's wrong is not the harm but the fact that the action prevents the rule-governed coexistence of freedom amongst persons.[15] If protecting independence is the norm of right, then violating independence is the criterion for wrong.

Kant remarks that it is not only my actions that should be able to coexist with others in universal freedom, but "my condition in general" [*überhaupt mein Zustand*] (6: 231). What this means is left open, but we can infer that one's general condition should be included when employing the universal principle of right. Does this mean one's psychological condition? Probably not, for that is too internal. I would wager that it refers to one's pattern of actions over time, one's role in society, including occupation, lifestyle, and habits—in short, one's practices as an economic, desiring agent. If my condition can be wrong or wronged, what would be a right one? The simple answer is any condition that allows the condition of others to coexist in equal and universal freedom. The more complex answer is a second-order condition that allows the individual conditions of persons to coexist in equal and universal freedom. This second-order condition would require particular normative constraints in place to prevent wrongful individual conditions from emerging. To jump ahead, the first answer leads to private right, the second to public right. For Kant, the former cannot exist without the latter, even though the former is justified independently of the latter.

If right was just an abstract rule for judging individual behavior, the story would end here. But as a practical law of external freedom, right operates *in* the world, effectively. How does it do this? Right functions as a law of freedom through the authorization to coerce [*Befugnis zu Zwingen*] (6: 231). Intuitively, this seems backwards, for how can freedom effectively rule through its opposite? For Kant, these are not opposites; rather, the authorization to coerce analytically follows from the principle of right according to the law of non-contradiction. The argument is deceptively simple: if whatever hinders the use of freedom in accordance with the freedom of others is considered wrong, then removing this hindrance is effectively right, since it promotes the original rightful use of freedom. We can lay it out like this: *If Y wrongfully hinders Z, and X hinders Y, then X promotes Z*. In other words: if a wrongful use of freedom (Y) hinders a rightful use of freedom (Z), then a use of coercion (X) that hinders the wrongful use of freedom (Y) effectively promotes the rightful use of freedom (Z).

Remember, there is no intrinsically wrong choice or deed, only wrong *uses* of freedom in relation to others. Coercion, then, is not inherently wrong but wrong only when used to hinder the freedom of others. The use of coercion to hinder the hindrance of freedom can thus be a *rightful* use of freedom (6: 231). This dialectical logic has the advantage of making sense of the central role of coercive force in legal relations instead of disavowing it as an unfortunate byproduct of a supposedly noncoercive law. On the contrary, coercion and right, force and freedom are born and bound together, as inextricable as three sides are to a triangle. In fact, Kant compares the relation between reciprocal coercion and universal freedom to

the *a priori* mathematical construction of the law of equality for the action and reaction of moving bodies in space.[16] This strange analogy is not so far off once we realize that the freedom under consideration here is external freedom, or freedom *spatialized*. Kant's theory of right can be read as a construction of the *a priori* laws for equal human action and reaction in conformity with universal freedom. The concept of *right* comes not from experience but from reason, yet its construction shapes experience in determinate ways. If freedom is to be realized as right, then the authorization to use coercion is already entailed by the normative framework.

Innate Right of Freedom

Although there is only one normative source for the basis of right, our will as practical reason, not all rights are therefore *a priori* truths. Our experience as spatially embodied creatures on a finite planet forces us to engage in all sorts of complex social interactions, not all of which can be decided ahead of time by the formality of the universal principle of right. Some rights are authorized by legislators (positive), whereas others are justified independently of any positive law (natural). Some are tied to our faculty of will (innate), whereas others are instigated through specific deeds (acquired).

Kant's main concern is "natural" rights, innate and acquired. These labels are not what they seem: *natural* means not by nature but by reason, *innate* means not by birth but by virtue of one's status as a person, and *acquired* means not found but activated through choice. The *Doctrine of Right* posits one innate right (freedom), two genera of acquired rights (private and public), three species of private right (property, contract, and status), three species of public right (nation, state, and cosmopolitan), and one final end of right (perpetual peace). Together they compose a "system of equal freedom."[17] This elegant picture, however, leaves out Kant's foundational (and lengthy) argument that grounds the entire project: how it is possible to "have" and "acquire" external things as mine or yours? How can possession be consistent with right even though it appears to contradict the freedom of others? In fact, as Kant will try to prove, the principle of right requires this elementary relation of possession, for without it, each person is denied the freedom to effectively carry out her ends as she chooses. Why that is the case has to do with the one and *only* right that Kant states is *innate*, or unconditional. That is the right of *external freedom*:

> *Freedom* (independence from being constrained by another's choice), insofar as it can coexist with the freedom of every other in accordance with a universal law, is the only original right belonging to every man by virtue of his humanity.
>
> (6: 237)

If Kant's practical philosophy already presupposes transcendental and moral freedom, inner and outer freedom, autonomy and spontaneity of the will, then why restate it here? The reason is that none of those freedoms concerns *other people*. Freedom as a *right* is structurally interpersonal. Without others, this freedom disappears. It is a rule for how to act only in relation to others, not in relation to the good will or moral law. This right of freedom is innate, not acquired, because it is an unconditional axiom that comes from taking up the standpoint of law. Being a person means taking this kind of freedom as a given; it is the cost of playing the game of right.

This concept of freedom cannot be analytically proven within the theory of right since it is a condition of possibility for rightful relations, but it does have philosophical support in Kant's practical philosophy as well as in everyday norms of justice and equality. The innate right to freedom highlights the unconditional and universal features of human dignity that serve to ground a juridical order based on equal freedom of all. Kant's practical philosophy sets up the framework in which it is possible and rational for people to take themselves to be capable of acting according to their own laws, independent of natural causality. But given this framework, the laws of freedom under which one can act have constraints of their own, such that to act against those constraints is to act against one's own freedom. In ethics, these constraints are the categorical imperative and the moral law. In right, these constraints are the universal principle of right and the innate right to freedom.

Another way to understand the innate right to freedom is to see it in relation to the universal principle of right. Recall the universal law of right: "So act externally that the free use of your choice can coexist with the freedom of everyone in accordance with a universal law" (6: 231). The innate right of freedom scales this down to the individual level: for the free use of choice to coexist with the freedom of everyone else, no person's choices should be unwillingly subordinated to those of another. I am free as a person under conditions of right insofar as I am not dominated by the choices of others. That is, I am free to the extent that I can choose my own ends and pursue those ends with means of my choosing in a way formally consistent with the freedom of others. This freedom is achieved reciprocally in practice: for my innate right to freedom to be respected by others, I must incorporate the same norm of non-domination into my own understanding of others. Reciprocally recognizing the innate right of freedom formally establishes the possibility of a rightful order amongst persons.[18]

The basis of external freedom for Kant is *independence*. This is not transcendental independence from sensible determination but legal independence from personal domination. This is not moral freedom or the

spontaneous freedom of reason, although they provide the moral and metaphysical background. This is rather the freedom to act, to choose, to pursue one's ends, and to use means for those ends without coercion from others as long as such actions and choices are consistent with the freedom of others. Along with the tradition of liberal political philosophy, one could call this *negative* freedom since it surely entails the right to non-interference. Yet Kant sees this as more than a purely negative right.[19] The innate right of freedom as independence from another's choice already "authorizes" certain positive normative principles: equality, autonomy, and freedom to communicate (6: 238). Such principles are still highly formal, turning a blind eye to the content of one's choices. They only constrain the forms of choice such that they ensure reciprocally equal independence, respect autonomy of the person, and allow for free communication between all. In the social world, where conflicts emerge over what's mine and yours all the time, where multiple claims and positive rights are contested on numerous grounds, the one innate right holds steady as the indivisible, normative foundation of the legal order.

The innate right of freedom, posited as a formal *a priori* truth of practical reason, authorizes individuals to pursue their ends independently of the coercion of others. But what does this mean practically? To choose a goal, pursue an end, or act toward a purpose may require the use of my fingers, legs, or hands, all of which are unquestionably under my control, such that I wrong no other person in my use of them. The one innate right protects my body as a space of freedom for purposive action guided by my will alone. When someone uses parts of my body against my will, they infringe on something deeper than a positive right, for the ability to determine one's own bodily action is unconditional, a right granted by virtue of one's humanity. Such humanity is recognized in my supersensible capacity for freedom, my status as *homo noumenon*, and not in my physical sensibility, my status as *homo phaenomenon*. As free, I am my "own master" (6: 238), independent of the rule of others concerning what and how I choose to move my body. Yet as a physical being, I am also part of the world, occupying space, moving things, taking and acquiring, consuming, and producing the world around me for my own purposes. So, what happens when my plans include not only moving my body but also using a pen, car, river, or computer? What happens, in short, when I use the external world for my internal ends? Who is to say what is right or wrong? Can one be injured not only through a violation of the body but by a violation over the use of an external thing? The universal principle of right and the innate right of freedom are not enough to guide one through the vagaries of the external world.[20] For that, one needs to figure out *how to have something external as one's own* or what it means to say *mine and yours*.

Overview of the Doctrine of Right

In broad strokes, the argument of Kant's *Doctrine of Right* runs as follows.[21] Acting rightfully consists of using one's freedom to choose ends as well as means to pursue those ends in a way that does not interfere with the freedom of others. Irrespective of the content of my end, acting rightfully requires setting normative boundaries between *mine and yours*. Without this distinction, my freedom of choice could not extend beyond my physical grasp, for there is no objective way to cut up the external world so that each person could use their freedom without interfering with the freedom of others. At a certain point, "my" inner mine would run into "your" inner yours, and there is no non-normative way to set up a boundary between mine and yours that can be recognized by all. Without explicit rules in place for distinguishing what's mine from what's yours, right loses its purchase, and the project of a system of equal freedom falters. Thus, to act purposively, one needs more than just an end and a means to accomplish it; one needs to determine the conditions of use for those means as objects of choice. Being able to determine when and how to use certain objects for my purpose is just another way of saying that something is *mine* and *not yours*. What makes something rightfully "mine," according to Kant, is that its possession and use coexist with the freedom of everyone else. In other words, taking something as mine cannot interfere with the freedom of others to act and choose objects for their own purposes. But this cannot be the *cause* for why certain things are mine, only the effect of their already being mine. It is the effect of *being* rightfully mine that, as a rule, my use of it does not interfere with your freedom. So, back to the beginning: how can something be mine at all? This is different from asking what it means for something to be mine or how one should act within the normative boundaries of mine and yours.

For Kant, something can be mine only if I *acquire* it in conformity with the universal principle of right. But right says nothing about the world beyond our formal, practical relations of choice. That is, norms of right concern only human beings as *persons*—rational agents who can reciprocally bind others (through their rights) and be bound by others (through their duties).[22] Lacking reason, *things* have neither rights nor duties; they cannot obligate anyone and thus fall outside the strict domain of right.[23] Persons, however, bind each other through rational norms—such as independence from another's constraint. If empirical objects retain no normative significance, then why should I respect some *thing* as yours at all? Under the principles so far outlined, I should not. Hence, for something to be recognized as mine or yours, practical reason must extend itself into the material world to cover objects of choice. Kant resolves this problem by means of a self-legislated juridical postulate of practical reason: since there

is no universal law preventing the use of external objects for one's own ends, I am authorized to take possession of, use, and dispose of external objects of my choice. Furthermore, no particular object in principle can be rendered off-limits to my possession. Otherwise, reason would be limiting its own freedom of choice by means of criteria which it has no business employing: the *matter* of choice. In short, the external world moves from being completely outside to completely inside the domain of right.

Kant classifies this postulate as a "permissive law" since it permits a form of action (possession) to take on normative characteristics (obligating others to non-interference) that otherwise would be indifferent to questions of right.[24] According to this law, I can take possession of something only if it does not conflict with another's claim on the object and if my use of it does not interfere with the external freedom of everyone else. At first blush, this seems to be a very high demand, for most actions interact with other people in all sorts of ways. But the point is not to prevent interaction, only interference with another's faculty of *choice*. And choice requires not only having an end in sight but also willingly pursuing it. That said, we still need a proper account of what constitutes acquisition, and Kant provides the bare outlines of one: taking control, giving a sign, and willing something to be mine in conformity with a universal law. Whereas the first two seem obvious, the last one is key, for it authorizes my appropriation as a universally binding act. To call something mine, again, is not a relation between the object and myself; it is a relation between me and everyone else concerning the object in question. By appropriating something as mine, I put all others under an obligation not to interfere with my property. But how is such a universally binding rule possible through a unilateral act? To make it even starker: how can I change your normative status in relation to me without your approval? Would this not be coercion and thus against the principle of right?

Kant argues that individual acts of acquisition must be authorized in light of a united will in order to be legitimate. This omnilateral will emerges as a necessary "idea of reason," a regulative principle that acts as a standard by which to judge and incorporate unilateral acts of possession into a common framework of right. The united will has its normative basis in the idea of original possession in common, an idealist thesis which belies a materialist truth: every act of acquisition presupposes a common condition—our shared existence on earth, a condition we did not choose but must adopt as our own, as if by choice. This is how one makes a contingent, factual existence in space into a normatively significant aspect of right. Our unchosen cohabitation of a spherical planet becomes, through the metaphysics of right, a deliberate act of appropriation by all for each. Without the idea of "original possession in common," the external freedom that right protects would be homeless, unmoored from the very place

of our existence. By presupposing the joint possession of the earth in common, we graft relations of right into the core of the collective human project of cohabitation. Individual appropriation in the present reveals the collective authorization to appropriate the earth according to rational norms of right. Without this authorization to appropriate, one's own freedom to act is intrinsically unstable from birth, at the whim of whoever rules the space around them. This retrospective appropriation of our own spatial finitude by an act of a united will functions as a *provisional* authorization for unilateral acts of acquisition in the present. This is provisional because a final authorization to acquire something as my own requires an *actually* united will, not just an idea of reason in light of which we act. Only in a civil condition of public right, where external lawgiving becomes formalized by public institutions recognized by all, does a united will become actual. Thus, to acquire something as my own, I must enter into a civil condition. I now turn to the details of this argument.

Mine and Yours: Normative Foundations of Property

In the following section, I develop my own interpretation of Kant's argument in DR §1–9 on the possibility of intelligible possession of external objects of choice. First, I explain Kant's notion of intelligible possession. Then I clarify the deduction of intelligible possession, the juridical postulate of practical reason, and the permissive law. Next I draw some consequences concerning the conceptual and normative conditions of possession. I then outline the so-called *antinomy* of possession and explain why property rights can only be *provisional* outside a civil condition of public right. I end this section with a more speculative reflection on the provisional status of one's own self-identity in relation to others.

Possession

Kant's *Private Right* begins with the possibility of being wronged—someone interferes with my use of something (6: 245). I am harmed, damaged by your deed, yet I remain physically fine, my bodily integrity intact. What is wrong then? If *using* something is included in my choice to pursue an end, a choice that I made independently of you, then your blocking my use blocks my freedom. And if freedom from another's constraint is the only innate right, one that authorizes the use of force to hinder its hindrance, then I am justified to authorize the use of force to stop you from interfering with my use of something external. This internal relation between my use of something and my freedom is called *possession*.[25]

Why not just begin with a positive definition of possession? Kant begins with the possibility of being wronged because the content of the concept of

possession comes entirely from its negation, *wrongful interference*. For something to be mine signifies nothing more than the fact that I can now be injured by your use of it against my will.[26] "Mine" is a contrastive, interpersonal concept that offers only prohibitions.[27] *Do not interfere, no trespassing, stay off*: the language of property always appears imperative, negative, and exclusive. Property is the negative theology of law—we can describe only what it is not, not what it is. The obligations and social bonds that form the community in which legal possession is possible disappear into the ether of reason. But they do return in the form of a united omnilateral will that publicly authorizes property through political institutions. Here, though, Kant is only showing the validity of the concept of *possession* and not yet giving an account of its actual practice.

The problem with this account so far is that it says nothing about what constitutes wrongful use of something external to you. Your body is inscribed within the normative zone of purposive action and rightful freedom and so interfering with your body just is interfering with your freedom.[28] But why can't I freely use that which is separate from your body, and outside your grasp, even though you might claim it as your own? Who is to say your claim is more rightful than mine? Kant wants to show that a wrongful use can occur even when I am not in immediate physical possession of an external object of choice. For this to be possible, possession must have another, nonempirical meaning. Otherwise, when you physically use something that I claim, it would be yours and hence I could not be wronged. Taking the shirt off my back interrupts my freedom to use these clothes to cover my body; it blocks my choice to set a specific end independent of your constraint. But taking a shirt off the table in front of me does not appear to injure my "inner mine," the right to use my body as I choose. For it to do so, the use of an external thing for my own purpose must somehow be comparable to the use of my body. To make it more abstract, I must be able to make a judgment about a spatio-temporal thing using concepts of practical reason alone, concepts which have no empirical representations attached to them. How can I connect my will, a supersensible entity, to a thing, a sensible one, in such a way that the freedom of my will is *dependent* on the use of a thing? This strikes a note of heteronomy—determination of the will by sensible phenomena—the chief enemy of freedom for Kant.[29]

The solution lies in the power of abstraction. In virtue of our status as *noumenal*, free beings, we are able to abstract from the spatio-temporal conditions of possession, such that nothing empirical grounds the relation between the object and me: not its physical distance to me, my strength in holding it, the amount of time I grab it, and so on. On the contrary, rightful possession must signify an intelligible, rational relation between wills and not a physical, sensible relation between wills and objects. Such a form

of possession would be based on rational norms of use between wills irrespective of one's physical relation to the object. From this bare thought, Kant generates a transcendental deduction of legal possession.

Before that deduction, the terms of the possessory relation are further clarified: what kinds of external objects could I rightfully possess, and what would each one entail? In accordance with the categories of *relation* as laid out in the *Critique of Pure Reason* (substance, causality, and community), there are only three possible external objects I could possess: "1) a (corporeal) *thing* external to me; 2) another's *choice* [*Willkür*] *to* perform a specific deed (*praestatio*); 3) another's *status* [*Zustand*] in relation to me." (6: 247). These three categories represent the metaphysical basis for rights to property, contract, and (domestic) status.

For a *corporeal thing* to be mine, the rule is simple: I must be able to have it without holding it. My innate right to freedom protects me from your power to take things directly out of my grasp or to push me physically from where I stand. To hold an apple or lay down on the grass is an explicit act of choice in which I use my body as a means to further my ends without coercing another. My right to hold the apple or lay down needs no further justification. But when I put the apple down or step away from the grass, I cannot still be wronged by someone's interference with my use of those objects unless the apple and the grass can be mine irrespective of my spatial proximity to them. For spatial objects to be mine, space must be abstracted away.[30]

To possess *another's choice to perform a deed* is to have the right to coerce someone to perform an action they freely consented to do. For instance, this could be a contract to give me a cup of coffee for a certain amount of money. If the agreement and the performance of the deed agreed upon are simultaneous, then the possessory relation is unproblematic. What is mine—the other's choice to give me the coffee—comes into being at the exact moment of the agreement to perform the deed. Yet this is not sufficient since not every promise, contract, or agreement to perform a deed is simultaneous with the performance. To possess the choice of another, the deed to be performed can also be in the future and yet still be mine. If I pay you in advance, then the choice to give me the cup of coffee is mine before the coffee even arrives; the failure to perform the deed interrupts my freedom to set an end by consensually using your choice as a means. Thus, possessing the choice of another person to perform a specific agreed-upon deed entails that my temporal proximity to the deed being performed is irrelevant to my possession of it. For temporal deeds to be mine, time must be abstracted away.

To stand in a marital relation, a parental relation, or a relation of guardianship is to possess a legal *status* in terms of another person, such that one both restricts their choices and holds obligations to them. To carry out the

obligations of status to a wife or husband, to a child, or to the subject under guardianship means acting for the purposes of the other person and not for oneself. To wrong them is to exploit them—that is, to subject their freedom of choice to one's own will in ways that do not further their own ends. These *domestic rights* apply not to people's bodies but to their wills, such that the rights and obligations involved are not dependent on the physical control of people in a time and place. To call a child mine holds true inside and outside the home, just as calling a husband mine holds true from one day to the next. For persons to be mine, conditions of space and time must both be abstracted away (DR §4).[31]

Deduction of Intelligible Possession

For each kind of external object to be mine, empirical possession must be superseded by intelligible possession. It is not enough to say that something external can be mine only on the condition that my freedom of choice would be denied if someone stopped me from using it. We must add the further qualification that something external can be mine if I can be wronged by someone stopping me from using it *even* if the object is not in my physical presence, even if it is neither spatially nor temporally proximate to me (DR §5). Intelligible possession is the rational basis of rightful possession of external objects, whereas empirical possession captures only the appearance of the relation. Paradoxically, however, it is not objects as *appearances* that are intelligibly possessed but objects as *things in themselves*. Kant explains this discrepancy by differentiating the theoretical tasks of the *Transcendental Analytic* in the *Critique of Pure Reason* from the practical focus of the *Metaphysics of Morals*:

> Intelligible possession (*possessio noumenon*) must be assumed to be possible if something external is to be mine or yours. Empirical possession (holding) is then only possession in appearance (*possessio phaenomenon*), although the object itself that I possess is not here treated, as it was in the Transcendental Analytic, as an appearance but as a thing in itself. (6: 249)

Intelligible possession is not a theoretical judgment oriented toward knowledge of an object (as in the *Transcendental Analytic*) but a practical relation of choice toward objects based on norms of practical reason that orient one's own will to act with others under a framework of equal freedom. The object I possess is treated as a thing in itself and not an appearance since possession is a relation between rational wills of reciprocally binding duties for protecting external freedom when it comes to the use of means to pursue one's ends; it is not a rule for how to manipulate external

things but a principle for how to treat people in their use of things. For possession to signify more than a functional, economic mechanism, it must be rationalized within an order of rightful freedom. While this juridical order concerns the use of material things, it is valid independently of their empirical qualities, for right takes freedom into account only when determining its laws.

To be clear, Kant is arguing that practical judgments of mine and yours concerning empirical things are based on *a priori* concepts of right like possession. Since using things in a possessory way—that is, making practical judgments of mine and yours—is a necessary aspect of practical experience (without it, one could not use means to pursue ends, occupy a particular space on earth, make contracts, hold statuses), such *a priori* concepts of right *must* be valid.[32] That is, although they are *a priori*, they are *indispensable* for practical experience. To prove that, we need a *deduction*, an argument that can show the necessity of *a priori* concepts that underlie and condition practical judgments in experience. Such a deduction would not show how pure concepts of right are *all* we need for making valid judgments of possession, only that they make those judgments possible. To determine whether they are true, legitimate, or rightful (i.e., in accordance with the freedom of all), they need to be subsumed under ideas of *public right* (e.g., the united will, original possession in common, civil condition). Those ideas, or *norms* as Kant calls them (6: 313), do not require deductions since they are necessary not for the *possibility* of practical judgments of possession but only for their legitimate *application*; such ideas require only normative arguments that can attest to their conformity with the universal principle of right.[33]

The deduction of intelligible possession (or "merely rightful possession") begins with a practical question about how judgments of mine and yours concerning external things can be possible.[34] We already know the answer: the rational basis for empirical judgments of mine and yours is the *a priori* concept of intelligible possession, which applies the concept of 'having' and not 'holding' by abstracting from the spatio-temporal conditions of the object under possession. This answer, however, only pushes the question back further, for now we want to know how the *a priori* concept of intelligible possession—which conditions empirical judgments of mine and yours—is itself possible. But we know the answer to this too: intelligible possession is a concept of *right*—that is, a concept based on the universal principle of right and the law of external freedom, both of which are deduced from concepts of pure practical reason alone. This last answer, however, is potentially in contradiction with itself, for although intelligible possession is a pure concept of right, it ultimately applies to empirical objects. So how are *a priori* judgments of possession concerning external things possible? Thus, we have finally arrived at the transcendental

question about the possibility of applying pure *a priori* concepts of right to objects of experience. In Kant's words, the question becomes "how is a *synthetic* a priori proposition of right possible?" (6: 249).

Kant answers this question in a way similar to how he answered a parallel question in the *Critique of Pure Reason*: with a transcendental deduction of the conditions of possibility of *practical* experience. What is different about this deduction is that the possibility of synthetic *a priori* propositions of right does not concern theoretical objects of knowledge but external objects of choice. Both deductions attempt to explain how it is possible to make correct judgments about objects using only *a priori* concepts, but the deduction of intelligible possession seeks to explain *practical* judgments like "this is mine" and not *theoretical* judgments like "2 + 2 = 4." The former judgments are *normative* in a more powerful sense than the latter, such that the determination of mineness hangs on a certain understanding of how the world should be and not how it is. This understanding is based on the universal principle of right, which seeks to unify the norms for external relations of choice amongst persons under universal laws of freedom.

The task of the deduction of intelligible possession as an *a priori* concept of right is to show how it is possible to use nonempirical concepts to relate to empirical phenomena. More specifically, it needs to show how *a priori* concepts of right condition the use of practical judgments when it comes to making claims of possession for external objects of choice. In other words, if practical judgments of possession concerning empirical objects require nonempirical concepts for such judgments to be intelligible, to get a grip on the objective relation so to speak, then we need a theoretical justification for employing these nonempirical concepts in relation to empirical things.

What validates *intelligible possession* as the right concept to use in order to explain judgments of *mine or yours?* How does it make possible the claim that something is mine? Furthermore, why is it necessary that I make such claims at all? If we cannot appeal to any empirical reasons for rightful possession (e.g., self-interest, happiness, and utility) or empirical conditions of rightful possession (e.g., holding, spatial and temporal proximity, and force), then only an account of the normative conditions for the use of practical reason in the external world will suffice. This account would show how, for a concrete, empirical claim of possession between a person and an object to be rightful, it would have to be based on the more abstract, normative claim of ownership between wills concerning an object.[35]

Normative claims impose obligations on other people, and these obligations must be shown to be in conformity with right; otherwise, they are coercive, inconsistent with the equal freedom of all. Thus, the *a priori* concept of intelligible possession requires a deduction of its objective validity. Or else, when saying "this is *mine*," we would be binding other

people's wills to our own purposes without knowing whether such an act is contrary to right or not. We need to know exactly *how far* the freedom of choice extends into the material world, how nonmaterial norms govern the possession and use of things, choices, and statuses, and how all of that can be consistent with the general metaphysics of morals (as the *a priori* principles for the laws of freedom) and the specific theory of right (as the sum of conditions for rational legislation over *external* freedom).

Regarding empirical possession (e.g., *holding*), no special deduction is needed to ground its rightful character, for the connection between holding and freedom is tied to the innate right of every person to determine the use of their own body in pursuing their own ends. Interfering with my holding is directly interfering with my person and thus incompatible with the universal principle of right. But intelligible possession (e.g., *having*) transcends empirical boundaries and applies to external objects irrespective of their spatial and temporal proximity to my person. Whereas the former kind of possession is analytically rightful (based solely on the concept of innate freedom and the universal principle of right), the latter would be synthetically so (based on the universal principle of right and *some other principle about the rightfulness of having external things as one's own*). But if "all propositions about right are *a priori* propositions, since they are laws of reason" (6: 249), then how can rightful (*a priori*) propositions about external things be possible?

Juridical Postulate of Practical Reason

The answer comes in the form of a postulate. Postulates of reason are theoretical propositions that cannot be proven *in experience* but that we nonetheless must practically accept since they are bound to the validity of *a priori* practical laws.[36] This might seem like pulling a rabbit out of a hat, but Kant is not being sly here. Although the postulate cannot be proven, it does have a basis in Kant's theory of agency, practical reason, freedom, and morality.[37] This is to say not that we should just accept it without question but only that it is consistent with Kant's practical philosophy as a whole.[38] The postulate of practical reason with regard to rights (or the juridical postulate of practical reason) states

> It is possible to have any external object of my choice as mine, that is, it is against right if the maxim, [that] an object of choice must *in itself* (objectively) be *ownerless* (*res nullius*), were to become law.
>
> (6: 246)

The postulate is composed of two propositions: one positive and one negative.[39] First, "it is possible to have any external object of my choice as mine." The key word in this sentence is "have" (as opposed to "hold"), meaning

that it is possible to apply the concept of *having*—a concept which abstracts from spatio-temporal conditions—through practical judgments of possession ("as mine") to external objects of my choice. The three kinds of possessable external objects of choice, in accordance with Kant's categories of *relation*, are corporeal things, choices, and domestic relations; respectively, these confer rights to property, contract, and status. Thus, if it is metaphysically possible to apply *a priori* concepts of practical reason to empirical objects of choice, then possessing external objects *can* be consistent with right and the freedom of all, if acquired under the right conditions.

All this says is that possession is *possible* as a relation of right, not *how* it can actually be rightful. To justify actual property claims, the concepts of private right (possession, contract, acquisition) must be subsumed under the ideas of public right (civil condition, original possession in common, united will *a priori*). In other words, Kant's argument claims only that it is rationally possible to say "x is mine" without wronging others. It does not say anything about how to determine whether any particular judgment of "x is mine" is actually rightful or not. This requires a civil condition or state with the power to determine, enforce, and assure property relations as legitimate and conclusive. Kant covers this in *Public Right*, the second half of the *Rechtslehre*.

The second proposition of the postulate is a negative argument for the validity of possession. It claims that a rule denying the ability to own objects would be wrong if we were to make it into a universal law. Changing the grammar around a bit, it says: the maxim that "an object of choice must *in itself* (objectively) be *ownerless* (*res nullius*)" is against right if it were to become law. Notice that the juridical argument takes the form of a universalizability test, akin to the categorical imperative, in which maxims of the will are tested and not external relations of choice. For some, this reveals the moral basis of the juridical postulate and the morally derivative status of the universal principle of right as such.[40] For others, the postulate is not a test of an action's moral permissibility; rather, it says that a rule rendering external objects unpossessable would be juridically wrong because it would deny people's freedom of action to use external objects for their own purposes, thus constraining their will without any legitimate reason.[41] Since objects cannot in themselves declare their unavailability to possession, such a rule must be set up by people themselves. Even though possessing external objects is not covered by the innate right of freedom, the contrary of the rule is not therefore prohibited. Categorically declaring objects unusable would be contrary to right, for no one has the authority to deny people the capacity to use what they choose.

The juridical postulate justifies the use of the *a priori* concept of intelligible possession in practical judgments of mine or yours insofar as such judgments apply to external objects of choice. In short, the postulate

says: it is possible to make binding judgments of possession ("to have any external object of my choice as mine") even when those judgments do not refer to any empirical conditions (e.g., without reference to spatial and temporal constraints). That is, practical reason does not require an empirical relation between will and object to make possession intelligible, only normative conditions between will and will. Furthermore, such a relation is not only intelligible (i.e., possible for practical reason) but *necessary*. Without it, we would contradict our own freedom by denying the use of external means to carry out the ends we choose.[42] The relation between willing and acting would be severed since nothing external could be rightfully used as a means to bridge the gap between *willing* to do something and *actually* doing something; the freedom to use means to satisfy my ends would extend only as far as my physical grasp. As an embodied agent inhabiting a finite world with a plurality of others sharing scarce resources and numerous needs, my body is not sufficient for my agency.[43] For instance, without the ability to use external objects as my own, I would not even be able to have a *place* where I could carry out my will free from the domination of others. For if nothing external can be mine, then neither can any external place serve as the object of my will unless I continuously occupy it. Otherwise, no matter what I do, *where* I do it would always be insecure, subject to the power of anyone who wishes to control it.[44] Any action would be impossible that involves using a specific place over time without my continuous physical presence. As the juridical postulate affirms, rational agency presupposes the possibility of intelligible possession of external objects of choice, that is, the *right to property*.[45]

Permissive Law

While the juridical postulate solves the problem of explaining how possession can be theoretically possible, it opens the door to a much bigger problem: how can it be *normatively* possible? That is, how can I justifiably obligate others to respect an object as *mine* through a unilateral deed without their consent? According to Kant's distinction between person and thing, things can be treated as *means* regardless of the moral law because their metaphysical status falls outside the normative zone of rights and duties (6: 223). Incapable of reason, things have no argument against our use and abuse. Persons, however, cannot rightfully be treated only as a means or be coerced against their will, yet possession coerces others to refrain from using what's mine. The paradox is thus: it cannot be wrong to treat things as means, to use and possess them; but it cannot be right to restrict other persons' wills to my choices without their consent, which is what happens when I possess things.

Kant recognizes the paradox and attempts to resolve it by categorizing the postulate as a *permissive law*. A permissive law neither prohibits nor commands an action but declares that an action originally *indifferent* to right can be compatible with the freedom of all and thus permissible (6: 223). This does not make something *wrong* right, as some commentators claim, but rather incorporates a hitherto unregulated relation into the sphere of right.[46] A permissive law does not grant exceptional status to what would otherwise be wrong but rather gives legal form to a relation that was unregulated by norms of right and wrong. As a *power-conferring norm*, the permissive law "provides a person with a legal power to do something."[47] It is similar to how property rights today are often created to deal with new technology, economic instruments, and social needs; although such rights are *permitted* by the state, their justification arises from the practical demands of rational agents themselves. Referring to the normative puzzle of possession, Kant states:

> This postulate can be called a permissive law (*lex permissiva*) of practical reason, which gives us an authorization that could not be got from mere concepts of right as such, namely to put all others under an obligation, which they would not otherwise have, to refrain from using certain objects of our choice because we have been the first to take them into our possession. Reason wills that this hold as a principle, and it does this as *practical* reason, which extends itself a priori by this postulate of reason. (6: 247)

While the postulate asserts that it is possible to have things as mine, the permissive law explains what that means for myself and others. It gives me the authority to obligate others to act in a certain way, to constrain their will to my own through my unilateral deed of taking possession of an external object. My possession obligates others to refrain from using an object of my choosing, and it obligates me in return to refrain from using the possessions of others. Through appropriating something as my own, I bind others into a rightful relation without their consent. How can this be right? Normally, one is not allowed to coerce others unless it is to "hinder a hindrance to freedom," but here it is justified not by "mere concepts of right" but by "practical reason, which extends itself *a priori* by this postulate of reason" (6: 247). Possession is not an exception to right, but it cannot be grounded on right alone.

Proof of the Postulate

The structure of practical reason, according to Kant, requires possession to be possible so that agents can maintain their external freedom to set and pursue ends of their choosing in the world around them; possessing

external objects binds people together in intelligible, normative relations that extend beyond the empirical conditions of experience. How does this "extension" of reason occur? The method by which reason extends itself *a priori* in the practical realm is not by adding intuitions (as in the *Critique of Pure Reason*) but by subtracting them:

> [A]ll conditions of intuition that ground empirical possession must be *removed* (disregarded), in order to *extend* the concept of possession beyond empirical possession and to be able to say: any external object of choice which I have (and only insofar as I have it) in my control can be counted as rightfully mine, without being in possession of it.
>
> (6: 252)

By removing empirical conditions from possession, conditions which cannot sufficiently account for the nonempirical consequences of what it means to say *mine*, practical reason renders a seemingly physical relation between will and object into a normative relation between wills. Acting rightfully requires intelligible conditions of possession to be possible even if such conditions cannot be determined by right alone. By removing empirical constraints from our capacity to have rightful relations with each other, constraints which rational beings have no reason to accept as final, "we end up with the social form that free beings must adopt in their pursuit of ends," as Robert Pippin puts it.[48] This social form, in my words, is the property relation.

The indemonstrable ground for accepting the postulate lies in the background theory of freedom underlying Kant's practical philosophy.[49] If we want to act in accordance with our rational agency, our freedom to will and choose according to laws we give ourselves, then we must give ourselves a law of rightful possession concerning external objects. This law enables us not only to use our bodies as rightfully protected means to fulfill our ends but to use objects of the external world for our purposes *to the exclusion of others*. If intelligible possession is in principle possible, then all sorts of new normative relations will become possible too, particularly rights to property, contract, and status. The external world becomes infused with new social possibilities and legal capacities conferred by the permissive law.[50] With the postulate in place, and its meaning explained as a permissive law, we acquire the following duty of right: "to act toward others so that what is external (usable) could also become someone's" (6: 252). That is, to coexist in a system of equal freedom, our actions are constrained not only by the duty to respect the innate freedom of others but also by the duty to act toward others in a way that enables people to have things as their own. To live rightfully, property must be possible—*even if we cannot prove it*.

Conceptual and Normative Conditions of Possession

Another way to explain this is to say that for Kant, judgments of possession have both conceptual conditions and normative conditions. Conceptually, we must be able to make sense of "mine" statements such that they conform to our standards of intelligibility governing how we relate to objects and others. If people were not able to possess things and use them as their own, then their freedom of action would be denied expression in the external world, for they could not effectively use means of their choice to pursue their ends. As Patrone writes, "we would have the capacity to have choices but no means to exercise this faculty rightfully."[51] Furthermore, external freedom of choice means that I should be able to use things in different ways for different purposes such that my use is not dependent only on physically holding things. For why should my freedom of choice be restricted by empirical criteria when I am not only a sensible creature but a rational agent who can act according to norms of reason and not just laws of nature?[52]

To call a hat mine—and if I want that to signify something more than the fact that I am wearing it right now—requires the application of nonempirical conditions to the relation between me and this external object. To make sense of this, Kant argues that the nonempirical conditions we apply in fact relate not directly to the object but to other people (or in Kant's language, to other wills). "This hat is mine" makes sense as a judgment because we know it means that I stand in a certain normative relation to other people with regard to the hat, irrespective of my physical relation to it. The judgment relates to how they are to treat me in regard to the hat, such that they are to refrain from using it without my consent while it is under my control. In Kant's terminology, the common concept of *mine* presupposes an *a priori* concept of intelligible possession.

The second condition, which results directly from the first, is normative. "This hat is mine" may be an intelligible judgment, but it would not be normatively binding on other's wills if it went against the rightful conditions of coexistence according to the law of external freedom. If it were inconsistent with the freedom of other's choices, then the force of the judgment would be empty. I would have no authority to obligate others to act in a certain way concerning my choices. I could choose to have a hat, could call it mine, and could think of the hat as mine irrespective of where I put it, but unless others recognize the rightfulness of my possession, it would all be for naught. In other words, having a hat as mine would be rational but not yet legal. Thus, for something to be mine, it must be consistent not only with principles of reason but also with principles of freedom. In Kant's terminology, the concept of intelligible possession must be shown to be in conformity with the universal principle of right. If so, then judgments of

possession (e.g., *this hat is mine*) would be both intelligible and normative, consistent with our *a priori* concepts of practical reason and in conformity with our *a priori* concepts of right.

The juridical postulate and the permissive law provide the conceptual and normative conditions for possession as a meaningful concept and binding norm. It would be self-contradictory (to our freedom) not to be able to have external objects as our own, and it is permitted to obligate others to act in a specific way toward me with regard to my possession. Therefore, if the juridical postulate of practical reason declares it possible (i.e., rationally intelligible) to have external things as *mine*, and if the permissive law determines such ownership to be compatible with the universal principle of right (even though it cannot be derived from that principle), then we should be able to make a practical judgment that something external can be mine, that I can *have* it without *holding* it, such that the judgment can be recognized as conceptually meaningful and juridically binding by all persons who take themselves to be free.

Antinomy of Possession

When faced with the possibility of an external object being *mine or yours*, practical reason "is forced into a critique of itself" (6: 254), for it cannot judge the validity of claims to possession without making a choice about what *counts* for something to be mine. Must it be in my grasp or not? How can intelligible concepts have empirical conditions? Kant calls this an *antinomy*, an "unavoidable dialectic" of reason, in which two mutually exclusive theses both appear to be valid.[53] The antinomy of possession is formulated as such:

1 it is possible to *have* something external as mine without *possessing* it;
2 it is impossible to *have* something external as mine without *possessing* it.

The thesis (1) signifies not only that it is theoretically possible to have something without directly possessing it but that it can be *rightful*. The antithesis (2) rejects both the theoretical and normative possibility of having something without directly possessing it. The first thesis is thus more "rationalist," while the second is more "empiricist." Both propositions can be true, according to Kant, only if reason distinguishes between two kinds of possession: *empirical* possession in the former and *intelligible* possession in the latter (6: 255). In the thesis then, possession refers to empirical holding, and in the antithesis, to nonempirical norms.[54] Thus, we can say that the claim "it is possible to have something external as mine even though I am not in *empirical* possession of it" is consistent with the claim "it is not possible to have something external as mine unless I am in

intelligible possession of it." To put it more clearly, the condition of possibility for *having something as mine* is nonempirical, intelligible possession of an object of choice. In the technical jargon of Kant's practical philosophy: our everyday judgments of external things as *mine and yours* are possible (i.e., rational and rightful) because they presuppose the *a priori* concept of *intelligible possession*. The *a priori* concept of *intelligible possession* abstracts from all spatial and temporal conditions between agent and object, applying only to rational wills; yet the concept of *intelligible possession* is still able to relate to the object through the nonempirical, but not yet rightful, concept of *having*.

Thus, when I seek to know whether it is possible to have something as my own, practical reason initially confronts an antinomy: to have something as mine, I *must* and *must not* be in possession of it. Reason resolves its own dilemma not by *limiting* itself to the realm of appearances but by *extending* itself to the realm of purely intelligible relations between wills—that is, by disregarding empirical intuitions and solely considering whether the form of action involved in possession can universally coexist with the external freedom of all (6: 255). The unprovable but rational postulate of right answers this affirmatively, stating that intelligible possession of external objects cannot be denied without denying the innate right to freedom. Furthermore, acts of intelligible possession are granted the authority to generate obligations according to a *permissive law*—that is, a law which treats morally indifferent acts as legally significant. But, even if intelligible possession is justified *in principle*, how could any specific unilateral act of possession create a universally binding duty on others? If possession is to be a right, a "giving of law" to others (6: 254), and if a right must be reciprocally coercive, then how could I ever universally and unilaterally coerce other persons to recognize my claim to possess something as mine?

To answer that, I take a clue from Katrin Flikschuh's interpretation of the *Rechtslehre*. On her view, the antinomy of right is a political form of the third antinomy from the *Critique of Pure Reason*.[55] The antinomy there is between freedom and causality, the power of spontaneity versus the constraints of nature. The thesis and antithesis represent rationalist and empiricist perspectives, while the solution comes from adopting Kant's transcendental idealism. To mediate between the constraints of nature and our own spontaneity, a new perspective is needed, one which can recognize our agency as phenomenally determined and noumenally transcendent. With the antinomy of right, however, the domain of *external*, interpersonal freedom is under consideration; the constraints are not that of nature or subjectivity but that of *other people*, for right concerns only interpersonal relations of choice and their effects on the independence of all. As Flikschuh argues, "the constraints refer to the external conditions of agency in general" and thus cannot be modified by my will alone.[56] To incorporate

the constraints of other people's freedom into my own condition of willing requires "a recognitional shift in agents' perception of their situation."[57] This normative shift in one's self-understanding comes from seeing possession no longer as a unilateral claim by subjects over objects but instead as a reciprocally binding relation between subjects concerning each other's duties with regard to objects. This 'recognitional shift' in understanding what's required for something to be mine motivates the transition to a civil condition, where private claims of possession can be publicly authorized as universally binding rights.[58]

The Need for a Civil Condition

The juridical postulate and permissive law assert the compatibility of intelligible possession with the principle of right, but they do not explain how such compatibility is achieved. Kant's answer, motivated by the antinomy of right, comes in the title to paragraph §8: *It is Possible to Have Something External as One's Own Only in a Rightful Condition, under an Authority Giving Laws Publicly, That Is, in a Civil Condition* (6: 255). A civil condition is a political order of positive laws and public institutions. It is theoretically distinct from a 'state of nature'—that is, a social condition without external rights (e.g., property), in which only the innate right to freedom is valid (i.e., the right to act independently of the coercion of others). As argued above, this innate right extends only so far—as far as my body. But to use external means in pursuit of my ends—ends which constitute my agency, individuality, and self-identity—I must be able to take possession of the external world. To institute rights to property, contract, and status—each a form of possession consistent with our rational agency and moral principles—a state of nature is insufficient.[59] But the state of nature is an idea of reason, not a historical reality; its argumentative function is to explicate the *a priori* concepts of (private) right, valid independently of any historical, cultural, and social context. These concepts are deduced from pure practical reason *provided* that reason is embodied in desiring persons living amongst each other on a finite planet. Theorizing a state of nature, while fictional, nevertheless helps clarify the fundamental normative principles and rights that any public order must recognize and legitimize if it is to be just. A civil condition is the social form in which the right to possess something as one's own can coexist with the freedom of all. This form is institutional, juridical, and political, and with it arises the legitimacy of coercive laws that can mediate between disputes over what's mine and yours according to norms of freedom. Such a condition does not prudentially arise in order to solve problems of violence, coordination, or efficiency.[60] For Kant, its existence is obligated by practical reason itself. Entering a civil condition is a *duty* of right since only by

means of it can one legitimately possess external things at all. In such a condition, the freedom of each is made compatible with the freedom of all, and that is the *raison d'être* of law, the organizing principle of a state.

But why is possession rightful only in a civil condition? There are both general and specific reasons; I will focus on the general ones.[61] The main reason has to do with ensuring the bindingness of my act: if the content of rightful possession is to impose an obligation on others to refrain from using an object of my choice, then I too must be bound by the same rule (6: 255). Each person must be assured that everyone will respect one's claim of possession, that the obligations are truly reciprocal. If the act does not engender a reciprocally binding obligation, then it does not really count as rightful. In other words, to call something mine is meaningless unless you can recognize my claim as authoritative and binding, and you can do so only if I can *assure* you that I can also recognize your claim as authoritative and binding.[62] For you to orient yourself toward me in a way that acknowledges what I take to be mine *as mine*, I must orient myself toward you in a way that acknowledges what you take to be yours *as yours*. This is the *recognitional shift of an agent's self-perception*, the taking-another-into-account in one's own self-understanding that is required for possession to be binding as a right. This reciprocal assurance of obligations is a condition of all rights, yet it is a problem only for *property* rights since these arise unilaterally and contingently. Although property rights are formally consistent with universal principles of practical reason, their actual existence comes into being only by specific individuals unilaterally and contingently taking possession of external objects of choice.

For my possession to be rightful, my will must be universally binding; yet it is impossible for any single will to unilaterally obligate everyone else. Only a universal will can obligate universally. This is both a normative and functional claim. Normatively, no single person has the authority to rearrange the means of action for everyone else. By excluding others from a usable object of choice, I force their will to bend to mine, such that their purposes can no longer be achieved independently of my choices. The only possible form of authority that can justify such a law is a collective one; such an authority would be drawn not from any particular will but from the concept of a united, general will. For Kant, a united, general will is an *idea of reason*, a regulative norm under which we act as if it were a universal rule.[63] A united will that can authorize laws omnilaterally, by all for all, would be consistent with the freedom of everyone and thus be right.[64] The existence of such a will cannot be deduced from principles of practical reason alone; it must be *produced*, and that can only be a political act.

To create a united, general will is to establish a modern state under the rule of law: a civil condition. Public rights, political institutions, and positive laws make up the elements of a civil condition, all of which are

justified to come into being, in Kant's argument, not for any instrumental reason but rather as a duty of right. The specific duty to create a civil condition is based on the general duty to be a person, free from the domination of others, to be one's own master. This form of life requires the possibility of rightful, intelligible possession of external objects of choice. To actualize the kind of possession required for external freedom means instituting a legal, political order, for only in such an order can what's mine and yours be respected, ensured, enforced, and settled. That is Kant's ultimate claim here. To be a person, to live up to our innate right to freedom, to choose ends and use means independently of coercion, to have a distinct *self*—none of this can be achieved on our own. Not individually as a matter of force, not bilaterally as a relation of ethics, not divinely as a matter of religion—only *politically* in a condition of right. To be the kinds of beings we are capable of being means letting go of the autonomy to set the rules by which we each choose how we are who we are. The *ends* we choose and the *means* we use make up our concrete identity as distinct individuals in the social world; as such, they compose a unique self out of the chaos and contingency of everyday social existence. Yet to be that self, to be an individual capable of distinguishing oneself from other things and other people, one must give up one's sovereignty to decide how to externally relate to things and people. That power must be joined together with others into a united, general will, for only through such a will can the freedom of each be consistent with the freedom of all. And only on that condition is one authorized to have external rights to property, the legal right to intelligibly use the world—to possess things, make contracts, and claim status—in pursuit of one's ends, without limiting oneself to empirical constraints. The free individual is thus not given naturally but achieved socially as a result of political action.[65] Without a normatively binding legal order, an individual is only *provisionally* free, only provisionally a *self*. Freedom now means independence within interdependence, as private claims to mine and yours become right only within a public condition of ours.

Functionally speaking, the law of possession must be not only normatively binding but capable of being coerced. No single will can effectively coerce everyone, and so a *powerful* will is required that has not only the authority to bind but the power to coerce. For without the ability to hinder a hindrance to freedom, right is as impotent as a wish. Yet right without the possibility of coercion would mean that external freedom could not be exercised *equally* and consistently since those with more power than others could usurp means, interrupt ends, and subvert choices with impunity. In effect, the force of the stronger would be able to freely constrain the wills of the weaker, and the freedom of one would come at the expense of the freedom of another. Such is life in the hypothetical state of nature, where private rights to possession are intelligible but not yet practical. Because

we are concerned with *external* freedom, the kind of independence that depends on how others act in relation to me, the security of willing is a serious issue. If one cannot will to use an object without fear of being dominated by another, if no one can be secure in their ability to have something as their own, then freedom is practically annihilated. There is only an illusion of choice, one which depends on the benevolent wills of stronger masters.[66] A civil condition upends this insecurity by authorizing a will powerful enough to coerce anyone who seeks to manipulate the laws of freedom for their own benefit. Securing the right to possession entails ensuring the equal capacity for all to use the means of agency they choose for whatever purpose they want irrespective of the power of others as long as it conforms with the external freedom of all. A sovereign state has the power and authority to secure what's mine and yours and thus only in such a state can possession be rightful.

In short, a universal will that can authorize unilateral claims to possession without infringing upon the freedom of others must be both "collective general (common)" and "powerful" (6: 256). The collectivity of the will solves the normative problem of imposing obligations unilaterally, whereas the powerfulness of the will solves the functional problem of exercising coercion universally. Together, they constitute a public order of positive law, the only condition in which something external can be rightfully mine or yours.

Provisionally Rightful Possession

What is the point of meticulously deducing the right to property in a state of nature if it can never be legitimate in such a condition? Kant clarifies his argumentative strategy in paragraph §9. First, the goal has been to reveal the external "natural rights" (6: 256) that laws in a civil condition cannot infringe upon. If intelligible possession is an externally acquired natural right, then there can be no law against the possibility of having something as mine. Second, the purpose of a positive legal order has been found: to resolve the normatively and functionally deficient conditions of possession that afflict right in a hypothetical 'state of nature'—that is, to legally *settle* and *secure* "what belongs to each" (6: 256). Possession in a state of nature—that is, possession understood in virtue of *a priori* concepts of private right alone—is empty. For without "being united with the will of all in a public lawgiving" (6: 257), my will to possess external objects as my own cannot be authoritative for others, cannot be morally or legally binding. Physical possession is the first step to intelligible possession. Such possession becomes *rightful* only when physical control is superseded by intelligible norms of freedom authorized by public institutions and consistent with the choices of all.

Although possession outside a civil condition is legally unbinding, it still must be possible for external objects to *become* mine or yours. But this creates a puzzle for Kant. For what one possesses is not yet one's possession, and it will not be one's possession until everyone treats it as such. So, what is the normative status of the object of possession before it is recognized as mine? We know it cannot be *wrong*, but it is not yet *right*. Between these two extremes, Kant proposes a middle way: one could act *as if* it could become right—that is, in anticipation and preparation of the law to come. To treat what you *claim* to be yours and what I *claim* to be mine in such a way that it *could* accord with a universal law would mean acting as if what was *not* binding was in fact binding. Kant calls this "provisionally rightful possession":[67]

> Possession in anticipation of and preparation for the civil condition, which can be based only on a law of a common will, possession which therefore accords with the *possibility* of such a condition, is provisionally *rightful possession*, whereas possession found in an *actual* civil condition would be *conclusive* possession.
>
> (6: 257)

It is thus not wrong to steal my property in a state of nature, but it is *provisionally* rightful for me to resist that coercion and act so that a rightful condition could come into being. Acting this way means recognizing other people's property *as if* it was theirs and defending my property *as if* it was mine. Provisionally rightful possession does not grant one the authority to use coercion against interference with what one considers "mine" (such authority comes only from a collective will). However, it does grant one a different right: to constrain any interaction partner "to enter with us into a constitution in which the external mine and yours can be secured" (6: 256–7). The reason that I have this entitlement to coerce potential interaction partners to enter into a civil condition with me is that only by means of a public legal order could each of our possessions be collectively and effectively authorized as rightfully our own. And securing each other's possession just is securing each other's external freedom, the only unconditionally valid right of all human beings. Otherwise, we remain in a state of indeterminacy and unfreedom, such that force effectively decides in the present who owns what. The only way to rightfully resolve disputes of mine and yours is in a civil condition and thus one is right to compel one's neighbors into a condition in which their mutual freedom can be secured. For when anyone close to me claims something as their own, it *affects* me, *constrains* me, and I have the right to resist any constraint that is not compatible with my freedom of choice under a universal law. Without a general will, though, I do not really know if any particular claim of possession

really harms me or not, for the external boundaries of our shared freedom are indeterminate. One must therefore *prepare* the way for a legal order which can determine the boundaries of freedom. Practically, this means *acting in anticipation of the law*, for this "at least has the advantage of being compatible with the introduction and establishment of a civil condition" (6: 257). Recognizing what's mine and yours is at least compatible with the idea of a civil condition and hence *provisionally*, if not actually, right.

Philosophical Consequences

Let me pause to offer some general reflections on the philosophical consequences of Kant's argument so far. For Kant, the freedom to act depends on the power to set ends and use means independently of the domination of another. Yet this very freedom to determine oneself by choosing distinctive ends and using specific means to fulfill those ends is not intelligible without a boundary between the domain of mine and yours, between what I am accountable for and what you are accountable for, between my sources of action and yours. This separation between mine and yours, however, does not come with the innate right of freedom and neither can it be unilaterally determined through my deeds.

In short, my own freedom is insufficient to account for who I am, distinct from others. Instead, I require other people who also require me to set the boundaries between self and other, mine and yours. This free separation of ourselves from each other cannot exist without the force of reciprocally recognized norms instituted publicly in social and political contexts. Such norms do not emerge naturally but result artificially through collective action, struggle, conflict, and compromise. Historically contingent yet morally necessary, this new context of freedom provides rules and reasons for each person to be able to follow through on their own choices independently of the domination of others. Together, we politically construct the interpersonal rights that enable us to be who we take ourselves to be—self-determining social agents—which alone we cannot be.

Robert Pippin notes with acumen this aspect of Kant's legal philosophy, suggesting a more intersubjective proto-Fichtean and developmental proto-Hegelian quality to the *Doctrine of Right*.[68] For Pippin, Kant's understanding of the status of human beings as rational agents begins to loosen up when we take into account the normative development of right from empirical possession to intelligible possession to, ultimately, socially recognized property rights in a civil condition. This rational reconstruction of the conditions of external freedom from the perspective of practical reason highlights our capacity as practically oriented agents to engage in (and fail at) determining the boundaries of mine and yours, self and other.[69]

But how can one's agency be both the presupposition and goal of right? "Of course, according to Kant's practical metaphysics," Pippin writes,

> we simply *are* such intelligible, or reason-responsive beings, but this narrative suggests that such a capacity can also exist in an unrealized state, or in more speculative terms, that what it means to be such a subject is also to be able to fail *to take up such a status*, to fail to be one.[70]

Pippin reads Kant's deductions and exposition of the concepts of right *narratively*, as a story of normative development.[71] Almost phenomenologically, the development of Kant's doctrine of right is motivated by internal problems with each stage of right: innate right cannot account for the use of external means for my own ends without private right; private right cannot account for unilateral acquisition, enforcement, or settlement of property claims without public right; the rights of states and nations cannot account for their own security, economy, and treaties without cosmopolitan right; and cosmopolitan right cannot become a global framework for all without the regulative ideal of perpetual peace. None of these developments is guaranteed, but all of them are *possible* from the moment that rational agents begin to take each other as free and equal persons sharing a single planet. For Kant, this normative process necessarily leads through the metaphysics of possession.

To be a distinct self is to have something *as mine* with which to act, use, identify, control, and dispose. But this does not mean that what's mine and yours can be taken for granted. Rather, "mine and thine, the basic boundaries of the private, are not treated as original starting points by Kant but as secondary and as some sort of socially mediated achievement."[72] That is to say, property claims do not simply describe a given state of affairs between pre-formed legal subjects; rather, such claims ascribe normative statuses to subjects in the first place, constituting them as distinct persons bound to each other in mutual obligation.[73] These statuses are not found in nature or reason but are continually reproduced in the social relations, political institutions, and legal judgments that people develop with each other over time. There is no end point to this process, no final moment at which mine and thine are settled once and for all and each person is finally free to be a distinct and separate self. There is a goal, an ideal republic that functions as the normative standard by which to judge the present. But this ideal never comes. Property, to varying degrees, remains permanently provisional. Individuals are only provisionally separated from each other, only provisionally independent and free. The right to innate freedom is not enough to determine what's mine and yours; freedom is not enough to account for ourselves as separate but interdependent agents. Collectively authorized property for all is a necessary but insufficient step for making a

world of freedom possible. The social conditions of practical freedom require a form of universally recognized property relations consistent with our permanently provisional status as incomplete, unfulfilled, desiring, dependent, and sometimes rational creatures.[74]

Acquiring: Social and Material Foundations of Property

In the final part of this chapter, I confront the problem of justifying the unilateral *acquisition* of rights to property, focusing of paragraphs §10–17 of Kant's *Doctrine of Right*. In so doing, I examine the notion of "original possession in common," the role of land and space for practical agency, and the "unchosen conditions of freedom." I also discuss the provisional status of property once more and, in particular, its relation to the postulate of public right and colonialism. I conclude by pointing to the potentials and limits of Kant's account of property.

Acquiring Rights to Property

In order to *have* something external as my own, I must first *acquire* it. In paragraphs §10–17 of the *Doctrine of Right*, Kant lays out the social and normative conditions for the rightful acquisition of things (property rights), deeds (contract rights), and persons (status rights).[75] I will focus on the problem of originally and unilaterally acquiring *rights to things*, what are traditionally called *property rights*.[76] Kant first defines the right to a thing counterintuitively: it is a right to a thing *against every possessor of it* (6: 260). But isn't the possessor the bearer of the right? We can make sense of this definition by distinguishing between an *owner* and a *possessor* or between *property* and *possession*. An owner legally has a right to a thing as their property, whereas a possessor empirically holds the thing as their possession. As Kant clarified before, *holding* must be sharply differentiated from *having*, such that only the latter can function as the proper mode for intelligible possession of objects of choice. For Kant, acquired property rights are essentially *negative*, authorizing the rightful owner to exclude others from using a corporeal thing of her choice. Effectively, this means that nobody can use my property without my consent, that everyone else has a duty to refrain from using it, and that anyone who does use it without my consent can be constrained, against their will, to cease and return it to my control. So far, this sounds like a classically liberal theory of property as *the right to exclude*.[77] But Kant has a different point. By analyzing property through the lens of universally bindings rights of the owner against every other possessor, Kant is asking the question of *where* the correlative duty of another (to refrain from using what's mine) comes from.

First off, it does not come from the *thing*. Kant explicitly criticizes theories of property which fetishize the relation between persons and things, as if things themselves contain duties to their owners, like "guardian spirits" protecting them (6: 260). For Kant, things cannot hold duties, for rights apply only interpersonally between persons to formal relations of choice. As bearers of reason and agents of choice, only persons can be held accountable for their deeds and responsible for their effects on the freedom of others (6: 223). Hence, rights to a thing can be explained not by any relation whatsoever between persons and things—whether material, spiritual, or intellectual—but only in social-normative terms.[78] Thus, for Kant, the Lockean idea that an individual and a thing can be bonded through the spiritual connection of labor is utter nonsense.[79] So is the Hegelian idea that one can create property by expressing one's free *personality* in a material thing, as if it that created a unique metaphysical connection to the owner.[80] Although Kant believes it is absurd to represent property relations this way, it is, however, *permissible* to express it like this as a sort of shorthand.[81]

If things cannot obligate others to refrain from wrongfully using them, then what can? Kant treats this question in a way similar to how he deals with the problem of the moral law in his ethical writings. Whereas the authority of *moral* legislation is based on the idea that I can be bound only by laws I am capable of giving to myself (i.e., by my autonomy), the authority of *juridical* legislation is based on the idea that *we* can be bound only by laws *we* are capable of giving to ourselves as a whole (i.e., by our united will). In effect, we can be bound only by obligations we *collectively* give ourselves the authority to impose. But how can we collectively give ourselves the power to constrain each other with respect to individual acts of acquisition unless we are *already* bound to each other through mutually coercive laws of right?

To put it more directly, if you and I have not *already* agreed to be bound by reciprocal norms of right, then how could my unilateral act of acquisition have any authority over you? How could my individual deed over here reshape your normative commitments over there without our ever having first agreed upon the conditions, duties, and obligations that go along with such acts? A major claim of Kant's doctrine of private right has been that no such prior agreements are required to validate the rightfulness of intelligible possession of external objects; having things as mine or yours has already been deemed rational and rightful by the juridical postulate of practical reason and the permissive law, neither of which depends on the consent of other people. To *originally* acquire property and thus unilaterally impose duties of self-restraint on all others seems impossible to justify without appeal to a pre-constituted community with norms of property acquisition, yet any acquisition in such a community would be *derivative*

of the community's norms. So how can the acquisition of property be both original and derivative? And if derivative acquisitions of property cannot be traced back to an originally rightful acquisition, then are they not ultimately unjustified?

Original Possession in Common

We thus arrive at a dilemma. The individual right to a thing presupposes a collective authority under which I could acquire it and yet I must be allowed to use and possess things without first needing permission from others. For me to act freely in pursuit of my ends, using this and discarding that, acquiring this and controlling that, I must be both separate from and united with other people in my choices; I must be both independent from and dependent on their will. Some commentators see this dilemma as a contradiction in Kant's legal thought, or rather, they take it as a sign of his unmistakably bourgeois position.[82] In effect, it is argued that Kant lays bare the hypocrisy of modern property rights, for while such rights must be *in principle* consensually agreed upon in order to be just, property rights are *in fact* imposed upon us without any say in the matter. And yet we are called upon to justify them *as if* they were made for our own individual freedom, when they do nothing but limit our choices.

In my reading, Kant's idea of "original possession in common" challenges this claim. There is no need for any actual consensus to be granted in order for individual property rights to be sanctioned. Rather, the point is that unilateral acts of acquisition must be conceived as already taking place under the idea of a universal community of human beings *in virtue of our common lot on earth*. Unilateral acts of acquisition have normative force only against the background of an assumed joint intentionality of all persons to use and possess the earth, a united choice of all. This original choice binds everyone together into a universal human community of common possession. As Kant puts it: "By my unilateral choice I cannot bind another to refrain from using a thing, an obligation he would not otherwise have; hence I can do this only through the *united choice of all who possess it in common*" (6: 261, emphasis mine).

Original possession in common is what authorizes me, through the "united choice of all," to obligate everyone else to refrain from using what's mine; it is not the thing itself (metaphysically wrong), nor my individual will (morally wrong), nor a broad consensus (politically wrong). For you to be able to wrong me by using what's mine, and vice versa, we must presuppose our joint participation in a community which possesses in common. To be able to exclude you from using this thing means that you must already be bound to me—or else I would not be able to exclude you at all. If you were not bound to me already in a community of possession,

you would be outside the duty/right relation, and my unilateral deed would have no authority over your choices. Thus, you have to already be inside my community of right for me to exclude you by means of right from the right to *this* thing. That is the paradox: one must be included to be excluded, inside to be outside.

This paradox is resolved by understanding Kant's use of "original possession in common" as an *idea of reason*: not an *a priori* concept of right like intelligible possession but a regulative norm like the idea of perpetual peace. For a system of equal freedom to make sense, for a community of right to function, we must assume a condition we cannot prove, and even if we could, it would not matter. Kant's idea of *original possession in common* refers not to a theological-historical stage in the past but to a normative principle for unilateral acquisition in the present that can be fulfilled only in the future. The idea of original possession in common can constrain others to respect my private acquisition because it presupposes that our individual wills are already joined together in a shared condition with consequences for right: *a united will to possess the earth in common*. This united will to possess the earth in common is a materialist injunction of practical reason, one that comes from the confrontation of our innate right of freedom with the specificity of our spatial and plural condition: living on a spherical planet, without infinite resources, we need to be able to exist somewhere or another, here or there, with others, which means we need to be able to will the particularization of the earth, so that all can have a place where they can act free from interpersonal domination (6: 267). But the goal of dividing the land for each presupposes a united will that originally possesses the earth in common, one that has the authority to divide it. The united will and original possession in common are *ideas of reason*, not historical facts but normative principles which orient our practices in the present into an intelligible, coherent framework of justice.

Boiled down, the point is relatively simple: *rights to a thing, though acquired privately, are authorized publicly*.[83] The individual right to exclusively acquire, use, and possess a thing as one's property is conditioned by the idea of a united will to possess the earth in common, a regulative norm under which we must act if we are take ourselves as externally free on this planet. But a united will can be present only in the form of institutions of public right, and if such institutions do not exist in reality, then acquiring something rightfully means just that one is committing oneself to bringing those institutions about. Kant goes as far to say that, in fact, there is no such thing as a (direct) right to a thing (6: 261). Private property rights are directed solely against other individuals with whom one possesses the earth in common and thus share certain expectations of how to act under a universal law of freedom. That is, private property rights presuppose a community of individuals who can be harmed by one another through the

violation of a universal norm and who can be expected to publicly rectify that harm. This is not a physical harm but a legal one, an injury to freedom. To acquire rights to a thing means just that one is authorized according to the idea of original possession in common to feel injured by another's unwanted use of it—authorized, in fact, by the injurer herself.[84]

Land and the United Will

Kant's paradigm for the original acquisition of property is land. Land is the *substance* of all possessions, the secure ground upon which moveable things inhere (DR §12). As Kant argues, land can be originally acquired only in conformity with the principle of original possession in common, a principle we have to assume in order to accommodate two unconditional facts of nature and one material condition of freedom: first, the fact that we are born in a specific place without any choice; second, the fact that the places in which people are born and live are all connected and limited because of the spherical nature of the planet; and third, the condition that all human action requires a specific place in which to be performed.[85] How does original possession in common bring these facts and conditions into a framework of right, and what does this have to do with the original acquisition of land? The key claim is in paragraph §13:

> All human beings are originally (i.e., prior to any act of choice that establishes right) in a possession of land that is in conformity with right, that is, they have a right to be wherever nature or chance (apart from their will) has placed them. This kind of possession…is possession *in common* because the spherical surface of the earth unites all the places on its surface; for if its surface were an unbounded plane, men could be so dispersed on it that they would not come into any community with one another, and community would not then be a necessary result of their existence on the earth.
>
> (6: 262)

The fact that we exist somewhere prior to our own ability to choose (and thus establish a right to it) and that we are forced to take into account each other because of the spherical surface of the earth (and thus must form communities) means that each person should have a right to *exist* somewhere independent of their own will; furthermore, this right comes not from any individual act but rather from the common condition of all who exist on the earth together. But since a common anthropological condition cannot grant one a right to anything—rights arise only in accordance with practical reason's laws of freedom—the idea of original possession in common subsumes this condition under a principle of reason. This principle

retroactively authorizes one's unchosen cohabitation of the earth as a collective choice to prospectively share the planet with all under a system of equal freedom.

As a "practical rational concept," original possession in common "contains *a priori* the principle in accordance with which alone people can use a place on the earth according to laws of right" (6: 262). What is this principle? Although it is not mentioned here directly, it must be the idea of a *united will*, for possession "in common" presupposes a common will united in its purpose to authorize individual wills to use, acquire, and possess the earth in conformity with its norms.[86] Original possession in common thus provides a possible social framework that can accommodate the individual need to use a place on this earth before any condition of right is established.

The idea of a united will grants a provisional authorization—retrospectively grounded through possession of the earth in common and prospectively oriented toward a potential normative order—for anyone to privately exclude another from a piece of the earth through a unilateral deed of acquisition. Acquiring something unilaterally is made normatively possible through our *a priori* membership, as rational creatures on a finite planet, in a united will that grants individuals the right to separate from each other within a collective order of interdependency. Thus, an individual will to unilaterally acquire land is justified by its inclusion in an *a priori* united will, an imagined community of all that held possession of the earth in common before any establishment of right and that could authorize the first acquisition of land by individuals.[87]

At this point, one can ask: is this not ideological? Isn't this account of the *a priori* united will simply a retroactive justification of coercive individual appropriation of common land, of violent private dispossession of shared property, of illegal conquest and robbery of indigenous territory? For how can any people resist an individual's claim to exclusively acquire a plot of land if the united will allows such acquisition, or even demands it, for the sake of right? Is there a right of occupancy to counter the right of property? There are two ways of reading Kant here. One can read Kant as a bourgeois apologist, like Locke, whose property theory provides a rationale for the colonial appropriation of the Americas. I find this reading doubtful since Kant comes out explicitly against colonial theft of land in this very text, as I will discuss below. If he does not think his own theory supports such a claim, then we should probably read it differently. This means seeing the right to acquire land in Kant not as a right of a private individual to go anywhere and claim something as their own *against* all *others* but rather as a right *within* a shared community to divide the earth so as to grant individuals the material capacity to exercise their freedom. It is this latter reading I follow here.

Having something external as my own has already been deemed *possible* by the postulate of right and the permissive law. But the act of *actually* acquiring something external can be rightful only insofar as I bind myself to bring about a united will which can authorize my act as consistent with the freedom of others. In other words, the individual act of taking control of a piece of land is not wrong but not yet right unless done under the presumption that my neighbors and I will create a public, collective authority based on shared principles of right. The empirical deed of taking physical possession is provisionally valid—and must be respected—until a united will is instituted which can recognize (or reject) the claim to possession. That is to say, although individuals cannot create laws for others through unilateral acts of acquisition, they can be collectively empowered to unilaterally enact their right to possession upon external things. While the source of this right lies in principles of practical reason, its authority must stem from public institutions of law. Instead of seeing my appropriating deed as an isolated act performed against the wills of everyone else, we should understand it as an individual exercise of a joint power with respect to an external thing.[88] This joint power is formed through uniting our individual wills into an omnilateral will—that is, into a generalized public authority which can legislate and coerce in accordance with the freedom of all. Within this order, private acts of acquisition can be publicly recognized as legitimate for all. This united will is not a one-off historical creation but a rational norm presupposed by the conjunction of our principles of right with our material conditions of existence; this norm of a united, omnilateral will thus operates as a regulative ideal by which to judge the legitimacy of the private appropriation of the earth in the present.

The Unchosen Conditions of Freedom

Let me pause to draw out some consequences of these claims. First, to be a free and separate person, one must first acknowledge the shared unfreedom that comes with being a member of the human community. Trapped on a finite sphere with nowhere else to go, forced to interact with others, struggling over a limited pool of resources—every individual is, in principle, bound to all others through the united will of an original community of possession that recognizes each person's *a priori* right to be somewhere here or there, regardless of choice, by virtue of their humanity. This right to a place on earth is neither innate nor acquired but a result of our unchosen conditions of freedom: the specific, social, and material relations of land and community that both constrains and enables our powers of choice, our norms of possession, and our objects of acquisition. Reclaiming that original unfreedom as our own choice reinterprets our collective dependency as a condition for individual freedom, our unilateral separation as a result of our common possession.

Second, Kant's framework takes something "natural"—our contingent birth on a spherical planet—and conceptually integrates it into the framework of right. This requires some interesting philosophical moves. The first one is the claim that humans have a non-permanent right to possess the land wherever they are born (6: 262). Without a right to possess where we come into existence on earth, we would be at that mercy of whoever controls that space. Without such initial possession, we would not be allowed to use the space we are born into. While this "birth" right is not a result of our freedom, it can be provisionally recognized as part of our freedom if we can relate to it in a way that brings forth a public order of right. The idea is that we all need to be free to act before we can choose where to act, and this means we need to be able to possess the space of freedom.

There are some clear problems with this thinking. Is Kant assuming that individuals are born completely out of a social context? Does he think that individuals are placed abstractly in point X and that they then require rational justification and legal protection to allow them to use their freedom against other individuals surrounding this point? Obviously, people are born in communities, full of social ties, familial bonds, and webs of dependency. The need to "protect" your space from birth sounds like a Hobbesian nightmare, not a fact of nature. So, what is the purpose of this initial possession of land? Kant's argument is more theoretical than practical; the point is not about the mythical past but about our present justification of acquisition. Since all acquisition in the present is dependent on an original acquisition of land, he must show how that original acquisition was justified from the standpoint of right.

The second move is to expand the standpoint of right from considering only formal relations of choice between persons coexisting under a universal law of freedom to a wider perspective that incorporates the material conditions of choice for communities living on a finite sphere under particular limits of necessity. All places on earth are connected and thus social interaction is an unavoidable fact of our existence. In other words, because of a contingent fact about the shape of the earth, we are bound to come into community with others. This means that if anyone wants to be individually free, everyone must find a way to collectively cohabit the earth together. On a closed planet, there is nowhere to run. Adopting norms for originally acquiring land should enable everyone to have a proper space in which to exercise their freedom. To do this, people must rearrange their obligations to each other such that anyone can in principle acquire land, so that everyone can be their own master, following ends and using means of their choosing in a place they could call their own. Otherwise, no matter what one chooses, there would be no place to do it rightfully. This does not mean that *private* property is the only way to structure one's legal relation

to others concerning how to use land and goods, only that such a relation is not excluded. Whatever property rights and relations are developed, there must be ways of allowing individuals to use external means to pursue their ends, together and apart from others.

Kant is right to emphasize the normative consequences of our unchosen cohabitation of the earth, and he is right to underline how freedom takes shape under specific material limits, particularly spatial constraints. Yet he is wrong to think that community is a mere side effect of the shape of the earth, instead of being a condition of humanity as such. Rationality is not a pre-social capacity of the individual but emerges within linguistic communities bound by social norms engaged in cooperative activities.[89] Humans depend on community not just for their survival but for their agency as well.[90] There is no such thing as an *a priori* isolated individual, capable of reasoning alone from birth and participating in a community only when compelled by some territorial constraint. In other words, community should be the premise, not the result of freedom.[91] As will be discussed in Chapter 3, this is precisely the theme that Hegel develops in his critique of Kant and Fichte's theory of right.

Yet Kant could have a deeper point, which is that although individuals are born into communities with all sorts of social bonds and communal norms, there is no 'natural' community of right. A community of right is not a given 'community' at all but a public, institutional structure in which various individuals and communities can coexist in equal freedom under reciprocally binding laws. Although the unilateral acquisition of land by individuals in non-legal communities is consistent with the form of right, it will not be recognized as right until these communities transform themselves into political bodies bound by law.

From Common Possession to Individual Property

Unlike utilitarian and natural right philosophers who try to explain the transition from common to individual possession on theological, prudential, or economic grounds, Kant rationally reconstructs the logic of individual property according to the metaphysical, normative, and spatial conditions for external freedom to exist amongst a plurality of people on earth.

The rightful basis of original acquisition lies in the solution to a normative puzzle: if "all human beings are originally in *common possession* of the land of the entire earth (*communio fundi originaria*) and each has by nature the *will* to use it (*lex iusti*)" (6: 267), then how can anyone use the land without trampling on the freedom of another? In other words, because land is limited and people do not choose where they are born, when it comes to using the earth, "the choice of one is unavoidably opposed by

nature to that of another" (6: 267). The will to use the land as one's own before any act of law has its basis in the innate right of freedom, which unconditionally legislates the independence of each from the choices of others. One cannot be independent from another's choice without having a particular space of freedom in which to act on one's own; to act in a concrete place means willing the use of a piece of land. To will the use of land independently of others, i.e., according to *right*, this will must also "contain the law for choice by which a *particular possession* for each on the common land could be determined (*lex iuridica*)" (6: 267).

What kind of law could particularize the common without annulling the universal? A *distributive* law that can "determine for each what land is mine or yours…in accordance with the axiom of outer freedom" (6: 267). Such a law would justify the division of the earth into particular pieces of land which can be individually appropriated without denying anyone's freedom of choice. What kind of will can legislate according to this law? Not a unilateral, contingent, or derivative will but only "a will that is united *originally* and *a priori* (that presupposes no rightful act for its union)" (6: 267). That is, only "a will in the civil condition (*lex iustitiae distributivae*), which alone determines what is *right* [*recht*], what is *rightful* [*rechtlich*], and what is *laid down as right* [*rechtens*]," (6: 267) can authorize individual property for persons with opposed interests living together on the limited land of a common planet. In short, the united will of the people must figure out how to authorize, enforce, and judge the division of the earth in accordance with the freedom of *all*. If not, then *right* is still not actual.

Kant's terminology in the above phrases is dense. The justification for original acquisition starts with the will to use land held in common, requires a law for particular possession, and ends up with the united will in a civil condition. But this development is also more abstractly expressed by the three *leges* of right and their different modalities: from the formal possibility of *a priori* rules of right in the *lex iusti*, to the reality of applying principles of right to our actions in the concrete world of the *lex iuridica*, to the binding necessity of following what's laid down as law in the *lex iustitiae distributivae*.[92] Each of these modalities captures a different aspect of the totality of right: what is *recht*, *rechtens*, and *rechtlich* expresses what is (possibly) right, (actually) juridical, and (necessarily) legal. These different modes of thinking, applying, and enforcing right remain separate without a common normative framework to unify them into one integrated whole based on universal and equal freedom.

A civil condition of public law provides an institutional framework for mediating the universal, formal *a priori* principles of right with the material conditions of the earth and the contingent choices of people. In so doing, the united will as expressed in the rule of law has the power to

recognize the distinction between mine and yours, authorize acts of possession, and limit the acquisition of property. But a united will cannot be the *result* of unilateral and contingent acts of individuals alone, for it is supposed to be the *original* and *a priori* source by which individuals can reciprocally bind each other to recognize what belongs to each in the first place. Thus, although a united will can be effective only in an actual civil condition, it must also exist as an *idea of reason* prior to any material instance, functioning as a guiding *norm* under which individuals can act *as if* it was in effect. In this way, the united will is both the presupposition (as norm) and result (as law) of original acquisition.

How should one act under this norm but prior to its political realization? Kant suggests the following: "Before the establishment of the civil condition but with a view to it, that is, *provisionally*, it is a *duty* to proceed in accordance with the principle of external acquisition" (6: 267). That is, one acts as if all the conditions for taking possession are in effect and as if any unresolved details will be worked out under a future system of public law. It is a *duty* to act as if unilateral acquisitions of land can be provisionally rightful prior to a system of law since provisional claims of possession create the context and trigger the need for determining property rights in a political system of right. And creating a system of right is not a choice; it is the only condition in which free choice is possible.

Provisional Acquisition

Before a united will exists in the form of public institutions and positive laws, mustn't it be the case that empirical, unilateral acts can confer rights of possession? How else would mine and yours come into being? This is the wrong question for Kant. The point is to describe not how empirical claims of mine and yours came into being but how those claims can be justified by the norms of practical reason. The distinction between mine and yours is instigated by physical acts of taking control, but the possessory claims implicit in those acts remain outside the domain of justification until a collective authority willed by the participants themselves can retroactively legitimate them. Even though the act of empirical, unilateral acquisition is in itself not yet rightful, it does trigger the need for a political resolution that can be instituted only through a shared framework of public law. This is why Kant treats empirical, unilateral acquisition outside a legal order as *provisionally* rightful—demanding recognition from others but still subject to the future judgment of law.

Original acquisition is always provisional since it takes place outside a civil condition. Provisional acquisition means acquiring something *with a view toward bringing about a civil condition* (6: 264). This is because only in a civil condition can a united will actually obligate everyone to respect

an empirical deed as normatively binding. But what does it mean to acquire something with a view toward bringing about a civil condition? We can read this in two ways. On the one hand, it could mean that the "idea of a civil condition" (6: 264) entails formal constraints for any and all kinds of provisional acquisition. Acting under the idea of civil condition would suggest incorporating reciprocal norms of right into one's deeds whether or not others are bound to reciprocate them. Consistency, reciprocity, universality, equality, and independence would be the guiding principles of such provisionally rightful acts.

On the other hand, and more likely, it could mean that although provisional acquisition is consistent with reason, that alone does not make it binding for others; provisional acquisition requires that the involved parties *actually* try to bring about a civil condition in order to settle the distinction between mine and yours. The juridical postulate of practical reason holds true for every group of rational beings on earth, and the principles of private right affirm the universal possibility of acquiring property, no matter where or when. "Provisional acquisition is true acquisition" (6: 264), but that truth is not fixed or eternal. To be legitimate, conclusive, and binding, it requires the power and authority of a collective, omnilateral will. Provisional acquisition, on this reading, authorizes the use of coercion to leave the state of nature behind and make property a permanent fixture of law and life.

The provisional nature of property claims outside the institution of public law is central to Kant's political theory, yet the interpretation of this provisionality is duly contested.[93] Does provisional right refer to how individuals and states can justify the pre-legal origins of their property claims? Or does it represent the nature of property in non-state societies? Or rather does it refer to a permanent aspect of all property claims in modern states? Anna Stilz uses the concept of provisional acquisition to defend the property claims of non-state societies against colonial intruders.[94] Lea Ypi treats the territorial boundaries of modern states themselves as justified by provisional right alone.[95] And, most radically, Elisabeth Ellis reads *all* rights within modern states—including property—as provisional rights, for no actual state lives up to the ideal republic outlined in the *Doctrine of Right*.[96] All societies fall between the state of nature and the civil condition and thus "provisional right is the rule that applies to them."[97] The normative benefit of claiming that all actual states exist only under provisional right is that one's political practices, laws, and institutions can be seen as perpetually progressing (or failing to progress) toward the ideal by which we judge our present. This does not mean that everything is up for grabs; provisional claims must be respected as valid *unless* a better organization of right can be instituted. Provisional politics privileges reform over revolution, gradual change from the current organization of rights toward a

more perfect order of justice. Radical ends, reformist means—*provisionalism* is Kant's practical theory of transition toward a metaphysically suitable political order. Long before the 20th-century revolutionary debates on the "transitional stage" between capitalism and communism, Kant developed a theory of political transition between the present imperfect world and the more just society to come. It is by no means a theory of revolution, but it is a revolutionary theory.

To see the political consequences of Kant's theory of the provisionality of property rights, one need only turn to his critique of colonialism in the *Rechtslehre*.[98] First off, Kant does not subscribe to the Lockean and bourgeois paradigm of property in which efficiency, labor, and value justify the private expropriation of common land from peasants, indigenous communities, and the like. Although Kant thinks that individual freedom requires the existence of a legal right to private property, he does not believe that this argument justifies expropriating anyone from what they claim to be theirs. For although different peoples, cultures, and societies relate to land in all sorts of ways, this does not mean that they lack a system of binding norms for how to determine, recognize, and enforce claims of mine and yours or ours and theirs. It is true that Kant thinks rights to property are fully secure only in a modern legal order, but this does not mean that rights before or outside that order are arbitrary. They are still *provisionally right*—that is, anticipatorily justified in light of a future or ideal public authority that could legislate according to a united will, rendering claims of possession secure and determinate.

Furthermore, Kant thinks that non-traditional forms of property acquired outside a legal order are provisionally rightful. First, private ownership of land is not the only form of property, for different people can also own land "in common."[99] Second, a piece of land can belong to all of society as a whole, with individual members having use rights upon it.[100] Third, there is no single way land must be used; different economic forms of life—from hunting to pasturing to farming—must be recognized as legitimate and protected against the compulsion to adopt different methods of use.[101] Fourth, non-state societies of indigenous peoples—such as the Hottentots, the Tungusi, and the American Indians—all have valid claims to provisional acquisition, according to Kant, which means that their "property" cannot be taken away by brute force nor be acquired by clever manipulations of contract.[102] Anyone can acquire land and settle wherever there is no conflict of use with another people; but if one wants to acquire land within an area that another community uses as their own, then the only way to do so is by clear and informed consent.

Given this explicit defense of common property and non-Western forms of land tenure in Kant's framework, what are we to make of the argument for the necessity of *private* rights to property in particular, a necessity

which is usually read as justifying the duty to enter a civil condition? If the civil condition does not negate forms of common property practiced by various peoples around the world but in fact recognizes them and integrates them, then is the transition to a civil condition perhaps less linear, less European, and less teleological than normally thought? In my reading, Kant's theory of provisional acquisition does lead to this conclusion, yet it still requires some more work to get there. And although the private right to property is necessary for the realization of right, it is not the *only* form of property that Kant's right recognizes, nor is it *merely* private. Kant's account of private right, and the property relation it entails, has to incorporate the institutional conditions for equal freedom to exist amongst a plurality of subjects sharing a finite space. This, in turn, allows for more openness and to a diversity of forms of life and property than is normally thought. What matters is not that private rights to property exist above all but that a condition of right can be developed in which individuals can have and acquire things as their own, alongside other relations as well.

Postulate of Public Right

There is, however, a complication with Kant's anti-colonial provisionalism. It comes from his claim that there is not only a *duty* to leave the state of nature but a *right* to constrain others to enter into a civil condition in order to settle the boundary between mine and yours. The duty to leave the state of nature and enter a civil condition in which "each can keep what's theirs" is oft repeated by Kant,[103] but it becomes formalized as the *Postulate of Public Right* in the following way: "When you cannot avoid living side by side with all others, you ought to leave the state of nature and proceed with them into a rightful condition, that is, a condition of distributive justice."[104] Given this duty, "each may *impel the other by force* to leave this state [of nature] and enter into a rightful condition."[105] The reason one has a presumptive right to use coercion to bring about a rightful condition is that no one is ever safe from coercion in a lawless environment. The principle is that "one is authorized to use coercion against someone who already, by his nature, threatens him with coercion."[106] Everyone in a state of nature potentially threatens me since there is no collectively agreed-upon authority to mediate our disputes without violence.

Of course, it is not wrong *in particular* to live in a state of potential violence since one cannot infringe upon rights where no rights exist. But it is wrong *in general*, according to Kant, since "they do wrong in the highest degree by wanting to be and to remain in a condition that is not rightful, that is, in which no one is assured of what is his against violence" (6: 307–8). As Kant explains in a footnote, it is not materially wrong but

formally wrong, for it goes against the formal concept of right as such and not any particular right.[107] In this sense, choosing to remain in a state *outside of law* is formally similar to wanting a revolution *against the law*: both seek a form of life without right, a society without collectively authorized principles for coordinating action based on the universality of reason, the unconditionality of freedom, and the shared community of land. To Kant, that just does not make sense. The right to acquire property is necessary for me to be able to exercise my external freedom of choice independently of the domination of others, and since only in a civil condition can I legitimately acquire property, it is *only* in a civil condition that I can truly be free. A civil condition does not just resolve the inefficiency and violence of the state of nature; rather, the indeterminate status of the distinction between mine and yours in the state of nature produces a need for a juridical form that can authorize property rights (and, in so doing, ensure the innate right to freedom) for all.[108]

It seems, on first glance, that this duty to exit the state of nature could be used to justify the forceful subjugation and expropriation of any people who do not want to enter into a civil condition of public right. "It can still be asked," as Kant put it,

> whether, when neither nature nor chance but just our own will brings us into the neighborhood of a people that holds out no prospect of a civil union with it, we should not be authorized to found colonies, by force if need be, in order to establish a civil union with them and bring these men (savages) into a rightful condition (as with the American Indians, the Hottentots, and the inhabitants of New Holland).
>
> (6: 266)

The forceful expropriation of those without secure property rights looks consistent with the *Postulate of Public Right*. For this postulate authorizes individuals to constrain potential interaction partners to enter into a political-legal project for settling the normative boundaries between mine and yours. The way to settle these boundaries is through an institutional structure of public law that can legislate with authority according to an ideally united will that renders provisional possession permanent. Unless we create this condition, we are all subject to arbitrary rules and unilateral coercion, unable to choose means and pursue ends independent of the will of others; that is, we are externally dependent on nature and chance for any successful exercise of practical agency in the world. Unilateral coercion to escape a condition of unilateral coercion seems justified as long as it is done with the aim of establishing a civil condition where all are equally subject to the same laws, bound by the same norms, and constrained by the same will.

A Kantian Critique of Colonialism

Kant's legal reasoning against colonialism, however, concerns not the end of action (i.e., the creation of a rightful condition) but only the form of action by means of which this condition is to be created. He thus criticizes the "veil of injustice" (6: 266) which treats the end of secure property rights as justifying the means of forceful expropriation. Colonialism entails the use of violence and fraud against individuals to acquire land, irrespective of the innate, provisional, and acquired rights of the people who live there. The acquisition of land, no matter the goal, must still, however, conform to the formal principles of right in order to be normatively valid, even if these principles are not yet instituted in positive law by a public authority. But if people are living outside a civil condition, so the argument goes, then they have no rights to land, only temporary claims of empirical possession based on force. So why not use force to take what force acquired, especially if it leads to the creation of a legal order? There are a few specifically Kantian reasons why this is wrong: (1) colonialism makes an unjust use of war,[109] (2) colonialist domination is inconsistent with Kant's neo-republican theory of freedom as independence,[110] (3) colonialism is an "avoidable interaction" between peoples and hence not covered by the postulate of public right,[111] and (4) non-state societies have provisional rights to empirical possession that must be respected.[112]

The first point is simple: if colonialism is considered a form of war and if war is justified only as a defensive measure, then colonialism can have no basis in right.[113] The only case to be made is that colonialism is a form of *aggressive* war, which seems obvious to the colonized. The second point is a bit generic but also true. Kant's framework of right is based on the principle that all humans have the innate right to freedom, to be able to choose and act independently of the domination of others. This right is unconditional; it cannot be abrogated. The only justified use of coercion comes from stopping the infringement of freedom. If colonialism means the subjugation of individuals to the will of others, then in no way can it be right. Rather, forcefully *resisting* colonial expropriation seems more in line with Kant's concept of right than anything else here.

The third and fourth points are more interesting, for they more directly concern Kant's theory of property, acquisition, and authority. Kant describes colonialism as a situation in which different peoples are brought into contact by "neither nature nor chance but just our own will" (6: 266). This is not an off-hand remark about the intentionality of colonial endeavors but a juridical observation about the consequences of acquisition outside a civil condition. Pre-legal possessions cannot be conclusively authorized unless a united will sanctions them according to a common framework of right for all parties who share space together. Without this

explicit framework, no individual rights to property can be enforced against others with legitimacy. That is why it is a duty for people who share space to join together and create this normative framework. If my neighbors resist this collective project to determine the boundary between mine and yours, thus guaranteeing my external insecurity, then I have the right to coerce them into forming a collective political project. But, as Stilz argues, "our authorization to coerce others to fulfill their political obligations depends on a prior assumption that our interaction with them is *unavoidable*."[114]

The duty to enter a civil condition with those whom I *unavoidably* share space does not translate into a right to impose a civil condition on every people in the world. The postulate of public right is a spatially constrained duty, bound to those people with whom one lives "side by side" (6: 307), incapable of avoiding, tied together by nature or chance in a community of land. If it is an *act of will* to live side by side with another people, then no such duty follows. In other words, communities bound together by the limits of land have the obligation to settle their property differences normatively through a legal order. But this does not give other communities the right to willfully step in and impose the same duty, for they already have their own political obligations with their neighbors. Hence, acquisition by colonial expropriation has no basis in right.

Finally, it is not only that people have no right to impose a civil condition on non-state societies with whom they willfully come into contact but also that non-state societies themselves have provisional rights to land. These provisional rights are based not on rational titles of intelligible possession but on empirical titles of physical possession. Whereas the former are authorized by a binding omnilateral will, the latter are enacted unilaterally without any such authorization. But that does not mean they are empty. The original acquisition of land, according to Kant, occurs through taking control of land, giving a sign, and appropriating under the idea of a united will (6: 258–9). If no one else has yet acquired the land, but there is no united will to authorize it, then the act of acquisition can still be both rationally intelligible and provisionally rightful in light of a possible civil condition. Such claims must still be reckoned in a future civil condition, but they cannot be dismissed beforehand. Taking possession of external objects of choice requires empirical deeds, but those deeds do not authorize the duties which those very deeds impose. That authority comes from the *a priori* principles of practical reason which are valid independently of a civil condition but which call forth that condition in order to be complete. In other words, whereas the juridical postulate and the permissive law make it logically and normatively possible to possess external things in accordance with the freedom of all, the postulate of public right shows how to do it practically.[115] In short, the original acquisition of land through

empirical deeds of taking possession outside a civil condition triggers the need for a legal order to retroactively authorize such deeds as universally binding, but those deeds are still provisionally rightful without that order because they conform to our *a priori* principles of right concerning the possibility of intelligible possession and hence must be respected by others. Colonial dispossession denies this provisional right.

At the very end of the *Rechtslehre*, while discussing cosmopolitan right (DR §62), Kant reaffirms the point that it is wrong to dispossess people who live on land outside the purview of state authority (e.g., in hunting and shepherd communities). Nothing can excuse the forceful expropriation of people from their home, especially not rationalizing it by saying that a little violence is sometimes needed to bring about a future just condition. To Kant, "all these supposedly good intentions cannot wash away the stain of injustice in the means used for them" (6: 353). Even though I require property for my freedom to exist practically in the world, I am still constrained by the freedom of others in how I may acquire it. For it is not only *my* freedom at stake in the property relation but the freedom of all.[116]

Conclusion

What are we to make of Kant's theory of the acquisition of property? The argument is that the unilateral, original appropriation of *land*—as the first object of external acquisition, as the substance of all movable objects, and as the spatial condition for effective agency—can be justified only with respect to the freedom of others by appealing to two premises:

1 the idea of *original possession in common*: an idea of reason that judges the material limits of the earth to bind people together in a joint community before any act of right
2 the principle of *the united will*: the omnilateral will of all, necessarily united *a priori*, to use, divide, and particularize the earth.

Together, these two concepts justify original acquisition, thus enabling the intelligible possession of external objects of choice. In other words, original possession in common and the united will permit individuals to acquire property rights in the physical world without contradicting their own normative commitments to the freedom of others.

Do original possession in common and the united will do the philosophical lifting that Kant thinks they do? Are they necessary for the theory of property, or are they superfluous? To some, they are an unwelcome throwback to medieval debates on "first possession," something Kant neither requires for his justificatory account nor can provide with any success.[117] To others, the idea of original possession in common and the united will

are crucial steps for showing how unilateral acquisition can be made consistent with the principle of external freedom.[118] Although the whole idea of 'original acquisition' has little practical relevance for a society whose members acquire property primarily through contracts and the exchange of money in a market, the philosophical issues raised by thinking through original possession are serious and valid.

Explicating and interpreting Kant's principles of acquisition move us outside of legalistic debates about bundles of rights and beyond economistic disputes about mechanisms of efficiency and instead force us to think about the *metaphysical*, *normative*, *political*, and *material* conditions of possibility for achieving the coexistence of freedom among equals. It shows us how property is intelligible only as a social relation amongst free beings. Furthermore, Kant does this without presupposing any particular theology, anthropology, or history of property relations, as do many other 'first possession' approaches. All that is presupposed here is a certain account of practical reason, a minimal conception of interpersonal freedom, and a basic acceptance of the limits of the earth. Allow to me summarize the results below.

Metaphysically—To acquire something external means applying pure concepts of right to empirical objects by abstracting from all sensible conditions of possession and subsuming the deed of taking control under intelligible norms of freedom. Acquisition is a lawgiving relation between wills and not a physical relation between persons and things. The moments of acquisition (occupation, declaration, and appropriation) are valid according to the following principles of right: the juridical postulate of practical reason, original possession in common, and the idea of a united will. Together, they demonstrate that acquiring something as one's own is intelligible and justified within the framework of practical reason concerning the domain of choice. More than that, to acquire property shows how people can begin to live according to norms of equal freedom.

Normatively—Having something as one's own is permitted by the juridical postulate of reason; that is, it is contradictory for practical reason to make external possession impossible. But possession cannot exist without acquisition: the process by which one enters into a state of possession. Not all acquisition can be derived through the choice of another; some must be original. Thus, it must be normatively possible to originally acquire external things without infringing upon the freedom of others. This possibility is expressed in the idea of original possession in common, a regulative idea which licenses individuals to use and appropriate the earth before any acts of right. Original possession in common is not an *a priori* concept of right but a normative result of our unchosen circumstance of cohabiting a limited planet, all the while remaining incapable of pursuing our ends independently from the domination of others without using land and possessing things as our own means.

Politically—Acquiring something as one's own appears as an individual, unilateral deed, but it requires an omnilateral will to render it effective for others. Others must recognize acquisition as giving a law, as binding on them, or else it is just a contingent act of force by an individual. The social grounds of individual acquisition lay in the collective project of forming a political structure to recognize, authorize, and adjudicate property relations through public law. Only in a civil condition of public right can an individual act of acquiring property be legitimate. Before that, such acts are only provisionally valid in light of an ideal norm, but without any of the consequences of right.

Materially—The right to property is not an unconditional law for all rational beings or a condition of freedom for anyone under the moral law. Rather, it is a particular result of the material conditions within which rational, embodied, and economically desiring creatures find themselves. The interconnected, limited territory of the earth makes social interaction, conflict, and community unavoidable. When it comes to determining the use of external things for individuals, including land, then forming a law of property is the only way to navigate the choices of all without overriding the freedom of any. The material limits of the earth combined with the innate right to freedom (as independence from another's choice) justify the provisional acquisition of rights to property as long as one acts to bring about a just political order which can conclusively settle those rights for all.

This is not a genealogy of property but rather a rational reconstruction of its metaphysical and normative validity. This method lies somewhere between ideal and non-ideal theory.[119] Kant's *Rechtslehre*, it should not be forgotten, is a work of metaphysics, laying bare the transcendental conditions of possibility for the coexistence of external freedom, i.e., the principles of right. But these transcendental conditions of right are themselves materially and socially conditioned: by the limits of the planet's surface, the codependency of human beings, the externality of purposive action, and the spatiality of practical reason. The ideal concepts of right and the non-ideal conditions of existence together determine the laws of freedom adequate to the kinds of beings we take ourselves to be. These laws are founded on the right of individuals to be independent from one another's choice; they include interpersonal constraints on action, obligate reciprocal duties of recognition concerning the boundaries between persons, and authorize the use of coercion to protect the distinction between mine and yours.

The non-ideal setting of our normative ideals permits individuals to provisionally appropriate the earth in communities bound by collective norms of freedom. For these appropriations to be legitimate, consistent, and rightful, such communities must transform themselves into political bodies capable of publicly legislating with authority. This political transformation

allows for the retroactive justification or delegitimization of provisional possessions according to the united will of all as expressed in the laws and institutions of the society. Without such a transformation, the right to acquire a piece of the earth still holds, but only as a rational norm to guide individual action toward the creation of a just society. That is to say, what's mine and yours may be divided privately, but can only be recognized publicly through political negotiations. Without the mediations of public right, private right wanders aimlessly in search of an immediate conclusion to social conflicts over mine and yours. What began as a private conflict between you and me over the use of means ends only with the public creation of a *we* through the establishment of a finally political form of freedom.

The entire doctrine of right is nothing but the explication of the conditions of possibility for external freedom to exist in the social world. This explication follows principles of practical reason with respect to the formal relations of choice between persons concerning their actions on a finite planet of interconnected but limited territory. When these actions extend beyond the use of one's body to include the use of things in the world, reason must supply a system of rules for appropriating external objects without denying the freedom of others. This system is private right, and its laws are *a priori* valid for all who take themselves to be persons. To become the kinds of agents we take ourselves to be, we have no choice but to develop a legal system of property relations that can enable and enforce the intelligible distinction between mine and yours—the precondition for effective purposive activity in a material, social world. Even if others are opposed to this task, the duty to follow it still stands. The duty to create a rightful condition can be fulfilled only interpersonally, in collective political action with others. I cannot create it alone if my neighbors do not want to. In this situation, right exists as a provisional idea of reason, a norm under which to act so as to bring about a just condition, but one that has no binding force in practical relations with others. The law of property then becomes something like a specter, floating between the world of things and the world of people, waiting to manifest, but never quite appearing.

At the end of the day, justifying the original acquisition and distribution of property, though necessary, may be near impossible. Even if we can justify original acquisition according to an original contract, "such acquisition will always remain only provisional unless this contract extends to the entire human race" (6: 266). Only a *global* community of right could retroactively justify original acquisition as the basis for permanent property relations. No such community exists, nor may it ever. We might just have to be satisfied with a permanently provisional politics of property.

Kant's theory of right attends to the metaphysical, normative, political, and material conditions of possibility for ensuring equal freedom on a

shared planet by developing the property relation as indispensable form of coexistence amongst finite rational creatures. It moves us away from narrow debates on exclusion and efficiency and into fundamental questions of normative authority, social coexistence, self-identity, and practical agency. Kant's resolution to the paradoxes of private possession is resolved through the condition of public right. This is a *political* solution to a normative problem. But property rights do not just express the legal relations of free individuals to each other in regard to things, they also constitute the *economic* structure of society. Property relations determine *how* society reproduces itself, how labor is distributed, how classes are formed, how needs are met, and how individuals recognize each other. Kant's theory approaches such a perspective, one which takes mutual recognition and political economy into account, but he does not get there. To bring out this aspect of the property relation, I now turn to Kant's contemporary, Fichte.

Notes

1 For the German text, I use the *Metaphysische Anfangsgründe der Rechtslehre* (Kant 2009) edited by Bernd Ludwig. For the English, I use Mary Gregor's translation of the *Doctrine of Right* from part I of the *Metaphysics of Morals* (Kant 1996b). All citations of Kant's *Doctrine of Right* will refer *only* to the Prussian Academy pagination (e.g., 6: 245). Other Kant texts will be cited with the title and marginal pagination. Note that I update Gregor's translation to be more accurate when necessary. On the complicated publication history of the various editions of Kant's *Rechtslehre*, see Flikschuh's summary (1997; 2000: 8–9).

2 The single exception, published as this book goes to press, is James (2023). For some key interpretations of classical German practical philosophy, see Siep (2014), Wood (1990, 1999, 2014, 2016a), Honneth (1995, 2014), Flikschuh (2000), James (2011), Patten (1999), and Neuhouser (2000). Although many scholars take property to be *important* for Kant, Fichte, and Hegel, none of them, except James (2023), traces the theme of property across all three philosophers.

3 On Kant's "laws of freedom," see Gregor (1963, 1988).

4 See Kant's *Groundwork* 4: 446–7. On the reciprocal relation between freedom and morality in Kant, see Allison (1990: 201).

5 See 6: 245: "The *rightful/legal mine* [*Rechtlich-Meine*] *(meum iuris)* is that with which I am so connected that the use of it by another without my consent would injure me."

6 There have been three main interpretations concerning the kind of political order that Kant proposes: a libertarian (or classical liberal) minimal-state, a social democratic welfare state, and a kind of socialism. The socialist interpretation of Kant was prevalent among the neo-Kantians of the late 19th and early 20th century, although there have been some modern ones, like Wood (2014) and Dodson (2003). Philosophers like Hermann Cohen and Friedrich von Lange read Kant's ethical imperative to treat others as ends and not means in line with the growing socialist and workers movements of the time; these movements defended the intrinsic dignity of workers against their

instrumental use by capitalists for profit. How this gelled with Kant's actual theory of the state in his *Rechtslehre* is unclear. After the double decline of the workers movement and the neo-Kantians, this interpretation mostly fell out of favor, replaced by more libertarian readings of Kant as a defender of private property above all. Mary Gregor's (1963) influential translation and interpretation of the *Metaphysics of Morals* in English became the standard, while Wolfgang Kersting's (1992; 2007) comprehensive treatment in German set the tone for scholarship there. Contemporary libertarians like Byrd and Hruschka (2010) have continued this tradition through exegetical work on Kant's legal sources. Opposed to these narrow views of right, many Kant scholars influenced by Rawlsian liberalism now read the *Doctrine of Right* in line with social democratic theory. Issues like welfare, poverty, and equality are no longer taken as anathema to Kant; instead, they are incorporated into the structure of right in subtle but convincing ways. See Kaufmann (1999), Guyer (2000), Flikschuh (2000), Pippin (2006), Patrone (2008), and Ripstein (2009). And more recently on Kant's politics, see Hasan (2018a), Pallikkathayil (2017), Ypi (2014), Ellis (2012), Pinheiro Walla (2014, 2016), and Edwards (2011). Against *any* political interpretation of Kant's politics, see Beck (2008).

7 These are bold and far-reaching presuppositions, which I can only ask the reader to entertain for now. The claim that practical knowledge does not inform or rely upon experience, that the metaphysics of morals has no practical presuppositions or consequences, will be qualified in the pages to come and challenged more directly in the following chapters.

8 On freedom in the *Rechtslehre*, see Gregor (1988: 767).

9 See 6: 214. Moral laws are laws of freedom since only by conforming our will to the moral law do we experience the practical reality of freedom. Henry Allison labels this the "reciprocity thesis" between freedom and morality. See Allison (1990).

10 On the parallel to *Critique of Pure Reason*, see 6: 214. Whereas laws of nature conform to the outer (space) and inner (time) intuitions of the understanding, the laws of freedom conform to the outer (juridical) and inner (ethical) forms of choosing. While right considers freedom spatially, ethics considers freedom spatially and temporally. On parallels to the *Critique of Pure Reason* in the *Rechtslehre*, see Ripstein (2009: 373–87) and Flikschuh (2000: 50–79).

11 See 6: 230: "A merely empirical doctrine of right is a head that may be beautiful, but unfortunately it has no brain."

12 For more on homelessness and freedom from a Kantian approach, see Waldron (1993) and Essert (2016). For a Kantian based approach to social problems like poverty and welfare, see Ripstein (2009: 232–99), Weinrib (2003), Guyer (2000), Kühl (2009), and Hasan (2018b). On ambiguous rights in Kant, see 6: 234–6.

13 On the role of the universal principle of right in the *Rechtslehre*, see Flikschuh (2007: 5–7).

14 Ripstein argues that, for Kant, there are only *two* generic forms of violating another person's independence: usurping their powers (deciding what ends they should pursue) or destroying their powers (disposing over their means). See Ripstein (2009: 44).

15 To be clear, harming another can of course be *morally* wrong, but what Kant is trying to get out here is the specific normativity of *legal* wrong.

16 See the analogy at 6: 232. On the construction of the concept of juridical right and its relation to geometry, see Patrone (2008: 75) and Moggach (2000).
17 This phrase comes from Ripstein (2009: ix).
18 Kant does not discuss right in terms of 'reciprocal recognition,' but it is *implicit* in his account. My next two chapters focus on property and recognition in Fichte and Hegel.
19 The negative aspect of external freedom is independence from another's will; the positive aspect of external freedom is dependence on the laws of the state. This is analogous to the negative aspect of internal freedom as independence from sensible inclination and the positive aspect of internal freedom as dependence on the moral law. On the negative and positive aspects of the innate right to freedom in Kant, see Byrd and Hruschka (2010: 77–93).
20 Many (libertarian) philosophers argue that property rights are modeled on personal rights (i.e., rights to bodily integrity). The idea is that external possession is just an extension into the material world of our innate right to our body. See Locke (1988), Nozick (1974), and Cohen (1995). Ripstein (2009: 68) claims that Kant makes this parallel too. But I do not think this framework is so helpful, especially not in Kant, for the problem of the *Rechtslehre* is how to justify *acquired* rights to *external* things since there is no direct inference from the right to control one's body to the right to control external things. While the former is unconditional, the latter is conditioned by particular anthropological, territorial, and social factors, as Kant makes clear.
21 For helpful expositions of Kant's *Doctrine of Right*, particularly in relation to property, see Brandt (1982), Gregor (1988), Mulholland (1990), Kersting (1992, 2007), Tierney (2001), Guyer (2002), Ludwig (2002), Westphal (2002), Willaschek (2002), Flikschuh (2000), Patrone (2008), Ripstein (2009), Kühl (2009), Byrd and Hruschka (2010), and Byrd (2010). See also, in general, the anthologies by Timmons (2002), Ameriks and Höffe (2009), and Denis (2010).
22 See 6: 223: "A *person* is a subject whose actions can be *imputed* to him. *Moral* personality is therefore nothing other than the freedom of a rational being under moral laws." See also the division of subjects of right at 6: 241.
23 6: 223: "A *thing* is that to which nothing can be imputed. Any object of free choice which itself lacks freedom is therefore called a thing (r*es corporalis*)."
24 See the Postulate of Practical Reason and the Permissive Law at 6: 246–7. I will come back to this.
25 Kant presupposes the intrinsic connection between possession and use, but is this justified? Not unless Kant means more than just *private* use by possession. For families, teams and companies *use* things in all sorts of non-private ways, such that rightful use does not presuppose individual possession. Furthermore, Franciscans, Levellers, Diggers, socialists, and anarchists have all argued that individuals and groups can use things without owning them at all. For a recent critique of the identification of *property* with *use*, see Loick (2023). Byrd and Hruschka (2010: 116–7), however, defend Kant's identification of possession and use. They claim that *use* is a broad concept for Kant, such that the capacity to determine how to *use* something for one's ends just is the same thing as calling it *mine* (i.e., *possessing* it). Ripstein argues that *possession* and *use* mean different things but that both are authorized in Kant's property rights (2009: 67–8). Westphal (1997) argues that Kant only justifies *limited* forms of using external things (i.e., *usufruct*) and not liberal private property rights, which extend way beyond use. In my reading, Kant

proposes a limited conception of property rights, but these limits come from the freedom of others, not from reason itself.

26 I come back to the intrinsic relation between possession and injury in Chapter 3 with Hegel but in a very different way.

27 On *contrastive* rights in Kant, see Ripstein (2004: 9; 2009: 36).

28 The relation between bodily integrity and freedom is actually not that simple, since human bodies are not as self-contained as we would like to think. On the complicated relation between rights to one's body and rights to property, see Pallikkathayil (2017).

29 See Kant's *Groundwork* (4: 444):

> Wherever an object of the will has to be laid down as the basis for prescribing the rule that determines the will, there the rule is none other than heteronomy; the imperative is conditional, namely: *if* or *because* one wills this object, one ought to act in such or such a way; hence it can never command morally, that is, categorically.

30 Kant uses the apple and resting place example at 6: 247–8.

31 On Kant's categorization of the three objects of legal possession (property, contracts, and status), see Ripstein (2009: 20–21, 69–72, 79–80).

32 *A priori* concepts of right are still only *regulatively* or practically valid, since they constitute practical and not theoretical knowledge, according to Kant's metaphysics.

33 See Patrone's (2008: 202–67) careful analysis of the differences between *Rechtsbegriffe* of Private Right and *Ideas of Reason* of Public Right. Patrone argues that *concepts of private right* relate to *ideas of public right* in a parallel way to how *concepts of the understanding* relate to *ideas of reason* in the speculative realm. While *concepts of the understanding* apply to experience in order to bring empirical knowledge, *ideas of reason* apply to the concepts of understanding themselves, bringing them into unity and systematicity without thereby bringing knowledge. In the practical realm, this relation carries over, not in order to know the truth of the world but to know how to live.

34 Intelligible possession is 'merely rightful possession' and not rightful *tout court* because it is not yet subsumed under concepts of public right. Although it utilizes *a priori* concepts of right in its judgment, we cannot judge the justice of the judgment without the norms of public right that settle such questions.

35 Patrone (2008: 232) rightfully argues that, for Kant, the use of common judgments like "mine and yours" presupposes the concept of intelligible possession and thus presupposes our ability to apply nonempirical judgments to spatio-temporal objects.

36 As Kant writes in the *Critique of Practical Reason* (5: 122), a postulate is a "theoretical proposition, though one not demonstrable as such, insofar as it is attached inseparably to an a priori unconditionally valid *practical* law."

37 Kant says as much at 6: 252.

38 On the postulate and its indemonstrability, see the very different views of Willaschek (2002), Guyer (2002), and Pippin (2006). For a critical overview, see Flikschuh (2007).

39 For a more formal breakdown of the Postulate and Kant's deduction of intelligible possession in general, see Westphal (1997: 156). Westphal argues that Kant's deduction of intelligible possession fails and that Kant only justifies limited use-rights to external objects. This latter claim may be true, yet that is not necessarily a failure of the argument but perhaps the point.

40 Guyer (2002), Mulholland (1990), and Gregor (1988).
41 Willaschek (2002), Flikschuh (2007), and Wood (2014).
42 This claim presupposes Kant's theory of rationality and contradictions in willing, namely "the presupposition that if it is rational to will an end then it must also be rational to will the means" Guyer (2002: 57).
43 On embodiment and property in Kant, see Guyer (2000: 243–4) and Pallikkathayil (2017).
44 On freedom, place, and homelessness from a Kantian perspective, see Waldron (1993) and Essert (2016).
45 Does this mean that property is a *general* right of humanity for Kant or a *special* right dependent on contingent actions of individuals? (On this distinction, see Waldron 1988: 106–24.) That is, does everyone have a right to *actually* own some property or do they only the *opportunity* to acquire property. According to Höffe (2010: 91), Kant's argument does *not* entail a general right to property for all because the juridical postulate is addressed not to individuals but to the *legal order* itself. I think, however, that this ignores the spatial and social conditions of embodied rationality. For Kant, as well as Fichte and Hegel, everyone *needs* some property in order to act and be recognized as a person.
46 I am following Byrd and Hruschka's reading of the Permissive Law as a "power-conferring norm" and not Brandt (1982), Flikschuh (2000), Kersting (2007), Ypi (2014), or Pinheiro Walla's (2016) interpretation of it as a justification of what would otherwise be wrong (which they take from the use of the term in Kant's *Perpetual Peace*). See Hruschka (2004) and Byrd and Hruschka (2010: 94–106). It should be noted that Kant was not the first to use the idea of a permissive law. See Tierney (2001, 2014).
47 Byrd and Hruschka (2010: 100).
48 Pippin (2006: 431).
49 Kant concludes the first part of the deduction at the end of §6 by stating that the basis for the theoretical principles that justify having external objects as mine or yours cannot be proven, but it can nonetheless be *inferred* from the concept of freedom, the practical law of reason, the categorical imperative, and the fact of reason. See 6: 252.
50 See Byrd and Hruschka (2010: 105). But although the permissive law renders property, contract, and status rights *possible*, it does not make them legitimate, determinate, or secure. For that, they must be *authorized* by an omnilateral public authority.
51 Patrone (2008: 236).
52 See also Pippin (2006: 431).
53 See 6: 254–5.
54 See Ripstein's example (2009: 96): "Your intelligible possession of the pen brings the pen under nonempirical norms. The norms are nonempirical because they classify empirically individuated objects in terms of nonempirical normative features. That is why physical possession and ownership can diverge."
55 Flikschuh (2000: 130–34).
56 *Ibid.* 132.
57 *Ibid.* 143.
58 On the proto-Fichtean and proto-Hegelian aspects of Kant's argument, see Pippin (2006: 440) and Wood (2014). Opposed to this perspective is Wolfgang Kersting's bizarre "anti-communist" reading of Kant's theory of property (1992: 348–50; 2007: 183–8).

59 On the insufficiency of the state of nature for the legitimacy of (property) rights, see Ripstein (2009: 145–81). Against Ripstein, Byrd and Hruschka (2010: 23–43) take a more libertarian position, in which the juridical state merely legalizes what it is already there in 'natural right.' Suffice to say, I follow Ripstein here.

60 Or rather, a prudential, instrumental, or historical account of the emergence of a civil condition operates at a different argumentative level than Kant's *a priori* argument about the validity of such a condition. The contingent, empirical circumstances leading to the establishment of a civil condition does not justify its existence, according to Kant; only its conformity with *a priori* concepts of right can do that.

61 The *specific* problems with purely private rights to property in a state of nature is that the acquisition of property cannot be *authorized*, property rights cannot be *enforced*, and property disputes cannot be *settled* (see Ripstein 2009: 145–81). Only a public authority can authorize, enforce, and determine property claims. This authority is composed of the legislative (i.e., authorizing acquisition of property), executive (i.e., enforcing property rights), and judicial (i.e., settling property disputes) branches of a republican government (DR §41–49; Ripstein 2009: 146). In short, we know that intelligible possession of external objects is not only possible but necessary for the coexistence of external freedom, but without the institutional mediations of public law, there would be no authorization for the unilateral acquisition of property, no enforcement of one's right to property, and no measure for objective judgment concerning disputes over mine and yours.

62 The word Kant uses in 6: 255–6 to describe the "assurance" of mutual respect of possession is *Sicherstellung*, which also means indemnity, guarantee, securing, and seizure.

63 See Patrone (2008: 202–3) on the difference between "Ideas of Reason" and *a priori* concepts of right.

64 On omnilateral willing, see Ripstein (2009: 157).

65 See also Pippin (2006), whose interpretation is close to my own. However, for Pippin, the free "self" is a social-normative achievement, not necessarily a political one.

66 Kant's view of freedom can thus be read as neo-republican, emphasizing the right to non-domination over non-interference. See Ripstein (2009: 43). However, it is not *only* republican since political and economic institutions themselves can also be threats to the external freedom of individuals, as Hasan (2018b: 915) points out.

67 For a compelling explication and defense of Kant's theory of provisional right, see Stone and Hasan (2022).

68 Pippin (2006: 439). See also Wood (2014: 2–12), who explicitly brings together Kant, Fichte, Hegel, *and Marx* into one shared framework of practical freedom.

69 Pippin's dialectical reading of Kant is helpful in moving beyond formalistic accounts of Kant's theory of right, yet it does sometimes lean too far in treating Kant as merely a predecessor to Fichte and Hegel. Kant's theory of private right is, however, interesting on its own terms as an explication of the normative challenges and social preconditions underlying any freedom-based theory of property.

70 Pippin (2006: 438).

71 In a similar vein, Carol Rose (1994: 25–45) interprets *all* theories of possession as narratives. This includes Lockean, libertarian, utilitarian, and economic theories of property.
72 Pippin (2006: 438).
73 *Ibid.*
74 Although Kant uses concepts like exclusion, freedom, and right, his account of property is very different from the legalistic and economistic paradigms of the preceding chapter. His framework is based on a much broader account of what it takes for individuals to be free together, how their status as rational beings alongside their condition as finite creatures grants them provisional authority to have things without holding them, and how any claim to have an external thing as one's own carries with it the mutually binding obligation to construct a civil condition together. Kant is developing a theory of right and so it does appear like the legalistic view, but his account is about not simply defending the private rights of an individual but how right and property itself is unintelligible outside a social-political condition based on equal freedom for all.
75 See Kühl (2009) for a closer exegesis of DR §10–17.
76 The other way of acquiring rights to things is bilaterally and *derivatively*, through the choices of others (i.e., as contract rights [§18–21] and status rights [§22–30]).
77 Kant's identification of property with the right to exclusion belies an apparently narrow understanding of property relations, especially given the analyses of normative pluralism, social obligation, and progressive theories of property dealt with in my Introduction. However, Kant's expansive view of the objects and forms of intelligible possession, and the grounding of property rights within a more comprehensive theory of practical reason, legal normativity, and political institutions widens the focus beyond exclusion.
78 There are a few philosophical traditions that share this demystifying drive about property: Hume's social conventionalism, Bentham's legal positivism, and Marx's economic criticism, to name a few.
79 Locke (1988: §25–51). See also Nozick (1974).
80 Hegel (1991: §41, §44, §46).
81 This seems close to Merrill and Smith's (2001) information-cost argument for why property rights should be treated as a stable menu of *in rem* rights instead of a bundle of *in personam* relations. Basically, it is for the sake of the consumer to make easier choices.
82 See Williams (1977: 39). On Kant as a bourgeois thinker in general, see Lukács (1971: 110–49).
83 See Ripstein (2009: 157) on this point: "An omnilateral permission to appropriate makes private appropriation rightful, and so entitles a private person to bind others through a unilateral act. The act is unilateral, but the authorization for the act is omnilateral."
84 This claim returns in my interpretation of Hegel's theory of possession and property. See Chapter 3.
85 See Kühl's (2009: 236–7) apt questions on whether this means Kant's theory of right and property has materialist presuppositions. Kant's theory of property and right, in my view, are grounded not only in principles of reason but also in the material and social conditions of freedom.
86 Jeffrey Edwards (2011: 242) concurs with this interpretation of the principle underlying original possession in common, although he labels it the "universal" will.

87 On the originally and *a priori* united will, see 6: 267.
88 See Ripstein (2009: 157): "My appropriation can only change your legal situation if everyone, including you, has conferred a power on me to appropriate. My act of appropriation is thus a *unilateral exercise of an omnilateral power*, rather than a unilateral act."
89 See Tomasello (2009).
90 On the ontological primacy of community and its consequences for property, see Alexander (2009).
91 Is Kant guilty of presupposing the "political philosophy of possessive individualism," as Macpherson (1962) calls it. Projecting the conditions of modern individualist, commercial society onto the origins of human nature is a classic trope of this thinking. While Kant does this at certain moments, he also incorporates collective and social principles like the idea of a united will, original possession in common, and the civil condition into his account of the conditions of individual freedom.
92 On the three *leges*, see Byrd and Hruschka (2010: 61).
93 For a defense of the concept of provisional right, see the important essay by Hasan and Stone (2022). For a good overview of debates on the provisionality of property rights in Kant, see Hasan (2018a: 2–7). Hasan's position of "anticipatory provisionality" mostly aligns with my view, although I develop it into a more general political theory.
94 Stilz (2014: 213–7).
95 Ypi (2014).
96 Ellis (2005, 2008, 2012).
97 Ellis (2005: 114).
98 For a plethora of analyses on Kant and colonialism, see Flikschuh and Ypi (2014).
99 The "neutral land" example from 6: 265.
100 The Mongolia example from 6: 265.
101 The hunting, shepherding, farming example from 6: 266.
102 See the final paragraph of 6: 353.
103 See the 3rd duty of right at 6: 237 and paragraphs §8–9, §15, §41–42.
104 See 6: 307. This comes at the transition between private and public right at DR §42.
105 See 6: 312, emphasis mine.
106 See 6: 307. Kant argues from a "presumption of badness." See Byrd and Hruschka (2010: 190–3).
107 To do wrong in the highest degree (i.e., to do something formally wrong and not just materially wrong) is to "take away any validity from the concept of right itself and hand everything over to savage violence, as if by law, and so subvert the right of human beings as such." Footnote at 6: 308.
108 On this point, see also Pinheiro Walla (2014: 18).
109 Ripstein (2014: 147–8).
110 Kleingeld (2014: 145).
111 Stilz (2014: 206).
112 Muthu (2014: 73), Ypi (2014), and Stilz (2014: 212).
113 On war as a defensive measure, see 6: 346.
114 Stilz (2014: 206).
115 Stilz's (2014) argument about provisional rights to land is similar to mine, but she focuses on the wrong-righting nature of the *lex permissiva*, which I disagree with.

116 This is not to deny that Kant has racist or pro-colonial statements in his writings. On the contrary, it is surprising to find something *not* pro-colonial in his writings! This is another reason why his late theory of property is so interesting. For a comprehensive review of Kant and the question of race, see Lu-Adler (2023).
117 Garnsey (2007: 175).
118 Kersting (1992, 2007), Flikschuh (2000), Byrd and Hruschka (2010), Edwards (2011), and Pinheiro Walla (2016).
119 On the counterintuitive but compelling claim that Kant is a non-ideal theorist when it comes to politics, see Horn (2016).

2 Fichte's Recognition of Property

In the Introduction, I argued that prevalent accounts of property in modern legal philosophy tend to fall into the conceptual pitfalls of treating it as essentially a legal right to exclusion (legalism) or an economic means of welfare maximization (economism). Such one-sided approaches rely on individualistic, market-based accounts of freedom, which see *private* property as the core of all property forms, and ultimately deny the mutual recognition underlying the legitimacy of any property claim. The inadequacy of these approaches revealed the need for a theory which fully appreciated the metaphysical, normative, political, and material conditions of property as a social relation between free human beings on a shared planet. The elements of such a social-normative approach to property can already be found within some strands of contemporary legal thought, yet its philosophical potential remains constrained by its own discursive norms. To move beyond such limits, I suggested turning to the underappreciated theory of property in classical German philosophy, particularly in Kant, Fichte, and Hegel, all of whom take property to be *the* normative problem to be explained in any account of social freedom.

In Chapter 1, I argued that Kant's approach to property helps bring into focus the metaphysical and normative aspects of what it means to be free with others. Kant asks about the very possibility of how external objects can be mine and yours, and instead of taking property for granted, he shows just how difficult it is to justify. To know whether it is possible for something external to be mine requires not only a complex deduction of rights from *a priori* principles of practical reason but an entire theory of interpersonal freedom, legal normativity, spatial agency, provisionality, and political authority. Yet Kant's approach does not go far enough in making property intelligible as a relation of recognition or in drawing the consequences of the right to property for political economy and thus, in *this* chapter, I turn to the practical philosophy of J.G. Fichte. In 1796, half a year before Kant's *Doctrine of Right* appeared, Fichte published the first half of his *Foundations of Natural Right* [FNR].[1] Inspired by Rousseau's

DOI: 10.4324/9781003439745-3

Social Contract, Kant's *Perpetual Peace*, Babeuf, and the French Revolution, Fichte's FNR explicitly sought to ground the concepts of right, property, and the modern state in the necessary conditions of personhood and individual self-consciousness, separate from any moral considerations.[2] Moreover, Fichte went beyond transcendental justifications of the concepts of right and property to actually sketching out the kinds of political institutions and economic policies needed to fulfill the demands that such concepts place on rational beings. These policies combined elements of what would later be distinguished as liberalism, socialism, Keynesianism, nationalism, and protectionism. Although Fichte continued to refine his political economy of right in the *System of Ethics* (1798), *Closed Commercial State* (1800), and his late *Rechtslehre* lectures (1812), his basic conceptual framework was already in place with the FNR, the focus of this chapter.

I begin by introducing Fichte's theory of property and the structure of the FNR in general. This provides an overview of what is to come. Next, I lay out the core concepts of Fichte's practical philosophy which together form the foundation of the idea of right—that is, rationality, freedom, and efficacy, the summons and spheres of action, reciprocal recognition, and community. After this, I interpret Fichte's transcendental justification of property as an "original right," focusing on the epistemological, material, and ontological conditions of free action. I follow this with an analysis of Fichte's normative justification of property as a coercive right, focusing on the limits of freedom in relation to others. I then turn away from the theoretical justification of the right to property and begin to consider its consequences for organizing the political economy of the state. I show how property relations in the state are cashed out as *rights to live off one's labor*, rights which are authorized through a *citizens' contract* and *property contract*. To ensure that all citizens have a right to property in the form of life-sustaining labor, the state must organize the economy into a system of *classes*; this makes *unemployment* a particularly harmful wrong. Ultimately, Fichte ties property to labor so tightly that the meaning of freedom loses its value; Fichte recognizes this in his late lectures on right and thus emphasizes free *leisure* over necessary labor as the true purpose of having property at all. I conclude by briefly summarizing Fichte's theory of property, noting its political idiosyncrasies and its relation to Kant and Hegel.

Fichte's *Foundations of Natural Right*

This section provides an overview of the argument to come. I introduce Fichte's dual justifications of property and outline the argumentative structure of the FNR.

Introducing Fichte's Theory of Property

Fichte's FNR was virtually simultaneous with Kant's similar project of determining the fundamental principles of a legal framework for the peaceful and free coexistence of individuals in a civil condition.[3] As illustrated in the previous chapter, Kant provided a metaphysical deduction of the concept and validity of right according to the principles of practical reason alone and then drew the normative consequences for human beings living together on a finite planet under a universal law of reciprocal freedom, consequences such as the right to property and public law. Independently of Kant, Fichte attempts a transcendental deduction of the concept of right from the necessary conditions of self-consciousness.[4] Fichte's concept of right is the concept of the "necessary relation of free beings to one another" (9). Freedom here minimally means the capacity to act according to the self-determined concept of an end, that is, to act according to reasons (20). To realize the concept of right is thus to bring about the relation necessary for free beings to interact *as* free beings. Although this relation is necessary from the perspective of reason, it is contingent from the perspective of the individual. Against Kant's rational duty to enter a legal condition for the sake of preserving external freedom of all, for Fichte, it is a voluntary *choice* whether or not we want to live freely with others, whether or not we want to live rightfully.[5]

The fundamental relation in the development of a community of right is property, but it is not the same idea of property conceived by Kant, nor is it developed for similar reasons. Fichte's concept of property cannot simply be mapped onto modern liberal understandings of private property, nor can it be assimilated into socialist criticisms of property; it is not just a legal theory, an economic analysis, a transcendental justification, or a political critique of property—it is all of them wrapped together in a holistic theory of the normative constraints for constructing a political community centered on the twin poles of reciprocal recognition and individual freedom, the foundations of right. Fichte's FNR is a deduction of the validity of the concept of right from the structure of reason (i.e., why we are justified in having the concept at all), a 'proof' that the concept can be applied to the sensible world of human beings (i.e., why it is consistent with the anthropological, linguistic, and social conditions of self-consciousness), and a schema of how the concept of right can be applied differentially in the real world (i.e., how we can use it as a principled system of norms by which to construct and evaluate actual political orders).

The concept of property emerges at two key points in this argument. Property is first justified as the *original right* to an exclusive sphere of free activity in the sensible world for the purpose of subjecting things to one's ends, undisturbed by others (§11). Fichte later qualifies this *a priori*

justification of property as an abstraction from the social and normative conditions necessary for the relation of right to exist amongst persons (§12–16). Such conditions are the reciprocal recognition between rational beings, the explicit unification of wills through acts of mutual declaration, the law of coercion, the equilibrium of right, and, finally, consent to a 'property contract' that specifies the norms governing different spheres of free activity for individual citizens. Thus, although property is first conceived as the original right of an individual outside of any political community, it ultimately denotes the political right of citizens, authorized by the state, to an exclusive sphere of free activity and its objects for the purpose of working to satisfy one's needs of life (§17–19).

In other words, Fichte has not one but *two* justifications of property: one transcendental (based on the *a priori* conditions of self-consciousness) and one normative (based on recognition between persons in a community of right). Whereas the former grounds the concept's validity, the latter proves its actual legitimacy. However, the transcendental justification of property as an "original right" to subject things to my ends, independent of the relation to others, is explicitly based on the methodological fiction of the abstract individual (§10). This idealist view of property helps pose the question of how individuals can rightfully relate to objects in the sensible world for their own ends, but it cannot answer that question until it is embedded in a social-normative theory of reciprocal recognition between free beings in a community of right. That is, Fichte's theory of property may begin with the conditions of self-consciousness for the I, but it ends with a normative account of intersubjective recognition in a state.

These justifications lead Fichte to posit serious restraints on what property rights should entail in the rational state. For instance, Fichte claims that the objects of the property contract are not *things* but *activities*.[6] Thus, the earth or land cannot properly be owned, but rather individuals can be granted the right to use pieces of land for certain economic purposes.[7] This is very different from theories of property that take land to be the paradigm case of private ownership, such as Kant's.[8] For Fichte, the purpose of property rights, as first expressed in the transcendental deduction and later developed in the normative justification of property, is not just to secure a formal structure in which the "freedom of choice of each can coexist with everyone's freedom," as it is with Kant;[9] rather, it is also to guarantee the *material* security of individual freedom by establishing exclusive spheres of free activity in the sensible world by means of which one can make a living off their labor (185).

That concept of property is very different from the one that most legal theorists, political philosophers, and economists speak about; it is also very different from the one that real estate agents, homeowners, businessmen, workers, and politicians use in their everyday lives. Fichte does not

track how we actually use the concept of property to organize the world but tries to deduce the ground of the concept from *a priori* principles of practical reason, whether or not this ground is explicit in our use of the term (50). In fact, if the way that the term "property" is used in the world conflicts with its transcendental or normative ground, then we are justified in modifying it, adapting it, or maybe even abandoning it. For instance, when discussing the various 'civil contracts' that lay out the hypothetical conditions and obligations for individual entry into the community of right, Fichte argues that if the state fails to guarantee property to the individual (in the sense of rights to an exclusive sphere of free activity to meet one's needs through labor), then the individual's contract with the state is *canceled*, and that person has no obligation to respect anyone else's property (186).

To avoid this "destabilization of property rights," Fichte claims that individuals who cannot live off their labor have an "absolute right of coercion" to take the property of others.[10] That is, the property contract underlying Fichte's state includes a provision that enforces the redistribution of property to the propertyless.[11] Without this condition, the right to property is a sham, for property has normative value only given the validity of its final end, which according to Fichte is nothing other than the ability to live, to survive, and to meet one's needs (185–6). To be incapable of living off one's property means that one cannot find a place in the economic structure of society to validates one's labor; the state then has a duty to rearrange the property rights of all so that one can effectively survive.[12] This entails not only redistributing wealth to the poor but also regulating the economy such that the kinds of labor people do and the kinds of products they make must be able to effectively find their way to consumers. For if others cannot afford one's product of labor, then the producers themselves will also end up empty-handed.

In Fichte's political economy then, there is an issue not only of adequate supply but also of effective demand. To ensure that each person can live off their own labor requires a system of legislation concerning price controls, trade boundaries, wage regulations, monetary policies, and more. Laissez-faire capitalism this is *not*.[13] Fichte begins to sketch out his proposals for an alternative political economy in section II of FNR, on "Applied Right," but he develops it most fully in the *Closed Commercial State* (1800). If the state does not fulfill these duties to the individual, then there is no reason for the individual to accept the political authority of the state. Such states—like "our makeshift states" [*unseren Notstaaten*]—are not the same as rational states (262). Property in an "ordinary state" is not yet true property according to the principles of reason but rather just another name for barbarism. For "[e]very so-called state is nothing other—and never will be anything other—than the oppression of the weaker by the stronger under

the pretense of right, so that the stronger may use the weaker as they please" (262). Before I can unpack such bold claims, I will have to make sense of Fichte's argument as a whole. I begin with its overall structure.

Structure of the Foundations of Natural Right

The first part of Fichte's FNR provides a transcendental justification of the objective validity of the concepts of right, property, and the state; the second part outlines the normative framework for a political commonwealth based on the concept of right from Part I. The first part is split into three divisions: the deduction of the concept of right from principles of pure reason (§1–4), the deduction of the applicability of the concept of right for human beings in the sensible world (§5–7), and the systematic application of the concept of right to a community of free beings, also called the *doctrine of right* (§8–16). The second part of the FNR, "Applied Natural Right," has three main sections, which together compose the *doctrine of state right* [*Staatsrechtslehre*]: a section on the *citizens' contract* [*Staatsbürgervertrag*] concerning the normative basis of rights in the state (§17); a section on *civil legislation* concerning property, land, animals, mining, labor, housing, money, poverty, theft, and punishment (§18–20); and, finally, a section on the constitution (§21) and two appendices on family right and international right.

One way to thematically interpret the trajectory and structure of the *Grundlage des Naturrechts* is to see it as the unfolding of a progressively more concrete concept of right: from a norm of recognition (§1–7) to a law of coercion (§8–16) to a state of political economy (§17–21).[14] On this reading, the first conceptualization of right can be understood as a transcendentally deduced norm of recognition in which finite rational beings necessarily limit their freedom "through the concept of the possibility of the other's freedom" (49). Although this concept of right as recognition captures the intersubjective condition of individual freedom, it is still too abstract to apply to persons in the sensible world. That is, if the concept of right is supposed to illustrate the "necessary relation of free beings to one another" (9), then this account fails to secure what it sets out to prove. For free beings are not just self-conscious reasoners but embodied, acting, desiring, egoistical humans.

The concept of right is further concretized under principles of applicability to embodied, egoistical human beings in the world. If right is to be possible for real individuals as a norm of recognition concerning the free efficacy of each, then certain constraints on actions are required; these constraints center on one's body (as means of action) and one's property (as sphere of action). These limits on interfering with the free efficacy of persons are called "original rights." Such "original rights" cannot be secured by a norm of recognition, for that would rely on the contingent moral will

of each, but rather must be enforced by a law of coercion. Since coercion nominally contradicts the freedom of each, rightful coercion must be justified by mutual consent in a commonwealth. As a law of coercion, the concept of right now contains the authority to coerce individuals who violate the original constraints on human action, i.e., my body or my property. Although this conceptualization of right as coercion expresses the protected legal status of one's body and property, it is still too abstract concerning the extent of freedom each person requires in the world. The boundaries of the body may be self-evident, but the limits of property can be determined only *politically* by a united will in a state.

The concept of right is therefore further concretized under the political and economic conditions of a modern state that can adequately determine the limits of property for all. The primary objective of the state is to arrange property relations in a way that guarantees the ability for all to *live*, the "highest and universal end of all free activity" (185). The art of politics then consists in organizing the economy such that everyone can live off their free activity. If individual freedom means efficacy, the capacity to act according to reasons, then property ensures freedom by providing an exclusive, recognized, enduring, and protected space in which to carry out these actions in the world.

To bring it altogether: the concept of right is initially determined as the norm of reciprocal recognition for individuals who limit their freedom for the sake of each other, it is then specified as the law of coercion that protects this self-limited sphere of freedom, and finally it is concretized as the united will of a political state that organizes economic relations such that equal spheres of freedom can be distributed to all as rights to property. These exclusive spheres of freedom in the sensible world allocated by the state as property rights should be understood as *forms of labor*—that is, historically determined modes of productive activity in which individuals use objects for their ends in order to satisfy their material needs. The pathway by which the concept of right is fully determined begins with an investigation into the intersubjective conditions of possibility for self-consciousness, moves through principles of application to the sensible conditions of human beings, and completes itself as the concrete totality of the state which guarantees exclusive spheres of free activity to all as rights to property. Read this way, Fichte's developmental account of the concept of right can be considered methodologically similar, but not identical, to both Kant's *Rechtslehre* (which moves from an abstract account of private right to a more fully developed theory of public right) and Hegel's *Rechtsphilosophie* (which moves from the will of legal persons in abstract right to the ethical life of citizens in the concrete state).[15]

Kant, Fichte, and Hegel all have a similar *dual* strategy of justification for property and right: once outside the state and once inside the state.

None of them believes that the concept of right has any legitimacy (i.e., normative authority) outside a state of law [*Rechtstaat*], yet they all exert considerable effort in constructing "state of nature" scenarios where individuals interact freely without coercive laws. What is the point of this? Above all, the purpose of such thought experiments is to conceptually isolate exactly what it is in human beings that positive laws must respect—irrespective of any historical, contextual conditions. That is to say, the point is to determine the inalienable normative principles that any state must recognize and legitimize if it is to be just and rational. For each thinker, the ground principle is *freedom*, and the legitimization of freedom minimally entails recognizing individuals as persons with rights to their body and property. For Kant, according to the universal principle of right and the juridical postulate of reason, rights to property are provisionally legitimate claims against others for exclusively using external objects as one's own in anticipation of a united will. For Fichte, individual rights to property are grounded in the transcendental conditions of free efficacy for rational beings, but the legitimacy of any particular claim to property lies solely in the mutual recognition of citizens under the authority of a commonwealth and its political economy. For Hegel, property rights crystallize the reciprocal recognition of normative interdependency between vulnerable wills; they are *not* transcendentally grounded in abstract freedom but rather are historical results of a self-negating struggle for authority between possessing families over land, a struggle spurred by the moral injury of exclusion. I have discussed Kant in the previous chapter, and I will tackle Hegel in the next, but for now, I will reconstruct Fichte's transcendental deduction of property rights, step by step, starting with his metaphysical account of rationality, freedom, and efficacy.

The Concept of Right

This section has four parts, which together compose the transcendental foundations of the concept of right, itself the presupposition of Fichte's concept of property. First, I give an account of self-positing rationality and efficacious freedom in the FNR. I then analyze the structure of the *summons to act* and the accompanying idea of *spheres of action*. Next, I discuss *reciprocal recognition* as the content of right, and, finally, I examine Fichte's particular version of social contract theory.

Rationality, Freedom, and Efficacy

Before we can turn to *property* rights, we first have to understand what kind of being is the being that can have rights at all. For Fichte, as with Kant, this is a *rational* being. To be a rational being signifies not just the

capacity to act under a self-authorized law but also the capacity to 'posit' oneself as rational, i.e., as free (9).[16] This discovery of the necessarily self-positing aspect of the rational being results from Fichte's prior analysis of the fundamentally reflexive nature of rationality in the *Wissenschaftslehre*.[17] In the FNR, Fichte focuses specifically on the forms of practical reflexivity that characterize a *finite*, individual rational being. Stressing the role of willing in the constitution of self-consciousness, Fichte strongly affirms the priority of practical reason over theoretical reason (21). The fundamental activity of practical reason consists in "the *act of forming* the concept of an intended efficacy outside us, or the concept of an *end* [*Zweck*]" (20). Whether we call it willing, or spontaneously forming the concept of an end, or the "free self-determination to exercise efficacy" (20), for Fichte, "self-consciousness becomes possible only by means of such an activity" (21). This is because one of the conditions for being a self-conscious rational being is to be capable of performing a kind of activity whose ultimate ground lies in itself (18). In willing, one constrains oneself to act according to self-generated concepts (purposes, norms, rules), thus making the I into both "deed and product simultaneously" (23), object and subject at once, that is, fundamentally self-reflexive. Or as Fichte puts it: "*Activity that reverts into itself in general* (I-hood, subjectivity) *is the mark of a rational being*. Positing oneself (reflection upon oneself) is an act of this activity" (18).

Fichte's concept of right emerges from thinking through the internally generated problems that arise for a rational being to reflect upon itself as a self-conscious, distinct individual, for the *I to posit itself as self-positing*. For Fichte, the "I" is absolutely practical; it is not some separate substrate of being that reflects upon its activity but rather exists only in its own activity of positing, willing, and representing (23). Self-constitution is the essence of the I. "In acting, the rational being does not become conscious of its acting; for *it itself* is *its acting* and nothing else" (4). But, as Allen Wood warns, the transcendental nature of the self-activity of the I should not deceive us into thinking that such activity captures our ordinary experience.[18] In everyday life, acting and willing always occur in particular contexts among other such beings; yet in Fichte's philosophy, such activity can be conceptualized apart from its context in order to isolate its fundamental characteristics and necessary conditions of possibility. The concept (or relation) of right forms one of these conditions.[19]

Why is the concept of right a condition of possibility for self-consciousness to posit itself as such? For Fichte, rationality is characterized by the activity of forming concepts and acting according to ends posited in concepts. Like Kant, Fichte considers these activities to be expressions of freedom. For freedom is "nothing but the capacity to construct, through absolute spontaneity, concepts of our possible efficacy [*Wirksamkeit*]" (9).

To be conscious of oneself as a rational being then necessarily means taking oneself to be capable of freely constructing ends for action. Or, as Fichte states in his first theorem, *a finite rational being cannot posit itself without ascribing a free efficacy to itself* (§1). Fichte believes that the idea of free efficacy, contained in the concept of a rational being, is the key to discovering the necessary mode of relating to other such beings. For freedom is "the only thing that rational beings ascribe to one another with necessity" (9). This means that in positing myself as rational, I necessarily commit myself to ascribing freedom to other rational beings, beings whom I have already posited since I can distinguish myself as an individual only in relation to them.[20] Justifying this claim takes up the beginning of the FNR.

The connection between rationality, freedom, and efficacy is tight but not always clear. If rationality consists in the self-reflexive activity of forming concepts and if freedom specifically involves constructing concepts for action, then efficacy entails the capacity to follow through on these actions. In other words, for freedom to be more than just a possibility, for it to have objective validity, there must be an *object* in experience that actually corresponds to one's concept of an end (9). That is, one's efficacy must be confirmed by actions which modify the world according to one's ends. As Fichte clarifies at one point: "What does *being free* mean? Evidently, it means being able to carry out the concepts of one's actions" (48).

This means, first of all, that there must be a world that *can* be changed, a sensible world, independent of my will and amenable to being shaped by human activity (§2). Through the act of positing myself as rational, therefore, I already posit individuality, freedom, efficacy, a sensible world, and an object that corresponds to my ends. But what object in experience can confirm one's freedom, one's rationality? This is where the paradox of self-positing freedom sets in. The rational being must posit an object upon which to exercise its efficacy so as to confirm its freedom as real, as objectively valid. Without external confirmation that I can affect objects through my purposive actions, my self-ascribed freedom is nothing but a mere fancy (and along with it, my rationality and self-consciousness). To ward off this danger, I must confront and determine an object that reflects my own capacity for efficacious freedom back to me. This object must be outside me, opposed to me; otherwise, it would not independently confirm my capacity for free action. Such an object necessarily *limits* me, resists me—in short, *determines* me. But if I am to posit my own object for action, how can I posit something that limits me, determine something that determines me?

From another angle, how can a limited, determined, finite object reflect my spontaneous freedom back to me and confirm my self-identity as a rational, self-determining being? As an *object* upon which to act, it must be something passive and sensible. As a reflection of my *self-activity*, it must be something active and free. How can it be both? Even more

problematically, any existing object upon which a subject could exercise its efficacy would have to already be posited prior in time to the subject's own relation to the object or else it cannot be said to be truly existent, objective, independent, and thus reality-confirming. But if a subject's consciousness of freedom comes not only from *relating* to an existing object but from actively *determining* it, how can it determine an object that has already been determined? Self-consciousness seems to be chasing after its own tail, or as Fichte worries, there seems to be no place to attach the "thread of self-consciousness" (30).

Summons and Spheres of Action

Without an object to reflect its free efficacy, a finite rational being is lost. A finite rational being qua *rational* is self-positing, self-determining, but qua *finite*, it is posited, determined by something else. The rational being ascribes freedom to itself, and this freedom must be realized through efficacious action in the world. For its freedom to be real, the subject must therefore actively relate to a determinate object in the world, one that simultaneously limits the freedom of the subject and confirms the subject's capacity for freedom. Resolving this antinomy means finding an object that is identical in kind to the subject: determining and determined, finite but free (32).

The only suitable object that could confirm the self-consciousness of the subject would be one that enables the subject's capacity for free efficacy itself, allows it to come into being, so to speak. Yet this object would have to do so in such a way that it does not *compel* the subject to be free but only invites, requests, or *summons* the subject to freedom. That way, the capacity for freedom is itself freely chosen. As Fichte puts it:

> How and in what sense, then, must the subject be determined to exercise its efficacy, if it is to find itself as an object? Only insofar as it finds itself as something that *could* exercise its efficacy, as something that is summoned to exercise its efficacy but that can just as well refrain from doing so. (33)

The object must therefore determine the subject in such a way that it allows the subject to determine itself, to resolve whether to act or not, to pose a demand, question, request—in effect, to offer a reason for action which one can accept or reject. The only way this makes sense, according to Fichte, is if we think of "the subject's being-determined as *its being-determined to be self-determining*, i.e. as a summons [*eine Aufforderung*] to the subject, calling upon it to resolve to exercise its efficacy" (31).

In other words, the object that determines the subject to be self-determining is a *summons* inviting one to act in a particular way.[21] By reflecting

upon this object, this summons, I simultaneously reflect upon my own capacity for free action, a condition of possibility for my self-consciousness. The invitation to resolve my efficacy to act motivates a certain orientation toward the future. It is about what I *could* do, what I *should* do, not what I am doing (32). My own freedom is thus first made possible by reflection and resolution upon future action, not by an immediate experience of free action in the present. Thus, the paradox of finding an object that can reflect my freedom, but that does not yet exist, is cancelled.

This "being-determined to be self-determining" is the key to understanding Fichte's intersubjective theory of freedom, which forms the foundation of right and motivation for property. The only way that I can be determined to be self-determining, that I can be *summoned* to action and not *necessitated* to act, would be if the summoning itself was the product of a free action and not just a mechanical *cause*. The capacity to respond freely to a summons presupposes that the subject can grasp the intentionality behind the summons, its purposiveness. But intentionality and purposiveness can only be the result of another *intelligence*, another rational being or self-consciousness. Therefore, Fichte's summons can be understood as a purposive solicitation from another rational being calling upon me to decide whether or not to act in a particular way in the future; understanding this request triggers my own capacity for freedom by inviting me to reflect upon reasons for action, thus confirming the very freedom I have been seeking (35).

In short, the object that invites, confirms, even challenges my freedom comes from another rational being in the form of a summons to act. Grasping this object means grasping the intersubjective basis of my own self-awareness as a free being. It means *recognizing* that another self-consciousness is fundamental for my own self-consciousness to be conscious of itself as a self-consciousness. Another way to say this is that a "human being … becomes a human being only among human beings" (37); to be human is to be a member of a species, unintelligible apart from its species relations (38). Concretely, the summons is not just a single request or demand; rather, it names the developmental education of human beings into their own self-consciousness: "The summons to engage in free self-activity is what we call upbringing [*Erziehung*]. All individuals must be brought up to be human beings, otherwise they would not be human beings" (38). This upbringing into humanity is, first of all, an enculturation into the norms of recognition-based, conceptually mediated interaction.[22] In a formula,

> Only free, reciprocal interaction by means of concepts and in accordance with concepts, only the giving and receiving of knowledge, is the distinctive character of humanity, by virtue of which alone each person undeniably confirms himself as a human being.
>
> (38)

Thus, to be a self-conscious human being requires specific normative relations of recognition with other human beings. But to be an *individual* human being, a distinct person with one's own self-identity, demands more than generic relations of recognition; it requires an exclusive *sphere of action* in the sensible world. It requires property.

Fichte has argued that a rational being comes to awareness of its own freedom and efficacy through a summons to act from another rational being. Since a summons to act can be understood as an appeal only if the summoned comprehends its intentionality, to be summoned necessarily entails the recognition of another being's rationality. But how does the summons lead to my own self-awareness as an *individual*? The summons from another self-consciousness *formally* conditions my freedom by providing an opportunity and sphere for me to exercise efficacy; but the *content* of my freedom can be determined by me only *within* the range of possibilities triggered by the summons. That is, the other invites me to act and, in so doing, delimits a sphere within which to act. So far, my freedom is bound to the other. Within the sphere itself, however, my deeds are "freely chosen," *mine*. I individuate myself from another rational being by choosing a possible action from the constrained range of possibilities within my own "allotted sphere": "the subject constitutes its own freedom and independence out of these possibilities and by comprehending them as the sum of the possibilities that it could have chosen" (40). The self-positing being which makes *this* choice and not another is thus "*the subject's I*, the individual, the rational being that becomes determinate through opposition to another rational being" (40). By acting within its own sphere, a subject distinguishes itself from another.

In distinguishing myself by choosing a possible course of action, I reveal the "mutually determined and conditioned" nature of the relationship to another rational being (40). The argument is thus: by acting within my own limited sphere of possible choices, prompted by another, I simultaneously acknowledge the self-limited sphere of another acting individual (41). For the only way that my own sphere of freedom is possible is if the other being restrains itself from determining my activity. The other being *could have* blocked me from acting, but it did not. Rather, "it materially limited its freedom through itself" (41). That is, the other being limited itself *in its very summoning me to act*. And summoning to act makes sense only if the summoned can understand the intention of the summoning. Thus, the other being must presuppose my capacity for intelligence and freedom if it is to summon me at all.

The relation of free beings to each other is thus determined as such: my *knowledge* of the other as free is based on being *treated* as free by the other. For the other being limits its own freedom in the act of positing my freedom. But being treated freely presupposes their knowledge of me as free,

something that cannot be proven until I treat them in a free manner, which itself presupposes knowledge of their freedom. In other words, each being's knowledge and treatment of the other as free presuppose being treated and known as free by the other. This is a circle but a virtuous one: the knowledge and activity of one condition the knowledge and activity of the other (42). What this means is that the I is intersubjectively constituted, dependent on another to complete and confer its own self-understanding as unique, free, and rational. Without another individual treating oneself as free, one cannot act freely; without acting freely, another individual cannot treat oneself as free. Fichte thus concludes that the very idea of individuality is a "*reciprocal concept*," something "never *mine*…but *mine and his, his and mine*; it is a shared concept within which two consciousnesses are unified into one" (45).

Fichte's "mine *and* yours" concept of reciprocal individuality evokes Kant's "mine *or* yours" idea of external freedom. But whereas Kant stresses that the normative *distinction* between mine and yours is necessary to ensure freedom for both, Fichte focuses on the *common* basis of recognition upon which individuals distinguish themselves as free. Both theories, however, are built on a particular understanding of what it means to be a political and economic subject in the modern world: it means having the ability to act according to one's own self-determined ends in such a way that one can recognize the results of one's actions as one's own. For both, this ultimately requires collectively authorizing legal norms to property that can secure one's use of external objects or, for Fichte, one's *sphere of action*.

Although the concept of a "sphere of action" nominally signifies a spatially bounded zone in which one acts free from the interference of others, Fichte's use of the term also highlights the normative aspect of this concept. A sphere of activity denotes not (just) a physical space but a *way* of acting that results from a particular relationship to others. My own sphere of efficacy, in which I can freely pursue my ends by choosing from a range of various possibilities, emerges through the activity of another being who restricts their own freedom *for* me. In this restriction, my sphere and theirs are jointly born. This 'act' of self-restraint is not a one-off affair but a continual process that must be ceaselessly renewed for one's own freedom to be actualized. The concept of a sphere of action is thus the concept of a specific relation between individuals that jointly produces the possibility for free action. This relation is the shared recognition of each other's right to separation. By acknowledging that another can act separately from my will, I grant them not just a space to act but a right to do so.

The limits of this sphere are initially indeterminate, but they become clearer with the concept of "original rights"—regulative fictions that spell out the inviolable conditions of personality that any rightful order must adopt into its constitution. Original rights are exhausted with rights to one's body and rights to property. Whereas one's body as a sphere of action

supposedly has natural limits, property is socially constituted and thus requires another system of laws for determining its boundaries. Such laws are guided by *a priori* principles of right, but their content can be fixed only in particular contexts of application through collective agreement.

From Recognition to Right

Fichte summarizes the results of his argument so far with a phrase potent with philosophical significance. "Thus," he writes,

> 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. (42, emphasis mine)

Although not flagged as such, this is Fichte's first formulation of the content of the concept of *right* as a relation of mutual *recognition*.[23] The claim is still underdeveloped since it does not say what recognition means for action, and as Fichte claims, "*only in action does there exist such a recognition valid for both*" (44). How does one treat another as free? If freedom means having the capacity to construct the concept of an end and act accordingly, then treating another as free means interacting by means of self-constructed concepts as opposed to violence, force, or instinct. The "moderation of force by means of concepts is the unmistakable and exclusive criterion of reason and freedom" (43). That is, self-control is the hallmark of both rationality and freedom, for such activity proves that one can resist natural impulses (freedom), conceptualize a purpose (reason), and act toward it (efficacy).[24]

Fichte's next step is to universalize the (normative) expectation of treatment based on mutual recognition. In effect, the argumentative move is to show that the expectation of recognition from another particular rational being logically presupposes the expectation of recognition from every rational being. Fichte claims that the "universal, ongoing expectation" (43) of recognition is a condition of possibility for self-consciousness. The argument is simple: without the expectation of being recognized as free, one could not be aware of oneself as an *individual* distinct from others, capable of acting within a sphere of efficacy apart from another. For the very idea of separate spheres of efficacy is valid only if one recognizes that others require similar spheres of action for their self-consciousness. This expectation is already woven into the structure of subjectivity, and there is no reason why it should be granted to one person but denied another.

By acting toward another so that each expects recognition of a self-ascribed sphere of efficacy, one enters into a *community* with them. According to Fichte, there must be a common "law" that governs

interaction within this community, one that gels with the motivation for entering into it. This law is *reason* itself, the object of recognition. To act according to the "law of reason" means incorporating the character of rationality into one's treatment of others. "Consistency," "agreement with oneself," and "general logic" are all part of the character of rationality and thus all rational beings are obliged to comply with its law if they want to be treated as rational (45). This is not theoretical consistency, but *practical* consistency, consistency of *actions*, since "it is actions that matter here, rather than concepts" (45). Thus, in my interaction with others, I act according to reasons, which means that I act in light of the expectation of recognition that conditions our mutual freedom (48).

What emerges from this thought is the fundamental principle of right: "*I must in all cases recognize the free being outside me as a free being, i.e. I must limit my freedom through the concept of the possibility of his freedom*" (49). In this formulation, recognizing the freedom of another is identical to limiting one's own freedom.[25] Fichte is keen to state that his principle of right is a necessary result of the conditions of individuality and self-consciousness and thus deduced *a priori* from pure reason alone (49), similar to Kant's principle of right.[26] More interesting than such declarations are the interdependent concepts that condition this principle. We can state the chain of inferences like this: no rationality without self-positing, no self-positing without efficacy, no efficacy without an object, no object without a summons, no summons without recognition of another subject, no recognition of another subject without self-limitation, no self-limitation without distinct spheres of action, and, as will be seen, no distinct spheres of action without rights to property. Therefore, one can say the concept of *mutual recognition* underlying the principle of right necessarily leads to the concept of property in Fichte.[27] This would suggest that it is incoherent to use Fichte's concept of recognition without simultaneously presupposing its correlate concept of property, not in the sense of material *possession* but in the broader sense of "rights to free action in the sensible world in general," (168) as we will see. To show this, I will first have to explain the concept of a community of right.

Community of Right

Fichte's science of right combines two seemingly incompatible theses about the freedom of the individual: the individual is both absolutely free and absolutely dependent on others. To resolve this antinomy requires distinguishing between the *exercise of freedom*, on the one hand, and its *condition of possibility*, on the other. The freedom to act according to concepts is absolute, but it is effective only if others recognize this freedom by limiting themselves, that is, by granting a sphere of action in which to exercise it. In non-Fichtean terms, one could say that individual freedom is

conditioned by social freedom. Without the social norm of reciprocal recognition and self-limitation (i.e., without *right*), the freedom of the individual person is incomplete, incapable of being exercised in relation to others. Producing this social relation means constructing a community of right, namely a community of free beings in which the conditions of free action are set in laws. The paradox of freedom and dependency can now be answered through another question: "*How is a community of free beings, qua free beings, possible?*" (79)

In the history of modern political philosophy, two major camps have arisen in response to this question: an involuntarist one which argues that it is the obligation of individuals to join together and form a political community based on some principle of justice (Kant, for instance) and a voluntarist one which states that it is a free choice for every individual to decide whether or not to join a political community (Hobbes, for instance). Fichte is squarely in the second camp, which follows the social contract tradition.[28] As with Kant and Hobbes, Fichte's contractarianism is also tied to his theory of property and its role in securing the freedom of the individual. For both Kant and Fichte, forming a community is ultimately tied to constructing a personality distinct from others, with its own sphere of action, objects, and ends that it can recognize as its own. For Kant, joining this community is *obligatory*, so that individuals can legitimately possess external objects of choice, an indispensable condition for the coexistence of freedom. For Fichte, entering this community is *voluntary*, an individual choice that guarantees the consistency and permanence of one's sphere of free efficacy. *If* one chooses to enter into a community of free beings, then one *must* submit to the principle of right as the rule for social interaction. But there is no categorical imperative to live in a community based on freedom; one can always choose to live inconsistently with others, in a situation of unfreedom and injustice.

The reason why a community of right is not obligatory for Fichte is this: although "the free being, by his mere presence in the sensible world, compels every other free being, without qualification, to recognize him as a person," (79) such recognition can always be *denied*, refused, or disregarded. The response to the summons cannot be *forced* since that would deny the intention behind it, to be *freely* recognized, since one's freedom can be confirmed only through the freedom of another. If someone chooses not to recognize another, they may be inconsistent but not wrong:

> It is not possible to provide an absolute reason why the rational being should be consistent and why it, in consequence of this, should adopt the law that has been established. But perhaps it is possible to offer a hypothetical reason.
>
> (80)

The hypothetical reason why the law of right should be adopted can be formulated as such: *if* one wants to live in a community of freedom, *then* one must adopt right as its law (82). Whether one wants to be in such a community or not, however, is contingent on the individual will and hence arbitrary (81). Whereas Kant claims that no rational being can consistently deny the principle of right as the law of coexistence for free beings, Fichte argues that acting consistently is itself a free choice that cannot be taken for granted. For reason tells me only what it would be necessary to do if I wanted to live consistently with others in equal freedom, not whether I should live that way. The individual has the right to be practically inconsistent, even if it is morally wrong, absurd, or evil. That is to say, "[t]he rational being is not absolutely bound by the character of rationality to will the freedom of all rational beings outside him" (81). That is the difference between a theory of right and a theory of morality.

Transcendental Ground of Property

In this section, I analyze Fichte's transcendental deduction of property as an 'original right.' I begin by explaining the concept of an *original right* and its relation to the idea of efficacy in general. I then turn to Fichte's claim that the ground of original property lies in the epistemological, material, and ontological conditions of free action in the sensible world. Finally, I provide a review of Fichte's theory of property up to this point.

Original Rights

"If reason is to be realized at all in the sensible world," Fichte writes, "it must be possible for several rational beings to exist alongside one another as such, i.e. as free beings" (85). With this statement, Fichte begins to flesh out the basic elements required for a community of right to exist. Once we decide to live in a community of freedom with others, we can start to figure out how to transform the concept of right into a practical social relation. This means filling in the idea of right beyond the notion of reciprocal recognition, which is too abstract to give any content to the actual shape of a community. In the process of converting the idea of right into a concrete social relation, Fichte "deduces" the concepts of original rights, property, coercion, and the commonwealth and then shows how such concepts could be realized in a modern state.

To go from the concept of right to a law of right, the first step is to ask: "What is entailed by the idea that someone is free in general, or is a person?" (86). So far, the only practical consequence of the deduction of right is that each person has a right to a sphere of free action, a sphere which necessarily includes their body. "But the law," writes Fichte, "at first, says

nothing about *how far* the sphere of each person's possible free actions is supposed to extend" (86, emphasis mine). To determine the extent of one's free action in relation to others first of all means finding out the inviolable limits of personality, that is, determining whatever cannot be violated without violating one's capacity for free action. This negative analysis of freedom reveals its ineliminable content in the shape of "rights." Rights are defined as those aspects of personality which others *could* violate through their free action but *should* not (87). These aspects of one's free personality are not 'natural' but rather are produced through (the possibility of) injury from others and thus demand protection by explicit norms and positive laws. If one abstracts from the interpersonal status of rights and hypothetically ascribes them to the individual as such, then one can deduce the rights of an individual that limit the action of another. Fichte calls these "original rights," and they are exhausted in the *body* and *property* (87).

In other words, a person's sphere of action becomes a sphere of *rights* only when it is considered in relation to its possible violation by another person. Rights can be thought of as "conditions of personality," Fichte claims, "only insofar as they appear in the sensible world and can be violated by other free beings" (102). Thus, there can no right to *think*, but there can be a right to bodily self-preservation (102). Furthermore, there are no "individual" or "natural" rights apart from the actual limitations on spheres of action necessary for a community of free beings to exist. For any right to have validity, the *right of coercion* must be in effect, and coercion is justified only when one consents to the power of law within a union of wills, a commonwealth, or a state.[29] If "original rights" are those rights which pre-exist this union, then "there is no condition in which original rights exist; and no original rights of human beings" (102). Yet just because there are no original rights does not mean that they cannot be useful conceptual tools for thinking through the basic principles of right.[30] Original rights for Fichte are rights conceived independently of the "limitations imposed by the rights of others" (101). They are conditions of personality abstracted from the community of right, as if the individual person was considered "*only a cause* in the sensible world" (103) and not something caused. This thought experiment can help determine the principles that actual rights should protect, what violations justify the use of coercion, and ultimately what the mutual limitations of freedom should be.

What does the right to be a free cause in the sensible world entail?[31] For Fichte, the causality of human freedom means having the capacity to act according to reasons and to produce external effects which can be recognized as the result of one's own activity. Fichte also calls this power *efficacy*, and having it is the *sine qua non* of freedom of the person. As argued above, a person cannot have efficacy without having a distinct sphere in

which to act, and the first sphere of action for the person is the material body. "The free being—as appearance—is identical with its body" (103). Fichte confirms this point with an intuition gained from the phenomenology of everyday experience and ordinary language: "In everyday life we always think in this way: *I* was not there. He saw *me*. *He* was born, died, buried, and so forth" (104). In other words, when we speak or think of others, we identify their activity with their body, their movements, and their appearance. For "the body is the I's representative in the sensible world, and where only the sensible world is being considered, it is the I itself" (104).

Hence, the right to be a cause in the sensible world entails the right to freely move one's body in efficacious action and be identified with this movement. Negatively put: "The body must neither be set into motion nor restricted in its motion by any external cause; there must be absolutely nothing that immediately exercises an effect upon it" (104). This is not so surprising or insightful. Yet Fichte proceeds from here with an argument consequential for the concept of property. To create an effect in the world with one's body requires *more* than just self-movement, it also demands specific "knowledge of the thing to be affected" (104). One must know some basic facts about motion, cause, effect, resistance, and change; one must understand how actions affect objects, how A relates to B, how C causes D, and so on. In other words, efficacy presupposes knowledge of the laws of nature; furthermore, it presupposes that such laws do not change randomly. No one could effectively will to bring about their own ends in a chaotic world. Ontological stability is thus another precondition of free action.

Thankfully, nature and the sensible world are fairly stable.[32] What appears as change to us is just nature following its own laws, which we can potentially understand and take into account in our own plans for action (105). But alongside the stability of objects, there is also the freedom of other subjects to consider. Since other free beings also act according to their own concepts, their actions are also a potential threat to the realization of my ends in the sensible world. They affect my efficacy in ways that I cannot foresee (105). My right to be a free cause in the sensible world presupposes both my capacity to effectively change the world and the stability of the world. But this stability is challenged when others disrupt the region of the sensible world in which I seek to act. Thus, my right to exercise efficacy requires that others refrain from disrupting my sensible sphere of action (104).

Although this sounds similar to Kant and other liberal arguments for why freedom demands non-interference from others, Fichte is making a slightly different point. He is not parsing the limits of free interaction between persons, because he is not yet talking about actual rights in a

community. Here, Fichte is considering only the *original rights* of personality—that is, the transcendental conditions of efficacy in the sensible world for persons conceived of independently from the claims of others. In this regard, what matters to original right is my body—as the "I's representative in the sensible world"—and the world, more specifically that part of the world in which I am to act. These two elements together exhaust the content of original right and provide the ground of property rights.

Original Property

I already control my body, and although I do not control the world, I do understand how to act within its causal structure. For this knowledge to be effective, though, that part of the world in which I act must remain free from the influence of another. This condition of action forms the transcendental justification of the right to property since securing a part of the world from external influence just means possessing it. As Fichte states:

> 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.
>
> (106)

This argument appears very strange at first. First, for a person to demand that "in the entire region of the world known to him everything should remain as he has known it" sounds awfully vague, grandiose, and, in fact, impossible to satisfy. How can entire regions of the world remain static, unchanged, and undisturbed by anyone? Second, why should changes in the world be automatically disorienting and problematic? One can read this demand as justifying a conservative political order that must guarantee absolute social stability in order for individuals to pursue their ends. But this reading would not make sense in the context of Fichte's argument. The claim here is rather epistemological and ontological; it is about how our actions fit with our knowledge of the world and its causal order.

The ability to carry out an action that reflects one's efficacy depends on determinate knowledge of the world in a specific place. For this knowledge to be accurate, and thus for a deed to be successfully accomplished, the object of knowledge and the context in which one seeks to affect it must remain fixed. That is, the general conditions of action must remain stable and as one conceived them throughout the duration of the process of

carrying out the action, from concept to follow-through, so to speak. The object of knowledge and the context in which one knows this object should be secure, predictable, and orderly, such that one can successfully modify the object according to one's own will. There can be no ontological gaps in between forming the concept and carrying it out. But this object of knowledge is itself a "part of the world," a sphere comprising all sorts of external things. So, when Fichte claims that the region of the world known to a person must remain as one knows it, he is claiming that free action depends on protecting the conditions for knowing how to act in a specific place with regularity. That is, free action requires securing the material conditions that underlie the epistemic conditions of efficacy.

In other words, a person must have reliable knowledge of the causal conditions in the part of the world where one acts for the duration of the action, and this knowledge is made reliable through a secure material relation to things in that place. This double-conditionality of action (material security plus epistemic stability) becomes synthesized in the right to property: here the right to property is grounded in the conditions of self-consciousness that require a part of the world known to me to remain stable, so that I can affect an object according to my concept of an end and, in so doing, exercise my efficacy and know myself as the cause of efficacy, as free. This epistemic relation to the object, however, is stabilized only when my material relation to the sphere of action that encompasses this object is first secured.

Fichte believes that this is the *rational* ground of property rights, not the ground in terms of *society* (since that requires recognition from others)[33] but the ground in terms of *reason*, the true object of philosophy. Immediately following the above quote, he writes the following paragraph as a side note in the argument about original right:

> Here is the ground of all property rights. The part of the sensible world that is known to me and subjected to my ends—even if only in thought—is *originally* my property. (It is not, simply for that reason, my property *in society*, as we shall see more precisely in what follows.) No one can affect that part of the sensible world without restricting the freedom of my efficacy.
>
> (106)

Original property names that part of the sensible world "known to me and subjected to my ends," whether in practice or in thought. On this account, property requires not *physical* subjection of a thing to one's ends but just knowledge of a thing and the will to subject it. These conditions—knowledge and subjection—together create "original property," or *possession*, but they do not justify it.[34] The justification lies in the absolute right of a

person to exercise her efficacy in the sensible world; since exercising efficacy is a necessary condition for a self-consciousness to know itself as self-conscious, "original property" itself becomes a condition of self-consciousness, for without it, one cannot successfully carry out reflexively identifiable purposive actions in the world. To act in the world, Fichte claims, one's material sphere of efficacy must be free from disruption. Since the only thing that can disrupt my freedom is the freedom of another, this means that others must refrain from affecting that part of the world necessary for my efficacy.

This is a peculiar theory of original possession. It is grounded not in labor or justice, desert or utility, history or efficiency but rather in the epistemic and material conditions for self-conscious efficacy. On this account, to be a self-aware subject depends on the (materially and epistemically conditioned) capacity to carry through actions from concept to end in a particular place over a determinate period of time *and* to recognize oneself as the agent of those actions. The right to possession or "original property" satisfies the epistemic condition for *stability of world* and the material condition of *endurance of the will through time*. As one may see, Fichte's transcendental account of original property has some similarities with Kant's metaphysical account of intelligible possession. The common idea is that in order to use one's practical freedom, one must be able to "have" things without "holding" them. And *having* presupposes a certain nonempirical and fixed relation to external objects. For Kant, this right is normatively required for the coexistence of equal freedom, which means that it is justified not according to the needs of an *individual* but rather according to the universal laws for a community of equal and free subjects. For Fichte, however, the right to property is a condition of self-consciousness itself, which means that it is also bound to the material *preservation* of individual consciousness, not merely to its free exercise. This has certain political and economic consequences, which will be discussed shortly.

To illustrate what he means by the "ground of all property rights," Fichte uses a telling example in a footnote. The example is not about someone finding an apple, crafting a spear, or trading a coat; it is about a lone individual (on a "desert island") and his practical and epistemic relationship to a specific part of the sensible world ("the woods"), a region which supplies his means of subsistence and sphere of activity:

> Think, for example, of an isolated inhabitant of a desert island who sustains himself by hunting in the island's woods. He has allowed the woods to grow as they might, but he knows them and all the conveniences they afford for his hunting. One cannot displace or level the trees in his woods without rendering useless all the knowledge he has

> acquired (thus robbing him of it), without impeding his path as he pursues game (thus making it more difficult or impossible for him to acquire his sustenance), that is, without disturbing the freedom of his efficacy.
>
> (106)

This Robinsonade example helps clarify how knowledge, action, and world come together in Fichte's transcendental account of property. First, Fichte's "isolated inhabitant of a desert island" conjures an imagined situation or thought experiment about the principles underlying property, not a deduction of actual property relations. The transcendental justification of property as a condition of self-consciousness proves only that a principle of possession is compatible with reason and should not be denied (a point Kant also makes concerning intelligible possession). It does not, however, justify possession in the face of others whose freedom would be limited by such a right. That requires a normative argument, and that comes only after the community of right is established and taken for granted. Actual property rights have validity only in a political community of citizens bound by norms of recognition, laws of coercion, and a state-managed economy. That is, the only normatively valid ground of a right to property lies in the reciprocal recognition of free beings in a political community, where each person limits their own sphere of activity for the sake of the other.[35] The idea of an *original* right to property outside any reciprocally binding obligations is useful solely as a theoretical exercise in pointing out the necessary but insufficient conditions for individual efficacy.[36] Fichte's example claims to show that an individual requires a protected relation to an external sphere of action in order to realize his efficacy. This does not justify the exclusive appropriation of external things as a natural right but rather highlights the fact that any rightful political community must find a way to provide an individual with an exclusive sphere of action in the world.

Second, the isolated inhabitant "sustains himself" through an activity based on his relation to the woods. The woods are his "sphere of action," and his relation to this sphere is based on practical knowledge that cannot be disturbed without disturbing his life-sustaining activity (his "freedom of efficacy"). The woods may grow and die, and others may make use of them too, but if someone destroys them or blocks them from use, then this severely undermines his practical knowledge and negates his life-sustaining activity. The individual relies on his particular knowledge of this part of the sensible world for his own material reproduction. The woods are, in a sense, an *extension* of his mind insofar as they provide a sphere of action filtered through his concepts. To destroy the woods then is to destroy an expression of his reason.[37]

Third, the individual does not "own" or "possess" the woods as private property; they are more like "common property," accessible to all, so long as no one takes them exclusively for themselves. That is to say, the individual's relation to the woods as their "property" is one not of absolute power of disposal but of sustainable access to use, reliant on local practices and context-dependent knowledge. Destroying this context—and the knowledge and practices it supports—*is* destroying one's property. If the commons are the model for Fichte's justification of property rights, then his understanding of what property means is very different from the liberal view of private property. As he will clarify later, property does not simply entail the coercive right to exclusive use or disposal of an object. The essential value of a right to property is in securing one's access to a life-sustaining sphere of activity or labor. This is quite different from Kant or even Hegel's conception of the freedom of the will. For both Kant and Hegel, the will actualizes its freedom in the world through its relation to things, others, and itself; for Fichte, the will is an embodied living being whose life occurs through freedom rather than mere animal instincts.[38] That is to say, Fichte's rationalist idealism turns out to be more of an anthropological materialism than anything else.[39]

To summarize the argument so far: Fichte claims that reliable knowledge about a specific part of the sensible world enables one to successfully subject external things to one's own ends over time. This knowledge-dependent activity not only satisfies material needs but also realizes one's "freedom of efficacy," a necessary condition of self-consciousness. This material knowledge of the world allows one to form reasons for action based on the use of external things as means for ends. But neither knowledge nor things grant one an original right to property; rather, it is the individual's *dependency* on practical knowledge of a specific material context of action that rationally justifies the right to exclude others from disturbing that context. For Fichte, if an individual is dependent on a specific knowledge-world constellation for their means of life, then no one can affect that constellation without affecting their freedom.

It is significant that Fichte here identifies the "freedom of efficacy" with the capacity to satisfy one's needs of life. Recall that for Kant, right concerns formal relations of choice between rational beings who are externally free—that is, free in the sense of capable of setting ends and using means to accomplish those ends. Central to Kant's philosophy of right is that the *content* of one's choices are irrelevant; only the formal coexistence of external freedom matters to right, and this coexistence must be secured, systematized, and rationalized. For Fichte, however, right concerns not only the form of choice and its coexistence with others but the *matter* of choice itself. Freedom, in other words, is impossible without the materially secured ability to reproduce oneself through labor. I recite this point not

just because it is historically interesting but rather because *I think it is central to understanding the meaning of property relations*. That is to say, although Kant is right to have set up the problem of property as a normative dilemma concerning the formal coexistence of freedom of choice among persons on an enclosed planet, I think Fichte is correct to see in property relations not just a way of coordinating choices with arbitrary ends but a mode of securing the *condition* of freedom itself, that is, *life*.

In Chapter 1, I argued that Kant also incorporates some of the material conditions of freedom into his account of property, particularly the spatial conditions of agency, which entailed that everyone has at least a *provisional* right to acquire a place on earth. But, as I will show, Fichte goes further by incorporating the *temporal* conditions of agency as well, that is, *life-sustaining activity* or labor. Now, one could interpret Fichte's account of property as a regression to a morally motivated theory of *needs*, concerned with welfare, distributive justice, and economic equality. In sticking with my terms from the introductory chapter, the pendulum would have moved away from Kant's more *legalistic* approach to property as a freedom-securing right to Fichte's more *economistic* approach to property as need-securing sphere. But that would be mistaken. For Kant *and* Fichte, freedom is the alpha and omega of property, and property in the form of right is neither a narrow legal relation nor a functional economic mechanism but a normative relation with political, legal, social, and economic consequences for all. For Kant, *right* names the universal law of coexistence for equal freedom, a law that recognizes *provisional* rights to property, rights which ultimately require public authorization to be normatively valid. For Fichte, *right* names the normatively necessary social relation for self-conscious, living beings to know themselves as free. Yet this relation falters without reciprocally recognized spheres of free action or *property* in which each person can exercise efficacy. Realizing the relation of right necessitates individuals joining together into a commonwealth in order to protect one another's sphere of property. But spheres of property are just stable forms of labor that reproduce one's own conditions of efficacy, or *life*. In short, property rights fix labor relations, and labor relations secure the maintenance of life itself, the ground of freedom.

So far, the transcendental ground of property rights has been said to lie in the conditions required for a person to exercise free efficacy in the world. This efficacy is exercised through a form of labor that relies on stable practical knowledge about a physical region of the world whose material contents provide the means for satisfying one's needs. According to Fichte, this part of the world must be protected from external influence lest one's practical knowledge be rendered defunct and the freedom-realizing, life-sustaining efficacy made impossible. The successful exercise of efficacy consists not just in *doing* something but in doing something in a way which

allows one to perceive oneself as the doer. What allows this is not social stability but a kind of ontological continuity between past, present, and future, such that one can reflect on oneself *after* acting as having accomplished one's end. Incorporating the *futural* aspect of efficacy and the perception of it into right provides another ground for the justification of property.

Fichte's theory of the efficacy of action, however, presupposes a temporal lag between the formation of a concept of an end and the carrying out of an action in accordance with this end. One task of right is thus to protect this lag from any interruptions. But the point of protecting the duration of action by means of property is not to immunize the world from change but to ensure that the individual can *perceive* itself as one practically *continuous* being over time. The will to act in the world as a free cause includes willing to perceive the realized end of one's concept in the world (106). On the one hand, this means *ontological stability*, or willing that "things must remain undisturbed and be left to their natural course" after one's action or omission (106); on the other hand, this means *personal identity*, or willing to continue to exist in the future as the same identical self, as the same *perceiver* (107). This latter aspect of willing is key to understanding Fichte's emphasis on the role of continuity and stability.

Fichte claims that, in order to act and recognize oneself as the cause of action in the world, a person must also necessarily will (1) the continued and secure existence of one's body and (2) the continued and secure existence of one's free influence in the sensible world (108). The reason why individuals must will their own continued bodily existence and their own continued free influence in a sphere of the world is that these conditions secure the *identity* of the person over time, allowing for the recognition of oneself as the very same being who conceives and carries through plans to affect the world. Willing one's own future existence "is the condition of all other actions and of every expression of freedom," (107) for without a concept of the future, there is no continuity of the self, no I to reflect upon. In willing to bring about an end, one wills a *particular* future, a determinate state of affairs; this presumes the possibility of a causal sequence or narrative about oneself and one's sphere of action that can be reconstructed intelligibly as the result of one's self-activity (107). Original right, as the right to be a free cause irrespective of the limits of others, must include the right to endurance over time for one's body and for one's sphere of efficacy. This latter condition forms the basis of the right to property.[40]

Review

Allow me to gather together the pieces of the argument so far. To call property an original right is to say that a person cannot be a person without having reliable access to a sphere of action in the sensible world for the realization

of ends. The ground of this right is not in the world or in others but in the conditions of personality; these conditions require that an individual be capable of effectively acting in the world and recognizing themselves as the cause of changes in the world. Although rights exist only between persons through the reciprocal recognition of self-limiting spheres of freedom, the ground of property rights can nevertheless be transcendentally justified in abstraction from the constraints of others—that is, as a necessary but insufficient condition for an individual to know itself as rational and free.

The "final ground" of the original right to property is located in the will to subject things in the world to my ends. Although there is no actual context in which this ground can function as a coercive right against others (117), this does not render the justification invalid. Subjecting something to my end does not necessarily make that thing my property, for property is always a socially mediated intersubjective norm dependent upon a structure of recognition between free beings. So, *what* exactly is being recognized when free beings acknowledge each other's right to property? This question motivates Fichte's transcendental deduction of the validity of the concept of property. To Fichte, what is recognized in property is not the thing that people own, or the will to subject those things to ends, or the legal authorization to exclude others, or some potential economic value; rather, it is the very essence of what it means to be an I: *self-activity*.

The self-activity of the I forms the irreducible starting point of Fichte's investigation into the nature of right. An I is a subject or rational being whose activity is identical to its being. The self-reflexive, self-positing, and self-activity of reason means that acts of reason are also reflections on that act—they are both practical (willing) and theoretical (representing). As Fichte puts it: "The I is not something *that has capacities*, it is not a capacity at all, but rather is *active*; it is what it does, and when it does nothing, it is nothing" (23). Unlike with Kant, the subject of Fichte's FNR is not practical reason as such but the individual, practical, rational being, or the *person*. As Fichte explains at one point, "the rational being posits itself as a rational individual—from now on we shall refer to this as *the person*—by *exclusively ascribing* to itself a *sphere for its freedom*" (53). What does this freedom mean? "To say that a person is free means: the person, merely by constructing a concept of an end immediately becomes the cause of an object corresponding perfectly to that concept" (56). To be the "cause" of an object corresponding to one's concept is to have the capacity to effectively change the world through reasons for action. To actually be a free self-conscious being, one must have an *effect* on the world; that is, one must exercise *efficacy*, produce objective changes or modifications in the sensible world, and recognize oneself in doing so. That is, one's *being* must be a *doing*. To recognize one's efficacy in the world is to be able to say "this is mine" and have it confirmed in oneself, in the world, and in the actions

of others. The right to property forms a necessary step in realizing the conditions of right. Without property, without right, the rational being remains deficient, only potentially free, only potentially a subject which can act in a world of its own making.

Fichte's concept of property is not the same as the legal right to dispose over external objects of choice but rather signifies a pre-legal norm of reason to act purposively and enduringly on a portion of the world with one's body by subjecting things to one's ends; in so doing, others limit their freedom in recognition of one's right to act in this sphere, granted that one limits themselves in turn for them. Furthermore, Fichte's concept of property entails that one must be capable of recognizing the effects of their activity in a portion of the sensible world as the result of their own will (i.e., as objective validations of their rational agency). For this to be possible, a certain epistemological and ontological *stability* of the world is demanded. Since I seek to modify the world through my actions, I must first have *knowledge* of the world and its laws. Otherwise, attempting to realize my concept of an end will not necessarily produce the effect I seek since I might just be confused about how one thing leads to another. Once I have this knowledge, I need to be assured that no fundamental changes in the structure of reality will occur to throw off my efficacy. The only such changes that can affect me are from other free beings. The ground of the original right to property thus lies in this need to secure and stabilize my epistemological and material relation to a part of the world from the disturbance of others, so that I can effectively carry out actions that reflect my self-activity and ensure my continued existence over time. The original right to property has no authority over others without their recognition, but it can function as an ideal constraining any political order based on right.

Normative Ground of Property

In this section, I move from Fichte's transcendental justification of an original right to property (in conditions of self-consciousness) to the normative justification of a coercive right to property (in a community of reciprocally recognizing persons). In so doing, I outline Fichte's *equilibrium of right* for determining the limits of freedom between persons, and I lay out the initial rules of property according to this normative framework.

Limits of Freedom: Body and Possession

What is the function of original right in the theory of right as a whole? Like a stage in Hegel's *Phenomenology*, original right marks a one-sided development in pursuing the conditions of possibility for self-consciousness, but one that propels the argument further precisely in the awareness of what it

lacks. The thought experiment of original right is necessary for determining the norms that justify the use of coercion in the application of right. The inviolability of one's body and the continued existence of a sphere of free efficacy—a *sphere of property*—provide these norms and thus coercion is justified only when one's body or property is violated (109). However, determining whether an action is a violation of original right, and thus whether any specific use of coercion is valid, requires knowing not just the norms of right but the *quantitative* limits of right. The question to be asked now is: "What quantity of freedom does the law of right determine for each person?" (109).

My original right is infinite, free from the limits of others; but coercive rights are finite, valid only in relation to the freedom of others. Figuring out the limits of freedom means determining the proper balance of freedom for all that can ensure the freedom of each. Fichte calls this ideal balance the "equilibrium of right," and its content provides a "regulative principle" or criterion for the use of coercion. Violations of this equilibrium authorize coercion (109). As long as the hypothetical isolated individual does not *know* of another's existence, his original right is infinite. Such an individual "has the right to extend his freedom as far as he wills and can, and—if he so desires—the right to take possession of the entire sensible world" (111). But with the knowledge of another free being immediately comes the necessity of self-limitation, "without further qualification" (111). For the principle of right is that "each person is to limit his freedom through the possibility of the other's freedom" (109), and this right goes into effect with the recognition of another person.[41] Reciprocal recognition entails *that* one limit one's sphere of freedom for the other, but it does not say *how much*. In other words, bare recognition triggers only *formal*, not material, self-limitation (110).

The normative principle underlying the equilibrium of right is formal reciprocity: for any limitation on freedom to be justified, it must be reciprocal in principle. But contrary to political philosophers who stop at formal theories of right, Fichte rightfully poses the materialist question of politics; that is, "*How much* should each limit the quantity of his free actions for the sake of the other's freedom?" (110). The "how much" question leads Fichte to incorporate economic issues into his political framework instead of banishing them to the realm of the non-political. Whereas Kant nominally restricts the domain of right to formal relations of choice between persons, Fichte's inquiry is restricted only by his aim of transcendentally deducing the necessary conditions for a finite individual to know itself as rational, i.e., as free. Unlike with Kant, this means not just knowing how to coordinate the external freedom of all according to a universal law but also knowing *how much* freedom each can have without harming the other.

The boundaries of freedom take shape through the recognition of another rational being, another *person*. I will not recite the whole argument here, but Fichte claims that the perception of a *human body* immediately signifies the presence of reason in the sensible world through its very shape as a purposive, self-determining organism.[42] For me to *perceive* another human being is thus to simultaneously *recognize* a person with a claim on me, a claim to limit myself for the sake of their sphere of freedom. The other person's body presents the first clear limitation of my freedom since it occupies a determinate space from which I am rightfully denied any influence. The normative ground of this limitation comes from "original right," which posits the identity of one's "I" with one's body. The body is an inviolable sphere of action, and any violation thus authorizes the right of coercion, i.e., self-defense (112).

Recognizing another person's right to express their will in the world through their body is the first step in setting boundaries for freedom. But, as Kant already argued, a person needs more than just their body to act effectively. To translate the concept of an end into an action that affects the world and realizes my efficacy, I need to subject things in the world to my ends (112). If my sphere of efficacy includes the right to subject things to my ends, then another person's sphere of freedom must include the same (114). This recognition of a person's original right to subject things to their ends produces the *second* limit of freedom in the equilibrium of right: *each other's possessions*. The objects that each person uses to realize ends are part of the sphere of efficacy and thus are off limits to the other. But unlike one's immediately perceptible body, it is unclear *what* objects are *whose* for *how long* and *why*; it is unclear to each what the *rules* of possession are. The knowledge of one's possessions is not immediate or explicit with the recognition of another person but rather "internal" to the consciousness of each (112–3). This makes the objects that determine the boundaries of right "problematic" or uncertain (113).

When the rules of possession are unknown, not only do the objects of right remain uncertain, but so does right itself (113). Without an explicit rule for knowing how to determine which objects belong to whom, it is impossible to know whether another person has adopted the principle of right into their own self-understanding. For Fichte, "this lack of knowledge therefore makes it impossible to confirm that we are beings who possess rights in relation to one another" (113). Without explicit property rules, the normative ideal of "rightful coexistence" disappears (113). For no one can be sure in taking possession of something that they are not appropriating the objects of someone else or even that their previously acquired possessions are not in fact the possessions of another. This dilemma produces an "undecidable conflict of right" between possessors—that is, "a conflict of physical forces that can end only with one of them being physically annihilated or completely driven away."[43]

The struggle to death for recognition of one's property, to foreshadow Hegel, has a relatively easy solution (at first): *people must talk*. They must *declare* what they want to possess exclusively for themselves (115). That is the only way to decide on the status of objects of possession. What is internal must be made external: the expressions of mine and yours in language is the first act in confirming that the other truly does seek to relate to me as a free being. The reciprocal declaration of property inaugurates the beginning of right as a practical relation between *particular* persons, for now each knows that the other will recognize their external sphere of freedom (115). Now, when two individuals declare different objects for exclusive use, no conflict arises. But if they express the desire to possess the same thing, then who is right? Counterintuitively, Fichte states that "the claim to first appropriation is not valid for the purpose of external right" (115) since neither can *prove* to the other that they were actually *first* to possess something. Since both have an equal right to the same thing, *either* they must compromise and come to an agreement about the object *or* they will have to fight in a war to the death! (116). Again, the struggle to death for recognition occurs over property.

War, however, is against right, for it negates the possibility of a relation based on the mutual recognition of freedom. The non-violent way to prevent a war over property follows a classic strategy of modern political philosophy—to turn over power to a third party, a sovereign (116). This third party must have the *authority* and *power* to determine the allocation of property in the present and *guarantee* it in the future. According to Fichte, the only political structure that can rightfully authorize property claims now and into the future is a *commonwealth*; thus, *if* the two parties choose to live together according to principles of right, then "they must enter into a commonwealth with one another" (116). For Fichte, unlike Kant, there is no duty for rational beings to enter into a commonwealth with each other, but if individuals *want* to coexist together in a relation of equal freedom, then there is no other way except through a commonwealth.[44] Fichte lays out the details of this commonwealth in later chapters, but at this point, the question still concerns how possessions become rightful between individuals in the process of recognizing each other. For if the two parties now agree on what belongs to whom, one can still ask: "what is the basis of their property right to the *particular* objects that happen to be theirs?" (116). What grounds the right of person X to claim object Y as her own against person Z? The answer is nothing—*except the agreement between persons* (116).

To Fichte, all rightful *declarations* of one's own possessions are simultaneously *recognitions* of another's possessions. By asserting that *this* is mine, I also recognize that what is *not mine* can be yours, for your recognition of my property is dependent on my reciprocal recognition of yours (116). My exclusion from your sphere of property is thus not an external

imposition on my will but a self-limitation of my will made freely in agreement with your will (117); for without this self-limitation, my own sphere of property would not be secure, and so my right and freedom would be destabilized through my own activity. Summing up the consequences of this argument for the right to property, Fichte concludes

> Therefore, their property right, that is, the right to exclusive possession, is completed and conditioned *by mutual recognition* and does not take place without this condition. All property is grounded in the unification of several wills into one.[45]
>
> (116–7)

With this, Fichte moves away from the transcendental justification of property right in the conditions of personality (i.e., in efficacy) and toward the normative justification of property in the conditions of community (i.e., in mutual recognition).

From Possession to Property

Agreeing on who possesses what is a major step in securing the relation of right, but it immediately falls apart without a rule for future appropriations (119). So far, enacting the right to property requires a *declaration* of what I appropriated and *recognition* from another person of my possession. But to prevent conflicts in the future, each person must agree to recognize each other's declarations of possession "in the realm of what has not yet been assigned" (120). Given this "contract" (voluntary in terms of wills but necessary in terms of right), certain classic rules of acquisition now take on validity, not because of any "natural right" but solely due to the agreement between persons to treat them as valid.

For instance, temporal priority (*Qui prior tempore, potior jure*) now justifies a claim to possession since each has agreed to accept each other's claims (120). Like Kant, Fichte believes that no object is *inherently ownerless* (*res nullius*) but rather only undecided (*res neutrius*) until claimed (120). *Ownerlessness* can be achieved through an agreement but not through the thing itself. In addition, given the temporal gap between the act of taking possession and the act of declaration, another seemingly "irresolvable conflict of right" (121) is possible. To close the gap and prevent intervening parties from appropriating what I have possessed but not yet declared—causing a paradox of right—"the acts of taking possession and declaration must be synthetically united" (121). Just as one is able to immediately perceive a human body as a rational being deserving of recognition, one must be able to immediately perceive an object as a rightful possession deserving of recognition. To achieve this, "the object itself must

make the declaration" (121); that is, there must be an agreed-upon system of *signs* for designating one's possessions.[46] Since signs and declarations are necessary to announce one's property, they are also required to give up one's property (122).

By agreeing to these minimal property rules (amongst others), individuals "prove to each other that they are beings who have rights" (122). The rights to one's body and a sphere of free efficacy are transcendentally grounded in the conditions of personality, but their normative force as a reciprocal limitation on others and myself comes into being only through the perception of another human body. This perception does not *prove* the existence of a relation of right but only announces its hypothetical validity as a mode of interaction based on the reciprocal recognition of freedom. The real "proof" of right lies in the actions that confirm it, specifically property-enabling action. By relating to one another in a way that recognizes each other's possessions and affirms the rules of appropriation, individuals confirm the "general applicability" of the formal law of right to "materially determine the scope of each person's right" (123). That means the theory of right deduced from the conditions of self-consciousness has acquired objective validity as an applicable framework for the free interaction between human beings in the sensible world. The validity of right is thus ultimately ensured only through the existence of explicit property relations, otherwise called *the property contract*.

How do Fichte's different justifications of property relate to each other? Or how does property as an original right relate to property as an intersubjective right? In the "imagined context of original right," I acquire something solely by subordinating it to my ends, and I justify this by appealing to my absolute right to free efficacy, a condition of self-consciousness (117). In the social context of intersubjective rights, I acquire something by declaring my will to possess it in the face of another, and I justify this act by limiting my own freedom through the recognition of the freedom of another. The former case does not validate property *in society*, but it does provide the "*first* and *highest* condition of property"—the need for persons to have an external sphere of efficacy (117). When human beings are considered in relation to each other, however, this hypothetical condition is no longer enough to justify any actual claim of possession. Possession must be *recognized* to be right, for only through recognition does possession acquire an "external, *shared* validity"; that is, only through reciprocal recognition does "*possession* become *property*, i.e. something individual" (117). Fichte follows this up by making an analogy between individuality and property: to think of oneself as an individual is impossible without thinking of oneself in opposition to others, and to conceive of one's property is likewise impossible without conceiving of the property of others. Individuality and property are both *reciprocal concepts*, in Fichte's

terminology. External recognition individuates one's property as much as it individuates oneself.

Since "[a]ll property is grounded in reciprocal *recognition*, and such recognition is conditioned by *mutual declaration*" (117), the validity of one's claim to possess something extends only as far as one's recognition and declaration extends. That is, the right to property in a particular thing holds *only* between the recognizing parties (117). So, for instance, if the rest of humanity disputes what I just declared to be mine to a few others, then I have no right against them (118). Up to this point in the analysis, relations of right are dependent on *direct* interaction between persons and their spheres of influence. In order to have one's specific property claim be judged as *universally* valid, the domain of right must extend *globally*. Otherwise, property and the free efficacy it secures devolve back into uncertainty. In a statement that hearkens back to Kant's thesis of the *provisionality* of all rights before the accomplishment of cosmopolitan right, Fichte asserts that "no property is certain, no property is thoroughly secure for the purpose of external right, *unless it is recognized by the entire human species*" (117, emphasis mine). Until every single person in the world recognizes my possession of this land, I cannot be sure that it is actually mine. And if I do not know what is mine, then I do not know *who* I am at all.

"Securing this recognition seems to be an immense problem," Fichte admits, but the solution has already been solved by "the present constitution of humankind" (118). This constitution is the division of humanity into separate *states*, each of which "recognizes and guarantees the property of each person who lives within it" (118). Bordering each state is another state that recognizes its property, and bordering that one is another one, and so on. Through the transitive law, each state therefore recognizes the property of every other state and every citizen within it since all states are bound together on the limited sphere of earth. Similar to how Kant uses the spherical shape of the earth to make a normative claim about the necessity of right, Fichte uses the shape of the earth to solve the problem of global property recognition. "Since the earth is an absolute, closed, interrelated whole," Fichte concludes, "all property on earth is indirectly recognized by virtue of the immediate, mutual recognition between neighboring states" (118).[47] In short, Fichte's argument is that for individual property to gain universal validity, and thus for human beings to be recognized as *persons*, the interpersonal recognition between possessors must be supplemented by political recognition between states.

As pointed out above, the concept of *right* proves its objective validity through the existence of human interaction based on property rules; these rules express the fundamental norm of reciprocal recognition and confirm the self-limitation of each to their own separate spheres of efficacy. The initial development of relations of right presumes *honesty* and *trust*

between individuals, but once these feelings are lost, they cannot be forced to return (124–5). No one can be coerced to trust again. Right, however, depends not on inner feelings of trust and honesty for its continued existence but only on external actions that conform to its principle. The possibility of right does not require a *good will* when dealing with others, for "[e]ach has a claim only to the other's *legality*, but by no means to his *morality*" (125). Hence, there must be another means to pursue relations of right "in the absence of honesty or trust" (128).

The ultimate task of the law of right is to foster a condition of freedom and security for all. That is not a "natural" condition but an artificial one brought into existence through the agreement to live according to the equilibrium of right. To enforce the equilibrium of right without trust, however, requires a coercive power that can ensure the "mutual security" of all (128). This coercive power, created through the joining of wills into one, is called a commonwealth or state. Through the coercive power of the state, and not via individual agreements, the laws of right and property can be introduced, modified, adapted, and applied to all irrespective of one's moral standing with others. "Natural right" disappears as the social condition of mankind, and "the state itself becomes the human being's natural condition" (133). Fichte's social contract "deduction" of the commonwealth as the political form of a united will is not so important for this investigation (§16). What is relevant, however, is the claim about the state's main function: "The most immediate task of the state is to settle disputes among the citizens concerning property" (163). Before anything else, the state must recognize, distribute, and allocate property for all. It must determine the limits of property and its uses. Since property relations are the first proof of right, the state must reconstruct a system of property that satisfies the conditions of right and personality: it must ensure a sphere of efficacy for each.

Applied Right

In this section, I look at the normative consequences of Fichte's theory of property for the political economy of the constitutional state. I begin with the *citizens' contract*, Fichte's multi-part agreement between individuals which legitimates state authority and sets up the conditions for rightful interaction. The central plank in the *citizens' contract* is the *property contract*, the political agreement between individuals to mutually respect each other's property rights as binding; although this may appear uncontroversial, for Fichte, this agreement can function only within a system of political economy where *everyone has work*. This is because the right to property in this framework does not authorize the private ownership of external things but rather obligates the state to ensure that every person has an

exclusive sphere of labor from which they can live. This high demand on the state necessitates a particular division of labor and classes, one in which *avoiding unemployment* becomes the central aim. Finally, I turn to Fichte's late writings in which he reinterprets the right to property to no longer entail just a right to *labor* but, more importantly, a right to *leisure*.

Citizens' Contract

In the second part of the FNR, Fichte applies all the *a priori* concepts of the first part (e.g., right, property, coercion, and commonwealth) to the social conditions of the modern world. This application is not a supplement to the theory but its fulfillment. If the theoretical framework of right cannot provide any practical guidance for the construction of a rational state according to its principles, or at least the evaluation of actual states according to its norms, then the framework itself is flawed. For the methodological point of deducing the foundations of right is to determine the necessary and rational form of the relation between free beings. If this relation cannot be applied to the lived experience of human beings—to desiring, egotistical, violent creatures of different nations, races, and languages constantly at war with each other over the control of scarce resources on a small planet—then the entire project is a failure. The successful application of the theory of right accomplishes the goal of Fichte's practical philosophy, proving its objective validity. This means not that there must be a Fichtean state in order to prove Fichte's theory but that Fichte's theory of right must provide normative and empirical criteria for the actual evaluation and improvement of modern states. Fichte begins to develop these normative and empirical criteria systematically in Part II of FNR, *Applied Right*, and its "Doctrine of State Right," but this project comes to fruition only in the *Closed Commercial State* of 1800.[48] In the following sections, I will analyze Fichte's applied theory of property, the so-called "property contract," within the doctrine of the state, and only briefly touch upon the *Closed Commercial State* and other texts. I will show how Fichte applies the transcendentally deduced concept of property to the sensible conditions of the world and how the meaning of property expands from a legal relation between individuals to an economic relation between society and the state.

When right is considered *within* a commonwealth—and coercive rights are possible only in a commonwealth—then all the aforementioned normative principles for free interaction between persons must be translated into political rights and applied to the inner relations of the state itself. For instance, property can no longer be considered a norm of recognition between individuals but rather a political right between citizens and the state. The ground of property is no longer contained in the original right

to subject something to one's end as a condition of free efficacy but in the social contract, or, as Fichte calls it, the "citizens' contract."[49] The citizens' contract is a tri-partite set of binding obligations between individuals that constitutes the authority of the state and the structure of the economy. This 'contract' is conditional on the basis of persons who come together to resolve conflicts over property in a way that does not lead to war (165). Fichte reconstructs the three generic obligations that together complete this contract; individually, each obligation requires an entire legal apparatus to be effective. As Fichte has often claimed, the agreement to peacefully settle a dispute over property according to principles of right requires the development of a commonwealth. But how does the contract work?

All contracts have a certain structure to Fichte. First, a contract begins between two *private wills*; when directed at an object, they are "material wills" (166). To avoid conflict, both parties must agree to unite and compromise in future disputes over right; this is called the "formally common will" (167). The content of the formally common will in this case is the relation between the parties over the objects they claim to possess. If they agree not to take what the other claims as their own, then they have created a "materially common will" (167). This will is directed at each other's property, and as long as they both refrain from interfering with it, the contract holds. As such, it is purely negative (167). That is the structure of the contract in general. The *citizens' contract* in particular moves beyond a purely negative relation between individuals to a positive system of reciprocal obligations concerning the limits of free actions in the world. Fichte introduces this contract not by discussing security, law, or the state but by referring to property in the "broadest sense of the word." In a key passage, Fichte asserts that

> [There is] no rightful relation without a positive determination of the limit to how far each individual's use of freedom should go; or, which means the same, *without the determination of property in the broadest sense of the word*, insofar as it designates not just the possession of real estate [*Besitz liegender Gründe*] or the like, but *rights to free action in the sensible world in general*.
>
> (168, emphasis mine)

Fichte's entire theory of property can be gleaned from these few sentences, which we are now capable of understanding. In the above paragraph, "the limit to how far each individual's use of freedom should go" is identified with the word "property," which itself is understood as "rights to free action in the sensible world in general." All of these phrases in turn mark an indispensable condition for the existence of a "rightful relation" among persons. Furthermore, this concept of property *includes* the "possession of

real estate," but it is not confined to that referent. As Fichte argued in the first part of the FNR, rights apply only between rational beings, not directly to things (land, for instance) (51). All rights to things are derivative of rights to activities, and these activities constitute the economic organization of society.[50]

The overall claim here is that the purpose of the citizens' contract—arranging rightful relations between people—is accomplished *precisely through organizing property relations for all*. In a word, one could say that for Fichte, the goal of politics, *justice*, is achieved by means of economics, *property*. Or even shorter: *justice is property*. Not in the sense of *private* property but in the sense of the rightful distribution of human activity. Now, it may appear as if all I am saying, through Fichte, is that property and the economy are important for achieving justice and freedom. Or even cruder: that human agency requires private property rights period. If this was true, then Fichte (as well as Kant and Hegel) would represent just another case of "possessive individualism," as Macpherson described the unquestioned assumptions of Hobbes, Locke, and much modern political philosophy.[51] The problem with this assessment is that the meanings of *property*, *freedom*, and *right* from Kant to Hegel are nothing like the anglophone equivalents. As I argued in Chapter 1, *property* for Kant entails a whole normative framework with social, political, and material obligations that are not reducible to economistic or legalistic motivations of the individual. For Kant, there is no such thing as a right to property outside a comprehensive public order which can authorize the claim to have something as one's own. And as I am arguing in this chapter, property for Fichte designates not natural rights to things but reciprocally recognized rights to collectively organize the material conditions of social life. The real upshot of Fichte's claim is not that freedom demands a sphere of property but that the property which freedom demands is itself unintelligible outside a normative vision of social labor and the economy as a whole. So sure, one can label the political philosophy of German Idealism as possessive individualism, but only if by *possessive* one understands *normative*, and if by *individualism*, one understands *socialism*.

Fichte's *citizens' contract* constitutes a legally normative, politically coercive framework for social coexistence based on the reciprocal recognition of freedom between persons; the object of this contract is to determine the rightful balance of spheres of free activity in the sensible world, i.e., to determine property relations (169). The first moment or generic obligation of this contract is the agreement to refrain from claiming the property of others just as they agree to refrain from our own. In order for this contract to be effective, however, *everyone must have property*. Or else, why would anyone enter into it? Property forms the content of the contract, its central motivation. "Therefore," Fichte nonchalantly states, "each citizen

necessarily has property" (169). This is not a descriptive statement but a normative one, a *demand* on the state itself.[52] If an individual has no property, no sphere of free action in the sensible world, then that person has no reason to agree to the contract, no reason to respect the property rights of others. Granted that each individual owns some property, the first agreement of the citizens' contract can be expressed in the following formula: "*each individual pledges all of his property as a guarantee that he will not violate any of the others' property*" (170). Fichte calls this "the property contract," and its content is fleshed out in detail in civil legislation (§18–19). The property contract presumes a solely negative relation between citizens: each person promises to refrain from claiming the other's property—or sphere of free action—on the condition that the other does the same for them. The collateral of one's own property backs up this promise materially; my right to property depends on not denying your right to property, and vice versa.

The second agreement of the citizens' contract is motivated by the gap left open in the first one. Although each has agreed to reciprocally abstain from the other's property, that does not leave either person safe from a third party who violates the property of one. To protect against this, a *positive* obligation is needed on behalf of each person to actually *defend* the property of others (171). Fichte calls this the "protection contract," and its content is fleshed out in detail in penal legislation (§20). While the property contract promises only something negative, restraint, the protection contract promises something positive, protection. The formula of the protection contract is: "I will protect your right, under the condition that you will protect mine" (172). But how does one *prove* that they are willing to protect the property of another? For it is not certain that any individual will actually fulfill the positive duty acquired through the protection contract. Fichte's solution is to identify the existence of the contract with the fulfillment of its duties: forming the citizens' contract means just creating a "protective power" to which everyone contributes (174). This "power" is the state itself. Who does this power protect? Everyone and no one, i.e., whoever's rights are violated, which could be anyone. The referent of the protection contract is thus an "indeterminate concept," a concept "in oscillation" (175). This conceptual *indeterminacy* is actually normatively significant for Fichte. For in thinking through the indeterminate referent of protection, there emerges the concept of a "real whole" or totality (175). The playfulness of the political imagination produces the unity that underlies the social contract itself.[53]

This real bond which unites different individuals into a totality constitutes the materially common will, the object of the protection contract. Fichte compares the structure of the common will to an *organism* (specifically a tree), in which the parts are united for the sake of the whole.

Whereas "nature constitutes herself by bringing all organic forces into a unity," to Fichte, "humanity constitutes itself by bringing the free choice of all individuals into a unity" (181). The political expression of this unity is the state, the unification of separate individuals into a whole. Fichte marks the formation of this real unity within the overall citizens' contract as the "unification contract." This is the means by which the first two contracts are "protected and secured" and in consequence of which "the individual becomes a part of an organized whole, and thus melts into one with the whole" (177). The romantic language of "unity" and "wholes" is not accidental (176). If the state is an organism, then each individual has a role, meaning, or purpose only in the whole, in the state. Isolated human beings are like raw matter, self-interested subjects who act for their own needs; but citizens are like organic material, acting for the sake of a single purpose. Like parts of an organism, citizens act to preserve the whole without even knowing it (181–2). The state is the "real whole" which pledges to protect everyone's property; it thus "validates the property contract," transforming endless individual contracts into a single contract for all citizens with the state (178). By becoming the defender of everyone's property, Fichte's state also becomes the *owner* of everyone's property and regards an injury to anyone's property or right as an injury to itself (178).

In Fichte's theory of right, individuals acquire property only *through* the state, and the state acquires citizens only if it grants them rights to property. As Fichte mentions in a footnote, this differentiates his contract from Rousseau's social contract. Contrary to Rousseau's theory, which begins with the renunciation of possessions, in Fichte's account no one actually 'has' property to renounce before the creation of the citizens' contract (177fnA). Before the contract, all that exists is the transcendental ground of property as the right to a sphere of free efficacy, but this ground does not translate into actual property claims. Only the state can authorize property and so the citizens' contract commences when individuals *receive* property from the state, not when they give anything up (179–80). To clarify what exactly citizens receive in the form of property, I now turn to the details of the *property contract*.

Property Contract

The property contract is the foundation of rightful relations between individuals in the state, the basis of "civil right" or "civil legislation" (183). It is more than a system of laws for recognizing what's mine and yours, and it is more than a set of legal tools for managing scarce resources. Rather, the property contract is Fichte's attempt at providing a normative framework for organizing the political-economic structure of the state in such a way that *everybody can participate* or, put negatively, such that *nobody is*

unfree. As I will show, the purpose of Fichte's right to property is to guarantee that individuals can satisfy their basic needs through labor (185). This is not a formal right based on the possible coexistence of free choice, as it is for Kant, but a material right dependent on the satisfaction of ends, the ultimate of which is life itself. This practically means that every citizen must have property in the form of work, shelter, and sustenance, and it is the duty of the state to ensure this.

In the imagined context of original right, a right to property refers to the transcendentally necessary entitlement of rational beings to have a sphere of free efficacy in the sensible world; in the political context of state right, a right to property refers to the materially necessary entitlement of citizens to acquire a sphere of labor for their own life. According to Fichte's property contract, the state allocates to each person a "determinate part of the sensible world" as an exclusive sphere of "reciprocal interaction" [*Wechselwirkung*] (183). The negative condition of this contract is that one must refrain from violating the spheres of freedom of others, and the positive condition is that one must contribute to defending others against transgressions (183). The sphere of freedom allocated to an individual as their exclusive property includes objects, but these objects do not constitute one's property. As stated before, practical freedom means efficacy, the capacity to act with reasons toward an end in the sensible world. The exclusive use of particular objects is thus justified only relative to these activities and ends, nothing more (183–4). If private property means that an individual has the right to exclusively dispose over a thing at will, then Fichte's citizen *has no private property*—at least not in the sense we think of it.

It may appear as if individuals have only *use* rights and not *ownership* rights in external things, but property rights for Fichte just are rights authorized and allocated by the state to perform certain activities with specific objects for determinate ends. The property contract between citizens and the state authorizes individuals to exclude others from a part of the sensible world and its objects *insofar as and only as long as* one uses this part of the world and its objects for the ends that realize one's efficacy. This means that the property contract grants not rights to things but rights to activities. "The object of the property contract is a particular activity," Fichte writes (184). But what activity can justify the right to exclude everyone else from my sphere of freedom? Or more specifically, what *end* of an activity can justify my right to use a part of the sensible world and its objects as my property? As an original right, property was grounded in the mere subjection of things to my ends (184). Fichte's example was the isolated individual and his dependency on the knowledge and stability of the woods for his efficacy. Already there, we noticed that the purpose of the activity which realized his efficacy and justified his property was the material reproduction of life. Here again, within the state, actual rights to

property are grounded not in one's indifferent freedom of choice but in the necessity of life. Thus, Fichte wonders, "Can all of a citizen's possible ends be subordinated to one, single end?" (184) Unlike Kant, who tries to banish the content of choice from the domain of right, or legal philosophers of the 20th century, who reject any claims about the ends of human beings, Fichte believes there is *a necessary end of all human striving*, one which ultimately justifies property: *my continued existence*.

Fichte deduces this utterly materialist end through a phenomenological account of the futurity of human action. The focus on *time* differentiates Fichte's account from Kant's more spatial theory of property. Whereas Kant grounds property rights in the material limits of the earth, Fichte grounds them in the temporal structure of action. For Fichte, to act *in general* is to seek to bring about a future state in which one's particular ends are realized. This future is not just conditioned by one's present activity, it is *contained within it* (184). This means that the future can affect the present, and nature proves this through the experience of *pain*. When the "continued existence" of my freedom is threatened, I feel pain. Not any pain but the kind of pain that triggers my need to secure my future existence. "This pain is *hunger* and *thirst*," Fichte writes, continuing in an almost psychoanalytic way, "and thus we find that the need for nourishment alone is the original driving force—and its satisfaction the ultimate end—of the state and of all human life and drives" (185).[54] To be as clear as possible, Fichte is saying that, on the one hand, the *need for nourishment* (or the *avoidance of pain*) is the *original driving force* [*ursprünglicher Triebfeder*] of *all* human life and drives *as well as* states and, on the other hand, that the *satisfaction* of this need is the ultimate end [*letzte Endzweck*] of all human life and drives *as well as* states. Ending the pain of hunger, providing sustenance, preserving life—*these* are the original universal ends to which human activity is subordinated and according to which it can be judged. That is to say, for Fichte, freedom must first serve the needs of life before it can elevate itself to a "higher existence" (185). The satisfaction of material needs is thus what justifies the exclusive use of spheres of freedom, distributed to all by the state through the property contract. If property means the right to an exclusive sphere of free activity for realizing one's ends and if "the highest and universal end of all free activity is to be able to live" (185), then the right to property is valid only if it actually allows one to live by means of one's activity. The legitimacy of the state depends on guaranteeing this possibility.

The end of all ends that justifies property in the state is the continued existence of life. It is the material condition for the exercise of efficacy, which the state is obliged to secure for all on account of the property contract. In the following excerpt, Fichte reflects on the inner connection between property and life, eventually concluding that the practical

attainment of the end of property requires the state to guarantee everyone's ability to live from labor:

> 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 exclusively 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. It is a principle of all rational state constitutions: everyone ought to be able to live from their labor.
>
> (185)

To break this down:

1 The property contract permits individuals to possess certain objects only insofar as they are used for certain ends within a determinate sphere of activity.
2 The final end that justifies any particular set of ends and exclusive use of things as one's own is the ability to live.
3 The ability to live is the "absolute inalienable property of human beings" because it conditions one's capacity to effectively carry out future-oriented action.
4 Guaranteeing the ability to live forms the "spirit" of the property contract between individuals and the state, its purpose or mission.
5 Therefore, every state, insofar as it is *rational*, must incorporate the spirit of the property contract into its constitution in order to be legitimate. Formulated as a principle, this entails that

   a everyone should have property which can sustain them; that is,
   b everyone should be granted a sphere of activity with a specific use of objects that allows them to reproduce themselves; that is,
   c everyone should be able to live off their labor.

This is the practical payoff of Fichte's theory of property. The entire sequence of the deduction of right—through the transcendental arguments about self-consciousness, efficacy, individuality, the summons, spheres of action, mutual recognition, original right, coercion, and the commonwealth—leads to a simple but powerful claim about the right to property as the right to live off one's labor. Living off one's labor means having a sphere of activity for oneself that can sustain one's own reproduction in the overall economy of the state. One has a "property right" to this sphere, to this labor. This is not wage labor, or the selling of one's labor as property, but a right against the state insofar as it is obligated to ensure that my laboring activity allows me to live. Fichte believes that this demand is

implicit in the property contract that underwrites the normative justification of the state. In virtue of being a member of a commonwealth, according to Fichte, I have pledged to all other members, who have also pledged to me, that all of our laboring activity should function as a means of life. A primary responsibility of the state is thus to organize the distribution of needs, labor, and goods to ensure that this aim really is met for *all*.[55]

Fichte illustrates the *spirit* of the property contract with a unique example about a tailor in the land of the naked:

> In a nation where everyone goes naked, the right to work as a tailor would be no right; or, if there were to be such a right, the people would have to stop going naked. 'We grant you the right to make such products,' means the same as 'We obligate ourselves to buy such products from you.'
>
> (185)

The point here is that the right to live off one's labor can function not on the basis of individual choice alone but only within the economic relations of society as a whole. In a society based on a division of labor, any individual sphere of activity functions as a means of life only if *others* act in a way that recognizes it and adjusts accordingly. For instance, my right to be a philosopher holds only if others would compensate me for my travails. Does this mean that the state must force people to appreciate philosophy just so that I can survive? Or that I must stop doing philosophy since there is no audience for it? As Fichte later details in his class division of society according to producers, artisans, and merchants, the content of one's labor is determined by the needs for the reproduction of society as a whole (202–6). What one does in one's spare time, however, is up to them. The right to property is thus not a right to a single sphere of activity (and its objects for use) but the right to a balance between spheres of activity that mutually allows individuals to live off their labor. The property contract compels the state to structure the economy such that various forms of labor can coexist in harmony. This means making sure that individuals *can* in fact satisfy their material needs through work, which requires other individuals to act or refrain from acting in certain ways as well.[56] The only political-economic order that can guarantee this, according to Fichte, is a planned one: a *closed commercial state*. I now turn to the political economy of such a state.

Political Economy of Property: Labor, Class, and the Unemployed

In section §19, Fichte deals with the following three questions: (1) What kinds of life-sustaining labor are available to human beings who want to live according to right in a commonwealth? (2) What kinds of property are

necessary for this labor? (3) And what kinds of financial, environmental, and legal arrangements enable it? This empirically rich section is not about property rights in the common sense of the term today but about the proper distribution of labor in society. Fichte deduces the necessary classes of laborers from the basic needs of humanity and the organization of nature; he details the rights of each class and how their activity can be organized in a way that ensures an equilibrium of right between all citizens. In a sense, it is more like *political economy*, the burgeoning field that Fichte was learning about at the time through Adam Smith and others. In this section, I will succinctly lay out Fichte's political economy of property, labor, and class as well as some of its normative and political consequences.

According to Fichte, nature "forces" human beings into free activity through its very organization (188). Nature is organized into kingdoms in which the higher ones eat the lower ones. If humans want to live together, food needs to be readily available. Otherwise, they disperse. Thus, humans must grow food for themselves and their cattle. To "organize" nature for one's own food production is called *agriculture*, and agriculture forms a foundation of the state since it allows humans to be sedentary and live in a community together. For agriculture to function properly, there must be people dedicated to the exclusive cultivation of land, off limits to others so that everything "remains exactly as cultivator knows it to be"—lawful, undisturbed, as their stable *sphere of efficacy* (189). Thus, there must be some kind property in land for agricultural workers, or, as Fichte calls them, *producers*. Similar to how Kant incorporates the spatial conditions of freedom into his theory of right, Fichte recognizes the primacy of land for human existence in his account of right (190). But this importance does not grant anyone a right to *own* the earth.[57] To talk about the agricultural producer's "right to a particular piece of land" means only that he has "the right to cultivate products entirely by himself on this land" and to exclude others from using it or interfering with his use (190). As Fichte demonstrated above, a right to property can be only a right to a specific activity and the objects deemed necessary for carrying it out.

The agricultural producer cultivates land in order to make a livelihood. If he cannot live off his labor, then "a new distribution must be undertaken" by the state, one "that increases his property," as the property contract obliges (190). Furthermore, per the same contract, in order for the producer's own property to be secure, he must contribute to the state's protective power and assistance fund. Once that is done, the "products" of the agriculturalist remain his own, his "absolute property."[58] Fichte also comments on uncultivated land, fallen wood, wild berries, and more, concluding in both a proto-Marxist way (unclaimed land should remain common for everyone's use) and a Lockean way (but uncultivated land should give way to cultivation) (192). Other producers who work with "raw materials" besides

agriculturalists are miners and those who raise cattle. Mining requires special laws ("royal prerogatives") for the appropriation of minerals since no one can own what's underneath the earth; property in animals applies only to domesticated species based on exclusive care and not wild ones.

Fichte's detailed account of forms of labor and their property relations (land, mining, animals, etc.) is important insofar as it reveals the economic issues of his day: to develop a system of property laws for economic growth and equal freedom in a modern state based on a division of labor and new industries.[59] Since all property rights for Fichte are regulated by the state, the state can limit the number of animals slaughtered, the kinds of crops grown, the rate of production, and so on, based on whether or not it allows for the future reproduction of society. This means that *economic and ecological sustainability* are central criteria for every form of labor, every form of property, and every form of production. For instance, Fichte discusses the management of common property (fisheries, forests, and rivers) and the particular norms of use required so that no one's freedom is harmed by the actions of another.[60]

Beyond these "producers," Fichte describes "artists" or "artisans," those who do not possess raw materials directly but who work on them for human consumption. Whereas producers "leave nature entirely to herself," artists "configure the natural parts entirely in accordance with their own concept" (202). For individuals to live off this kind of labor, they must have exclusive rights to pursue these activities, or else the economic equilibrium sustaining them would not function. More than that, some people must desire what these artists make, other artists must refrain from making certain things, and some artists must cooperate to make their products sell better. Artists can form *guilds* to protect their labor, but ultimately it is the responsibility of the state to "calculate how many persons can make a living from each type of work" (203–4). Although one's occupation is a choice, and the economy is commercial-based, there is no "free" market for labor in the capitalist sense of the term. Rather, production and prices are regulated by the state to control the balance of supply and demand, unemployment and surplus.[61]

There are two types of "artists" to Fichte: "those who merely expend their labor but do not own the materials on which they work (*operarii*), and those who do own the materials on which they work (*opifices*)" (203). The first are wage laborers, the majority of workers on the planet today, which would have definitely shocked Fichte since they are dependent on the property of others for their existence; the second are artisans, self-sufficient craftsmen, a group that Fichte probably assumed to be the largest class of the future. Since the artists' livelihood are based on receiving raw materials from producers and selling their products to consumers, the state must guarantee an equilibrium of exchange between producers and artists and also between

artists and consumers, so that no one's life is threatened by underconsumption, overproduction, or economic crisis in general. The workers who oversee these exchanges are called *merchants*, and they are trade specialists who supervise commerce, regulate prices, check contracts, and so on.[62]

How does private property in products of labor fit into this structure? On the one hand, the property contract obligates the state to protect the products of each person after they have made their contributions to the whole; on the other hand, the state must be able to lay claim to one's products in order to balance out the equilibrium of exchange so as to guarantee that all can live off their labor. Hence, a citizen both *has* and *does not have* a property right to their own products of labor. Thus, "the property contract and one of its immediate implications stand in contradiction" (207). To resolve this, Fichte claims, the state must introduce *money*: the form, but not the substance, of the value of property.[63] The idea is that when the state lays claim to a citizen's products in order to balance the equilibrium of exchange, only the *substance* of the value of the product is "needed to sustain life" (207), not the form of value. The state must therefore offer money as a substitute for the form of value in property while laying claim to the substance of property, its use. Money thus solves the contradiction of the property contract, allowing both the state and individual to lay claim to the same object as their own property, but split into substance (use) and form (value).[64]

The property contract requires each person to belong to a specific class of laborers in order to live. Each class expresses a specific sphere of activity for the material reproduction of society, and each class contains its own norms, regulations, and materials. To own property—to be able to rightfully subject things to one's ends, to have a separate sphere of efficacy recognized by others, and to be a self-conscious rational being living with others in freedom—presupposes belonging to a class. For only as a member of a class can one's labor be made consistent with the labor of others. As shown above, the three classes of labor or spheres of property that constitute the economic order of society are producers, artists, and merchants. Fichte's rational state is thus economically structured according to a systematic division of labor with separate classes of (agricultural, mineral, and animal) producers, (independent or employed) artisans, and (civil and private) businessman whose work mediates each other and together provides the needs for the material reproduction of society as a whole.[65] The class structure of society is secured as *property rights* to separate but interlocking spheres of activity for each citizen. Along with a sphere of activity, each individual acquires rights to possess and use things, have a home, and accumulate money. Accompanying these rights, each person also obtains duties of protection to the state and each other. These rights and duties together compose the property contract that justifies the state.

The structure of property relations thus appears in the state as the social organization of labor. Individual rights to subject things to one's ends as property do not exist independently of one's class position in the political-economic structure of society. Property claims are not some pre-social natural right later ratified by an omnilateral authority, and classes are not some arbitrary grouping of individuals according to work preference. Rather, property and class are *reciprocal concepts* since rights to property just are rights to belong to a class. *Class, in other words, is the form of appearance of property*. The social division of labor reflects the ideal structure of property in the state, and coercive rights to property for individuals are conditional upon class belonging. To fulfill the terms of the property contract, the state must allocate protected spheres of free activity to all according to the material needs of society for its total reproduction. Rights to use things as one's own derive from this more fundamental right to belong to a class. Since property is the object of the contract that founds the state and secures the practical freedom of each, the normative validity of the state itself depends upon the successful realization of the property contract and its political economy of labor.

The reciprocally recognized right to a limited sphere of free activity for the satisfaction of needs through labor ultimately fulfills the agenda that Fichte laid out in the beginning of the *Grundlage*: to deduce the conditions of possibility for a finite, practical, self-conscious rational being to know itself as free. The result is that in order to achieve the normative status of being a rational, self-positing, practically free, recognized, and recognizing subject, *I must have property* in the sense of "rights to free action in the sensible world in general" (168). But if having property requires belonging to a certain class, as Fichte argues, then to be a complete "I," I must belong to a class. Class then becomes as transcendentally necessary for the individual as does property.[66] The political-economic structure of the state according to the property contract is thus essential to the development of free individuality. Without property in the form of self-determining labor, I lack the means to be a free cause in the world, to construct the concept of an end and follow through on it, to recognize myself as the agent of a deed, and to respond to the summons from another free being to be self-determining. In short, I am nothing.

At first glance, this may sound absurd. But even if Fichte is wrong to claim a transcendental connection between property, class, and individuality, he is right to recognize such connections in social reality, in which individual status is tied to one's property and class position. For the upshot of his claim is that if one's normative status as an individual is dependent on certain property relations and if property is unintelligible without the concept of class, then changing property relations must entail changing the class structure.

The political and moral consequences of the property contract are stark. If someone is poor or in need, if she cannot sell her product or find work, if she is propertyless, hungry, homeless, or unemployed, then her property contract with the state *ceases*, and she has the right to claim other people's property as her own—*with force*.[67] If one cannot live by the means of labor, then there is no "right" to respect, no reason to oblige by the norms of law, state, or society. It is thus rational to rebel, to steal, to riot. How else will one find bread? There is, of course, another way: the redistribution of property. "To prevent property rights from being destabilized in this way," Fichte claims, "all the others must (as a matter of right and in consequence of the civil contract) relinquish a portion of their own property, until he is able to live" (186). As soon as someone suffers from poverty, unemployment, or any other kind of economically induced *crisis*, the equilibrium of property rights must shift to accommodate the person in need. This person is not just harmed by unemployment but *wronged* by the state, the executor of the property contract, and thus has a coercive right against it. Individuals whose labor or products are unneeded by society thus have an absolute right to assistance from the state through the "repartitioning of property" (186).[68]

If I am without property, without an adequate means of living or an effective sphere of freedom, then what belongs to another rightfully belongs to me until my needs are satisfied. The dialectic of property reveals itself here: what one "owns" as property is valid in terms of right only if everybody else owns property in a way that enables them to live; if not, nothing is anyone's, everything is everyone's.[69] Accordingly, to Fichte:

> Each person possesses his own property, only insofar as, and on the condition that, all citizens are able to live off what belongs to them. If all are not able to do so, then each person's property ceases to be his own, and becomes the property of those who cannot live off their own. (186)

Fichte could not be clearer. Everyone and anyone's right to their own property is dependent on the needs of all others. If *one* single person in the state is unable to live off their property, i.e., to live off their labor, then my right to have anything as my own vanishes. That is an extremely high standard for the legitimacy of property rights, one which, it seems, no modern state can satisfy. We should not forget this political implication of Fichte's property theory.

Finally, to receive assistance in Fichte's state requires proof of effort that one is actually *trying* to work and *failing* at it, something like welfare requirements. This means that the state has the right to "oversee how each person manages his own property" (186). If one is not seeking work, or is

mismanaging their freedom, or is just being "lazy," then one's own property right *disappears*.[70] Fichte's "rational state" is thus an egalitarian but strict *workers' state*.[71] The community of freedom, in other words, turns out to be a society of labor. Fichte's state, however, is not a free market society of dependent wage-laborers working to produce goods for profit but an enclosed state society of independent laborers working to produce for their own needs in coordination with the needs of others.[72] Although the social structure of a free market capitalist society appears to be different from Fichte's closed commercial state, they both seem to revolve around the same social activity: *labor*. This is deceptive, however, for the former kind of labor is constrained by the imperative to be productive and reduce labor time, whereas the latter kind of labor is constrained by the universal right to have a sphere of free activity which enables self-reproduction *despite* productivity or efficiency. Nevertheless, there still seems to be something *off* in Fichte's identification of property with the right to live off one's labor, no matter how different it is from other conceptions of work. Roughly put, what about the freedom *not* to work? It is to this problem I now turn.

Freedom, Leisure, and Absolute Property

If individual freedom requires rights to property, if rights to property are cashed out as class-mediated forms of labor, and if this labor is justified solely according to its role in satisfying social needs, then it seems as though freedom is nothing more than a form of necessary labor.[73] That would be a sad kind of freedom indeed. But what about other kinds of activities that express human capacities independent of material needs, activities like art, religion, philosophy, and politics? In the 1798 *System of Ethics* and the 1800 *Closed Commercial State*, Fichte adds the "higher" classes of administrative, military, educational, and spiritual labor to the state. These so-called "higher" functions, however, depend on the working classes for survival. Although their vocations have intrinsic moral value, they are in fact subordinate in terms of *right* to the laboring classes, for without a secure material basis, the state collapses.[74]

The problem can be put another way. According to Fichte, when individuals join or form a commonwealth, they do so in order to acquire secure (property) rights to a sphere of free activity in the sensible world. These rights to freedom are apportioned to each so that all can adequately, consistently, and interdependently perform the necessary labor of society. Through this form of labor, individuals objectively confirm their inner potential to be the self-positing, rational beings they were originally summoned to be according to the demands of reciprocal recognition. Thus, the exercise of freedom appears identical to the exercise of labor. But socially

determined labor can also be seen as a *constraint on freedom*, for it is a sphere of activity ruled by the laws of necessity, not by the spontaneity of the mind. If freedom minimally means the capacity to construct the concept of an end and follow through on it, then this freedom should not be constrained by any end, not even the ultimate end of biological self-preservation. The exercise of freedom is *more* than just the physical performance of labor, it is also the spontaneous expression of intellectual, aesthetic, moral, and religious sensibilities apart from the material necessities of self-preservation. It thus seems as though freedom and necessity are *too* tightly interwoven in Fichte's state, that rights to property do not enable one's practical freedom but rather constrain one to work in a system of class-mediated, necessary labor. Is there a space for freedom without work, perhaps even freedom *against* work?

Fichte confronted this problem head-on in his late 1812 lectures on right in Berlin, transcribed as the *Rechtslehre*.[75] In these lectures, Fichte updates his concept of *property* to no longer emphasize labor but *leisure* [*Muße*]. That is to say, Fichte delinks the concept of property from the sphere of necessary labor and begins to bind it to the sphere of free time, or "free leisure for any ends."[76] In this new account, the sphere of self-activity that the state allocates to citizens as a form of property is no longer exhausted by one's class-mediated labor for life but rather is expanded to ensure a space of free time in which one can *transcend* the form of labor itself. As a condition of free agency, having property means not just having space but owning time and not just the time to work for one's material needs but the time to develop one's capacity as a human being and realize one's full potential. The temporal character of agency was already a key element in Fichte's deduction of property as a right to free action in the sensible world, but here this element is released from its material bonds and allowed to take on new meaning.

As Fichte declares in his 1812 *Rechtslehre*, the final end of human beings, secured by the state, is "freedom, leisure from imposed labor" (RL 230). But

> this requires *labor* as a *means*; no one enters the state for work, but for the security of freedom. It is a necessary end of the state to make the ratio of total work to leisure ever more favorable, that is, to increase national wealth. Freedom must rise, be expanded. The highest end would surely be that the human being was completely free.
>
> (RL 230)

Foreshadowing Marx's concept of true *wealth* as disposable time,[77] Fichte posits national wealth as directly proportional to the free time rendered available by the rising productivity of labor. The less leisure freed by the necessary labor in the state, the poorer it is, while the more leisure made

possible, the wealthier is the whole (RL 230). This means that everyone should have a right to leisure. The freeing of time for purposeless human activity is brought about by the division of labor, which reduces the work and effort of each while providing more products for all.[78] The right to leisure is not merely an *opportunity* for individuals but a *duty* that the state must provide. To Fichte, the state must organize the distribution of leisure as a time for freedom and self-education, especially for the working class, who otherwise would not have the means to do so (RL 231). Thus, whereas the condition of property is the right to a sphere of free activity for satisfying the needs of life, the end of property is no longer bare life but the spiritual development of free individuality in leisure. The freedom of leisure should be put to use *specifically* to develop one's moral, religious, aesthetic, and philosophical sensibilities as a member of a community of rational beings; that is, it should be used for education. Of course, this cannot be coerced, but it should nevertheless be encouraged.[79] In the 1812 *Rechtslehre* then, a right to property means a right to freedom in the sense of leisure gained through labor (RL 229, 241).

In the 1796/7 FNR, owning property meant the following: (1) primarily, having the right to a job and belonging to a class; (2) derivatively, possessing the tools, land, and skills to carry out one's work successfully in order meet one's basic needs in the closed market state; and (3) the possibility of keeping any surplus for oneself, *relatively* as taxable/recallable goods and *absolutely* as a home and money. The obligations on the part of the individual in the property contract is that she actually works, that her possessions are her collateral, and that she protects the property of others. In short, she must follow the laws of the state. The normative justification of this contract is that it satisfies the conditions of right by formalizing the relation of reciprocal recognition between free beings, and the transcendental justification is that it satisfies the conditions of reason by securing a sphere of efficacy for each. In Fichte's 1812 *Rechtslehre*, however, owning property means something more: (4) possessing the right to a sphere of leisure, guaranteed by the state, in which one has the time to pursue one's ends free from any material constraints. The state must not only secure this leisure time for individuals but provide the means so that one can make proper use of it. This means *education* in the form of moral, religious, aesthetic, and philosophical tools for self-improvement.

Furthermore, Fichte writes, the leisure which potentially results from labor is actually the true *value* of labor, and the state must secure this potentiality for everyone (RL 241). In the FNR, the value of labor was understood to be expressed in the utility of its products. The *substance* of value was taken to be inseparable from the products of labor since they provide the sustenance of life; the *form* of value, however, could be separated from these products and represented as money. Here, however, Fichte

sees the true value of labor not in the actual meeting of needs but in the potential to liberate free time for the moral development of individuals. Since the fulfilment of the property contract is the object of the state and since the property contract is now geared toward the procurement of leisure, the state must therefore work to secure leisure for all. Of course, as Fichte makes clear, leisure is secured only *after* one's necessary labor is finished. But, so Fichte dreamed, the rising division of labor will soon reduce necessary labor time to a minimum so that one can spend most of the day devoted to the leisurely development of one's spiritual and moral capacities. As Marx in 1857, Keynes in 1930, and many others imagined, the freeing up of time made possible by the mechanization of labor is perhaps the truest freedom of all.[80]

Initially, Fichte's concept of *property* in the rational state translated into the coercive right for each person to have a class-specific form of labor within the overall economy in which to satisfy the needs of life. This sphere of labor fulfilled some condition of self-consciousness for rational beings, namely the possibility for identifying one's own efficacy in the sensible world by securing the epistemological, ontological, and material conditions of action. The final end of property was life itself since the whole drama of self-consciousness, efficacy, and reason is worthless if one's material existence in the sensible world is threatened. Practical freedom thus required a social order in which one can *own necessity* so to speak, and this meant constructing a political economy of property relations as rights to labor. In the *Rechtslehre*, however, the point of property expands beyond owning necessity into possessing leisure. While leisure presupposes work, and freedom presupposes necessity, the final end of property no longer lies in securing the grounds of existence but in reducing labor time to a minimum so that individuals can pursue whatever ends they so desire. But where did this change of heart come from?

The seeds of this development can already be found in the *Grundlage* with the concept of *absolute property*.[81] This idea refers to the property that remains for oneself after the products of labor are taxed, held, or redistributed by the state in order to maintain economic equilibrium. Such property is *absolute* insofar as the state has no right to expropriate it. In fact, the state is obligated to protect it. Absolute property in the form of private goods for consumption is a result of labor; it is a surplus allowed to individuals in the form of physical goods or money. For the state to protect one's absolute property, however, it needs a simple way of distinguishing between what rightfully belongs to whom. This is not so difficult with those things that people immediately use and consume, for they are associated with one's body. As the first sphere of freedom, the body is inviolable and irrevocable, and whatever is associated with it is thus protected. Yet nobody (*except the Lazzaroni!*) carries around with them

everything they possess, particularly the things that are not for immediate use (211). Therefore, Fichte claims,

> there must be some kind of surrogate of the body, through which whatever is linked with it is designated as my property. We call this a *house*. (Housing[82] in the broadest sense of the word: the room someone has rented, the maid's dresser drawers, the suitcase given to the post office, and the like).
>
> (211)

The house, in the broadest sense of the world, is the paradigm of absolute property, for in it, everything is under my control, free from private or state interference—within the bounds of right. This includes *furniture*, *clothes*, *money*, and *valuables* since one can do whatever one likes with them, including destroy, discard, and sell them—as long as it does not ruin the maintenance of one's material needs or the needs of others. Housing is thus a form of property guaranteed by right that lies outside the economic logic of the state. One's home is not the source of freedom, for that lies in reason and recognition, but it is a space in which to enjoy it, to use it for whatever one so desires. "Within my house, I am sacred and inviolable, even as far as the state is concerned" (211). The limits of my home are the limits of my absolute property.

Already in 1797 then, Fichte argued that the state has an obligation to secure a *free space* for individuals to pursue whatever ends they so desire, separate from the sphere of labor, given that one performs the required work duties first. This free space in the form of housing constitutes one's absolute property. It is, in other words, *spatialized leisure*. Absolute property as housing is therefore Fichte's first sketch of freedom in the sense of *leisure gained through labor*. In the *Grundlage*, having a home is an important part of being a member of the community of right, but it is not the *end* of property. The end of property is the preservation of life mediated by labor. Having a home is a byproduct of that goal, and the freedom it encases is strictly delimited. In the 1812 *Rechtslehre*, however, time itself becomes a form of absolute property, a protected and inviolable sphere in which to pursue whatever ends one desires. In fact, Fichte explicitly identifies "absolute property" with "free leisure":

> The absolute property of all is their free leisure for any ends, after they complete the work for the state and themselves. What actually comes out of the whole right of property is what lies beyond work, leisure. This is absolute property and each has property only in so far as he has leisure. To secure this is the ultimate purpose of the property contract.
>
> (RL 229)

The final end of Fichte's property contract is to secure leisure for all. The right to property is not merely a right *to* work but a right *not* to work. That is, state-secured property rights are justified as long as they procure leisure time and reduce labor time for all. A precondition of this end is the physical maintenance of oneself and the state through labor. But the achievement of this end is found in the transcendence of labor. Although the paradigmatic form of absolute property is the *home*, as an unregulated space for free activity, the real content of absolute property lies in a particular relation to *time*. In a formula, it is *to make a home out of time*. To bring it altogether: if everyone has a right to property and if the end of property is maximal leisure time, then we should be able conclude from Fichte *that everyone has a right to maximal leisure time*. Over two hundred years later, this demand is as radical as ever.

Conclusion

I now conclude this chapter with a review of Fichte's theory of property as a whole along with some reflections on its political implications and its relation to Kant and Hegel.

Fichte first justifies property from reason alone as the original right to an epistemologically, ontologically, and materially stable sphere of free efficacy in the sensible world. This abstract right to possess and use things for one's own efficacy, free from disturbances by others, is transcendentally grounded in a necessary condition of self-consciousness, which entails that one recognize one's own freedom in the world by changing it, namely by constructing the concept of an end and following through on it. Only then can one objectively identify oneself as the cause of action, thus confirming one's own efficacy. Furthermore, the objective confirmation of efficacy lies not in performing *any* action whatsoever but only in those actions which reflect one's self-positing nature and safeguard the material conditions of freedom, life itself.

This first justification, however, does not ground any actual claim to subject things to one's ends as one's own. In order for any such claim to be valid in terms of right, it must take into account the freedom and consent of others, and the power and authority to universally enforce that claim. Such qualifications can be fulfilled only in a commonwealth. Hence, Fichte's second argument, in which he embeds the transcendental ground of property within the normative, social-political framework of the state. To legitimize the 'original right' of property as a normatively binding, legal right between free persons, Fichte appeals to the structure of reciprocal recognition. For the principle of right entails that each limit themselves for the sake of freedom of another. This self-limitation at the heart of right is achieved through the reciprocal recognition of one another's sphere of

freedom. This sphere is exhausted not by one's body but by the activities and objects needed for the continuance of life itself, the material condition of freedom. In order to secure these separate spheres of free activity constituted through mutual recognition, individuals must agree to join together into a common will to protect each other's property. This property contract grants coercive rights for all individuals to exclusive spheres of activity within the overall economy of the state, thus allowing the freedom of each to be reflected, recognized, and secured. The right to property in the rational state is expressed as the right to a sphere of labor for the purpose of self-reproduction, and derivatively, it includes whatever objects are necessary for this end. The division of property into classes of labor is determined by the material needs of society as a whole. Beyond objects for work, property also exists relatively in the form of recallable goods and absolutely in the form of money and the home. Once the property contract is organized into a system of political economy, the division of labor should reduce labor time to a minimum, thus freeing up time to pursue one's own self-development through education.

Fichte's theory of right is thus a transcendental theory of the social and practical conditions of free agency in the sensible world. This theory entails *rights to property* as universal rights to secure, stable spheres of free action within the state; the actualization of this right takes place by means of the state's allocation, distribution, and protection of forms of labor as the means of life. The *property contract* specifies various kinds of property as historically determinate modes of labor. If determining the rights and limits of property means legally authorizing a division of labor geared toward the self-reproduction of individuals and society as a whole, then property relations for Fichte just are *class relations*.[83] I call these *class* relations because class names the material division of society into separate laboring groups depending on one's relation to property.[84] For Fichte, *as well as for Kant, Hegel, and Marx*, one's relation to property is a fundamental indicator of one's measure of freedom. For Fichte and Marx, the access to and control of *property* is access to and control of *labor*, which means the access to and control of the *conditions of freedom*. Freedom, property, and class are inseparable for Fichte, as for Hegel and Marx. In short, practical freedom is dependent upon transcendentally grounded yet normatively justified rights to property, and these rights are reciprocally recognized and collectively authorized as class-dependent spheres of labor for life and leisure.

To pull back a bit from the text to the context, Fichte's political and economic philosophy can be seen as a response to the decay of feudal empires, the rise of capitalist industry, the appearance of propertyless workers, and the ambiguously proto-socialist revolutionary movement of his day. Fichte's childhood poverty and his sympathy for the French Revolution influenced his philosophy, giving it a radical egalitarian tinge. His theory of

property is explicitly aimed at expropriating feudal landowners and putting ownership in the hands of all those who work and at the same time giving assistance to all those who cannot.[85] In placing such high demands on the state, in particular the right to property as the right to live off one's labor (and later the right to free leisure), he unwittingly provided the resources to criticize any and every modern state which fails to live up to its concept. His idiosyncratic theory of property, money, government, and trade has led people to call him a socialist,[86] liberal,[87] fascist,[88] liberal socialist,[89] Keynesian,[90] and economic nationalist.[91] Although Fichte's work has been appropriated by a wide array of political tendencies, it is still unclear which view, if any, is most in line with Fichte's own intentions.

In my reading, the normative and political implications of Fichte's theory of right and property provide a unique synthesis of individualism and socialism: *individualism* since the purpose of Fichte's foundations of right is to secure the practical freedom of the individual in relation to others and *socialism* since this relation is realized only through organizing property, labor, and leisure for all. Let me briefly compare this with two other readings of Fichte. According to Frederick Neuhouser, the aim of the state for Fichte is to promote and respect its members' *individuality*, including the capacity for individuals to be *conscious* of themselves *as* individuals.[92] While this reading correctly flags the key roles that individuality and self-positing play in setting up the framework of right, it leaves out how this framework is fleshed out by means of social-normative concepts like *reciprocal recognition*, *self-limitation, equilibrium*, and, above all, the *property contract*. Fichte is clear that individuality can exist only within a political order based on the reciprocal recognition of property as the right to free action in the sensible world since only by means of this free action can one satisfy their needs of survival, the ultimate end of property (185). If one takes individuality as the core of Fichte's theory of right, then it may seem like rightful relations can flourish only in a liberal state. For in a liberal state, citizens have private spheres in which to posit themselves as distinct individuals with rights.[93] Yet Fichte's state is not simply a liberal one. It is not anti-liberal per se but rather goes beyond the individualist model of the liberal state which relies on the market for distributing property and labor to each.

David James also criticizes Neuhouser for categorizing Fichte as a political liberal. The problem with such an approach, according to James, is that it interprets the concept of right in "abstraction from its application to the conditions of the sensible world" (i.e., apart from part two of the FNR on *Applied Right*). In that section, property rights are strongly curtailed in favor of satisfying social needs.[94] James thus interprets Fichte's theory of property as a *critique of liberalism*.[95] This would, however, assume that "liberalism" already existed in 1796. It is rather more likely that Fichte

developed his own unique account of freedom, right, and property in a way that transcends dichotomies between liberalism and socialism. For instance, Fichte's *Closed Commercial State* (1800) challenges the idea of any straightforward liberalism, edging closer to a blend of proto-Keynesian and state-socialist models of economic development.[96]

As I have tried to show here, Fichte's theory of property leads him first to propose a class structure in which the state protects one's right to work and guarantees one's satisfaction of needs through the regulation of exchange and labor. In return, each must contribute portions of their property to the state for social assistance and the protective power. Each agrees to refrain from claiming the property of others and even help protect the property of others, all in order to secure a sphere of free action for each. But if you are propertyless, poor, or unemployed, then your contract with the state is broken, the right to property has no authority over you, and you have the right to reclaim the property of others. The theory then changes from a justification of property rights to a vindication of class struggle. Furthermore, Fichte's own deliberations on the end of property evolved from securing the means of life to liberating the freedom of leisure. These two ends, however, should be seen not as antithetical but as complementary. For only in a society where the needs of life can be secured for all, that is, only through a particular social organization of property relations, can leisure be enjoyed by everyone. The potential for universal basic leisure is already here, as Fichte thought it would be, it is just not very evenly distributed.

Fichte's state is thus not the Kantian state. Of course, Fichte's concept of property shares certain elements with Kant, particularly its ground in the conditions of practical reason, its necessity for external freedom, its connection to the spatial and sensible character of willing, and its overall role in the justification of the state. Both separate *right* from *morality*, and both provide two justifications of property: one metaphysical (in relation to oneself) and one normative (in relation to others). And although Fichte goes further with his egalitarian values and his socialized account of freedom, both he and Kant are anti-absolutist, republican, gradualist reformers.[97] But Fichte also departs from Kant in key ways, specifically his focus on the intersubjectivity of individual self-consciousness, his understanding of *right* as the reciprocal recognition of spheres of freedom, and his emphasis on embodiment, human needs, and the temporal aspect of willing. Fichte further differentiates his theory of property from Kant insofar as he takes the object of property to be an activity, interprets property rights as rights to live off one's labor, and denies even a provisional right to property outside the state. Lastly, Fichte distinguishes himself with his voluntarist account of the social contract, his unabashed defense of distributive justice, and his proposal for a closed commercial state mediated by laboring

classes with rights to work, housing, and leisure. Important for my argument is that Kant and Fichte both take property to mean something more than just a legal relation between persons or an economic tool for welfare maximization. Rather, the concept of property has broad normative, social, metaphysical, and political consequences for understanding and achieving human freedom. The difference lies in *how* property binds people together in each account. For Kant, claims of possession normatively and spatially bind individuals together to found a joint political order which can authorize rights to mine and yours for all. For Fichte, property rights bind human beings together in reciprocal recognition of each other's need for a sphere of freedom in which labor and leisure are guaranteed.

In the *Doctrine of Right*, Kant asks about the *metaphysical* and *normative* possibility of a right to property, and he realizes that this cannot be answered without recourse to social, material, and political concepts. In the FNR, Fichte asks about the *transcendental* and *normative* ground of property rights, and he realizes that this cannot be answered without recourse to a philosophical anthropology of life and a political economy of labor. What neither Kant nor Fichte can grasp is that the right to property is not merely a conclusion to an *a priori* deduction from principles of pure reason but a result of a moral and metaphysical struggle between vulnerable beings over how to authorize each other's claims to be who they take themselves to be. To understand this, we must turn to Hegel.

Notes

1 The second, "applied" half of Fichte's text appeared in late 1797, after Kant's work. In this chapter, I use Baur's translation of Fichte (2000). Note that I often update the translation to be more accurate. For the German, I use the Felix Meiner Verlag edition (1979). When referencing Fichte's FNR in the main body of this chapter, I will cite *only* the page numbers in parentheses unless otherwise indicated.

2 On Fichte's *Foundations of Natural Right*, see the compendiums edited by Merle (2001a), Rockmore and Breazeale (2006), Gottlieb (2016), and James and Zöller (2016). On Fichte's account of property in particular, see Merle (2001b, 2016), James (2011, 2012), Martin (2016), and Wood (2016a, 2016b) as well as the references to property in B. Merrill (2006), Skees (2009), and Neuhouser (2016). On the concept of property in Fichte's *Closed Commercial State*, see Nakhimovsky (2011), especially Chapter 4. On the concept of property in Fichte's 1812 *Rechtslehre*, see James (2012).

3 On the similarities and differences between Kant and Fichte's theories of right and property, see Nuzzo (2016), Wood (2016a: 256–8), and Merle (2016: 206–9).

4 Nuzzo (2016: 13) argues that Kant's starting point is the metaphysical (rational and *a priori*) *concept* of right, independent of its bearers, and thus it needs to be *applied* to human nature. Fichte's starting point, on the other hand, is individual self-consciousness in its free action, with *right* being its transcendental

condition of possibility. This underplays, however, the role of Fichte's own 'application' of his theory to the sensible world. On this point, see James (2011: 5–12).

5 Kant's duty to leave the state of nature (or, rather, right to constrain neighbors to form a civil condition) is not a *legal* duty but a "rational duty" based on a *postulate* of reason (i.e., an indemonstrable claim attached to the unconditional *a priori* validity of a practical law). For Kant, private rights (to property) accord with the principles of practical reason but are only *provisionally binding* outside a condition of public right. I will come back to Fichte's conditional duty to enter a community of right.

6 FNR 183–4. See also Fichte's *Closed Commercial State* (2012: 92–3).

7 FNR 189–90.

8 On acquiring land in Kant, see Chapter 1.

9 Kant 6:230.

10 FNR 186. Note that this refers not to the so-called "right of necessity" but to the right of property itself!

11 This is similar to Kant's welfare provision for the needy (6:326) and Hegel's redistributionist policies for the propertyless (PR §240–245). Fichte, however, makes a much stronger case than both.

12 The state's duty to guarantee that each person can meet his or her needs through labor even trumps the duty to protect individuals from harm, a standard justification for state authority.

13 On Fichte's "radical critique of capitalism," see Saito (2015: 36–41), James (2011: 56–86), and Nakhimovsky (2011: 5).

14 This is only a structural overview and so the concepts discussed (e.g., recognition and right) will not be clear or justified until I proceed through the argument of the text itself.

15 For two recent attempts to bring the *Rechtsphilosophien* of Kant, Fichte, and Hegel together, see Wood (2014) and James (2023).

16 On self-positing in Fichte, see Neuhouser (1990: 66–116), Martin (2016: 165–7), and Wood (2014: 166–81; 2016: 29–64).

17 See Fichte's 1794 *Science of Knowledge* (1982: §1). The introduction to the FNR (3) restates this point.

18 Wood (2016b: 172).

19 Neuhouser (2016: 42–4) convincingly argues that Fichte's idea of having a "concept" of right is identical to having the "relation" of right, thus solving the puzzling problem of why needing this one concept is so crucial to the possibility of self-consciousness. The reason is because it is not just a concept but a normative relation to other rational beings that determines one's own self-relation. See also Nance (2012) on the metaphysical and normative interpretations of Fichte's deduction of the concept of right.

20 On why positing myself as rational presupposes ascribing rationality to other beings for Fichte, see Kosch (2021).

21 On the *summons* in Fichte, see Kosch (2021), Gottlieb (2016), Nance (2012), Bernstein (2010a), Wood (2016a: 91–100), Siep (2014: 76–84), and Honneth (2001).

22 On the summons as *upbringing* of self-consciousness, see Gottlieb (2016).

23 On the difference between Fichte and Hegel's concepts of recognition, see Siep (2014: 73–5, 82–4). The main difference, according to Siep, is that the structure of recognition for Fichte is fixed by reason alone and then applied to human relations as such, whereas for Hegel, the structure of recognition takes different

forms for different social and normative relations, each of which develops historically. Furthermore, Fichte's transcendental account of the necessity of recognition for self-consciousness is complicated or even contradicted by his voluntarist account of the social contract, which relies on self-interest alone. Hegel, however, incorporates recognition into every institution of the state, making it not just transcendentally necessary but normatively necessary as well. For a different take on the relation between the two, see Wood (2014: 214–28). In my reading, both Fichte and Hegel determine the concept of right to be a relation of recognition, and both take the right to property to be a normative consequence of said recognition. Yet for Fichte, recognition is directed toward the freedom of each being, and it is spurred through the summons to act in one's sphere, whereas for (the young) Hegel, recognition is directed toward the vulnerability and dependency of each individual will, and it is spurred through the moral injury of possession. Above all, what I hope to show is that the concept of recognition in Fichte and Hegel is inextricably tied to that of property and right.

24 In Kantian language, this would be *negative* freedom (independence), *positive* freedom (autonomy), and *external* freedom (freedom of choice). Fichte's account of freedom as the ability to act from reasons is very Kantian here. The difference for Fichte is that what counts as *reasons* for action is (explicitly) social or intersubjective.

25 I skip over the argument about how to know *what* to recognize as free and rational. For Fichte, the criterion is straightforward: whatever appears as a *human body*. The *shape* of the human body itself is itself a sign of freedom, for it reflects the self-fashioning of humanity from incomplete animality into a purposive organism. (FNR 74–9). The human body thus delimits the *first* sphere of action. On Fichte's theory of embodiment, see Bernstein (2010a), Russon (2016), and Nuzzo (2006).

26 For Kant, right names the universal law for the coexistence of external freedom, and although it is deduced from *a priori* principles of practical reason, it is not a *condition* of individual self-consciousness, as it is for Fichte.

27 Similarly, if one looks at Hegel's early *System of Ethical Life* and Jena *Philosophy of Spirit*, the concept of recognition also arises within a discussion of possession, exchange, and rights to property. As I will explore in the next chapter, property—and not *love* (Siep 2014: 86)—forms the first paradigm of recognition.

28 On Fichte's complicated relation to social contract theory, see Moyar (2016).

29 I will not discuss Fichte's deduction of the right of *coercion* in detail, but suffice it to say that it follows a modified contractualist strategy. In short, violations of one's original rights justify coercion against someone who does not subject himself to the law of right. To apply the right of coercion in a way that does not destroy the trust and recognition between free beings requires alienating one's power of judgment to a third party, a union of wills that acts with power and authority according to norms of right formalized into positive laws. Consenting to this union simulates a "contract," the main condition of which is *mutual security* of each. See FNR 88–99.

30 See FNR 102: "An original right, therefore, is a mere *fiction*, but one that must necessarily be created for the sake of a science of right."

31 Fichte develops the definition of original right as "the absolute right of the person to be *only a cause* in the sensible world" (103) with help from Kant's table of categories. In terms of quality: it is the capacity to be an absolutely first

cause. In terms of quantity: it is infinite. In terms of relation: it is causal. In terms of modality: it is necessary. See FNR 102–3.

32 A world in which nature is not predictably stable, a world of rapid anthropogenic climate change like our own, may challenge this assumption about the condition of free action; but it may also confirm it. On how to think about climate change and the question of human action, see Blumenfeld (2023a).

33 In §12–13 and §18–19, Fichte abandons the methodological fiction of individual "original rights" and instead takes up socially mediated "coercive rights" (i.e., rights within a political community). In a political community, the legitimacy of property rights lies within the reciprocal recognition of persons, not in any transcendental sources of reason.

34 It makes sense to call this "possession" and not property, since actual property claims for Fichte are based in reciprocal recognition (117). In §12, Fichte speaks of possession *becoming* property, stating that whereas possession is valid for oneself only in the "imagined context of original right," property is valid when individuals come together to mutually declare and recognize each other's claims (117–8).

35 See the following statements by Fichte: "All property is grounded in the unification of several wills into one" (117);

> As soon as the human being is posited as being in relation to others, his possession is rightful only if it is recognized by the other; and only in this way does his possession acquire an external, shared validity, a validity that—at this point in the analysis—holds only for him and for the other who recognizes it. (117)

"All property is grounded in reciprocal *recognition*, and such recognition is conditioned by *mutual declaration*" (117); "Thus property in a *particular* object—and not just the possibility of possessing something in general as one's own—is valid only for those who have recognized this right to property amongst themselves, and no further" (118); "Thus no property is certain, no property is thoroughly secure for the purpose of external right, unless it is recognized by the entire human species" (118); "All property rights are grounded in the contract of all with all" (186).

36 On original rights as necessary but insufficient for free efficacy, see Merle (2001b) and Martin (2016). Some other conditions of free efficacy are recognition from others, positive law, and a division of labor.

37 Perhaps Fichte is the first ecological rationalist.

38 The picture is a bit more complicated with Hegel, as I will show in the next chapter. But it is true in regard to the initial description of the will in the *Philosophy of Right*. See Hegel, PR §4–39.

39 It is of course a strong claim to say that Fichte, the proverbial subjective idealist, is in fact an anthropological materialist. To justify this more fully would require developing Fichte's theory of life, his materialist conception of the body, and his account of political economy. In this book, I will only go into the last topic. On Fichte's materialism, see B. Merrill (2006) and Bernstein (2010a).

40 Wayne Martin (2016: 164) argues that private property for Fichte is a necessary but insufficient condition for a subject to posit itself as self-positing. Martin translates *Wirksamkeit* not as efficacy but as *work* (i.e., the work it takes to change the world in accordance with owns ends). Martin's claim is that the specific "gambit" normativity (2016: 167) of Fichte's self-positing subject can be gained only through *work* and that the subject requires a sphere of efficacy

or domain of property on which to work in order recognize itself. "Property, on this account, is first and foremost a piece of the world on which the I can *work*. And it is only by working that I can recognize myself as free" (2016: 170). Although Martin's analysis is helpful in distinguishing the various threads of Fichte's argument that come together in the "ground of property rights" (self-positing, freedom, and work), he ends up with examples of property that do not seem to fit with Fichte's own later application of his concept. To Martin, Fichte's account of property is based on an auto-predicative theory of subjectivity in which the subject posits itself to exist in a certain way and then requires objective confirmation of this positing through working on the world and recognizing oneself in this work. The part of the world in which one works to confirm one's own claim of existence is thus one's "property." Or, in Martin's play on words, it is one's "owndom" [*Eigen-tum*], the kingdom-like domain where one recognizes oneself as who one thinks one is. The two examples of this kind of possession he uses are (1) an emperor positing himself as emperor who needs to possess an empire in order to confirm his self-positing and (2) a soccer player who "possesses" a ball in the game and thus confirms himself as the player of soccer. These examples are clever, but they fail to grasp the function of property for Fichte. It is not just to recognize oneself as who one claims to be, and nor is it to constrain oneself according to one's own rules of action. Rather, the function of property is to secure an epistemologically and ontologically stable relation to an exclusive sphere of activity tied to a piece of the sensible world for the continued existence of one's life. It is based not just on confirming one's idea of oneself as free but on securing the needs for reproducing oneself in order to be free. That is why Fichte's own examples of property are always about different forms of labor, means of labor, and products of labor. Property is always tied to those kinds of activities necessary for continuing one's existence, not any activity. The ground of property lies not in any end but only in ends that condition one's practical and living efficacy.

41 As Fichte writes (111), "Every relation of right between particular persons is *conditioned* by their reciprocal recognition of one another, and is also fully *determined* by such recognition."

42 FNR 70–9, 112. See also note 25 in this chapter.

43 FNR 114. This phrase also foreshadows Marx's description of the struggle to determine the working-day in *Capital*: "There is here, therefore, an antinomy, right against right, both equally bearing the seal of the law of exchanges. Between equal rights force decides" (Marx 1990: 344). Why this similarity? I think it is because they are both describing the *limits to right in the form of property*, which, if not resolved in speech, can be decided only by force.

44 See Kant's 3rd duty of right (6: 237) and the Postulate of Public Right (6: 307). This is not a *legally binding duty* for Kant, for duties are binding only when authorized by public right. The point is that rights (to property, above all) are both *necessary* for the coexistence of freedom and yet *unintelligible* without a commonwealth. Fichte agrees with Kant that private rights are meaningless if not underwritten by the state, but he does not think that individuals *must* live in freedom. Choosing unfreedom, though paradoxical, is possible. For Kant, it is not just paradoxical but self-contradictory. While Kant's position is more coherent (if freedom is relational, then opting out is not really a 'free' choice), Fichte's voluntarist position has something appealing about it, namely the idea that living in a state, although unavoidable, is not inevitable.

45 To some, this could seem like a justification of *contract*, not property (Kant 6: 271–7; Hegel, PR §72–81). For Fichte, however, the unification of wills into one emerges not only in contracts but already through the reciprocal recognition that validates any individual right to exclusive possession.
46 Fichte believes the most natural way to designate property in land is through "fences and ditches," which makes it impossible for animals to enter, and reminds people that they ought not to.
47 This is, however, true only if states are not at war, which they almost always are. But war is not compatible with right anyways.
48 On property in the *Closed Commercial State*, see Nakhimovsky (2011), Merle (2016), and James (2011). There are two other relevant texts in the practical development of the theory of right and the concept of property: *The System of Ethics* (1798) and the transcribed *Rechtslehre* lectures (1812).
49 *Staatsbürgervertrag* is translated as "civil contract" by Baur.
50 See FNR 184: "The object of the property contract is a particular activity." This claim is even stronger in Fichte's *Closed Commercial State* (1800):

> I have described the right to property as an exclusive right to acts, not to things… Hence, it is free activity that is the true object [*Gegenstand*] 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.
>
> (CCS 93–4)

"Our theory posits the first and original property, the basis of all others, in an exclusive right to a determinate free activity […] In our theory there is no property of land [*Boden*]" (CCS 130); "The basis of all right to property, it follows, is to be placed not in the exclusive possession of objects [*Objekten*], but in the right to exclude others from a certain free activity reserved for ourselves" (CCS 132).
51 See Macpherson (1962). Steven Smith (1989: 82), for example, labels Fichte a "textbook case" of possessive individualism—wrongly, in my eyes. Instead of seeing Kant, Fichte, or Hegel as "possessive individualists," one could read them as complicating the very category itself. For possession to them is inherently non-individual, and individuals can never fully possess themselves. Rather, their relational theories of property are all about mediating individuality and sociality in normatively complex ways that require incorporating recognition of another's status into the very determination of oneself as free.
52 Fichte's argument about the necessity of property is repeated in the 1798 *System of Ethics* (281–2):

> Every human who has arrived at the age where he is able to use his own reason ought to possess some property. The proof of this is contained in what was said above. He must be able to act freely; his action necessarily proceeds from certain starting points, certain objects in the sensible world, which are the first tools of his activity; but these tools must not belong to anyone else but him, because otherwise he could never be sure that [in using these tools] he would not be disturbing someone else's freedom. That everyone possess some property is, first of all, a concern of the state. Strictly speaking, there is no rightful property in a state in which even a single citizen does not possess some property ('property' in the proper sense of the word, in which this term signifies an exclusive sphere for free acting in general, and thus designates not only objects but (IV, 296) also exclusive rights to engage

> in certain actions). For each person owns his property only to the extent that this has been recognized by everyone else; but they cannot have recognized this unless he in turn has from his side recognized their property; and therefore they [all] have to possess some property. A person without property of his own has not renounced the property of others, and he is fully justified in laying claim to the latter.

53 See FNR 176. Fichte's point is Kantian in two senses: on the one hand, as with Kant, the imagination cannot help but develop a concept of a purposive whole to unify particulars; on the other hand, the indeterminacy of right in the state of nature makes everyone into a potential aggressor. Only by unifying wills into a whole with the authority to validate property can the indeterminacy of right be overcome.

54 Fichte adds that, "This is true, obviously, only so long as the human being remains entirely under the direction of nature and does not elevate himself through freedom to a higher existence" (185). He thus leaves space for the higher needs of spiritual, moral, and intellectual activity, which he covers in the *System of Ethics*. Here, however, he is concerned only with justifying the use of freedom in the property contract, not with all other activities.

55 Fichte confirms this in FNR 185: "All individuals have entered into this contract with all individuals. Thus all have promised to all that their labor really ought to be the means for attaining this end, and the state must make arrangements to insure this."

56 The property contract also has three *general* duties: (1) Everyone must declare to everyone else "how they intend to make a livelihood." (2) The state must allow everyone to work for their own declared livelihood, insofar as it fits within the total economy. (3) Since "the end of all such labor is to be able to live," each and every person must be willing to give up parts of their own property to help those in need. Absent those conditions, the property contract between individuals and the state is invalid. See FNR 187.

57 See FNR 190: "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."

58 FNR 191. I discuss "absolute property" more below.

59 Hegel does something similar in his account of the "system of need," which I discuss in the next chapter.

60 See FNR 196–201. On commons and fisheries in particular, see Ostrom (1990).

61 On economic planning in Fichte, see Nance (2019).

62 On merchants, see FNR 204–6.

63 On Fichte's theory of money, see Eich (2022: 76–104).

64 As one can see, the beginnings of a dialectic between *use-value* and *exchange-value* in private property and money are present here but not yet developed in all their inverted ways as they will be by Marx in the beginning of *Capital*. See Marx (1990: 125–77).

65 On Fichte's class structure of the state, see also Wood (2016a: 283–4).

66 Gottlieb (2016) distinguishes between two conceptions of individuality in Fichte: the *individual human being* responsive to reasons in the form of the summons and the *political individual* capable of engaging in relations of reciprocal recognition in society. It would make sense to say that the transcendental necessity of property and class for individuality only refers to the latter kind of individuality, the *political* individual. And yet I want to say more. For although Fichte's

account allows one the choice to not enter a political community, one's individual status as a free rational being would still be incomplete, partial, lacking in substance. To be a full I requires a recognized sphere of free activity, or property, and that can be granted only through the property contract, which lays out a specific class structure for ensuring that everyone can live off their labor.

67 Fichte makes this clear in FNR 186:

> If someone is unable to make a living from his labor, he has not been given what is absolutely his, and therefore the contract is completely canceled with respect to him, and from that moment on he is no longer obligated by right to recognize anyone else's property.

68 See also: "[T]he poor (those, of course, who have entered into the civil contract) have an absolute right of coercion to such assistance" (FNR 186).

69 This may sound Hobbesian, but it is more Hegelian or even Marxian. Like Hegel's rabble (PR §244) or Marx's surplus population (1990: 781–802), Fichte's unemployed are both outside and inside *right*. Fichte is saying that, in virtue of the property contract which justifies the state, anyone who is *propertyless or without a job* has a coercive right to take what they need from others, *unless or until they receive adequate property or work from the state*. This is a right not to harm other people's bodies but rather to expropriate their moveable property or land. This does not return one to a *state of nature*, for it takes place within a context of right, but rather reveals a kind of *social* state of nature within the contours of the modern state itself. On "remnants of the state of nature" in civil society, see Hegel, PR §200R.

70 See FNR 186:

> The principle that has been established is this: everyone must be able to live *off his labor*. Therefore, the ability to live is conditioned by labor, and *there is no right to be able to live if this condition is not fulfilled*.
>
> (emphasis mine)

71 See FNR 186–7: "Just as…there ought to be no poor people in a rational state, so too…there ought to be no idlers in it, either."

72 Is this socialism, state socialism, national socialism, Keynesianism, protectionism, capitalism? It is hard to say, since Fichte's account predates them all and has elements of each. Fichte's state includes personal freedoms, private possessions, and liberal rights, but it is based on a state-managed economy to ensure that everyone has work, and it contains quite a massive policing and surveillance apparatus. It is probably something in between protectionist-Keynesian capitalism and liberalized state socialism, but even these phrases are anachronistic. On the Keynesianism of German Idealism, see Nakhimovsky (2011: 3, 126, 171–3) and Mann (2017: 83–214).

73 See James (2012: 517).

74 See Wood (2016a: 283).

75 For other interpretations of Fichte's 1812 *Rechtslehre* and its novel development in relation to the theory of property, see James (2012) and Merle (2016). All translations of Fichte's *Rechtslehre* [RL] are mine, from the Gesamtausgabe IV: 6 (Fichte 2010). I cite the marginal pagination from the text.

76 "*freie Muße zu beliebigen Zwecken*" RL 229. Cited in James (2012: 509); see also James (2012: 519, 521).

77 Marx *Grundrisse* (1993: 706). See also Blumenfeld (2013).

78 RL 230: "The simplest means of saving work and gaining leisure is the division of labor."
79 See James (2012: 524).
80 Marx (1993: 707–11), Keynes (1963), and Postone (1993).
81 On absolute property in Fichte, see FNR 191, 205, 207, 209–11, 213–4, 222–3, 234, 255, 301.
82 *Gehäuse* can also mean encasement, enclosure, container, box, shell, or body. It is something which contains something else.
83 Although Fichte's theory of right resolves into a theory of political economy, it is not an account of *civil society* in Hegel's sense of the term (PR §182–256). This is because class relations for Fichte are an internal dynamic of the state, not an independent sphere altogether. I come back to this in the next chapter.
84 On the centrality of property relations for understanding class, see Wright (2015: 7–8, 33–4).
85 On the role of Fichte's biography for his philosophy, see Wood (2016a: 1–28).
86 James (2011).
87 Neuhouser (2016).
88 Kaufmann (1942).
89 Nomer (2005).
90 Nakhimovsky (2011).
91 *Ibid.*
92 Neuhouser (2016: 34–5).
93 Neuhouser (2016: 35).
94 See James (2011: 9, 27).
95 James (2011: 22).
96 See Nakhimovsky (2011: 171–3).
97 See Wood (2016b: 177).

3 Hegel's Struggle for Property

In the Introduction, I provided a genealogy of the concept of property and its limits in legal philosophy. The meaning of property skittered back and forth between formal-rights theories based on freedom and exclusion to instrumental-economic theories based on necessity and efficiency. In order to better explore the normative, metaphysical, political, and material conditions of possibility of the right to property, I suggested rehabilitating the German *Rechtsphilosophie* tradition found in Kant, Fichte, and Hegel. In Chapter 1, I carefully reconstructed Kant's deduction of the right to property from his 1797 *Doctrine of Right*. In order for something external to be *mine*, per Kant, one must commit to realizing a political order of social and spatial freedom for all earthbound creatures plagued with practical reason. From this claim, all sorts of interesting normative consequences for human coexistence follow, some of which I laid out in detail. In Chapter 2, I expanded the frame to incorporate the intersubjectively grounded account of property in Fichte's 1796/7 *Foundations of Natural Right* and 1812 *Rechtslehre*. Fichte first transcendentally justifies the right to property as a "right to free action in the sensible world" (FNR 185) from the conditions of possibility for self-conscious efficacy; he then normatively justifies property as a condition of possibility for the existence of *right* itself as a relation of recognition amongst embodied rational beings. Furthermore, legitimizing *actual* property rights necessitates founding a closed commercial commonwealth with a class structure and political economy in which everyone has the unassailable right to satisfy the needs of life through labor. Ultimately for Fichte, universal property rights should grant not only secure access to a sphere of labor but maximal free time for the enjoyment of *leisure*, the highest form of freedom.

In this chapter, I turn to Hegel. This chapter is methodologically different from the chapters on Kant and Fichte in two ways. First, I focus not on a *single* text but rather on various essays, lectures, and fragments from an early period; second, the argument does not follow from a single principle through a deduction and then on to an applied theory but rather traces various facets of the experience of consciousness in its coming to be as a

DOI: 10.4324/9781003439745-4

self-aware member of an ethical whole. Hegel thus inverts the method of argument from top-down to bottom-up. The argument, in short, is that the development of material conflicts between possessing, working, and exchanging beings via acts of theft, exclusion, and injury compels such subjects to reevaluate their normative self-conception as self-sufficient, independent wills. The various "struggles of life and death for recognition" signal different ways in which agents can produce the normative self-awareness necessary to overcome limited and indeterminate modes of relating to themselves and others and in turn ground relations of *right* in general and *property* in particular. For Hegel, the rational core of the right to property lies in its crystallizing the reciprocal recognition of morally vulnerable wills as dependent on each other for their own self-identity as self-determining. My aim in this chapter is to make this explicit. I do this through a close reading of Hegel's early Jena *Realphilosophie* lectures, for these provide the normative and phenomenological background to the more well-known and heavily discussed theory of property in Hegel's mature *Philosophy of Right* (PR). What underlies and motivates that later systematic theory, however, is usually ignored, forgotten, or simply presupposed: namely the recognition-based account of the genesis and validity of possession and the right to property. This earlier account understands the right to property as a result of the (failed) struggle between needy, desiring, and vulnerable creatures to assert their own identity in the identity of the other. Hegel's early phenomenology of possession, labor, property, and recognition thus offers a dynamic counterpoint to the static readings of Hegel's later doctrine of property as an abstract right. In that latter account, the phenomenological development of relations of right and property is already taken for granted and thus no longer needs to be explained. Hegel's PR is part of his theory of Objective Spirit, or institutionalized freedom, and it begins from the accomplishment of the will as a reality, charting the development of the free will willing its own freedom. The Jena *Realphilosophie*, on the other hand, begins with bloody conflicts over land between unequal families; with theft, murder, and violence; with need and hunger; and with labor, exchange, and surplus. While the rationality of property in the PR develops from its initially limited form as an individual abstract right of the free will to a complex, socially embedded relation determined by collective economic and political ends in the modern state, the normative background story is still hidden. By focusing on that aspect of Hegel's account, I hope to reveal novel elements of Hegel's theory of property, which emerged out of a critique of Kant and Fichte, whose property texts were published just five years prior to his Jena lectures. In Hegel's Jena philosophy, *rights* and *property* acquire their validity not from *a priori* principles of reason, as in Kant, or from conditions of possibility for self-consciousness, as in Fichte, but from the shared

experience and knowledge of morally conflicted individuals and families who desire, labor, exchange, and struggle with each other under material conditions of inequality. This point should not be forgotten when reading Hegel's mature theory of property right, and neither should it be forgotten when trying to make sense of property rights in the world today.

I begin this chapter with a general introduction to Hegel's critique of Kant and Fichte's practical philosophy, specifically their concepts of freedom and right. I then briefly look at some early essays from Hegel where he first mentions property before I turn to his more systematic texts in Jena. In the next section, I reconstruct the argument of Hegel's 1802–3 *System of Ethical Life* (SEL). I focus on the role of possession and property in pre-political life, the development of exchange and inequality, and the emergence of freedom through *crime*. I discuss the contradictions of property relations in the 'system of need,' and I conclude with some reflections on the originality of Hegel's first theory of property right. In the next section, I turn to the cryptic 1803–4 *First Philosophy of Spirit* (FPS). I focus on two things: (1) the role of transgression and recognition in the struggle between families over possessions and (2) the dialectic of labor and property in the universal economy of right. In the final section, I turn to the 1805–6 *Second Philosophy of Spirit* (SPS), and I concentrate on four aspects: the experience of possession as a moral injury, the normative conflict between the excluded and the excluding, the struggle against one's own possessions, and, finally, the birth of right.[1]

Hegel's Criticisms of Kant and Fichte

Hegel is the final figure in my reconstruction of the theory of property in classical German *Rechtsphilosophie*. I begin with an overview of his general criticisms of Kant and Fichte's practical philosophy.[2] In a sentence, Hegel builds upon Kant's conception of right as a universal law of interpersonal freedom as well as Fichte's understanding of right as a relation of reciprocal recognition, but he abandons their *a priori* deductive methodology and offers instead a more developmental method based on conflict, failure, and change. From the Jena writings in the early 1800s all the way to his late *Rechtsphilosophie*, Hegel criticized the political philosophies of Kant and Fichte for remaining bound to an atomistic, formal, and negative conception of freedom, one that treated all social bonds as external limits on the spontaneity of the individual will.[3] To Hegel, such views remove all the substantial moral, historical, and social content from the meaning of freedom, ultimately rendering it static, empty, and abstract. The bearer of such freedom is not a concrete individual embedded in social and moral relationships but the abstract shell of a person, an arbitrary will that can merely decide between given contents.

Hegel's conception of objective freedom is not restricted to an arbitrary will that treats everything like property and everyone as a limit; rather, freedom finds its fullest expression in a particular institutional totality of legal, moral, social, domestic, economic, and political relations. Hegel's compounded idea of freedom and his expansive concept of right presuppose the developments of legal personhood and moral subjectivity, but it finds its true expression in *Sittlichkeit*, the ethical life of peoples established over time as the habits, values, customs, duties, and laws which bind society together as a whole. The highest form of ethical life occurs when the normatively distinct spheres of modern life (family, work, and politics) reinforce each other in a coherent framework with secure individual rights, high moral standards, and just social, economic, and political institutions. Ultimately, to be free is to reflectively incorporate these rights, roles, values, and institutions into one's own self-identity as grounds and goals of action.[4]

Against Kant, Hegel claims that freedom cannot be identified with the form of choice of an individual will, a will whose content is contingently given through inner drives or outer senses. When freedom is reduced to the faculty of choice, right becomes nothing more than an empty rule for determining the consistency of choices amongst individuals. Negatively this means *limitation*, and positively, *consistency*.[5] For Hegel, on the contrary, right is not just an external law of consistency for individual choices; rather, it expresses the rational content of freedom *in* one's choices, values, institutions, and social relations. Perhaps this is the biggest difference with Kant: not merely the form but the content of the will must itself be rational and free. To be free, the will must will its own freedom (PR §27).

Against Fichte, Hegel claims that *right* cannot be deduced from reason alone and then mechanically applied to human beings like dead material. Right rather emerges in history as the concrete existence of freedom, expressed in various institutional forms, each with their own logic of recognition. What he takes from Fichte is the idea that all forms of right are premised upon a primary relation of reciprocal recognition between self-conscious, rational beings. How this recognition first arises and how it develops is a different story for Hegel, one first laid out in the Jena systems and eventually refined in the *Phenomenology of Spirit* (PhS) and *Encyclopedia*. In the PR, these accounts are taken for granted and so the task is no longer to justify the concept of right as the historically achieved form of freedom adequate to modern subjects but rather to develop and systematize the distinct and multidimensional forms of right implicit in various spheres of human interaction. The task of the speculative philosopher is therefore to excavate the historically achieved yet mostly obscured forms of freedom lying underneath our everyday social practices, to bring them to light and conceptually systematize them.

Hegel's major problems with Kant and Fichte's doctrines of right stem from their aim of separating morality from right and thus making politics instrumental to ethics. The state, on this reading, has no *intrinsic* value; it is treated as a necessary *means* for individual freedom, not as the *realization* of freedom itself. Hegel sees Kant and Fichte's political frameworks as contractualist, instrumental accounts of coercion and externality. There is nothing internally motivating individuals to play along except the threat of violence; there is no real unity between people, no trust, no spirit. Kantian and Fichtean states are contracts, whether necessary or contingent. Fichte's state is especially fatal to genuine freedom since it functions as a closed, overly rational, police-controlled machine. Hegel seeks to go beyond the Kantian and Fichtean dualities of law and morality, freedom and nature, self and other, individual and community. For Hegel, the state is not a coercive external apparatus that limits freedom but a universal community that *realizes* freedom.

Methodologically, Hegel gives a phenomenological account of the development of the universal will. The universal will does not emerge out of the hypothetical contract of separate individuals but is discovered in the so-called struggle for recognition. Hegel does not simply deduce or posit this will as a necessity but shows how a universal will can internally develop through a series of normatively laden conflicts with others, each of which motivates an expanded conception of the will through new modes of externalization. The most consequential of these conflicts is the life-and-death struggle for recognition over property and honor. Through this struggle, in which one risks one's life for the sake of one's honor as an owner of property, freedom is inadvertently *won* and recognized as absolute, beyond any particular relation to empirical, contingent, and natural qualities of the individual. Only then can freedom begin to be institutionalized in social and political structures as an absolute, universal value. The contract that forms the state in Kant and Fichte, on the contrary, does not transform the participants themselves. It rather solidifies what is already there: the innate right to freedom. For Hegel, the struggle for recognition *transforms* one's own self-understanding and the understanding of the other. Each becomes dependent on the other for recognition but in a way that liberates them from their own natural dependencies. Whereas Fichte deduces reciprocal recognition as a necessary condition for *right* to exist as an objective relation between free beings, Hegel develops a phenomenological account of recognition as an accomplishment of historical beings toward a system of objective freedom. Furthermore, Hegel sees Fichte's concept of recognition as too narrow, too static. Thus, Hegel not only appropriates Fichte's concept of recognition but adapts it for different realms of social interaction, beyond property relations. The form of recognition itself transforms in the spheres of family, the marketplace, and the state, all the while expanding and deepening the freedom of the individual in its relation to others.

Hegel's social philosophy is rich, and I will go through it in detail shortly, but first I want to point out some problems in his criticisms of Kant and Fichte. First, Hegel does not take Kant and Fichte's respective theories of property seriously enough. In fact, Hegel misconstrues Kant and Fichte's intricate views of property for a narrow conception of abstract right, thus missing their more social, material, spatial, and economic aspects. For instance, he ignores Kant's theory of intelligible possession, provisionality, and original possession in common, thus discounting Kant's emphasis on the relation between individuals, community, and place. He also does not follow through on Fichte's insights into the connection between spheres of efficacy, property, labor, and class. Once the simplistic account of property is complicated and revealed to be part of a much more complex structure of freedom, the charge of abstract individualism no longer stings. Second, although Kant and Fichte strongly separate right and morality, it can hardly be said that their political visions are *instrumentalist*. For both, the metaphysics of right expresses a necessary and distinct form of freedom, irreducible to any other value. To treat the social relations that constitute the state, the economy, and the family as purely functional is to reduce normativity to morality. For Kant, the particular normativity of right produces different demands on human beings than does the moral law, but these demands are not prudential; they are not *for the sake of* the moral. As I argued in Chapter 1, they are essential aspects of practical freedom in its *relational* mode. Right is realized through politics, and politics makes practical freedom possible. For Fichte, the specific normativity of right, distinct from the moral, is rooted in an understanding of individuality as a *reciprocal concept*; an individual is a being whose freedom is intrinsically dependent on the freedom of others. Securing this reciprocal relation through explicit norms of interaction like rights to property is not categorically necessary, according to Fichte, but it is necessary *if* one is to know oneself as free.

Hegel attempts to overcome the limitations of Kant and Fichte's philosophies of right by proposing a conception of the state as the realization of freedom and by positing a mediated unity of right and morality in the concept of *Sittlichkeit* or ethical life. Yet one should pause and ask why this is a worthwhile project at all. Should the state actually be considered the realization of freedom? Should the individual feel at one with a 'people,' a 'spirit,' a nation? Perhaps Kant and Fichte were simply more pragmatic than Hegel, realizing that no historical state, nation, or social institution can ever fully coincide with one's self-identity. Kant's concept of *provisional right* and Fichte's idea of the *Notstaat* are how each philosopher reconciles their vision with political reality: the current states are not rational, no one is fully free, and human beings have not yet incorporated the metaphysical principles of right into their political order. More bluntly, perhaps the

organization of a free society is a historical process that will never be finished, and we should not delude ourselves into thinking that it already is. By removing 'spirit' from politics and by emphasizing the necessary role of property as a spatial and temporal condition of freedom, one could argue that Kant and Fichte liberate individuality from alienated forms of identification with the state, the market, the family, and even conscience. Kant and especially Fichte find the material conditions of individual agency in the collective project to authorize and secure the juridical and economic relations of property for all. That is, the system of right ensures individual freedom irrespective of one's particular culture, morality, or family. Subjective identification with objective norms of right may help one act rightfully, but it is not necessary for a free society; what is necessary are the universal property relations that bind society together in a system of interdependence.

Hegel, on the other hand, seeks to identify the rational content already existing within the institutional structures of modernity, albeit often in repressed, obscured, or denied forms. Hegel's task is to reveal the different structures of recognition that normatively bind people together and express different aspects of freedom.[6] These aspects are systematized according to Hegel's logic of the concept, i.e., according to the organic unity of individuality, particularity, and universality. Each ethical mode of relation—for example, family, work, and citizenship—is but a partial aspect of the totality of right. Hegel's philosophy of objective spirit—as he calls his later practical philosophy—works to bring all the elements of right together, to reunite them in thought so to speak, so that we can see them for what they are: interdependent parts of a whole, actualized over historical epochs by individuals, sometimes with their awareness, sometimes not. To comprehend right for what it is can help enable the institutionalization of a more coherent, more unified, and more rational state in the course of history. Or, at the very least, it can help us know when we fail.

Early Writings on Property and Right (1798–1803)

Thousands of interpretations, criticisms, and defenses of Hegel's political thought have appeared in myriad languages over the previous century and so there is no need for me to rehearse them all over again.[7] Rather, I will focus specifically on explicating Hegel's theory of right, recognition, and property as presented in his early Jena writings, for these texts not only are closest in time and theme to Kant and Fichte but are much less researched than the mature PR. The Jena systems contain a treasure trove of cryptic insights jumbled together in ways that do not really make much sense until they are systematically separated out into the *Phenomenology*, *Logic*, *Encyclopedia*, and PR. But here, in this crucible of idealism, Hegel creates a materialist metaphysics of need, labor, possession, crime, poverty, and

recognition. These various drafts seek to phenomenologically describe the movement of self-conscious life as it jolts between nature and spirit, self and other, consciousness and object, freedom and dependency. Unlike Kant and Fichte, Hegel never offers a straightforward *deduction* of right, property, or the state but rather shows how these concepts become *actual* through social practices and material conflicts between separate but interdependent wills living together on a shared planet. In other words, Hegel does not justify property rights in the standard sense of providing reasons from self-evident premises for their normative validity. Rather, Hegel shows how claims to mine and yours *validate themselves* as a result of failed attempts to gain recognition of oneself as self-determining. Rights to property then are not entitlement to exclusively use things to realize one's innate freedom but fragile ways of mediating material conflicts between moral subjects to be who they take themselves to be.

Hegel elaborated his first systematic theory of the development of self-consciousness, right, and the state during his time in Jena, particularly in the SEL, the FPS, and the SPS. In these incredibly opaque writings, written in a style steeped in Schelling, *Naturphilosophie*, and romanticism, there are two things of particular interest to me: (1) Hegel's constant engagement with Fichte's *Naturrechts* and (2) Hegel's account of possession and property (along with its relation to labor, recognition, crime, alienation, struggle, and exchange). My aim here is thus to trace Hegel's views on right, recognition, property, and possession up until 1806, to try to make them coherent, and to tease out what they offer us for understanding the social, normative, and metaphysical aspects of property relations. I begin with a quick overview of Hegel's earliest thoughts of property, possession, and right in five texts he drafted between 1798 and 1803. I then spend the bulk of this chapter reconstructing and evaluating Hegel's theory of possession and property in Jena through a close reading of key sections from the 1802–3 SEL, the 1803–4 FPS, and the 1805–6 SPS.[8]

Hegel's political philosophy in Jena sought to reconcile two political traditions: on the one hand, the ancient Greek idea of a holistic political community with its shared ethos and, on the other hand, the modern liberal idea of a right-based market economy with its individual freedoms.[9] Hegel's project was to unify the twin poles of the *polis* and *property* in a new conception of *ethical life* as the *spirit* of a state.[10] Ethical life and its 'spiritual' relations cover the sphere of social institutions in which the particularity of the individual will is mediated with the universality of the political state. In this sphere, human freedom is concretized, challenged, and developed through various modes of recognition, specifically through one's role as a family member, laborer, and citizen, each of which contributes to the progressive reconciliation of individuals with others in community. The existence of freedom is thus made 'objective' in relations of 'spirit.'

Before he developed the philosophy of spirit, Hegel's understanding of property was colored by a thoroughly *romantic* conception of freedom.[11] In the fragment on *Love*, the *Spirit of Christianity*, the *German Constitution*, the *Differenzschrift*, the *Natural Law* (NL) essay, and *Faith and Knowledge*, all written before 1803, Hegel treats property as the source of modern alienation in man. Similar to Rousseau, Hegel believed that rights to property separate individuals from each other, dividing people from their common values and interests. Property mediates and divides what should be immediate and whole: community. On the other hand, private property is a necessary historical development for the success of modern states and societies. This romantic notion of community matched with a realistic view of property results in an ultimately tragic viewpoint: modern states, if they are to survive, must formalize property as a private right, yet in so doing, they unavoidably foster separation, atomization, and the loss of unity that characterized ancient communities. Hegel's tragic conception of right as the self-sundering of ethical life into objective form lasts at least until he develops a more nuanced understanding of property in the SEL, FPS, and SPS.[12]

One more note before the textual exposition. It is safe to say that all of Hegel's writings in Jena are critically engaged with Fichte.[13] In the *Differenzschrift* (1801), *Faith and Knowledge* (1802), and the essay on NL (1802–3), Hegel criticizes Fichte's coercive conception of natural right, his mechanical theory of the state, and his empirical view of freedom. He does this from a more or less romantic perspective which seeks to integrate these particularistic elements into an organic account of the people or nation. Even if they are not always fair, Hegel's criticisms do reveal certain limits to Fichte's framework, which Hegel takes as jumping-off points to formulate his own ideas. They are thus very important for Hegel's own intellectual development, whether or not they always hit the mark. Even the SEL, in which Hegel first presents his systematic conception of the development of spirit, should have actually been called the *Critique of Fichte's Natural Right*, according to the editor of the German edition.[14] For in that text, as we will see, Hegel develops his own account of ethical life out of an internal critique of Fichte's own theory of property, right, and the state. Before I turn to that one, I will first make a survey of Hegel's earliest writings on right, property, and the state. I begin with the 1797–8 *Fragment on Love*.[15]

The experience of *love* represents Hegel's earliest formulation of *spirit*. This is because love affectively expresses a mode of self-identification with another; that is, love conveys an experiential unity between separate individuals. To recognize one's own absolute value through another person's relation to oneself and vice versa signifies a necessary condition for the development of human beings as morally invested creatures. Yet love is ruined by the "acquisition of property and rights," an act which sunders

the unity of lovers into individual wills.[16] The "dead objects" attached to each person's will reflect his or her own paths of individualization. This is because "the one who sees the other in possession of a property must sense in the other the separate individuality which has willed this possession."[17] The power of possession separates wills, and these wills cannot even be united in common possession, for that would cancel "one of the other's relationships, namely, his exclusion of others from his property."[18] Property and love are thus *irreconcilable*. The negativity of possession breaks the unity of love and so the introduction of property marks the birth of tragedy in the ethical sphere.[19]

In the *German Constitution* (1798–1802), Hegel continues to hold an ambivalent attitude toward the role of property. He criticizes the conflation of the state with private right, a conceptual move that he finds in many social contract theorists. For Hegel, a state of atomistic property owners reflects not a true community but an artificial one dominated by private interests. A community of private right isolates people from each other and elevates only their self-interested needs.[20] Hegel criticizes Fichte's conception of the state as "mechanical"—that is, as a "machine with a single spring which imparts movement to all the rest of its infinite mechanism."[21] This single spring is the "supreme political authority" which regulates, commands, supervises, and directs all institutions of society.[22] Against Fichte's reductionism, Hegel posits a more dynamic political order which springs from the ethical life of people themselves and not from a totalizing conception of reason.

In the *Differenzschrift* (1801), Hegel criticizes Fichte's FNR as a philosophy of reflection mired in irreconcilable oppositions between freedom and nature. Fichte's practical philosophy, according to Hegel, is wrongly based on a negative conception of right as individual self-limitation.[23] Furthermore, and similar to Kant, Fichte's treatment of nature as dead objectivity prematurely discounts any normative value from attaching to the *contents* of the will beyond its pure form; thus, his concept of right cannot incorporate any substantial content beyond logical consistency of choice. Freedom in a community can then be expressed only as its opposite: submission to coercive rule for the sake of others. The state can then function only as a machine of police control for ensuring the consistency of all deeds with each other. For Hegel, however, human freedom emerges *out of* nature as the appropriation of one's own natural conditions. One cannot simply separate the objective norms of right from the subjective ends of freedom. Finally, the role of community in the theory of right is to *enlarge* the freedom of each, not to negate it.[24] The need to limit one's freedom for the sake of another signifies not true freedom but merely a one-sided conception of freedom from the standpoint of reflection. A truly speculative account of freedom lies not in mutual opposition of individuals but in the aesthetic harmony of parts in a unified whole, like a natural organism.

In *Faith and Knowledge* (1802), Hegel again criticizes Fichte's concepts of practical freedom, right, and the state for being overly formalistic, tyrannical, and alien to the vitality and particularity of the *Volk*, the real basis of politics.[25] Fichte's understanding of practical freedom as the pure will's positing of the concept of an end is criticized by Hegel for maintaining an empty, indifferent relation to the actual *content* of willing, i.e., the particularity of ends. Fichte's formalistic accounting of empirical differences into a system of rights is contrasted to a political condition in which "life itself posits itself at the same time in the law as universal and becomes truly objective in a people."[26] Fichte's state, according to Hegel, enshrines external freedom as a universal law *apart* from the people themselves, confronting them as a coercive limit; right becomes an objective concept upon which people are *dependent* for freedom. Such alien dependency, for Hegel, is the "nullification of all freedom."[27]

In the essay on *Natural Law* (1802–3), Hegel criticizes empiricist and formalist accounts of right: the former includes Hobbes and Locke, who justify political authority according to the economic needs of isolated individuals in a fictional state of nature, and the latter includes Kant and Fichte, who formalistically deduce political authority from a normatively empty conception of pure reason in a single will, opposed to the empirical needs of particular human beings in a community.[28] Both perspectives, according to Hegel, are individualistic and ahistorical; they fundamentally misunderstand how ethical communities can organically develop principles of right out of their shared values, customs, and religious practices. Furthermore, Hegel explicitly criticizes Fichte (and, implicitly, Kant) for making coercion the centerpiece of right, a move which paternalistically treats individuals as egoistic beings who would join together only under the mutual threat of violence to contractually form a state for the security of property.[29] For Hegel, any state formed through a property contract is merely a pseudo-community, not an organic expression of the people.

Hegel also here directly challenges Fichte's emphasis on political economy, specifically his understanding of property as the right of each person to live off their labor. In making property and labor central to right, Fichte supposedly subordinates politics to economics, when it should be the other way around. The purpose of the state is *not* to make life easy and secure for all but rather to make individuals into ethically upstanding members of a political unity, a goal which may sometimes require upsetting the material security of each person. Fichte's contractual theory of right thus risks liberating the destabilizing power of property from out of the control of the ethical totality of the state. The sphere of property relations is rooted in the particularity of need and the negativity of desire, and if left unchecked, it inherently breaks up the universal will of the people into individual, self-interested parts.

Hegel begins to theorize in NL what he will later call the *system of needs*,[30] although here it is called the "system of reality," the "system of possession," or simply "political economy."[31] But instead of dismissing this sphere as before, Hegel now seeks to rationalize it. The state as a "system of ethical life" thus authorizes property rights because it recognizes that individuals have basic needs for material relations of possession.[32] Hegel argues here for the first time that relations of property and labor are not merely negative but that they in fact inadvertently construct a system of "universal mutual dependence," thus providing a key role in the development of ethical universality.[33] Although the system of possession concerns only the objects of material *reality*—"physical need, enjoyment, possession, and the objects of possession and enjoyment"—the *relation* of possession itself contains an "ideality, a relative identity of the opposing determinacies."[34] This relative identity of *objects as property* and *subjects as owners* within the "system of reality" transforms material relations of possession into formal relations of property. This is the idealist core of property: particular relations of possession contain the intersubjective basis for recognizing universal rights to property between persons.

In other words, Hegel begins to infer universal relations of right within particular economic practices. This analysis of right as the universal normative bonds underlying particular relations of possession reverses Kant and Fichte's strategies of deducing particular property relations from universal laws of right. In so doing, Hegel sets the terms for his subsequent account in the Jena lectures, in which the universal normativity of right emerges from particular struggles of economic agents who desire unconditional recognition from one another in virtue of their (injured) moral status as property owners. As vaguely suggested in the NL essay, one can achieve recognition of one's status not through force or egoism alone but only by risking death for one's values, nobly, like a soldier. In that act, the 'empirical freedom' of choice, bound to the materialistic self-interest of property owners and checked by the coercive authority of Fichte's state, is negated, and 'pure freedom,' or absolute independence from empirical determinacy, is won.[35] The freedom of right, according to Hegel, cannot be identified with the self-limiting, coercive laws of formal coexistence among separate property owners; that is merely 'empirical freedom,' the negative freedom of the possessing class whose choices reflect no ethical value other than self-interest. The 'pure freedom' that underlies *Sittlichkeit* is rather proven through struggle, war, and the noble pursuits of soldiers who give up everything for the good of the whole. Hegel's own idea of right as an interlocking ethical totality of particular subsystems (e.g., family, economy, and law) bound by the spirit of the whole people begins to take shape here.[36] The political and ethical claims are not yet justified according to a dynamic theory of normative conflict and mutual recognition, but the key

element concerning the ambiguity of property relations, as negatively universal, is already there.

Hegel's early writings from 1798 to 1803 reveal his critical stance toward Fichte's theory of right as well as his first attempts to make sense of the *property relation*. But it is not until the Jena systems that he develops his truly original account of property, right, and recognition. I turn to these now.

Hegel's Appropriation of Fichte

In the SEL and both Jena *Philosophy of Spirit* lectures, Hegel begins to incorporate key insights from Fichte's practical philosophy into his own thinking, particularly the idea that individuals must relate to each other in certain reciprocally limiting ways in order for each to be free. This mutual recognition of another's freedom becomes objective in relations of right for Fichte, particularly in the form of property; for Hegel, however, this key normative principle develops across various spheres of life in distinct modes of human interaction.[37] One possible explanation for why Hegel became more receptive to Fichte's practical thought in these texts is because of his detailed reading of James Steuart's 1767 *Principles of Political Economy*. This book forced Hegel to take notice of the intelligible structure underlying the apparent contingency of modern economic relations.[38] If the economy was not just a random series of individual contracts between property owners, but rather contained a systematic logic only seen from the perspective of the whole, then perhaps it could not be dismissed so easily as irrational. But integrating the 'system of reality'—need, labor, property, consumption, and so on—into ethical life required treating it as a sphere with its own normative content. This content, in my interpretation, came from Fichte's theory of recognition.[39] Thus, after reading Steuart, and perhaps disappointed with his own vague, romantic ideas of political community, Hegel started to develop a more complex understanding of the economy as a structure of mutual recognition itself. By grafting Fichte's idea of mutual recognition onto the science of political economy, Hegel was able to integrate his normative concerns with material reality in a way that did not revert to mechanistic, atomistic, formalistic, and ultimately amoral understandings of freedom.

But didn't Fichte already do this with his idea of the property contract that binds people together in a joint community of right to manage the economy as a system of reciprocally limited spheres of freedom? And didn't even Kant do this when he argued that the concept of intelligible possession, as a necessary condition of external freedom, can be authorized only in a civil condition of public right? In other words, didn't Fichte and Kant already have normatively charged conceptions of the economic

practices which bind together rational beings in political communities? The answer is yes but not in a satisfactory way, according to Hegel. The point is not to incorporate property relations into a preconceived theory of freedom but to bring out the ethical meaning of property and the 'system of reality' as essential moments in the evolution of freedom itself. This new systematic theory of practical freedom charts the development of intersubjective recognition, or *spirit*, from the most immediate to the most universal: from the limited and unconscious forms of recognition that emerge in need-satisfying labor and possession, to the more complex forms of reciprocal recognition that result from conflicts over the need to be treated with respect with or without property, to a new universal form of multilayered recognition in a legally bound, ethically shaped, public community of citizens, families, workers, peasants, merchants, and administrators.

In my view then, Hegel integrates Fichte's theory of recognition into his own account to solve the problem of *property*, specifically the problem of its normative content. In so doing, he gives Fichte's theory a phenomenological spin. Forms of recognition are not merely posited by reason but are results of a historical, psychosocial struggle of life and death over one's moral standing as a possessor. In this struggle, one risks one's material life and security to be treated as worthy of respect, as a person. By risking one's life for a value higher than one's needs and self-interest, freedom from natural dependency is gained, and freedom in interdependency is learned. To know that this freedom in oneself is bound to recognition from another is to begin to construct the universal will that underlies the concept of right and eventually the state. As Shlomo Avineri once said, "Hegel tried all his life to write one book, and the *System der Sittlichkeit*, the *Realphilosophie*, the *Phenomenology*, and the *Philosophy of Right* are different versions and drafts of the same opus."[40] I now turn to the first draft of that opus, the SEL.

System of Ethical Life (1802–3)

This section begins with an overview of Hegel's SEL before transitioning into a close reading of the text.[41] In my exposition, I focus on possession and property in natural ethical life, the movement from equal exchange to lordship and bondage, the freedom of theft, and the political economy of the system of need. I conclude by contrasting Hegel's first theory of property to that of Kant, Fichte, and Hegel's own later account. Finally, I distinguish my interpretation of Hegel's SEL from Axel Honneth's reading.

The argument of Hegel's SEL, as Lukács noted, is "tortuous, over complicated, and over elaborate."[42] I will try to make it simple.[43] First, Hegel gives a proto-phenomenological account of the development of human consciousness from the immediate existence of need-satisfying labor to the

higher ethical self-awareness of being a member of a larger political community with duties, right, and obligations to others.[44] The very possibility of a transition from the particularity of 'natural ethical life' (i.e., the 'state of nature') to the universality of 'absolute ethical life' (i.e., the 'civil condition') occurs not *naturally* so to speak but *historically*. That is to say, the universal consciousness of ethical life is *produced* through a break in the form of subjectivity that previously grounded one's relationship to the world and others. This break centers on the role of property, but not in a *positive* way as some moral force which compels individuals to treat each other with respect. In fact, it is quite the opposite. For Hegel, it is the negativity of *theft* or crime *against* possession which engenders a life-and-death conflict for recognition that can spur a new orientation to oneself and others as mutually bound to respect each other's freedom for the sake of one's own. In a sense, this may sound similar to Fichte's transcendental account of the development of right, albeit historicized.[45] But Hegel does not just historicize Fichte, he also moves beyond a *positive* account of recognition—whose end is a contract among formal wills to secure property—and toward a *conflict* theory of recognition, one whose end is ethical self-reevaluation.[46] In Hegel's account, individuals must rearrange their normative commitments to each other if they are to resolve their mutually inadequate understandings of one another's self-conception.[47]

Second, Hegel theorizes how rationality and the will become objectified and universalized through different mediums of need-gratifying activity (i.e., in labor, property, exchange, family, and social intercourse). Formally, this is a development from individuality to universality; in terms of content, it marks a path from immediate intuition and feeling to reflective conceptuality and social normativity. An individual human being raises itself up from the immediacy of feeling through labor and possession to the mediated recognition of property, exchange, and contract, to knowing oneself as part of a whole within the family and its roles, and ultimately to the awareness of oneself as a member of a class of society with specific ethical obligations and duties to others in the state. Possession, labor, tools, property, and exchange all play essential roles in mediating individual consciousness with itself, with others, and with nature in a way that expands one's constricted dependency on immediate surroundings to one in which individuals can act freely with others as distinctly ethical beings, all the while without ignoring their embeddedness in nature (as need-based creatures) and society (as free individuals).

The logical progression from *natural ethical life* to *absolute ethical life* (i.e., from the state of nature to the ethical state) is hard to discern in Hegel's text. The phenomenological narrative progresses and regresses in different sections; conflicts and resolutions are out of order; modern and pre-modern aspects arise at different moments; and the supposed

transition section (on 'freedom or the negative or crime') does not seem to relate directly to what comes before or after.[48] That said, here is one attempt at a narrative reconstruction of the argument: discrete social units, initially working for their own needs, end up specializing their labor by making tools, which raises productivity and results in the accumulation of surplus possessions; they exchange surplus products as property with each other and formalize the system of exchange through contract; those without a surplus are dominated by the ones with surplus possessions, but this domination is overcome through the reorganization of social relations into *families*, which redistributes property communally without exchange and divides labor sexually. However, the equilibrium of pre-political social relations is upset by the subjective freedom of individuals to transgress norms of property, honor, and life; these transgressions produce conflicts between individuals which cannot be resolved without rearranging their normative commitment to each other in a more cohesive manner; this new manner is the unity produced in the ethical life of a *people*, which replaces the abstract subjectivity of free individuals with the common identity of an ethical community; the individual, as part of a people, identifies itself with the universal and is satisfied; the universality of ethical life is individualized in the form of virtue and particularized in the form of an estate: the *honorable* military/nobility, the *honest* bourgeoisie/merchants, and the *trusting* peasantry; the estates work together to produce an economic equilibrium in the "system of need," to educate and raise citizens in the "system of discipline," and to authorize a "system of justice" which recognizes property rights, administers law, and metes out punishment for crime.[49]

The *big picture* of the SEL is the story of how a desiring subject gains independence from its natural determinations through various forms of labor or externalizing activity and how this independence in turn becomes an obstacle to one's self-understanding as part of a more universal ethical community. Hegel's paradoxical claim is that the more *dependent* one becomes on others for one's own material reproduction and subjective identification, the *freer* one becomes from one's own limited conception of oneself. Freedom is thus achieved in degrees, at various levels of social interaction, each of which engenders conflicts with others over the extent of individual action. To render this objective freedom coherent, one must ultimately submerge one's individual will in the ethical whole of the people. The *small picture* that I want to focus on is the how possession functions as a formative mediation between subject and object in the development of individuality, how the freedom of transgressing norms of possession leads individuals to develop more normatively complex modes of interaction, and how legalized property functions as a universal medium of recognition between subjects in an economy. I now turn to the text itself, beginning with *natural ethical life*.

Possession and Property in Natural Ethical Life

The immediate formation of subjectivity takes place in the context of 'natural ethical life'—that is, the pre-political condition of familial reproduction in which desiring subjects develop ethical consciousness by externalizing themselves through labor, possession, tools, and speech.[50] This is the first level of natural ethical life, what Hegel calls the "subsumption of the concept under intuition," or the universal under the particular (SEL 103). This section describes how an initially unreflective relation to objects for the direct satisfaction of particular needs can develop into a form of universal practical intelligence via rationally mediated activities of labor, possession, tool-production, and speech (SEL 103–16). The second level of natural ethical life is what Hegel calls "subsumption of intuition under the concept," or the particular under the universal (SEL 116).[51] In this section, Hegel describes how the specialization of labor produces a dependency on others, one which can be resolved only through the exchange of surplus property by means of legal contracts (SEL 117–23); although contracts presuppose the reciprocal recognition of parties as formally equal owners of property, there nonetheless remains the material inequality of resources and power (SEL 123–6); the inequality between those who have and those who lack surplus property expresses itself in relations of lordship and bondage, and the means of overcoming this 'natural difference' between individuals occurs via the universality of the family form, in which surplus possessions are redistributed immediately as the common property of all (SEL 127–9).[52]

I begin with the "first level" of ethical life. The immediacy of experience here is marked by *feeling*, particularly the feeling of separation between subject and object, or *need* (SEL 104). Hegel's initial task is to describe the various ways in which a subject practically negates this feeling of separation in "enjoyment" (SEL 104). To supersede the feeling of immediate need requires appropriating objects of nature for one's own gratification. This can happen in two ways: immediately by consuming the object or in a mediated fashion through labor. In labor, a new kind of awareness emerges, one that can posit "the difference between desire and enjoyment" and thus one in which "enjoyment is obstructed and deferred" (SEL 106). This power to defer enjoyment while one labors on an object creates the possibility of the relation of *possession*. Possession is important because it interjects a moment of abstraction into the relation between need, labor, and enjoyment. In relating to the thing as "mine," I abstract from my immediate desire to have it *now*. I not only seize it or form it, I *save* it (SEL107). This third aspect of possession is the truth of the relation, for it reflects my own ideality in the object, my abstract personality separate from any natural determinations. This is not *legal* possession but

possession in the almost Kantian sense of the intelligible relation to an object of choice. That is to say, to labor on something for my (future) satisfaction of need is to treat it not just as an empirical thing but as *mine*, i.e., as abstractly related to my desire. The activity of labor thus creates an ideal relation between subject and object, an ideality that Hegel sees as a primitive form of the universality needed to found an ethical-political community of free human beings.

There are least two kinds of self-preserving, possession-enabling labor: (1) cultivating plants and animals and (2) producing tools. Tool-producing labor is the important one here since it is a form of activity which abstracts from the immediacy of need satisfaction. In making a tool, one creates the possibility for the satisfaction of need in general (SEL 113). Furthermore, the tool is a universally accessible and enduring form of mediation between subject and object, one which attests to human potentiality and reason. Tools are the "real rationality of labor" since they embody the capacity for universal reason to externalize itself in a singular thing (SEL 113). Tool-producing labor allows one to shape nature through mind, to objectify one's practical intelligence in an external thing, and to relate back to it as *one's own*. As a particular thing, it is one's *possession*, but as a general structure, it is available for all to make and use. In that sense, to produce a tool is the first step toward producing the universal in reality.[53]

Unlike Kant and Fichte, Hegel is not trying to deduce *a priori* the validity of possession according to principles of reason; rather, he is describing the phenomenology of possession as a specific relation emerging in tandem with the universal experience of human labor, abstracted from any determinate kind of labor. Unlike with Locke, labor does not give one a *right* to possess something; labor is rather a moment in the process of actually possessing something. This is 'mere possession' as a consequence of seizing, working, and saving something. There is no question of right involved. To possess an object for Hegel is to relate to it in an ideal manner, for possession means subsuming an object under one's concept of it as one's own. Hegel takes possession here as a *fact* of experience to be explored, not a problem of right to be analyzed. At least not yet. At this point, he is not concerned with *property* as a legal right.[54] In the next 'level' of natural ethical life, Hegel describes the transformation of *de facto* possession into *de jure* property as a result of the universalization of exchange, a structural development in material relations among individuals due to the growing division of labor and social interdependency. This change in social relations entails a change in normative relations as well: to adequately exchange surplus goods, individuals must reciprocally recognize each other as rightful owners of property. Each individual is thus implicitly treated as a universal bearer of rights, an abstract personality, irrespective of any specific characteristics. I turn to this level now.

In the second level of natural ethical life (SEL 116–29), Hegel expands the focus from laboring, possessing, and speaking subjects in isolation to an interdependent economy of workers. Although this takes place within the pre-political stage of social life, such relations appear strikingly modern. Like the political economists of his time, Hegel is most likely projecting modern relations of production (division of labor, property, contract, money, etc.) into the past as if they existed in a so-called state of nature. There is no real temporal frame here and thus it is hard to decipher what Hegel is actually talking about. He could also be self-consciously presenting modern economic relations in a highly abstract form, in order to isolate their essential elements, to separate out their universal and particular aspects, all in order to integrate them more fully into an ethical totality. The development of more rational forms of subjectivity and more universal relationships with objects and other subjects occurs by means of the progressive abstraction of labor away from immediate production for specific needs and toward production for needs in general.[55] Such labor is "more universal" but also "more alien" to the living whole (SEL 117). By dividing labor into "more mechanical," "deadening," and "quantitative" aspects, the product itself becomes more abstract to the laborer, more alien to his needs (SEL 117). The abstraction of labor presupposes that the totality of needs can no longer be provided by one person but rather requires the labor of others. One's individual possession has thus "lost its meaning for the practical feeling of the subject and is no longer a need of his, but a *surplus*" (SEL 118). The utility of the surplus product depends not on the subject's specific purposes for it but on the "general possibility of use" (SEL 118).

At this point in the text, Hegel introduces the distinction between *possession* and *property*. The writing is dense and obscure, but the argument is simple.[56] The surplus-producing subject of abstract labor is no longer just a possessor of objects but a *producer-for-others*. The subject's activity therefore already relates to others in its very form. This form is universal in two ways: positively as a producer for others *in general* and negatively as a possessor *recognized* by others. This latter relation is negative because the recognition from others is the recognition of being excluded from the subject's possessions (SEL 118). Here Hegel borrows Fichte's concept of *recognition* for understanding the meaning of property as a legal right:

> For recognition is singular being, it is negation, in such a way that it remains fixed as such (though ideally) in others, in short, the abstraction of ideality, not ideality in the others. In this respect possession is *property*; but the abstraction of universality in property is *legal right*.
>
> (SEL 118)

Recognition is *singular* and *negative*, meaning that it concerns not the empirical qualities of the subject but the ideal qualities of the possessor as an abstract individual, purged from any content except its normative or "ideal" relation to the object. Possession becomes property precisely when it is recognized by others as authoritative. Furthermore, Hegel claims that the form of legal right itself emerges as an abstraction from this universal element in property. This universal element is nothing but the reciprocally recognizing relations of individuals as owners of property. Legal right then is the abstraction of recognition within property relations, made explicit in the universal medium of exchange.[57]

While one can be a possessor all by oneself, one can be a property owner only in relation to others. In this respect, Hegel is no different from Kant and Fichte. In relation to others, the property-owning subject is no longer treated as a living individual but as an abstraction of the unity and uniqueness of this individual in the form of personality, a purely ideal category.[58] Property and right, it is reasserted, are not contained in any individual essence but rather are posited in *actuality* by the mutual recognition of each other's possessions as formally identical (SEL 118). This is the difference to Kant and Fichte: whereas they start with concepts of right and then deduce property *a priori*, Hegel starts with a description of possession and then shows how it transforms into property because of the mutual recognition underlying relations of exchange. Only then does he posit the existence of right, personality, and equality—not as premises but as results of the movement so far. The contingent relation to a possessed object, initially formed through labor and need, is transformed into an ideal relation of property once others recognize the possessor's relation to it as necessary, as fixed beyond its immediate context; for only by accepting the relation of property as fixed or "ideal" can one engage in a structured exchange of surplus.

Since property is not just any right but expresses the fundamental form of right as a relation of reciprocal recognition, to have a right to property is to have "a right to right" (SEL 118). There are now two sides to property: on the one side, there is the abstraction of property in the form of right, and on the other side, there is the particular content of property in the matter of possession. The divergence between the abstractly universal (right) and the concretely particular (possession) sides of property allows for the possibility of what Hegel calls the "negative" or "freedom." According to Hegel, the *negative* of property does not lie in losing the object or destroying it, for those are accidental, particular forms of negation. The negative of property is that which denies its universal form, not its particular content. Since the universal element of property consists in its being recognized, "the negative thus consists in the nonrecognition of property, in its cancellation [*Aufheben*]" (SEL 119). The nonrecognition of

property touches not its matter as possession but its form as right. In other words, it is the negation of one's *right* over the possession. The *wrongful* negation of property is theft; the *rightful* negation of property is exchange, to which I next turn.

From Equal Exchange to Lordship and Bondage

In section b of the second level of natural ethical life, Hegel further develops the relation between property, exchange, and contract. The individual relation to the surplus possession is no longer based on its particular use but on its ideal status as universally exchangeable property; it is a "pure abstraction—possession in law as property" (SEL 119). Practical intelligence, initially formed through laboring on an object for need, now overcomes its immediate, empirical dependency on the object and relates to it ideally as right, as *mine*. This ideal or normative relation to the object, separate from one's labor, "is the beginning of legal, and formally ethical, enjoyment and possession" (SEL 120). Legal property exists not on its own but only in relation to other individuals who recognize it as rightful. To treat various surplus possessions as rightful property is to treat them as *abstractly equal*, for they are all equally objects of right, irrespective of their particular content. This abstract equality of things as property is reflected in the thing itself as its *value*. "Value is equality as abstraction," the "ideal measure" of things; the empirical measure of a thing, however, is its *price* (SEL 121). Although these conclusions are sped through, the method of acquiring them is key. For Hegel is trying to develop the validity of economic categories like *value*, *price*, and eventually *money*, from their emergence in acts of *exchange*, which in itself realizes *property* as a relation of *right* between mutually recognizing, surplus-producing subjects of need and desire.

The loss of one's empirical relation to the surplus object and its replacement by another object of desire are mediated by the form of right and the equality of value. In this process, "needy intelligences" with "both a surplus and an unsatisfied need" seek to satisfy each other's desire by transforming "the individual thing, ideal-objectively related, into something subjectively related with need. This is *exchange*, the realization of the ideal relation" (SEL 121). What is the "ideal relation" realized in exchange? *Property itself*, whose ideal recognition is accomplished only in real exchange.[59] That is to say, "Property enters reality through the plurality of persons involved [*begriffenen*] in exchange and mutually recognizing one another" (SEL 121).[60] Hegel describes this transition between the ideal and subjective relation to the object as the "self-movement of the concept," which takes on opposite characteristics of ideality and reality by means of the practical relations of exchange of objects as property between persons.

The problem of exchange, according to Hegel, is that one must correlate one's surplus to another's need at precisely the right moment and place. This renders the success of exchange uncertain (SEL 122). If the process of exchange is not simultaneous, then the identity achieved through mutual recognition is broken. This problem was already noted by Kant in his *Rechtslehre* and solved in a similar way: the empirical relation between wills and objects must be subordinated to the intelligible relation between wills themselves. For Hegel, overcoming the external contingencies of exchange requires transforming the form of exchange into a purely ideal relation. "This transformation of exchange is *contract*" (SEL 122). Whether or not the empirical exchange has happened, the contract realizes the exchange as ideal, and this ideal exchange replaces the 'real' one as the true one (SEL 123). Hegel is here showing how seemingly simple, empirical acts require fuller mediation by ideal and normative concepts in order to achieve their purpose. This mediation of reality by the ideal spiritualizes nature and liberates individuals from natural determinations, rendering them more ethical and hence freer. Labor, tools, possession, surplus, exchange, property, and contract are all ways in which the "I" progressively expands its mediation with its other—beyond the restrictions of exclusive, natural, unconscious love in the family and into self-conscious universal recognition in political-economic society.

The productive mechanization of labor creates not only surplus possessions but the possibility of a universal system of exchange in which all can acquire their needs as property. The possibility of satisfying all needs is posited objectively in the form of *money*, a kind of property that is indifferent to any particular labor or need but which rather enables the universal mediation of need, labor, and property in general. Whereas money represents the abstraction and mediation of all particular kinds of property in a thing, *trade* represents this universal mediation of property in an activity (SEL 124). The monetary economy based on a specialized division of labor and trade is a totality, and this kind of totality produces particular subjects to carry it out. According to Hegel, the "individual" is the *intuition of this totality* as a singular being (SEL 124). For like money, an individual subject is the "indifference of all specific characteristics" [*Indifferenz aller Bestimmtheiten*] that constitutes her (SEL 124). That is to say, the flow of money, which moves through trade and acquires property through contracts, has the structure, like life itself, of the absolute concept or absolute subjectivity: it is a totality freed from any of its particular characteristics. For Hegel, "the individual, considered under this absolute abstraction, is the *person*" (SEL 124). In recognizing other individuals as persons, each one is free to be or not to be whatever specific characteristics they may have. Thus, individuals are able to recognize each other abstractly as free and equal persons because of their mutual implication in a monetary system of property exchange.[61]

Yet Hegel does not remain at the level of abstract freedom and equality; rather, he moves beyond the strictly formal accounts of right and begins to conceptualize *inequality* and differences in the "power of life."[62] The formal equality of individuals as abstract persons who own property, make contracts, and exchange goods through money for needs is still only a relation of *possibility*. It does not determine the actual interaction of living individuals, with all their differences in strength and power. Hegel calls this "relationless recognition" [*verhältnislose Anerkennen*] (SEL 125), for it is a formal recognition of identity without any actual recognition of difference. It is "relationless" because the recognition of equality is related not to the real individual but to an ideal person as a potential possessor. When living individuals actually confront each other, however, they immediately establish relations of "lordship and bondage" due to the "inequality of the power of life" (SEL 125).

Hegel describes the situation in which two individuals confront each other in obscure language: one individual is liberated in "indifference," the other is fixed in "difference." The former is free, the "cause" and "soul" of the latter (SEL 125). It seems as though the "indifferent" individual is the *property owner*, the independent person with surplus possessions who can provide for the needs of himself and others. The "different" person would thus be one who lacks property and can relate to others only through the specific characteristics of being a needy, particular individual. "At this point," Hegel proclaims, "there is no question of any right or any necessary equality" (SEL 125). The previously posited equality of the mutually recognizing persons is "nothing but an abstraction, the formal thought of life," something "merely ideal" and "without reality" (SEL 125). In *reality*, however, "the inequality of life" predominates, namely relations of lordship and bondage (SEL 125). This is because reality includes not only formal relations of identity but also "shape and individuality and appearance, and consequently difference of power and might" (SEL 125). Reality is "plurality" [*Mehrheit*], and the "concept" of the relation between individuals in a plurality is not right and equality but "immediately" identical with "lordship and bondage" (SEL 125). Hegel here identifies reality with plurality, plurality with difference, difference with inequality, and inequality with lordship and bondage.

This unequal relation is "natural," occurring whenever individuals confront each other, but also *ethical* since it can be formative in the development of individual talent (SEL 126). The status of this unequal situation is not yet as formative as it is in the development of self-consciousness in the *Phenomenology*; its role is more ambiguous here. It does not produce a struggle for recognition but is rather a product of incomplete recognition, "relationless recognition." Hegel's point is rather to show the inadequacy of property rights as a means for creating an ethical order of individuals,

even though such rights are necessary for liberating people from their natural dependencies in the first place. This liberation of individuals from their natural determinacy through the *form* of property, however, brings forth a new kind of domination through the *matter* of property. Although we are equal *as persons*, the *content* of my property upsets this ideal equality in practice.[63] I have a surplus, you lack one. I have what you need, and so I am the master and you are the servant (SEL 126). Hegel is very clear: one's position in the lordship and bondage relation is determined by one's access to the material needs of life, to property.

The first ethical solution to material inequality based on property comes not from top-down political measures of economic control but from the bottom-up 'natural' relations of the *family*. The economic structure of the family neutralizes the divisive power of private property and personality, binding individuals together in a more communal form based on shared needs. The "particularity [of property] is transformed in the family into the universal," and such a universal appears as 'nature' (SEL 127). In the relation of father, mother, and child, according to Hegel, "there is no antithesis of person to person or of subject to object, the surplus is not the property of one of them, since their indifference is not a formal or a legal one" (SEL 127). Against Kant, Hegel claims that all property contracts are abolished in the family, for contracts are based on "private personality" which here is replaced by one's role as member of a common unit. "Instead the surplus, labor, and property are absolutely *common* to all inherently and explicitly" (SEL 127). There are still elements of lordship and bondage in the family, but no longer is inequality determined by the ownership of surplus. The 'natural' differences in power between husband and wife and between parents and children are overcome by the shared labor, property, and identity of the whole family. Such differences are rendered 'indifferent.' The product of each individual's labor in the family is no longer private property for one but "common property" for all. The surplus product is redistributed internally amongst the family. And within the family, "the transfer of the surplus is not an exchange, because the whole property is immediately, in and for itself, common" (SEL 127). In this way, the family achieves a form of universality, albeit a 'natural' inner one, not yet an objective, external universality. It is still based on 'natural' differences, immediately present, unformed by free intelligence and the concept. True universality can appear only through a more reflective relation to one's own natural determinacy and to the institutional structure of society and its class constitution and political formation. Thus, the second 'solution' to the problem of nonrecognition and inequality lies in the supersession of individuality and natural differences in the organic totality of the *people*.

Now obviously families historically emerged before legal relations of property. Hegel is thus not describing a linear historical development;

rather, he is putting different ethical relations in dialogue with each other, so to speak, showing how the unifying form of family can mediate some of the differences that come with property. By binding property to families instead of individuals, relations of inequality are rendered less problematic since one person's lack becomes supplemented by another person's surplus, *without exchange*; surplus property thus becomes more capable of actually meeting people's needs when redistributed freely instead of mediated by exchange and labor. Yet individuals are not only formal property owners or natural family members. They are also free to negate their duties, obligations, and roles. As Hegel says, a free being does "not regard itself as absolutely bound up with any single characteristic, but as the indifferent identity of all of them" (SEL 128). And with this freedom comes the *negativity* or *crime* that can break the bonds of family and devolve social relations into cycles of revenge, barbarism, and cruelty. Such acts of transgression produce a crisis of self-identity which can no longer be solved by property or the family. To overcome the cycle of revenge, Hegel suggests that the 'natural' differences within the family and the 'legal' equality between individual property-owners must be submerged within the 'absolute' identity found in a 'people' as a whole.[64] Before I come to that, I now turn to Hegel's discussion of freedom, negativity, and crime.

Freedom, Negativity, Crime

Hegel's section on "The Negative, or Freedom, or Crime" is considered by many to be the most important section in the SEL, the one in which Hegel begins to become specifically Hegelian, though not quite as fully as he will be in the subsequent *Philosophy of Spirit* lectures.[65] The reason why this section is so important is that it comprises Hegel's first attempt at systematically integrating "negativity" or conflict and difference into his framework as an *essential*, dynamic element instead of dismissing it as a threat to some proposed ethical unity. But why does Hegel identify freedom with "the negative," and why are both associated with crime? Freedom here is conceived as the freedom to *break with* positive norms. It is the freedom to choose the possibility of action that does not reinforce the positivity of the whole but fragments it. Such deeds are both metaphysically and ethically negative: in the former sense, they are assertions of particularity against the universality of the whole, and in the latter sense, they are acts of individual crime against norms of universal right.[66] Let me contrast this to Kant and Fichte's idea of wrong.

According to Kant, crime and punishment are relatively simple. Any use of coercion *not* justified according to the equal freedom of all is *wrong*. Such coercion can affect things, people, choices, status, and bodies—anything to which one has a rightful relation of intelligible possession. To have

a right to a thing is thus to have a right to authorize coercion against others not to interfere with it for their own ends. Coercion is intrinsic to right, and since right is intrinsic to my own freedom, coercion is intrinsic to my freedom. Any *wrong* act, insofar as it is an unjustified use of coercion, generates a contrary *right* to authorize the use of coercion against the coercer to undo the wrong. Wrong is just wrong, there is nothing it contributes to right. Yet Kant's entire theory of private right and property begins by binding the concept of "rightfully mine" to the concept of *wrong*: what is rightfully *mine* is whatever I am so connected with that another would *wrong* me by using it without my consent.[67] So although Kant has no positive theory of wrong as ethically or legally productive in any way, he is forced to admit that the theory of right must follow the "fact" of wrong. Given this fact, one can then construct a coherent account of what is *mine*.

According to Fichte, the concept of right *precedes* the concept of wrong since right is a transcendental condition of possibility for self-consciousness. Right is the only possible relation between free beings that affirms the freedom of both. This relation is based on reciprocal recognition of one another's rationality and the ensuing self-limitation of one another's sphere of freedom. But although this fundamental normative relation of recognition is the transcendental condition for any possible system of right, finite rational beings cannot be expected to live according to this principle on their own accord. The structure of recognition may provide a general normative framework of 'original rights' to one's body and property, but interacting based on such rights works only when individuals trust each other enough to do so. Take away the presupposition of trust, and the ground of right falls. Hence, Fichte argues that any *application* of the principles of right must assume the universal egoism and self-interest of individuals who care little for the freedom of others (FNR 134). Applied right thus incorporates violation and coercion into its structure and modifies its goal from establishing an order of universal freedom of each to constructing a system that can preserve the mutual security of all.

For Hegel, right and wrong as well as justice and crime are *absolutely linked* in their very concept (SEL 132). Taking more from Fichte than from Kant,[68] Hegel assumes that no ethical system of recognition and right can develop without "negative" acts of wrong. But Hegel thinks that such acts do not provoke modifications of right on their own, as if the violation itself immediately leads to a new conception of right. Rather, violations of norms (of property) generate struggles between individuals (or families) who seek to assert their self-worth, dignity, and honor against the nonrecognition of others. When life itself is risked in these struggles to prove one's value beyond one's property, then a new form of absolute freedom is won, one which requires a restructuring of the norms of social interaction in order

to accommodate it. In the SEL, such struggles are not yet explicitly theorized as 'struggles for recognition' as they will be in the subsequent *Philosophy of Spirit* lectures. At this point, they are simply struggles for *honor*, and they do not yet clearly function as the transition to the more universal sociality of absolute ethical life.

In the section on freedom, negativity, and crime in the SEL, Hegel lays out various forms of "pure freedom" or negation of the universal: murder, destruction, fanaticism, and havoc. Relevant for us are the particular *moral* injuries to the universal element of recognition expressed in relations of property.[69] Such an injury is called *robbery* [*Beraubung*] when done in connection with one's person and *theft* [*Diebstahl*] when done in connection with an object (SEL 135). Yet Hegel immediately confuses this distinction and argues that an injury to a thing, when connected to the person as property, is itself an injury to the person and demands retribution. The language Hegel uses to describe this attack on the person mediated by the injury to the thing is incredibly dense (and the standard translation is not the best). I will try my best to explain it.

Theft or robbery cuts a subject's 'ideal' relation to an object—ideal in the sense that the empirical relation of possession is supplanted by the normative relation of right grounded in the recognition of others. "For recognition recognizes precisely this relation, which is in itself purely ideal, as a real one" (SEL 135). Theft is an "injury to right" not because it hurts one's self-interest, or even goes against one's consent, but rather because it negates the relation of recognition that grounds ethical interaction between free persons. Theft is thus "the real cancellation of recognition" [*die reale Aufhebung des Anerkennens*] (SEL 135). The injury of theft is not to the *object* but to the subject, for "the object stolen remains what it is, but the subject does not" (SEL 135). What is *aufgehoben* in the subject "is not the reduction of his possessions, for that does not concern him as a subject; on the contrary it is the destruction of his [being] as indifference by and in this single act" (SEL 135). What does Hegel mean by the *indifference* of the subject? "The indifference of determinations is the *person* and here this is injured, the reduction of his property is a personal injury" (SEL 135). Theft is thus not a quantitative or material act against a person and their possessions; it is rather a normative offense against the subject as a *person*, that is, as a rational being indifferent to any single determination. But if persons are truly indifferent to their characteristics, then why does theft harm them at all? Shouldn't the person not care about any particular object or any attack on property?

This is where the second, more metaphysical aspect of the negativity of theft comes into play. For Hegel, robbery is an act of "singular subsumption" in which one's possession is subsumed under the desire of another (SEL 136). In this subsumption, the robber relates to the person only

through the object of property and treats the object as a particular, *not* as the personality itself. The universality of recognition granted to the possessor in relation to the object is thus denied; the object no longer expresses a singular aspect of their infinite freedom but is reduced to a mere *thing*. In this way, robbery is a *particularization* of the universal, a collapsing of the free relation between person and property as a universal mediation of one's reason with nature into a determined relation to a thing as mediated by the force of another. The object is no longer mine, and my personality is now reduced to being the injured bearer of a lost particular. Consequently, this upsets my universally recognized standing as an equal property-owner amongst others; instead, relations of *lordship* and *bondage* set in (SEL 137). The robbed person is subjugated by the lack of property. To invert the relation of powerlessness, the robbed subject invests the lost object with the *entirety of its being* and relates to it as if it was identical to their personhood, as if it was a matter of life and death. This means that the injury to property is experienced as an injury not only to right but to *honor*. Hegel writes:

> Through honor the singular detail becomes something personal and a whole, and what is seemingly only the negation of a detail is an injury of the whole, and thus there arises the battle of one whole person against another whole person.
>
> (SEL 137)

To treat the negation of a detail as an injury to the whole—this is Hegel's formula for how theft can lead to a situation in which subjects contend with each other for dominance, in which they risk life to gain honor. Since there is no higher authority to which one can appeal, if individuals want the recognition they think they deserve, then they must stake everything on it. The need to risk the "totality of determinations" of one's life on a particular determination or piece of property is the ethical lesson of this section (SEL 139). For in this act, "freedom" from all one's determinations is gained for oneself (SEL 138). Unfortunately, Hegel does not follow up on this idea in the SEL. Instead, he depicts three moments in the reaction to an affront against honor: murder, revenge, and struggle. I will not go into these, but suffice it to say that the 'struggle' takes place at the level of families, and the result of the struggle is not a higher stage of self-consciousness (e.g., as in the PhS) but a kind of peace or stasis of animosities, one which immediately transitions into the ethical life of a people in a state.

Given this account, one should ask, *why* does the thief steal? According to Honneth, Hegel's thief is not a random actor but one motivated by incomplete recognition.[70] This motivation is taken to be internal to the form of recognition granted at this level of social and moral experience. In

a condition where recognition is based on the exchange of property, the lack of property to exchange is an immediate cause of nonrecognition and disrespect. The propertyless thief reacts against this feeling of being disrespected by acquiring what she needs to be recognized as well as making it clear to others how she has been mistreated. This reading is plausible, but it is not at all explicit here. Rather, it works much better as an interpretation of the attack on property in the Jena *Philosophy of Spirit* lectures, as I will show in the coming sections. Here, a compatible but more adequate answer would be to say that the thief steals in order to assert her particularity against the universal and abstract norms of recognition that govern the exchange of property; the crime of theft is a negative assertion of *freedom*. It is a way in which a subject can reaffirm to herself that she is not bound by anything but her own will. That is a stronger reading of the *negativity* of crime. Perhaps, however, the correct answer is the most obvious one: the thief steals because she *has* to. In an unequal society, Hegel knows that there is no property without theft, and instead of dismissing it outright, he tries to integrate it into the development of absolute ethical life.

The exit from the vicissitudes of natural ethical life and its resultant forms of negativity is finally found in the 'absolute ethical life' of the people as a whole. This universal form of ethical life appears as a constitutional state, a social structure that can integrate families, enforce property rights, and punish crimes with authority. The state tames the negativity of 'free' individuals by organizing property and labor into a system of classes, in which each person is granted the recognition they deserve. Yet it is unclear how the 'struggle for honor'—as a response to the denial of recognition caused by the injury to right expressed in the theft of property—leads to the development of absolute ethical life in the state. For Hegel, the insufficient forms of ethical universality present in the family and property require a more integrated structure of recognition of individuals within the reproduction of the whole. Although Hegel will eventually conceptualize the integration of individuality through the mediation of the market and civil society, it is merely posited as a condition at this point. In a sense, Hegel remains Fichtean.

Fichte's influence can also be seen in Hegel's political-economic division of the state into classes of military, bourgeoisie, and peasantry (SEL 149–56), with the "bourgeois" estate encompassing all those who labor for needs, own property, use money, and make contracts (SEL 153). Basically, this estate covers every urban, property-owning, laboring family who are neither military nor peasantry.[71] The only positive element that binds all these different individuals together into a single estate is their material dependency on property rights, which is itself a negative relation of recognition with others. Although it is not so original, it is a step forward from

Hegel's earlier dismissals of the sphere of property as a purely destabilizing force on social relations and thus inimical to ethical life. Now, learning from Fichte and the new science of political economy, Hegel realizes that there is a normative side-effect to property relations between persons: formal universality and reciprocal recognition. However, alongside the power of property to liberate individuals from natural dependency and bind them to other persons in new ethical relations, there also comes the negative experience that arises with the *lack* of property: nonrecognition, subjugation, and inequality. If formal universality is dependent on being recognized as an owner of property, then not having property denies one's universal right and demands retribution. Crime, theft, and robbery of another's property are thus appropriate means to gain recognition—as long as one has nothing to lose. To prevent this anarchy, the state must intervene in the economic 'system of need.' I turn to this system now.

The System of Need

In the analysis of the *system of need*, Hegel begins to grapple with the real contradictions of property relations in modern market societies. Unlike many, Hegel does not dismiss these elements as superficial but takes them to be essential. The economy is described as an *alien power* over individuals, prone to crises and crashes, a system that engenders vast inequalities of wealth and causes entire classes of people to feel left out, abandoned from any common identity. Fichte too recognized the absolute contingency involved in trying to satisfy one's needs through the market alone, and so in order to preserve one's right to live off one's property and labor, he advocated closing the market and planning the economy instead. Hegel, however, does not want to deny the freedom of individuals to pursue their needs through labor, property, and exchange, for those relations are how reciprocal recognition becomes universalized, a key step in the development of universal ethical life.[72] Thus, Hegel must find a way to regulate the contingency of the system without repressing the source of the contingency itself, property relations.

As a "system of universal physical dependence," the system of need is based on the premise that nobody's individual labor alone can secure the satisfaction of needs (SEL 167). One's surplus possessions must be converted into the general equivalent of money and exchanged for goods that satisfy one's needs. The exchangeable *value* of one's surplus, however, is "independent and alterable" since it fully "depends on an alien power [*eine fremde Macht*] over which one has no control" (SEL 167). This alien power is composed of the totality of needs and (surplus) property in society—what one would today call *supply and demand*—and this totality is "a barely knowable, invisible, and incalculable power" (SEL 167). It is unknowable because it consists in "infinitely many singular" decisions and

"infinitely many" kinds of property. Hegel describes the action of the individual upon the whole system and that of the whole system upon the individual as one of *reciprocal interaction* [*Wechselwirkung*] (SEL 167). Hegel's use of this Fichtean term is no coincidence, for he is describing not only the *empirical* interaction between individuals and the economy but also a metaphysical relation between parts and wholes and a normative relation between individuals and the ethical totality.[73]

The immediate context of the term is Hegel's attempt to determine the *value* of individual property and labor; this determination, however, is completely social, based on the *Wechselwirkung* of all upon all. In Hegel's apt metaphor, the value-determining, reciprocal interaction between the individual and the whole economy is a "perpetual wave, surging up and down" (SEL 167). Highly valued property becomes depreciated when the ratio of surplus (supply) to need (demand) alters. All surplus property is rendered abstract and commensurable and "indifferent" in the total measure of value; no individual can control the wave; no individual can determine the value of their surplus or need by themselves; nothing is "permanent and secure" in value. "Thus, in this system," Hegel admits, "what rules appears as the unconscious and blind whole of needs and the modes of their satisfaction" (SEL 167). This unfreedom of choice and uncertainty of life is neither sustainable nor ethical. Hegel responds to this problem with a call to organize the economy for the needs of all. But the conscious organization of the economy is the self-constitution of *government*: "The universal"—that is, the *people*—"must be able to seize control of this unconscious and blind fate and become a government" (SEL 168).

To Fichte, the uncertainty of subsistence that comes with the universalization of property is precisely why he limits individual property rights for the sake of the whole. One cannot just accumulate, sell, or produce as much as one wants or whatever one wants; to do so would have drastic, coercive, and unjustifiable effects on the lives of others. Government, for Fichte, means ensuring that all can live off their labor and property, not that everyone is free to pursue their own ends irrespective of other people. To Hegel, government should rein in the power of property over needs, but it cannot do so by denying any individual right to property. This right is fundamental to the ethical development of human beings into universal creatures of spirit. Rather, the people, as government, must learn the *science of political economy* and apply it to the whole.[74] In other words, the state should not prohibit trade and limit property, but rather try to alleviate its worst effects by instituting macroeconomics.[75]

By looking at the aggregate relations of value (i.e., the overall ratio of surplus to need), the science of political economy can provide *general* knowledge of the economy. The value of a good in general should depend on whether its production can meet needs ("whether a human being can

subsist on it") and how proportional the cost of providing this need is to the totality of needs (SEL 168). Value is thus abstractly determined by estimating what a human being needs to live, and this calculation comes partly from natural conditions (i.e., climate) and partly from social conditions (i.e., by "taking the average of what in a people is regarded as necessary for existence") (SEL 168). An equilibrium between surplus property and total need can hypothetically be achieved on its own through the balance of labor and exchange, but this balance can also be disturbed by external, natural conditions, such as famines, bad harvests, and floods. Since nature constantly breaks the balance of supply and demand, government must accordingly intervene to "uphold the mean and the equilibrium" (SEL 168). It must do so not only for the sake of people's lives but also so that the people do not lose "trust in the universal," the foundation of government (SEL 168). When one's surplus property is devalued through overproduction, for example, it becomes nearly impossible to live by selling it. This causes a part of the population to lose trust in the "universal" government to whom they tied their conditions of existence. When individuals abandon production-for-need and institute production-for-exchange, a necessary step in the development of absolute ethical life, they become dependent on the contingency of the universal movement of property through society.[76] This contingently universal interdependency of all upon all is rationalized through the government's administration of justice via property rights, contracts, and punishment. 'Trusting the universal' here means putting one's material fate in the hands of abstract forces and trusting that it will work out. But when the "abstraction of equilibrium" between *surplus* and *need* breaks down, why should individuals still trust this government at all? (SEL 169).

Unlike Fichte, Hegel does not think that propertylessness, poverty, or material deprivation breaks the 'social contract' that founds the state, thus granting individuals a coercive right to expropriate the property of others. For Hegel does not believe that government is a contractual relation at all. As the expression of the universal ethical spirit of the people, government is founded on the trust that individuals, families, and the estates will mutually care for each other's needs and treat each other with respect. If this trust breaks down in any part of the population, the government must intervene to supplement the lack. Government, for Hegel, can intervene with authority and right into the system of property whenever the abstract laws of value fail to satisfy the needs of whole classes of society. It is not only a possibility but a duty of government to do so.

Another problem with the satisfaction of need, or *enjoyment*, according to Hegel, is that it is endless: one can always enjoy more than what one has. Although one's enjoyment is always restricted in reality by given conditions, its "ideality" is infinite. "Civilized" enjoyment furthermore turns

raw need into fancy products which require more and more labor (SEL 170). More need, more labor, more products—the cycle has no end.[77] The ideality of enjoyment is restrained in the objectivity of *possession*, yet this fixed form of enjoyment does not limit one's infinite desire to possess more and more. The labor needed to produce surplus possessions, however, is *finite*, as are the produced possessions themselves. They are limited quantities trying to match unlimited needs. Given this conjuncture, "it follows that with the accumulation of possession at one place, possession must diminish at another" (SEL 170).

Here we come to Hegel's insight into the *intrinsically* produced, structurally *necessary* inequality of the modern economy: "This inequality of wealth is necessary in and for itself" (SEL 170). The system of need transposes 'natural inequality' (of skill, strength, etc.) into 'social inequality' (of property). This inequality, as Aristotle already saw, is a product of the drive to infinitely accumulate possessions.[78] But now, unlike in Aristotle's time, this endless drive is embedded into the DNA of modern industry itself and so the inequality it produces is inescapable. This "necessary inequality" of wealth is divided among various businesses and estates in society, but it is not only a "quantitative" relation; it becomes qualitative as a "relation of domination," as the re-introduction of lordship and bondage into the sphere of right (SEL 170). The "tremendously wealthy individual becomes powerful," overcomes the contingency of universal physical dependency on the market, and thus no longer needs to recognize the other as a condition of possibility for his own existence (SEL 170). This supersession of dependency, however, is an illusion, for individual wealth is wholly dependent on the collective labor of others. Such wealth is "bound up with the deepest poverty," and it produces not only "ideal universality" in property but also "real, mechanical universality" in labor (SEL 170–1). The mechanical labor which renders possible universal wealth is "purely quantitative," "inorganic," and "immediately the highest barbarity [*Rohheit*]" (SEL 171). As he will continue to do in the Jena *Philosophy of Spirit* lectures and the later lectures on *Naturrecht* in Heidelberg and Berlin, Hegel explicitly condemns the barbarity of modern labor relations and the absolute danger that the business estate [*Erwerbsstand*] poses to the ethical totality. When the business class loses respect for anything beyond property and profit, it sinks into "the bestiality of contempt" for anything ethical as well (SEL 171). That is to say, when a certain class takes the "wisdomless pure universal mass of wealth" to be *all that matters*, one can be assured that the "absolute bond of the people, the ethical, has vanished and the people is dissolved" (SEL 171).

The problem is that the business class plays an *essential* role in Hegel's conception of the totality of ethical life insofar as it facilitates the interdependent exchange of property, making the recognition of (the needs of)

others into an essential aspect of (the needs of) oneself. Yet precisely through this universalization of *finite* amounts of property produced by *finite* amounts of labor, there ensues a necessary inequality of wealth between property owners and laborers, and this quantitative difference translates into a qualitative imbalance of power. This inequality leads the owning class to deny their dependency on the universal labor of others and to pursue their particular wealth above any universal, ethical purpose. In short, a source of ethical formation becomes an obstacle to its very fulfilment.[79]

Since the business class cannot be abolished *tout court*, the government must work "as hard as possible" to stop the "universal destruction" wrought by inequality (SEL 171). This can occur in two ways: *externally* through government provisions, high taxes, and price controls or *internally* "through the inner constitution of the estate" (SEL 171).[80] According to the latter, more effective method, the estate of all those who labor, own property, and do business with each other should be reconstituted such that their physical dependency on each other as abstract, universal persons is supplemented by a "living dependency" on each other as ethical, active, singular human beings (SEL 171). This means that the binding universality of law and right would have to be seen not as an abstraction of individual wills but as a product of collective human self-activity. Hegel seems to think that the *rich* would be compelled to reduce their domination and allow more participation in the wealth of society because they find the "infinite" no longer in anything external (e.g., property) but in the living relations between individuals. When that happens, "the drive to amass infinite wealth is itself eradicated" (SEL 171). The concrete manner by which the *inner constitution of the estate* reshapes ethical relations between the rich and the poor into something more equal and ethical, however, is not really spelled out by Hegel.[81]

In addition to considering property in the system of need, Hegel posits property under a system of justice (SEL 173–5). In this framework, property is understood not in terms of *need* but rather in terms of *right*. This way of looking at property resembles the methods of Kant and Fichte as well as Hegel's own later account in the PR. In Hegel's mature *Rechtsphilosophie*, this metaphysical-normative approach to property as an individual right of freedom almost completely displaces the materialist approach to property as a socially recognized relation of need. Whereas the relation between need, possession, recognition, and property is central in the early Jena writings, the concept of need is explored in the later theory of right solely in the sphere of *civil society* as a motivating factor for the expanding division of labor. Property itself in the PR is conceptualized as an "abstract right" of the will, a necessary but insufficient condition for the actuality of freedom.[82] Indeed, this normative idea of property as the immediate

existence of freedom propels the development of objective spirit forward. In the SEL, however, the right to property is discussed not as the existence of freedom but as the universal being of the *I*, fixed by recognition.

The transition from seeing property under the aspect of *need* to seeing property under the aspect of *right* occurs once the universal aspect of property is emphasized over its particularity. This becomes clear in Hegel's description of how each "system of government" uniquely mediates the *universal* and *particular* aspects of ethical life. In the system of need, the universal value of a particular possession is tied up with the satisfaction of needs; the particular aspect of possession thus dominates its universal aspect. In the system of justice, however, the "need-related thing," as *property*, is determined not as something particular but as universally valid, that is, *as recognized* (SEL 173). "The thing is mine" means that my objective relation to it is subjectively recognized by others as absolutely valid; my private relation has "objective reality" (SEL 173). In the recognition of property, the "I is a universal, fixed, it has being" (SEL 173). The fixed, objective reality of my "I" comes not from my own ideal positing of something as *mine* but from the consciousness that "all I's posit this relation" (SEL 173). In other words, only through everyone's positing and recognizing of one another's practical relation to specific things does *my* individual claim to something gain legitimacy and right. And only insofar as I can be said to have a right to property can it be said that "I" have an external existence at all. At least, that is the claim.

The "whole mass of I's" which universally posits rights to property, when abstracted from their particular needs, forms the "public authority"; and as a self-conscious body, the public authority acts as the "administration of justice" (SEL 173–4). This is all to say that the middle term in the *self-property* relation, the medium that grants "reality" to the relation, is *government*. As the public authority administering justice in regard to property, government treats individuals in terms of universal *rights*, not specific needs. Justice is not a mechanical procedure of applying rules but a living, dynamic labor of judgment concerning particular cases and free persons, *seen from the perspective of what is universal in them* (SEL 174). With that, my exposition of property in the SEL comes to an end.

Conclusions on the System of Ethical Life

I conclude my reading of the SEL with four thoughts on what we have learned about Hegel's conception of possession and property. First, Hegel continues the tendency in Kant and Fichte of placing *property* at the center of the analysis of right, politics, and the state. More importantly, like Kant and Fichte, Hegel also analyzes property from *two* distinct perspectives: as an abstract (legal) right on the one hand and as a concrete (economic)

relation on the other. For Kant and Fichte, these two different takes on property require two separate justifications: one based on *a priori* principles of practical reason and one based on social-normative principles of practical freedom. For Kant, one must first justify the possibility of intelligible possession of external objects of choice according to pure practical reason alone before one can justify the actual right to *acquire* anything as one's own in a civil condition (see Chapter 1). For Fichte, one must first deduce the ground of the original right to property from the conditions of self-consciousness as the right to a sphere of free action in the sensible world, and only then can one analyze the coercive right to property (as a right to live off one's labor) as an element in the property contract with the state (see Chapter 2). For Hegel, property is both a surplus product of labor to be exchanged with others for needs and a formal relation of recognition in the system of justice. Although Hegel considers the nature of property from both a formal-legal perspective and a material-economic one, he does not reduce property to either. Rather, he shows how property relations come to play a formative role in the ethical development of human beings toward a more universal community.

Second, Hegel *reverses* the priority of analysis and begins with property in relation to need before discussing property as a right. Thus, whereas Kant and Fichte begin with an abstract conception of property based on a concept of *right* and then move on to its practical application in the state, Hegel starts from a philosophical anthropology of human needs and then shows how labor, possession, and exchange bring individuals into interdependent relations with each other; this new condition of generalized dependency makes the mutual recognition of one another's needs into an essential aspect of one's practical self-identity.[83] Acts of theft, however, disturb the trust underlying the recognition of property, and thus, in order to ensure reciprocal recognition of property, individual rights to property must be formalized into a system of laws, authorized by all. Only then is it meaningful to discuss property in terms of *rights*, for only then can individuals claim to really possess things independent of their power, labor, or status. Possession ultimately becomes real as property in virtue of its legal status, not its economic one. Hegel thus does not *deduce* property as a right in conformity with principles of reason or freedom; rather, he *describes*, phenomenologically, how relations of possession and property emerge from the active desire to negate feelings of separation (or need) through labor and exchange. This description is not neutral but normatively structured according to the telos of forming a universal community of absolute ethical life. Relations of possession and property help foster this goal, albeit inadvertently or even negatively.

In the SEL, Hegel is interested not so much in the metaphysical nature of possession—not yet at least—but in what people must do to make

possession *real*, to give it legitimacy. In other words, Hegel focuses on what it takes for people to make their lives materially dependent on abstract relations of property, as is the case in a society based on a division of labor and mediated by exchange. The answer is *trust in the whole*, or in a more Hegelian formulation, the absolute identity of subjectivity and *Sittlichkeit*, for without trust that one's needs will be met in the universal, there is no reason to sacrifice one's labor for others, to recognize other people's property or even other people at all.[84] To ensure that trust is not lost, the people—as government—must ensure that the economy does not devalue certain people's surplus property, whether through overproduction, natural catastrophes, crises, and so on. Through the inner constitution of the estates and government intervention, rampant inequality in society can be tamed and individual dignity of labor can be gained. In this way, property relations create new ethical demands for how people ought to act. Ultimately, Hegel wants to know how the recognition-enabling system of generalized exchange of property can be integrated, domesticated, and balanced within an ethical-political community such that it does not lead to the material and moral destruction of parts of the population.[85]

Third, and perhaps most controversially, *Hegel does not tie property directly to freedom*. Both Kant and Fichte ground their entire philosophies of right on the practical freedom of rational beings to act purposively in the sensible world, and both claim that the right to property is a necessary condition for such freedom to be successfully realized in any human community. In Hegel's 1821 PR (and in the lectures on right from 1817 to 1831), the concept of *property* is *immediately* and *explicitly* conceptualized as the first objective existence of freedom; property is the most immediate and abstract form in which the "will" expresses its objectivity in things, effectuates its agency over nature, finds itself as free, and invites recognition from others of its normative status (PR §34–71). In *contract*, this private will forms a universal will based on reciprocal recognition of one's another's status as free (PR §72–81), and in *wrongdoing*, the free will asserts its particularity against the abstract universality of right (PR §82–104). In a way, Hegel's mature political philosophy of right appropriates much of what Fichte said about property in the first part of the *Foundations*, but Hegel reads it through his own conceptual framework of historicized, socially minded *spirit* instead of Fichte's absolute self-positing I. Objective spirit—or the reason-embodying, historically formed, institutionally bound customs, norms, and practices of human beings—is the social medium in which freedom becomes objective to itself and conscious of itself as property-owning will, as moral conscience, as family member, as worker, and as citizen.[86]

In the PR, the right to property satisfies a necessary but insufficient condition for the free will to will itself as free. Yet in the SEL, Hegel never

claims that property is tied to the existence of freedom or that it is a condition of freedom or even that it is justified according to freedom. On the contrary, freedom is broached really only in the section about *theft*. So why does Hegel claim that theft is somehow a more proper expression of freedom than property? To understand why, we must first remember that property for Hegel in the SEL is a product of *necessity*; that is, property relations are always mediated by *need*. Property emerges as the storing of objects for deferred gratification and then as the possession of tools for laboring on desired objects. The creation of a surplus product through productive labor is the first form of property to be recognized by others, recognized because others *need* it. In the exchange of surplus possessions, the mutual satisfaction of needs is accomplished, and, inadvertently, relations of reciprocal recognition are established. So far, freedom plays no explicit role; implicitly, one can interpret the gradual mediation of natural necessity with labor and possession as a form of freedom insofar as it purchases independence from determinacy, but Hegel does not make that point. Such a thesis will become available to him only with the idea of *spirit*.

When the exchange of surplus possessions becomes generalized to such a degree that individuals are materially dependent on one another's products for their own satisfaction of needs, those who lack a surplus to exchange cannot meet their own needs, at least not by sticking to the norms of recognition. These individuals are part of a whole which does not value them independently of their surplus contribution. But by *stealing*, individuals without property can satisfy their needs *and* assert their particular independence from the whole; their negativity is liberating. *Theft is freedom* because it defies social conventions for the sake of the individual; theft breaks the norm to recognize property, a norm which is maintained not in order to secure equal freedom but in order to satisfy needs in a system of exchange. Now this negative freedom is not sustainable; in fact, it leads to struggles of honor to the death and to cycles of violence. Ultimately, the subjectivity of freedom must be "murdered" by the objectivity of ethical life (SEL 131). Government, as the "movement of the people" (SEL 165), can formalize property relations into coercive rights, economically manage them in a system of need, and legally safeguard them in a system of justice. In the system of justice, government mediates the relation between myself and my need, giving this relation objective reality as property. Through the right to property, *I* gain universality, fixity, and being (SEL 173). If the "I" can be read as proxy for the free will, then that is perhaps the closest Hegel comes to making any connection between property and freedom in the SEL.

Finally, allow me to comment on perhaps the most significant interpretation of the SEL in recent years, that of Axel Honneth. Honneth argues that Hegel's SEL is exemplary for developing an expanded conception of

recognition across various realms of life. According to Honneth, Hegel analyzes three distinct spheres of normative interaction, each of which is grounded in a different form of reciprocal recognition: affective recognition of individuals in the family as creatures of need, formal recognition of individuals in law as property-owning persons, and social recognition of individuals in the state as concretely universal citizens.[87] Social conflicts arise in each normative sphere when the recognition appropriate to it fails to capture some particular aspect of individual worth. These conflicts are not Hobbesian battles for material self-interest but struggles over one's moral status as worthy of being recognized and respected. Now, this idea of the normative stakes of social conflict is clearly there in Hegel's SEL, but the suggestion that Hegel has a complex multipart theory of recognition is highly questionable. Whereas in his later *Rechtsphilosophie* Hegel does come to formalize distinct spheres of interaction in the family, civil society, and the state, here in the SEL, such spheres are not characterized by *recognition*. In fact, it is *only* when Hegel discusses property *in any sphere* that recognition comes into play.

For instance, in natural ethical life, reciprocal recognition is introduced as a condition of possibility for exchanging (produced) surplus property with others for one's own needs. The unequal distribution of surplus property creates relations of lordship and bondage which can be restrained through family structures, *not* because of some affective recognition in the family but because of a new property arrangement, common property. With crime, individuals are motivated by the disrespect or non-recognition which comes from lacking property; this non-recognition can be overturned by stealing another person's property, such that my theft functions as a summons to the other to recognize me as an individual worthy of owning property. In the absolute ethical life of the state, universal recognition is found not in political solidarity with all citizens but again only in those relations which are mediated by property. In the system of need, or market economy, individuals recognize each other as producers and consumers necessary for each other's survival in the interdependent network of supply and demand. The system of justice formalizes this economic interdependency with a legal system of universal property rights and thus recognizes all property-owning individuals as persons. The military and agricultural estates do not share in these formal relations, and the government does not create a universal sense of belonging through a political form of recognition. Rather, the universal aspect of ethical life appears in the state in the form of a singular *people*, differentiated into laboring estates, materially related to each other through the economy, individually shaped through education and discipline, administered by law, cared for by the government, united in war, and freely ruling itself. Honneth is thus wrong to attribute such an expansive idea of recognition to Hegel at this point.

Recognition is here tied specifically to the property relation, as it is with Fichte, the difference being that Hegel's concept of recognition is mediated by exchange, labor, and need. Honneth is either projecting his own normative framework onto the SEL or reading Hegel's later *Rechtsphilosophie* into it. Hegel's focus on recognition, however, does become more apparent in the Jena lectures on the *Philosophy of Spirit*, to which I now turn.

First Philosophy of Spirit (1803–4)

This section has three parts. First, I discuss some of Hegel's Fichtean-inspired conceptual innovations in the FPS, focusing on the notion of *spirit*. Next, I provide a close reading of the text, concentrating on two aspects in particular: the necessary injury to possessions as part of the struggle for recognition and the structurally alienating system of labor and property. Finally, I summarize Hegel's claim that a self-negating struggle between mutually excluding families of possessors can indeed produce the universal normative consciousness for a political community of rights-bearing persons.

The SEL was Hegel's first attempt at systematizing his practical philosophy, and he did so through a critical appropriation of Fichte's *Naturrechts*. Hegel continues this philosophical project in the FPS (1803–4), critically appropriating even more of Fichte's ideas along the way. In particular, Hegel adopts two ideas from Fichte: (1) that *individuality is a reciprocal concept* and (2) that there is an *inner relation between property and recognition*.[88] Let me take these in turn. First, whereas Fichte *deduces* the reciprocal nature of individuality within a transcendental argument about the conditions of possibility for a rational being to posit itself as free, Hegel treats the social nature of individuality as an implicit condition that can be made conscious only through struggles over the boundaries of one's ethical community. The individual self is not the primary subject of these struggles but rather is part of a historically dynamic whole which embodies the freedom and reason of its participants. This whole is called *spirit*, and its development forms the new structure of Hegel's practical philosophy. Its philosophical source, however, can be traced back to Fichte's self-positing "I" which can posit itself only in relation to another. Hegel historicizes this idea and gives it a more developmental, conflictual story.

Second, whereas Fichte argues that the right to property presupposes the reciprocal recognition of the self-limiting freedom of each (see Chapter 2), Hegel argues that reciprocal recognition emerges as a result of conflicts over possession. Such conflicts are inevitable because there is not yet any universal authority to underwrite individual claims of mine and yours; thus, in a dispute, each possessing party stakes their entire identity on their possessions. An injury to a possession therefore becomes a threat to one's

whole being and so it must be defended absolutely in a struggle to the death. To resolve conflicts over possessions in a permanent way requires a new kind of self-understanding, one in which the recognition of *another's* possessions becomes just as important to oneself as the security of *one's own*. This reciprocal recognition of the right of each to possess property carries along with it a deeper recognition of the interdependency of free individuals upon each other for approval within a single ethical community. In making this norm of recognition explicit, individuals ethically develop themselves beyond their narrow circle of duties and begin to identify with a more universal human community, or *spirit*.

Besides the concept of spirit and the developmental account of recognition, Hegel's most important contribution in the FPS is to have further developed the obscure section on "The Negative or Freedom or Crime" from SEL into a much more complex and coherent account of the struggle to the death between family units over possessions. As noted above, the resolution to this struggle demands a realignment of social relations between subjects in which they overcome their limited normative understandings of themselves as members of separate—loving, laboring, and possessing—families and instead identify with each other as interdependent parts of a universal ethical community in the form of a people. Social interaction within the 'spiritual' community of a people is no longer plagued by irresolvable conflicts over possession but rather is subject to universal, reciprocally recognized norms of respect, trust, and honor. Yet Hegel's transition from a condition of separate families struggling over possessions to one of universal community in the shape of a people is somewhat abrupt; the new state of affairs seems to be more of a desideratum then an achieved status. It is not until the 1805–6 SPS that Hegel theorizes a proper middle ground between the particularity of the possessing, laboring consciousness and the universality of the people's spirit. This middle ground is the sphere of *Anerkanntsein*, being-recognized, or what he will later call, "abstract right."

For Hegel, all particular forms of ethical consciousness make sense only in relation to the 'universal'—that is, to a living community which encompasses differences while maintaining an absolute identity of the whole. In the FPS, Hegel's name for the "universal" is no longer "absolute ethical life" but *spirit*, and spirit manifests itself in different shapes: as *practical consciousness* (in speech, labor, and possession), as *recognizing consciousness* (in property), and ultimately as the *universal consciousness* of a people (in customs, practices, laws, and economy). Hegel's main thesis here is that *spirit* is both the mediation and ground of all the ethical ties, norms, roles, and values institutionalized by self-reflective human beings over time. I say "mediation and ground" because spirit both *mediates* the relations between subjects and objects within a single ethical substance and

grounds subjective action in an objective normative order. *Practical consciousness*, *recognizing consciousness*, and the *universal consciousness* of ethical life are "shapes of spirit" because they each contain different levels of subject–object mediation and express different grounds of action. Hegel here replaces the SEL's philosophical anthropology of 'natural ethical life' rooted in *need* with a social-epistemological account of self-consciousness *freeing itself from nature*.[89] The abandonment of nature as a determinant category allows Hegel to find spirit already present and determining itself at every level of practical agency. For example, in the communication of speech, the forming of tools, and the holding of possessions, spirit is already present in unacknowledged and restricted forms, not yet realized as to its full potential. The task is thus to bring into view the intersubjective, ethical conditions of individual self-consciousness in both its theoretical and practical forms.[90] At this level of abstraction, Hegel appears not so different from Kant in the *Rechtslehre* or Fichte in the *Grundlage*. The difference is that for Hegel, this task is not only philosophical, insofar as this awareness of spirit is to be made intelligible in conceptual terms, but also *historical*, insofar as spirit is to be made objective in concrete institutions over time. In order to show this, I now turn to the text of the FPS itself, particularly the section on the struggle to be recognized—*with and without property*.

From Transgression to Recognition

In the FPS, Hegel rewrites the struggle to the death for recognition as a political-metaphysical drama concerning the transition to modernity.[91] Like the account in the SEL, the conflict concerns the injury to possessions, and the result points toward the need for a new ethical-political order that can accommodate individual difference (i.e., in labor and property) within a social whole (i.e., in the economy and state). Unlike the SEL, the possessions at issue here are already mediated by the family and thus the inequality between subjects cannot be resolved through domestic rearrangements. Whereas in the SEL, the struggle over possessions abruptly transitions into the universal ethical life of the people, here the struggle more logically leads to a condition in which each separate consciousness finds itself reflected in the other. The struggle here takes place on a much deeper level: it is not just a moral struggle for recognition of one's normative status but an epistemological struggle that brings forth "universal consciousness." This new tale is thus part social-political and part metaphysical-epistemological. On the one side, Hegel tells a story of how separate, possessing families could be internally motivated, as a result of injuries to possessions, to develop universal norms (of property) that would *de facto* bring them out of the state of nature and into modern society; on the other side, Hegel

provides an account of how opposed individuals can begin to recognize one another as part of a universal community of free individuals, each of whom finds their own self-consciousness "confirmed" in the consciousness of another. This recognition is provoked through the *necessary injury* to another's possessions, an act which is taken as an offense to one's whole being and which must be retaliated against at the risk of death (FPS 238). Hegel thus appropriates and synthesizes elements of Hobbes's war of all against all, Kant's duty to leave the state of nature, and Fichte's summoning toward freedom. The running thread in all these stories is the conflict over mine and yours, the struggle over possession and property.

Hegel's aim is to show how a condition of "reciprocal recognition in general" between individual families as "singular totalities of consciousness" can come to pass (FPS 236). He does this by socializing Fichte's account of the summons: a single family (consciousness) can know itself *as* an ethical totality only *through* being recognized by the ethical totality of another family (consciousness). As a "singular totality," each family appears as one consciousness, as a unity of individuals and their possessions, without external mediations or distinctions. Every aspect of the family's possessions "appears bound up with their whole essence," indistinguishable from them (FPS 237). An injury to one's possession "is therefore infinite, it is an absolute offense, an offense against him as a whole, an insult to his honor" (FPS 237). If every single aspect of one's being is equally bound up with the whole, then every member of one's family and every possession equally reflect one's absolute bond. Hence, when someone breaks the bond between a family and its possessions by robbing them, that person challenges the unity of the family, their "totality of consciousness," so to speak. Since there is no public authority to verify or enforce one's claim to possession, all one is left with is the honor and willingness to defend it.

So far, this is not so different from the narrative in the SEL. But here, Hegel goes one step further. Hegel claims not only that an injury to a single possession precipitates a metaphysical crisis of the family's self-identity as a whole but that, in order for any family to be recognized by others as the singular totality they claim to be, they *must injure each other* (FPS 238). In other words, to assert the integrity of my family (consciousness), I must injure the integrity of another family (consciousness). This argument is not that strange once one brings into focus the specific meaning of possession here. For Hegel, like many other thinkers on property, possession presupposes *exclusion*.[92] To possess something means that one is entitled to exclude others from using that thing—whether by right, agreement, or tradition. Thus, for a family to be recognized as the totality it claims to be, as an integrated whole of people and possessions, its right to *exclude* must also be recognized. But this right of exclusion cannot be proven "through

words, assurances, threats, or promises, for language is only the ideal existence of consciousness" (FPS 237). At this stage, Hegel is concerned with "actual" consciousness, that is, with practical relations between families; recognition must therefore be gained practically as well. For Hegel, the entitlement to exclude others from one's possessions in a pre-legal scenario can be practically proven only when it is *challenged*. For without a public authority, how can anyone really *know* that they really possess something unless it is threatened? Until it is threatened, disturbed, or taken, the possessed object is only *ideally* one's own. The *actual* recognition of oneself and one's exclusive possession comes from *really* excluding others from what I claim as mine. To do so, however, first requires determining the boundaries between mine and yours. This boundary arises, according to Hegel, through *negation*, namely through *attacking the property of others*. For in that act, one learns who really owns what; that is to say, one acquires practical knowledge of the limits of one another's authority to say *mine*. One acts exclusively, transgressing the ideal boundaries of possession, and seeks recognition in return as a possessor. In a phrase, *recognition demands transgression*.

In other words, for a family to be recognized as a singular totality of consciousness reflected in all of its parts, including each possession, they must try to injure other families' possessions and defend themselves in turn. The goal, it seems, is to provoke a crisis of authority so as to determine the boundaries between mine and yours. Hegel claims that this necessary act of injury or 'disturbance' must be directed toward another's *possessions* (as opposed to their body, for instance). This is because exclusive, private possessions are *inherently* contradictory to the 'nature' of things as external universals (FPS 238). We can make sense of this claim by recalling Kant's problem of justifying possession in the *Doctrine of Right*: unilaterally claiming something external as one's own hinders the freedom of choice of others and thus cannot be justified according to reason alone. In order to justify such 'intelligible possession,' Kant makes recourse to a juridical postulate and a permissive law, and even then, it is still only provisional until authorized by public right. For Hegel, the 'contradiction' of singular beings possessing universal things of nature can be resolved not through postulates of reason but only by letting the normative conflict between opposing possessors play itself out.

The struggle goes like this. In order to know themselves as exclusive, one family disturbs another family's claimed possession, perhaps taking a piece of their land. This second family is injured by this act and realizes that they are not a 'totality' at all but fragmented, internally divided in their self-conception. The family is both what they *believe* themselves to be and what others *take* themselves to be. To reassert themselves as a self-determining whole, the injured family violates the other family by disturbing

their possessions, excluding them from something and staking their whole being on this violation. This "necessary injury," Hegel claims, "should lead to recognition," but it only leads each to "negate the totality of the other," to affirm their negated possessions as their own; mutual recognition becomes a negative relation insofar as "each affirms what the other negates," namely their possessions (FPS 238–9). This means that each puts their entire life on the line in order to prove to the other that what was excluded from them was in fact their own. For the sake of a detail, death is risked. For if one does not stake their 'totality' on the particular aspect, then they must accept the fact that they are not a self-shaping, unified whole. They would have to accept that they are *determined* by others and not in control of their self-identity (FPS 239).

To recognize myself as a whole, Hegel claims, I must assert my exclusivity in the consciousness of another; I need to recognize myself as an excluder, as a possessor, and this means compelling the other to accept my exclusion of them, at all costs, to the point of their death. This leads to a "contradiction": risking one's life for the recognition of one's exclusive being and possessions means *sacrificing all* of one's being and possessions, for now and the future. "I offer up everything I possess," Hegel notes, "and the very possibility of all possession and enjoyment, my life itself" (FPS 239). But in offering up *all* of one's possessions for the sake of a single possession, one reveals oneself to be *more* than one's possessions, to be *more* than one's external existence, to be—*rational*. Why rational and not *irrational*? For doesn't it seem a bit unreasonable to risk one's entire life to defend a single possession? Hegel sees this willingness to risk everything for how one is *seen by others* as proof of one's being-beyond-possessions as a being-for-others; and this is the normative self-awareness needed to ground relations of *right*, the foundation of universal consciousness. In affirming my absolute bond to my possessions by absolutely risking them all, I "transform" and "cancel" my *natural* existence and am "recognized only as rational, as totality in truth" (FPS 239). To wager one's life in order to be recognized as a totality of possessions is to wager one's possessions and thus to deny that one is only a totality of external possessions. One is not merely a conditioned consciousness but an "absolute" one. The absoluteness of one's consciousness beyond its possessions appears only when it is absolutely threatened and thus when it approaches death. To know oneself *as absolute* then requires pushing the conflict of possessions to the point of death, without surrender. To stop short of death, to accept a 'wound' or 'loss' of property, is to accept one's non-absolute status. A non-absolute consciousness cannot offer me absolute recognition, and I cannot prove my absoluteness without risking everything (FPS 240).

This absolute struggle is an absolute contradiction: the means for gaining recognition contradict the end of being-recognized because one cannot

be recognized when the other is dead. To "win" the struggle for recognition is thus to lose it since one wins only by negating the other, by cancelling one's own possibility of being-recognized. Yet "consciousness is only being-recognized by another" (FPS 240). Without the other's existence, I can never know myself as the absolute, excluding totality of possessions that I claim to be; yet with the other's continued existence, I have not proved to myself my absolute willingness to exclude the other. In the course of this struggle, therefore, consciousness recognizes itself as *self-negating*: in trying to exclude the other from its possessions, it excludes itself. To maintain itself, it negates itself and thus maintains itself *as negated*. To be is not to be, and to know myself as not-being is to achieve a new form of consciousness. I am no longer a self-subsistent, closed, unified, immediate, simple totality of being but a self-negating totality mediated by another self-negating totality. I am recognized in the other and the other is recognized in me as mutually cancelling each other's claims to unilaterally possess or to exclude each other from what we possess. That is to say, for Hegel, we *need* each other to *exclude* each other, and we need to exclude each other to know ourselves, but we cannot exclude each other without excluding ourselves as well. Consciousness thus exists only insofar as it *recognized* to be what it is not, that is, *exclusive*. For "being-recognized is its existence" (FPS 241). This mutual supersession of one another's exclusive consciousness provides the basis for "absolutely universal consciousness," the normative ground of a truly universal community—*spirit* (FPS 240).

The singular nature of one's status as a family (head) is thus overcome; each is necessarily mediated by the other in their own self-understanding as absolute. One's status as a desiring, speaking, working, possessing, individual family member is merely "ideal"—one renounces all of that in the struggle to the death, in self-sacrifice. And in so doing, one sees one's own self-negating consciousness reflected in the self-negating consciousness of the other (FPS 241). Being is superseded being, the cancelled consciousness of the other is in me, and my cancelled consciousness is in the other. For Hegel, this process of two consciousnesses mutually recognizing each other as self-negating consciousnesses, as becoming the opposite of what they are, represents an *absolute* totality, an *absolute* singularity, a self-relating *infinity*; in other words, it represents the "essence of spirit" or mind (FPS 241). To be able to reflect upon oneself as self-reflective, to recognize oneself as recognizing, to determine oneself as self-determining, these are the qualities of reason, of freedom, of spirit.

Recognition grants *existence* insofar as it produces a new form of being as being-more-than-oneself, as *being-for-others*. Reciprocal recognition also inaugurates the self-reflexivity of consciousness, for only in *recognizing another* (particularly their will to sacrifice everything for their external possessions) and in *being-recognized* by another (particularly as absolutely

willing to give up everything for one's own) is consciousness capable of *reflecting* on itself as absolutely *independent* of all constraints but what it gives itself. This absolute independence is at the same time absolutely universal, for it is not bound to any need, tool, family, possession, or identity—it is simply the form of subjectivity. In overcoming the determinacy of nature, one discovers one's own subjectivity as universal. Subjectivity, in a sense, is given from the outside, produced as an off-shoot of the struggle to the death to assert oneself as owner of one's possessions. In willing to give up one's life to be recognized as absolute possessor by others, one abandons all possessions and ties and is *free*. The practical struggle of mutually exclusive consciousnesses over possessions flips over into an absolute identity of consciousnesses within a single universal *spirit*. I now turn to the social relations of *spirit*.

The Self-Moving Life of the Dead

To be a part of *spirit* is to know that one's self-identity is interwoven with others in a single substance of meaning, mediated by universal conceptions, norms, and practices that develop over time into shared forms of life. These forms of life are what Hegel calls absolute *Sittlichkeit*. Spirit is the "eternal movement" of absolute consciousness "becoming itself in another and becoming another in itself" (FPS 242); it is the universal, active substance which fills a singular consciousness with its concrete identity as a member of a whole. Hegel describes the "spirit of a people" as a kind of second nature in which individuals work, enjoy, and know themselves as part of a universal web of reflective, ethical social practices (FPS 243). Spirit is objective; it is *produced* in works, institutions, practices, beliefs, and customs. The former levels of consciousness are now seen as idealized abstractions of the concrete life of the people; they are frozen moments in the real movement of spirit. The mediums of speech, labor, and possession are now taken as socially mediated activities within a universal whole and not isolated acts of individual consciousness (FPS 245). It is to this socialized conception of labor and possession that I now turn.

According to Lukács, Hegel's writings on "labor and possession" in the Jena *Philosophy of Spirit* "clearly represent a quite remarkable insight into the nature of capitalism."[93] What is this insight, and how does it differ from the earlier account of labor and possession? As in the SEL, Hegel here separates the analysis of the institutionally regulated forms of property and the division of labor from the earlier analysis of labor and possession 'outside' political society. Labor and possession are different when they are considered as part of a (concrete) 'people' than when they are considered as an (abstract) 'concept.' Individual labor and possession are now considered to be immediately *universal*. Even if one labors for one's own need

and possesses only what one produces, one's activities are still determined by the totality of social relations. For need itself has been filtered through the labor of others (FPS 246).

In a society where everyone's needs are mediated by everyone's labor and possession, all must learn how to labor. Hegel here understands that labor is not simply an ahistorical instinct of humankind but a determinate practice that must be learned. To learn how to labor is to overcome one's singular subjective activity and adapt to a recognized "universal routine" (FPS 246). Hegel means skilled, artisan labor, or so it appears. This labor is a form of universal rationality assimilated into oneself as "inorganic nature" (FPS 246). Even if the individual laborer develops more skills or more useful tools, their value is tied not to their particularity but to their universality, i.e., to their capacity to be used by all (FPS 246). This drive toward the universal productivity of labor and tools is a specifically *modern* drive of societies determined by a market-based division of labor.

In *tools*, human beings repurpose dead things for their own needs and end up formally binding their life to a dead activity (FPS 247). In *machines*, however, human beings go even further by removing themselves from the active side of labor in general. Consequently,

> the laboring that remains to man becomes itself *more machinelike*; man *diminishes* labor only for the whole, not for the single [laborer]; for him it is increased rather; for the *more* machinelike labor becomes, the less it is worth, and the more one must work in that mode.
>
> (FPS 247)

Hegel is here talking about *exploitation* and *alienation* in the labor process: *exploitation* insofar as the more one works, the more free-time one makes available for the whole of society, yet the less this free time accumulates to the individual laborer; and *alienation* insofar as human labor becomes less and less fulfilling and more and more instrumental, homogenous, and separate from one's needs. In machinelike labor, individuals no longer recognize themselves or their own activity, and this non-recognition is dangerous to their integration into the whole. In Marxist terms, the use of machines (as developed tools) generates a rise in relative surplus-value, which means that more products can be produced for cheaper and that the value of individual labor-power accordingly declines. But one must work more, not less, in order to reproduce one's value, because one is dependent for survival on the market. The point, however, is that this is not some 'natural' law but a product of social relations of production, or more precisely, social relations of *property*. As Hegel writes, property is just *labor at rest*, and one cannot truly discuss one without the other anymore (FPS 249).

When the division of labor becomes universal, it forms "an enormous system of communality and mutual interdependence in a great people" (FPS 249). It is "a self-moving life of the dead, which, like the elements, ebbs and flows blindly in its motion, and, like a wild beast, requires a constant strict control and taming" (FPS 249). This mixed metaphor captures both the positive and negative aspects of the division of labor and its economic order: it is, on the one hand, a truly universal system of mutual interdependence and reciprocal recognition and thus a form of spirit; on the other hand, its convulsions are blind, dangerous, and disruptive to individual stability and so must be constantly checked. On the one side, this economic system pulsates from the activity of workers (i.e., *living labor*); on the other side, the real subjects of this system are not the workers but the machines (i.e., *dead labor*). Thus, to call modern economic relations the "movement of the living dead" (FPS 249) is not so much to coin a clever phrase but to adequately describe the objective and subjective aspects of life alienated from its labor. But what power can control the ebbs and flows of value, labor, and property? What can stop the self-moving life of the dead? Who can tame the wild beast of the market? Hegel, does not say here, but we can assume that it is the people themselves, organized as a political power into a government and its estates.

As the system of labor and need is the "movement of the living dead," property relations reflect this same system but at rest (FPS 249). Just as individual *labor* is mediated by the labor of the whole 'people,' so is any individual *possession* mediated by the possessions of everyone in society. In other words, if the value and utility of one's labor are determined by their relation to the value and utility of all other labor, then the security and exclusiveness of one's possessions are determined by the security and exclusiveness of everyone's possessions. Insofar as this is the case, possession becomes *property*. Possession is property when it becomes "posited through the universal consciousness" of a people—that is, when all equally exclude each other from what they claim is theirs and when all accept being excluded from what is not theirs (FPS 249). In other words, property exists only through recognition of one another's authority to exclude, and this recognition is gained from struggle over the very boundaries of what it means to be taken as an authority over oneself, to be a subject. Furthermore, this fundamental recognition provides the ground of ethical life and spirit insofar as it is only on the basis of such recognition that individuals can relate to each other as equally self-determining agents within a universal structure of interdependence. The normative structure that grounds modern ethical life for Hegel is thus the dual consciousness that others depend on me in order to determine themselves and that I depend on others in order to determine myself. This dual recognition fosters ethical life insofar as it enables relations of property, commodity exchange, universal labor, law, government, and the state. It is, in a sense, the birth of *right*, which for Hegel is

synonymous with the birth of modernity. One is a property owner not because of one's nature or even one's labor but because one is capable of recognizing others and being-recognized by others *as* property-owning subjects within a system of moral and material dependence of all upon all. To be a self-determining agent (who can exclude others from their property) is a normative status conditioned by the recognition of others; and recognizing others as self-determining agents (who can exclude me from their property) is a normative status granted by me. This circle of determining and being-determined, of freedom and necessity, is unbreakable; it is infinite, expressing the unbounded freedom of spirit that makes up the life of a people. To reflect upon this infinite self-movement of spirit is to begin the process of reconceptualizing one's own freedom as essentially freedom-with-others.[94]

Conclusions on the First Philosophy of Spirit

As I have shown in Chapters 1 and 2, the idea that *recognition* is the social-normative ground of property is already present in Fichte and even partially in Kant. But, contrary to those accounts, Hegel here argues that recognition is the *result* of a struggle and not a conclusion to an *a priori* deduction from principles of reason, right, self-consciousness, or freedom. Relations of reciprocal recognition result from a moral-metaphysical struggle between competing agents over how to authorize claims of mineness, and this struggle is reflected at both the level of individual consciousness and the level of historical socialization.[95] In the conflict between two 'totalities of consciousness,' individuals find a way to mediate each other's refusal to engage by absolutely risking their separateness. In so doing, they recognize each other within a shared, absolute consciousness, a political community. With this development, the so-called "honor" of staking one's whole life on every detail, on every possession, ceases to be necessary. The 'totality of singularity' is superseded in the life of a people (FPS 250). As part of a politically organized people, an individual can gain new capacities and new purposes, such as the normative status of being a *person* and the recognized right to *property* (FPS 250).

With that, I am now ready turn to the final text in my analysis of Hegel's early theory of property: the second *Philosophy of Spirit*, from 1805–6, in which the relations between possession, injury, exclusion, struggle, recognition, and right are tightened even further.

Second Philosophy of Spirit (1805–6)

This section has four parts. First, I outline Hegel's new account of the struggle between competing families over land and recognition, emphasizing how possession itself is experienced as a form of injury. Next, I delve deeper into the unequal forms of recognition between the excluded and the

excluding families. Then, I outline how agents in struggle turn against their own possessions and, finally, I show how this leads to the birth of right.

The 1805–6 second *Philosophy of Spirit* provides the clearest expression of Hegel's early philosophical system.[96] My focus here will be on how possession itself is experienced as a form of moral injury which spurs the struggle for recognition of rights (to property). The purpose of this phenomenology of moral experience is to show how self-interested individuals can come to treat each other as bearers of (property) rights, without any external authority. In these lectures, Hegel incorporates Fichte's account of right as a *relation of recognition* deeply and permanently into his concept of *spirit*, and he does so, like Fichte, through a discussion of property and labor. And like Kant's *Rechtslehre*, Hegel's account of spirit is a developmental story of the transition out of the hypothetical state of nature by means of the universalization of right. Right and obligation here emerge via institutionalized recognition relations that mark the transformation of possession into property. In a sense, Hegel's entire philosophy of spirit can be read as an alternative to a state of nature story and its various contractualist, empiricist, or rationalist resolutions. Self-interested individuals *do* struggle and risk their lives over possessions in this account, as in many such stories, but this struggle does not instrumentally lead to a social contract, authoritarian state, or rational duty to leave the state of nature. Rather, it leads to the awareness of one's vulnerability of being harmed by others, not merely physically but *morally*, in terms of who one takes oneself to be. This socially mediated ethical self-awareness, born through conflicts over dispossession and exclusion, constitutes the minimal normative condition for a society of equal and free persons.

Possession as Injury

In the beginning of the SPS, Hegel describes the journey of the experience of consciousness from a primitive, desiring *intelligence* to an interactive laboring and loving *will* mediated by common, family possessions and children.[97] Let us assume the stage at which consciousness finds itself satisfied in love as a family working together on a small plot of land for their own needs. A sort of "state of nature," as you will. Hegel claims that the moral evolution from this condition to one in which individuals are universally recognized as rights-bearing, property-owning persons can be explained through the *internal dynamics of* the state of nature scenario itself. However, this works only once possession is itself understood as a kind of *moral injury* to others. While acquiring shared possessions for one's family objectively mediates the common consciousness of its reciprocally recognizing members with material goods into a kind of worldly permanence, for another family, such *exclusive* acts of taking possession are experienced

as an *offense*. For they are actions which do not take into account *their* own claims, their own desire to be recognized as parties to decisions which will affect their lives. Taking something in the world and marking it as one's own is never a relationless deed. Rather, as we saw with Kant in Chapter 1, the acquisition of property unilaterally imposes a duty on others to limit their own freedom for the sake of one's own—*without their consent*. For Kant, this problem of exclusion can be resolved only through the juridical postulate of practical reason, understood as a permissive law; for Fichte, as we saw in Chapter 2, this problem is resolved in the very deduction of right as a condition of self-consciousness, for an individual cannot be an *I* without limiting its own sphere of freedom for the freedom of another; for Hegel, this problem is resolved not by appealing to some external principle but rather by paying attention to the subjective experience of the excluded family. Taking possession of something without considering the voices of others, without recognizing them as valid, is an affront to their self-worth and dignity. It is an injury to the validity of their standing. Thus, once we shift the perspective of spirit from the possessing family to those excluded from possession, the love story changes into a class conflict.

The conflict begins when one party claims possession of some land. This act is not against the *needs* or *self-interest* of others. Rather, one family (head) takes possession of an unclaimed piece of land, and another family (head) feels excluded, not from the land but from "that which he is" (i.e., a universal being with universal access to universal things) (SPS 110). The excluded family is explicitly denied the possibility of freely using the "permanent universal existence" of a piece of land (SPS 110). They are posited as negated by others; that is to say, they are considered only insofar as they are excluded. If the excluded family does not *need* access to the newly claimed land in order to survive, then what is the problem? The problem is that they take themselves to be a self-enclosed totality of free individualities, and this act of possession pierces their enclosure, excludes them from something, and thus renders them dependent, particular, negated; in ethical terms, they are *disrespected*, *ignored*, *unrecognized* as to who they take themselves to be. Their "being-for-themselves" is not in line with their "being-for-others."

For the first time in all the iterations of this argument, Hegel explicitly connects this condition with that of a state of nature, "the free, indifferent being of individuals toward one another" (SPS 110). The point of the state of nature argument is to conceptually figure out "what rights and obligations individuals have toward one another," not in some particular context but *unconditionally as individuals* (SPS 110). Yet, according to Hegel's view of natural rights theory, there is no universally binding way that individuals *must* relate to each other within the state of nature. Rather,

individuals gain rights only by *leaving it* (SPS 110–11). That is to say, individuals acquire actual rights only by leaving the state of nature behind and consenting to follow the laws of an authority they collectively instituted.[98] As such, there are no normative resources in the hypothetical state of nature itself to authorize obligations and so the condition must be overcome, to be replaced with the lawful, sovereign order of a commonwealth. The problem with this argument, according to Hegel, is twofold. First, the concept of right is simply *posited* as the resolution to the state of nature when the task is to show how such relations can emerge in the very course of antagonistic social interaction.[99] That is to say, the philosophical aim is to explain how the "concept of mutually free self-consciousnesses" can transcend its conceptual form and "approach reality" (SPS 111). Second, the question, "What is right and obligation for the individual in the state of nature?" (SPS 111) presupposes what it is supposed to explain, namely *that* individuals can be conceived of as rights-bearers at all.

The formal concept of *right*, according to Hegel, is "the *relation* of persons, in their behavior, to others—the universal element of their free being—the determination, the limitation of their empty freedom" (SPS 111). At first, this appears to resemble Kant's idea of right as the coexistence of external freedom according to a universal law. But Hegel rejects the claim that such a relation is, on the one hand, a mere product of thinking and, on the other hand, dependent on the individual alone.[100] Rather, as in Fichte, right—as the reciprocal limitation of freedom—comes into being *through* the practical experience of intersubjective recognition. That is to say, the "recognizing relation" between subjects itself *generates* the relation of right as the reciprocal limitation of "empty freedom" (SPS 111). For Fichte, the concept of right, as the "necessary relation between free beings," is deduced *a priori* from the conditions of self-consciousness and individuality (FNR 4). To be a self-conscious individual, according to Fichte, one must already recognize the freedom of another such being and limit one's own sphere of freedom in turn. Without *being recognized* and *recognizing another*, the efficacy that conditions self-consciousness will not have a definite sphere in which to be *exercised* and *be acknowledged as exercised* by oneself and others; that is to say, one would not achieve the status of being a free individual without recognition from another. Individuality is hence a reciprocal concept as Fichte claims, and recognition is its social, normative, and transcendental ground. Similarly, for Hegel, in recognizing and being recognized, "the self ceases to be this individual" (SPS 111) and acquires a new form of existence structured by universal *rights*. To be recognized is to "count" as such, that is, *to matter*, to bear the force of obligation. Hegel's neo-Fichtean account of right takes the movement of recognition to be that which elevates human beings from immediate existence as self-interested, competitive, desiring, needy creatures into

reflective, interdependent, legal beings who know each other as free and are constrained by this knowledge in their behavior. In a key phrase, Hegel spells this out:

> The one recognized is recognized as *immediately* counting through his *being*—but even this *being* is *created from the concept*; it is recognized being. The human being is necessarily recognized and necessarily recognizing…he is recognition.
>
> (SPS 111)

Allow me to digress for a moment to discuss Honneth's influential interpretation of this passage. For Honneth, these lines are crucial for understanding Hegel's conceptual breakthrough in the Jena period, for they not only suggest a strong normative priority of intersubjective recognition for self-consciousness but hint at a different social ontology as well. Honneth understands Hegel to be saying that relations of right can emerge from within the state of nature not due to any external means but rather because *all* social interaction *already presupposes intersubjective recognition and normative consensus*.[101] In order to interact at all, Honneth claims, all individuals unconsciously yet *necessarily* recognize each other as *already* morally entitled beings before any social contracts. Hegel thus shows, according to Honneth, first, how the implicit expectation of recognition between individuals becomes explicit through the experience of moral injury and, second, how the pre-reflective norm of reciprocal recognition becomes the reflective ground of universal legal rights.

Honneth, however, ignores two elements of Hegel's theory and mistakes another. First, Honneth ignores (a) the specific role that *possession* plays in causing moral injury to individuals and (b) the specific role that *property* plays in achieving the recognition of persons. For Honneth, exclusive possession is just the trigger which starts the conflict that eventually leads each party to make conscious the knowledge of their presupposed intersubjective recognition—and formalize it into law. Second, Hegel makes it clear that individuals *do not yet* recognize one another in the state of nature, but only *disturb* each other through their *possessions*. Hegel writes:

> Individuals, as they are opposed to each another, do not yet recognize one another, but their being is rather disturbed. One of them disturbed it through his possession; this is not yet property. The right of *possession* immediately concerns things, not a third party. A human being has the right [in the state of nature] to take possession of what he can, as an individual. He has the right—this lies in his concept of what it is to be a Self, by which he is the power over all things.
>
> (SPS 112)

Hegel here clarifies the problem in a way similar to Kant: there is no reason why individuals cannot appropriate whatever they can in a pre-legal condition. This matches up with Locke's natural right, Kant's private right, and Fichte's original right. For Hegel, the (natural) right to possession need not be recognized by others, but it does *affect* them. I disrupt another individual's freedom by permanently blocking something from their use. Taking possession *disturbs* another through its normative *meaning*, not through its empirical characteristics. For possessing "acquires the meaning of excluding a third party" (SPS 112). How is this possible? In other words,

> What is it, in regard to this meaning, that binds the other person? What may I take possession of without wronging a third party? Such questions simply cannot be answered. Taking possession is *empirical seizure*, and it becomes rightful through recognition. It is not right just because it occurs.[102]
>
> (SPS 112)

How can an empirical act be normatively binding? In order for Kant to resolve the antimony of possession, he must posit supplementary postulates of practical reason, permissive laws, and an omnilateral political authority. Right emerges from practical reason as a universal law for the coexistence of choice between rational beings, but in its application to external things as mine or yours, it extends beyond pure reason and incorporates all sorts of material, social, and anthropological factors. For Fichte, right is deduced from reason and applies to empirical things, but it must be based on the reciprocal recognition of free subjects. For Kant and Fichte, it is not the empirical act that justifies possession but the reason-based normative relations between persons that can make a unilateral empirical act of possession binding on others. Hegel here repeats Kant's antinomy but calls it a contradiction (SPS 112). The contradiction is that the subject of possession is immediate, while the predicate is universal: *I claim this piece of land as mine*. In so doing, I attach my immediate existence to something external and try to impose a universally binding relation of right onto it. But right does not come from such immediacy: "It is my property because it is recognized by others: but what do others recognize? That which I have, in whose possession I am" (SPS 112). Others recognize the *content* of my possession, not yet the form of the relation itself. What I claim as mine is recognized only insofar as I have it, not because of any positive law or universal authority making it so. The limits to what I can possess are set only by what I recognize as already in the possession of others, and I limit myself from what is theirs only because I expect the same self-limitation from them in regard to what I claim as

mine. The real problem of recognition for Hegel arises not in regard to what we already take to be mine and yours but in regard to what is to be appropriated *outside* of our present standing (SPS 112). If I take something which belongs to no one, then I exclude another from using it in the future. Yet, in order to count as binding, this exclusion should require the consent of the excluded, for why else would they recognize my claim to possession? The only reason for accepting my claim is that my *actuality* precedes their *potentiality*, and they "must recognize me as I *actually* am" (SPS 113). In such a condition, individuals recognize each other not as they could be but only as they are, and when someone takes something unowned as their own, it *is* their own and demands recognition and self-limitation in turn.

"What do I possess, then?" Hegel asks. "(a) My body; (b) the thing I already have, in my mouth or in my hand" (SPS 113). So far, Hegel has not moved beyond Kant's innate right to freedom or Fichte's original right to one's body. Our bodies and that which we are immediately using (food, tools, and clothing) are *ours* because they are in our actual power. Hegel does not really justify this but rather takes it as basic principle of what it means to be a *self* (SPS 112). Yet, as with Kant and Fichte, human beings need and desire more than just their bodies and immediate things to pursue their ends. To use things beyond my grasp, I would also need to possess "that which I have marked with desire, with a glance, as something wanted, grasped for" (SPS 113). I should thus be able to take possession not only by immediate seizure and holding but through designating what I desire with a sign or by forming the object through my labor. Hegel is here beginning to work out the ways in which individuals can privately possess external things as their own. These different ways of appropriating things (by taking possession, forming it, and giving a sign) will eventually become systematized in the PR (PR §54–70). For now, he states merely that giving a sign, of which *laboring* is an example, is an adequate way of claiming possession beyond immediate seizure. This sign has one meaning: "whatever is designated as *mine*, the other must not damage" (SPS 113). But the problem of marking something is that the way it is marked is only contingently related to the thing itself; it is often unclear and requires interpretation or rules, i.e., a more formal system of recognition from others. In short, signs are vague, one's laboring contribution to a thing is indeterminate, and natural borders evolve, all of which means that something could be "designated as mine—and yet not" (SPS 113).

In other words, when I apply my universal will to a "sensory immediate," a particular object, the object and my will are not automatically joined together in necessity and unity; there is a gap of contingency between the two, a so-called "bad infinite division" (SPS 114). The possessive

relation to the object seeks to be universal and necessary, but the content is always particular and contingent. The contingent needs of the family or the individual determine what and how something is possessed here, not universal principles of reason or equality, "the basis of right," for those normative principles only emerge later, with rights to property and contract (SPS 114). In contracts, I do not exclude others in my acquiring but rather recognize them through it. In this pre-legal scenario, however, "immediate taking possession" immediately excludes others, and this exclusion is "not rightful" because in my act, "the excluded is not present in it as an actual consciousness" (SPS 114). I do not relate to an *actual* individual in my act and so there is no recognition, only exclusion. "Recognition is thus what must happen first," Hegel asserts, but this "must" is not in accordance with reality (SPS 114). In between what is and what ought to be, a struggle occurs.

The Excluded and the Excluding

Let's step back for a moment to see the whole picture. Hegel's purpose is to show how opposed individuals can come to recognize one another as subjects who count for each other and ultimately as persons who can obligate one another according to shared norms and values. That is, he is trying to show how a condition of right can come about, but without appealing to *a priori* rational principles or the notion of a social contract. In a condition of right, laws of property and contract can universally determine how to appropriate and distribute external things. But in a condition without right, the unilateral appropriation of external things can be experienced as an affront to one's dignity. Given the experience of being injured through the exclusion of possession, how can the ethical awareness of normative interdependence arise out of the seemingly hostile activities of separate parties acting on their own behalf? And how can this relation be formalized into law? If possession is not just a form of love but also a form of injury, then this seems impossible. Yet it is through the very experience of injury by possession that an unbounded form of social recognition can be produced. That is my claim in short.

Back to our two families. We left off after one family took possession of an unclaimed piece of land, an act which *normatively* disturbed another by excluding them (SPS 114). These two seemingly independent parties are opposed yet interrelated, with each knowing their own "essence" only in their role as excluding or being-excluded. The movement of recognition then begins "not with the positive aspect of knowing oneself in another," as with Fichte, "but on the contrary, with not knowing oneself in the other" (SPS 115). This not-knowing oneself in the other first arises on the side of the *excluded* party, who sees the other's independence only in their

act of excluding and does see not themselves as being-recognized at all. Furthermore, the excluding family does not even notice the excluded. The struggle escalates with an act of transgression from the excluded party that seeks to make themselves *known*:

> The excluded one injures the other's possession, he posits his excluded being-for-self into it, his *mine*. He spoils something in it, annihilating, like that of desire, in order to give himself his sense of self—not his empty sense of self, but rather his self positing itself in another, in the knowing of another.[103]
>
> (SPS 115)

To posit one's "excluded being-for-self" in the "mine" [*Mein*] of another practically translates into destroying the other's possessions. This destruction of possession, however, is based not on some material need or petty revenge but on the desire to have one's "sense of self" be acknowledged by the other as having been *injured*. The other possessor must *know himself* to be an excluder, and he can come to this knowledge only through my negative deed. Hegel makes it clear that the aim of such property destruction is not to harm the thing but to produce a kind of moral consciousness or "self-knowledge" in the other of my harmed status (SPS 115). By ruining the possession of the excluder, I make him realize that what he did to me was *wrong*. I am thus recognized, albeit negatively.[104]

To the original possessor (i.e., the excluder), this is a shocking development, for he did not *mean* to hurt anyone. Yet because of the negative response from the other party, "he becomes aware that he has done something altogether different from what he *meant* [*meinte*]. His *meaning* [*Meinen*] was the pure relating of his being to itself, his unbiased being-for-self" (SPS 115). In taking possession, he sought to assert his agency and independence, yet possession is never independent from others. Every act of possession, no matter how large or small, is other-directed and thus mediated by a knowledge of the other, avowed or not. Hegel is likely also playing on the connection between the words "meaning" [*meinen*] and "mine" [*mein*]. The philosophical point is that what I "mean" is not always "mine." My actions can and will have effects different from what I intend. The reason it happens in this case is because possession is not merely an isolated empirical deed concerning physical things but, following Kant, an intelligible judgment concerning *normative relations* with other individuals. To possess something is not just a way of exercising one's efficacy over the objective world and perceiving oneself in such activity—as both Fichte and the later Hegel sometimes appear to argue—but a way of constraining other subjects to my will. These other subjects can also push back and refuse my will. When that happens, I have to reevaluate my

own standing and my conception of what I take myself to be. The new scenario looks like this:

> Thus upset, both stand opposed to each other—the one as the offender, the other as the offended. The offender did not *mean* [*meinte*] offense to the other in taking possession, but the offended one, he meant [*meinte*] it to him: what the offended one annihilated was not the intrinsic form of the thing, but the form of the other's labor or activity.
>
> (SPS 115)

The possessor did not mean to injure the dispossessed one, but the dispossessed one meant to injure the possessor. In his action, the dispossessed negates not the thing itself but only the expression of the activity of the possessor in the thing. That is to say, I, the dispossessed, attack what makes the thing *yours*, not the thing itself. I annihilate your certainty that the thing is yours, which means I deny your unconsciously presumed reliance on *me* to recognize what is yours and to refrain from interfering with it. I refuse to authorize your claim, and in the process, you come to realize that you depend on me. You need me to affirmatively recognize you in what you take yourself to be doing, which is making a normative claim to possess a piece of land as *yours* and so you unconsciously grant me the authority to recognize you as capable of being your own authority. This (Fichtean) movement of recognizing the other recognizing oneself is not yet explicit here, not yet self-conscious. Here, one family tries to make a normative claim to a piece of land all on their own, while another family interrupts this claim by destroying the land, in effect, forcing their disregarded existence into the consciousness of the possessor. The first family sought its certainty in its claim to possession, and this is now disrupted; the second family sought its certainty in the consciousness of the first family, and this is now confirmed. In a more Hegelian formulation, while the first posited its "being-for-self" in the thing, excluding me in the process, I now posit my "being-for-self" in the other. While his independence is reflected in the object, albeit destroyed, mine is reflected in him, albeit negatively. Since we have both asserted ourselves as to who we are, one could hope that this would bring us to parity, but alas, "the fact that the excluded has restored himself does not produce the equality of the two, but rather a new inequality" (SPS 115). For my being-for-self is now recognized in the other, while his is lost in a denied relation to the object.

The Struggle against Possession

To summarize the story so far: a family takes possession of an unowned piece of land; this possession excludes another family from using it; that second family is offended by this exclusion because they were not taken

into account in the decision; they want to be recognized as subjects who have a say in what affects their lives; thus, the excluded family reacts and destroys the land of the first one. The first family did not intend to harm anyone, but now they realize that they may have harmed another family since they have been personally retaliated against for their act of taking possession; the excluded family now feels reassured through their negative deed because it brought awareness of their moral standing to the excluding family; but now the excluding family is not satisfied since the original meaning of their action is denied; the recognition between the two is therefore unequal.

The inequality lies in the fact that the injured party is recognized in their transgressive self-activity by the original possessor, but the self-activity of the original possessor is not. How can this inequality be overcome, or better, how can recognition become reciprocal? The argument becomes quite dialectical here, for Hegel claims that although this "inequality is *to be* overcome [*Diese Ungleichheit ist aufzuheben*]," somehow, at the same time, "it must *already* be overcome in itself [*sie muß aber schon an sich aufgehoben sein*]" (SPS 116/JS III 201, emphasis mine). Likewise, with exclusion: "the overcoming of exclusion has *already* occurred [*Das Aufheben des Ausschließens ist schon geschehen*]" (SPS 116/JS III 201, emphasis mine). That is to say, overcoming the disparity of recognition between parties is a goal to be achieved in practice, but it is a goal the elements of whose solution are already present within the relations between individuals. The potential for a non-exclusive, equal, and reciprocal recognition between parties is there already, within the will of each and desires of both, albeit not yet known. The task is thus to make the implicit equality explicit, to make what is true in-itself be true for-others. This is why Hegel describes this process with the word *aufheben*—for it is a cancelling *and* preserving of the status quo, a negation that releases the potential of what is negated and elevates it into a new form.

How are we to understand this thesis? Honneth interprets Hegel's claim that exclusion and inequality are "already" overcome to mean that each party already recognizes one another as "partners to interaction" at some deeper level of understanding.[105] That is to say, each already holds normative expectations of the other, although neither party is conscious of these expectations until such expectations are denied, injured, frustrated, or disappointed. This basic normative expectation, according to Honneth, is *to be recognized and to count for another*, to be treated as an absolute knowing will, which practically means: *to be respected as a person with rights*.[106] To sketch this out from the first-person perspective: on the one side, in being excluded from the land that you unilaterally occupied, my unconscious normative expectation of being taken into account is brought to the surface and denied, and my act of retaliation proves that this was my

expectation all along; on the other side, in having the land that I possessed destroyed by you, my implicit normative expectation that you would respect my will and recognize my possession is brought to the surface and denied, and my willingness to sacrifice everything in a struggle to the death proves that this is what I indeed intended. As Hegel says, we are both "outside" ourselves, both already caught up in seeking to know ourselves in each other, in needing *approval* from each other (SPS 116).

Yet Hegel says not that each family or each individual already *recognizes* one another but only that the *exclusion* or *inequality* is already overcome, or more technically, already *sublated in itself*. I claim that Hegel means not that there is some *deeper level* of recognition presupposed between opposing parties which holds the normative key to the impasse of social conflict toward ethical life, as Honneth argues, but that the recognition sought for *emerges through the denial of love produced in the injury of possession*. The inequality between the possessor and the dispossessed—between the offender and the offended, the excluder and the excluded—is already sublated because "each wants to count for the other…to see itself in the other" (SPS 116). But this aim misfires because the other is not simply a being, a thing, or an object—but a being-for-self, a self-consciousness, a subject. And although one can mediate one's theoretical and practical "I" with objectivity through the self-activity of labor and the lasting medium of tools and possessions, one cannot just as easily posit oneself in objects which are also *subjects*, that is, in the being of another self-consciousness with its own desire, reason, and freedom. This *can* occur through the mutual identification of partners in love, but that relation is necessarily limited and exclusive to those who share possessions. To review the movement of spirit so far: in order for consciousness to satisfy its needs and overcome its feeling of separation from objects, it labors on nature and objectifies itself in the universal mediums of speech, tools, family, and common possessions; but to express oneself in the medium of the knowledge of another self that one does not immediately *love*, that one does not immediately identify with as part of one's natural whole tied to common possessions—that is difficult and prone to error, confusion, injury, and resistance. For one acts not just *in* the material of another, *through* another or *for* another, but somehow *with* another—yet separately and without them.

So, one family takes possession of a field, and another family spoils it, salting the earth. Both want to *count* for each other, to be known as who they claim to be. Insofar as this is their true aim, superseding the inequality (of recognition) and exclusion (of possession) is already possible because each equally desires to be taken into account by the other. Yet the failure to properly count for the other is revealed only through the form of *possession*, the social relation that distinguishes mine and yours, that binds us together by separating us. This failure to count is experienced as *not being loved*.[107]

This experience produces a new normative expectation, the expectation not of being loved, for that has failed, but of being unconditionally recognized in one's claim to be somebody who counts. In other words, to be recognized as a *person*, with *rights*. All of this emerges through the *moral injury of possession*, an inclusive act of exclusion, a unifying relation of separation that hurts one's sense of self while producing a shared knowledge of mutual vulnerability. That is to say, the unequal relation of possession breaks the illusion of individual autonomy, for it shows that neither the excluding nor the excluded party can be who they claim to be without gaining approval from each other. To call something mine is thus to summon you to recognize me as who I take myself to be, even if I take myself to be absolutely separate from you. Self-knowledge, in a phrase, comes from outside.

The possessing family has been threatened by the transgression of the dispossessed family, yet this act summons the possessors to take into account who they excluded and the harm that they caused. On the other side, the dispossessed family who spoiled the land of the first does not recognize the possessing family for who they claim to be but rather sees them only as wrongful possessors. Thus, the possessing family must compel the excluded family to recognize them not merely as they appear to be but as they *know* themselves to be, as they intend and claim to be, as agents of their own making. And so, the possessor "no longer aims to produce his existence [*sein Dasein herzustellen*], but his knowledge of self, that is, to become *recognized* [*anerkannt zu werden*]" (SPS 116). The first possessor wants to know himself as independent, but he needs the other to confirm this in practice. He needs to be recognized for who he takes himself to be—as expressed not in the impermanent existence of the things he possesses or in the ideal existence of the words he uses but in "actuality," in his lived existence as a self-conscious, practical *will*. He wants to knows himself as absolute, which means to be "recognized by the other, to count as absolute for him" (SPS 117). But in "order to count as absolute, however, it must present itself as absolute, as will, as someone for whom his existence (*which he had as possession*) no longer counts" (SPS 117, emphasis mine). To present oneself as absolutely counting for others means knowing oneself as *unconditionally* worthy of being recognized, as recognizable independent of any conditions of existence. But *possessions* just are such conditions and thus to count as absolute means *letting go of one's possessions*. Once possessions are stripped away as the existent conditions of being recognized, one is left only with one's "known being-for-itself," one's *will to be known*, or desire to be recognized as such (SPS 117). This pure "knowledge of self" can then finally "come into existence" as an absolute value to be defended, replacing possessions and any other empirical, contingent expressions of oneself (SPS 117). This life-affirming value is worth *more* than life, it is life seen from the perspective of freedom.

To affirm this conception of oneself as a purely knowing will who can universally obligate others (and be bound by others in turn) is to nearly grasp oneself as a *person* with *rights*, the aim of this account. Such a self-conception is produced as a result of the movement between unintentionally harmful acts of possession and intentionally harmful acts of dispossession which makes the initial harm explicit.

This will to self-knowledge inaugurates the so-called struggle of life and death for recognition: I risk all my material conditions in order to bring into existence the pure *knowledge of self*—in myself and in my interlocutor. This means exposing oneself to the ultimate danger, to death. Hegel describes the meaning of the possessor abandoning their privileged relation to possessions as the "self-accomplished overcoming [*Aufheben*] of the existence that belongs to him" (SPS 117).[108] For possession is not just a normative relation but also a material one, and risking all of one's possessions is a form of suicide. It is both an objective and subjective cancellation of one's self-certainty in who one is and what one "has" as one's own. The point is not that I am willing to *kill* you to defend my conception of myself as unconditionally worthy of being recognized but rather that I am willing *to die* to do so (SPS 117). The absoluteness of my determination to bring you to awareness of who I essentially am, and to know myself in this knowledge of yours, transforms my relation to you *and* to myself as well. For in so doing, I know myself as more than a collection of drives, as more than a desiring, enjoying, working human being; I know myself as *knowing*, that is, as *reason*. Hegel describes this process as one in which the possessing self-consciousness reflects on its own "negated external existence" [*aufgehobenes äußerliches Dasein*], its destroyed possessions, and transforms that *other-determined* negation into a self-determined negation (SPS 117). That is, the possessing self-consciousness renounces its own possessions.

To Hegel, I can negate my *own* external existence in possessions because I am more than my possessions, I am *reason* (SPS 117). That is to say, one's self-conception—as a complete, land-possessing, tool-using, family-loving "I" full of drives to be satisfied with duties only to itself and its family members—fundamentally expands to incorporate what it is not. One's self-consciousness is no longer satisfied subjectively in love or objectively fulfilled in possession. Rather, one is free in knowing oneself in the knowledge of another. That faculty of universal knowing across subjective particularity is what Hegel calls *reason*. For reason is the universal medium of self-consciousness that seeks to transcend the division between subjective experience and external existence; self-consciousness is reason when it takes its own practical knowing to be authoritative for itself and others. In this way, the "knowing will" of reason claims independence from all external conditions yet, at the same time, *desires*, *expects*, and *needs* recognition from another self-consciousness in order for its claim-making authority to

be validated. Independence of will is thus achieved only by acknowledging one's dependence on another within a shared community. Or as Hegel puts it, *recognition is existence*.[109]

The knowing will is not satisfied with the indistinct unity achieved in the *love of a closed family*; it now also desires the explicit *recognition found between free and distinct individuals*. While love is knowledge in the form of selfless unity and common possessions, recognition is knowledge in the form of separate individuality and rights. "Cognition becomes recognition" when two individuals each know themselves as knowing beings-for-themselves—that is, when each abandons the goal of knowing themselves only through their possessions and rather seeks to affirm their absolute independence in the face of the other, who does the same back to them (SPS 117). This "movement is the struggle for life and death" (SPS 118). Hegel does not delve into the details of the struggle here. Unlike in the PhS, the struggle does not result in a master-and-slave relation, and unlike in the SEL or FPS, it does not directly transition into universal ethical life of the people in a state. Here, the struggle signals the break between "spirit according to its concept" (i.e., subjective spirit, or intelligence and will) and "actual spirit" (i.e., objective spirit, or immediate recognition in rights to property, contract, private law). That is, the struggle leads to the kind of recognition that forms the normative presuppositions of *abstract right*; in this first "immediate" level of ethical life, individuals relate to each other as *persons* deserving of unconditional respect.

Yet what is it *specifically* in the life-and-death struggle between opposed "knowing beings-for-themselves" that leads to a universal conception of legal rights grounded in respect for persons and property? Why must each family struggle to the *death* against each other just to defend their claims to be taken as authorities of their actions? Why should I risk all my possessions to safeguard one of them, and why would you risk all yours to destroy one of mine? Honneth, in particular, argues that Hegel's emphasis on *risking death* as a condition of being recognized is completely unnecessary and ungrounded.[110] For Honneth,

> It is the social experience of realizing that one's interaction partner is vulnerable to moral injury—and not the existential realization that the other is mortal—that can bring to consciousness that layer of prior relations of recognition, the normative core of which acquires, in legal relations, an intersubjectively binding form.[111]

This idea that *normative expectations of recognition are revealed through one's vulnerability to moral injury*, gleaned from Honneth's reading of Hegel's Jena *Philosophy of Spirit*, is one of the key insights to have motivated the revitalization of the concept of *recognition* in contemporary

political, social, and moral philosophy.[112] It is, I think, mostly correct, except for one small point: Hegel nowhere claims that there is a "layer of prior relations of recognition" which forms the normative core to legal consciousness. Rather, on my interpretation, the normative expectation of being recognized as a person which underlies relations of right is not *given* but *produced* through the experience of moral injury specific to claims of possession.

Let me put it another way: the recognition of another's vulnerability to moral injury is key to the genesis of a form of universal consciousness that has the authority to obligate others according to binding legal norms in a community of trust. This general thesis, however, fails to mention the specificity of the relation of *possession* which triggers this normative development. Along with many others, Honneth sees the role of possession as simply an example, a catalyst in the hypothetical state of nature which spurs the construction of legal norms or rights. Furthermore, since Hegel drops this example from later versions of the "struggle for recognition" and the development of right, it can be disregarded as inessential.[113] Yet the role of *taking possession* is essential, I claim, since it is a seemingly unilateral empirical act with universal normative consequences. In taking possession of something, I make a normative claim to separate myself from others, yet I depend on others to validate this claim of separation, which binds me to them even more. I implicitly form a community with others at one level of interaction by trying to explicitly distinguish myself from them at another. From the other side of possession, from the perspective of the dispossessed, I am excluded from another through their taking possession, yet this exclusion relies on my willingness to authorize the act of being-excluded. I am recognized as an authority to recognize the authority of the one who excludes me. It is this infinite movement of recognition back and forth that becomes objective in *right*; in the form of right, recognition converts the individual into a person, possession into property, exchange into contract, and revenge into punishment.

It is not the willingness to kill that is decisive for Hegel but rather the willingness to die. This willingness is directly tied to the self-negation of one's external existence in possessions. The element of death is tied to the fact that the subject *abandons all their possessions*—renounces the material ground of their existence, that which allows individuals to outlive their 'natural life' and that which unifies members of a loving family beyond their subjective particularity. Abandoning possessions meaning abandoning one's existence, one's family, one's love—all so that one can defend the claim to be taken as the sole authority of one's own experience, a claim immediately proven to be a contradiction since it *counts* only when recognized by others whom one recognizes as an authority over oneself. The ultimate assertion of independence from others reveals one's fundamental dependence on them, one's vulnerability to being rejected, unrecognized, and unloved.

The Birth of Right

Each consciousness, shorn of possessions, now sees the other as a "pure self," which is how they wish themselves to be seen (SPS 118). In seeing the other like this, they see them freed from their particular drives and interests simply as a *will to know*, a *desire to be recognized*. Each desires to be known by the other as pure knowing, and in this mortal encounter, each sees the other as it wants to be seen and thus *sees itself*. The two wills are no longer alien to each other but are aspects of a single community of consciousness. The "knowing will is now universal. It is recognized being [*Anerkanntsein*]" (SPS 118). The individual becomes a *person* with *rights*—a subject of *ethical life*. All these new normative concepts emerge from the struggle between possessor and dispossessed to know themselves apart from their relation to possession, the ground of their previous existence. The ground of self-knowledge is now shown to be not only in themselves but in each other, *doubly mediated*: on the one side, mediated with each other such that each relates to the other as a will deserving one's own recognition and, on the other side, mediated with oneself such that each relates to one's own self as a will deserving to be recognized. This social self-consciousness marks the transition to *actual spirit* (SPS 119–49).

The domain of *actual spirit* is composed of the rights-based interactions of reciprocally recognizing persons who work for each other, own private property, exchange goods, make contracts, and use money within a society of laws. Individual need and the satisfaction of need are socially mediated through legal rights and economic forms, through law and money, which are objective modes of *being recognized*. Hegel's description of "actual spirit" reproduces many of the features of the *system of needs* from the FPS and SEL, but it adds something new as well. This sphere of interaction is now explicitly grounded in relations of *recognition*, namely in *rights*. This is the first time that Hegel makes *right* into a separate and autonomous sphere of ethical life or spirit. Relations of recognition—including property, contracts, punishment, and law—are now taken to represent a necessary but insufficiently ethical stage between the sphere of immediate spirit (need, labor, possession, and love) and absolute spirit (politics, religion, art, and philosophy). This intermediate sphere of recognition prefigures much of what will appear in the later PR under the concept of *abstract right*, the realm of *personality* and *property*. That is to say, Hegel's Jena philosophy of spirit, particularly the analysis of possession, struggle, and recognition that I covered here, provides the phenomenological and normative background to the category of abstract right, the "first existence of freedom" in Hegel's PR (PR §45R). In the PR, recognition-producing conflicts over possession have seemingly disappeared; they are not gone, however, but presupposed as the necessary precondition for the emergence of the free will as a person. They are, in short, indelible moments in the long history of spirit that we are.

One way of understanding Hegel's philosophy of spirit—from here all the way to the *Rechtsphilosophie*—is that it represents his naturalized, socialized, and historicized alternative to various 'state of nature' accounts of human development, whether formalist or empiricist. It is Hegel's *history of the present*, a phenomenological reconstruction of the conflictual dynamic that produces our everyday normative concepts and social relations. Like many state-of-nature stories, the idea of a *right to property* is the key step out of the pre-modern past and into the modern present; but this is not a Hobbesian, Lockean, Kantian, or Fichtean story. Rather, Hegel fuses elements from all of them and roots them in the primary experience of *injury through possession*. For Hegel, possession is the *paradigmatic* moral injury that produces the joint awareness of vulnerability and dependency on one another's recognition to validate one's own self-identity. This joint awareness institutes "recognized being" [*Anerkanntsein*] (SPS 120–32), the sphere of normative relations centered on the objective institutions of personhood, right, property, and law, and founded on principles of equality and freedom.[114] One way to think of this transition into objective ethical universality is that it emerges through the *Aufhebung* of possession into property. That is, when individually contingent claims to possession become universally mediated rights to property, the state of nature is left behind and the state of freedom can emerge. For Hegel, the right to property explicitly affirms the recognition disavowed in individual claims of possession:

> Property is thus an immediate having, mediated through being-recognized. That is, its existence is the spiritual essence. Here the contingency in taking possession is overcome [*aufgehoben*]. All that I have, I have through work and exchange, i.e., in being recognized.
>
> (SPS 123)

As a person with rights, one loses access to the contingency of taking possession, but through work and exchange, one gains access to property, a new mode of "having" mediated by being recognized. If, however, property does *not* abolish the contingency of possession, if property does *not* grant recognition, then, so it would seem, the state of nature has not yet been overcome.[115] If that was the case, then we would be justified in leaving this state behind and building another one.[116]

Conclusion

I began this chapter by rehearsing some of Hegel's early criticisms of Kant and Fichte's practical philosophy. According to Hegel, Kant and Fichte's formalistic accounts of right posit *a priori* individualistic solutions to

normative problems that demand social and phenomenological analyses. Hegel challenged Fichte's "mechanical" theory of the state in particular for subordinating the ethical universality of the people to the destructive particularity of property rights. Hegel's one-sided perspective on property improved when he began to incorporate Fichte's concept of right as a relation of recognition into his account and when he started to develop a more morally nuanced view of political economy. To show this, I provided a systematic exposition of the phenomenology of possession, exchange, crime, property, labor, and recognition as presented in three texts from Hegel's Jena years: the SEL (1802–3), the FPS (1803–4), and the SPS (1805–6).

In the SEL, I focused on how property rights emerge from need-deferring practices of tool-producing labor, surplus possession, and exchange. On this account, relations of right arise on the basis of an ethical consciousness of the formal equality of exchanging producers within a division of labor. Yet this formal equality masks the material inequality between those who possess a surplus and those who lack one. The freedom of crime breaks the false norm of equality and signals the need for an ethical community which can submerge individuality within its universal forms of life. In this community of absolute ethical life, a "system of need" arises through the interdependency of labor and exchange, but this system necessarily reproduces inequalities of property if left unchecked by the "inner constitution of the estates" and the external governance of the state. Finally, I claimed that Hegel's SEL is distinct from Kant and Fichte's accounts both methodologically (reversing the argumentative strategy) and in terms of content (property is not justified according to freedom and right but explained and criticized according to equality and need).

In the FPS, I focused on two aspects in particular: (1) the struggle between possessing families who *must injure* each other via possessions in order to gain recognition of who they take themselves to be and (2) the dynamics of the "self-moving life of the dead," or the systematic alienation and exploitation of labor and property in a rightful state. In the SPS, I concentrated on how possession itself can be experienced as a moral injury to those who are excluded from it, how the conflict between the excluded and excluding parties motivates a self-negating struggle against one's own reliance on external possessions, and how this struggle can birth the form of universal recognition underlying relations of right. Throughout this chapter, I also maintained a critical dialogue with Honneth's influential reading of Hegel's Jena philosophy. Whereas Honneth focuses on the normative expectation of recognition underlying all social interaction, I argue that the desire for unconditional recognition is itself produced through the particular moral injury of possession and that the right to property avows this experience at a universal level.

Unlike Kant, Hegel does not see property as a provisional right of private law for protecting the spatial freedom of rational beings on a shared planet; unlike Fichte, Hegel does not see property as a state-legitimized right of recognition for securing the temporal freedom of laboring beings in a closed economy. Rather, the right to property for Hegel is a *result* of the failure to authorize one's own claim to possession without calling upon the authority of another; it is a resolution to the moral and material conflicts between absolutely dependent beings who desire absolute independence. That is to say, rights to property are ways of recognizing the mutual moral vulnerability of fragile creatures seeking love and labor on a hostile planet.

Property teaches us that we are vulnerable, that we can be injured not merely physically but morally, by being excluded from determining who we are and how we are to pursue our own lives. This specific moral injury occurs when somebody attempts to affirm their independence by claiming external things as their own. One contemporary political insight to be gained here is that the struggle for recognition responds to a moral injury which is *at the same time* a material one. To be dispossessed is to be excluded from the distribution of recognition and need. Overcoming this lack means engaging in an individual moral struggle for recognition which is indistinguishable from a universal class struggle for, and against, property. Hegel uses the particular experience of *injury through possession* to generate the form of normativity that can ground universal ethical life based on equality and freedom. Perhaps we should take this experience more seriously.

Nancy Fraser and Axel Honneth have debated whether (moral) *recognition* or (material) *redistribution* is better equipped to address claims for justice today.[117] On my reading of Hegel, the fundamental injury to be righted through political struggle is the morally and materially exclusive inequality underlying particular property relations. This injury is universally devastating to the moral status of individuals and to the material well-being of entire classes. It can thus be rectified only by a social struggle that transcends the divide between seeking recognition of moral status or redistribution of property. The vanishing point of a social struggle for recognition and redistribution may just be revolution.

Notes

1 Although I stick pretty closely to Hegel's texts throughout the chapter, I also utilize helpful commentaries by Marcuse (1960), Lukács (1975), Habermas (1974), Avineri (1972), Siep (2014), G. Rose (2009), Franco (1999), and Nance (2017). In addition, I maintain an explicit critical dialogue with Axel Honneth's (1995) influential interpretation of Hegel's Jena writings.

2 Detailed discussion of the following points will come in subsequent sections.

3 On Hegel's early criticisms of Kant and Fichte's practical philosophy in general, see Franco (1999: 11–32) and Ifergan (2014: 14–61). For Hegel's critique of Fichte in particular, see Williams (1992: 73–95; 1997: 281–92), Lukács (1975: 241–300), and Clarke (2009, 2011).
4 In Hegel's more poetic terms, freedom means being at home in another [*Beisichselbstsein in einem anderen*]. See PR §7A. On this phrase, see Wood (1990: 45–51), Neuhouser (2000: 19–25), and the editor's note to PR §23 (Hegel 1991: 401).
5 PR §29. See also PR §4, §15.
6 On this aspect of Hegel, see Honneth (2014).
7 For key interpretations of Hegel's social and political thought, see Marcuse (1960), Avineri (1972), Lukács (1975), Taylor (1979), Wood (1990), Williams (1992, 1997), Hardimon (1994), Pippin and Höffe (2004), Honneth (1995, 2014), Patten (1999), Franco (1999), Neuhouser (2000), Peperzak (2001), Knowles (2002), Pippin (2008), Comay (2011), and Brooks (2013). On property, labor, and economy in Hegel's PR, see Ritter (1982), Priddat (1990), Stillman (1980a, 1980b, 1980c, 1991), Waszek (1988), Macgregor (1996), Maker (1987), Pelczynski (1971, 1984), Ryan (1984), Horstmann (2004), Schmidt am Busch (2008, 2015), Ruda (2011), Herzog (2013), Buchwalter (2015), and Houlgate (2017). On Hegel's legal theory in particular, see Benhabib (1977), Cornell (1991), Conklin (2008), and Brudner (2013).
8 Besides a few remarks in the *Phenomenology of Spirit* (1807), Hegel continued developing and consolidating his thinking on possession and property in the Nuremburg *Philosophical Propaedeutic* (1808–11), the *Objective Spirit* chapter of the Heidelberg *Encyclopedia* (1817), a series of crucial lectures on natural right in Heidelberg (1817–8) and Berlin (1818–25, 1831), and, most comprehensively, the *Elements of the Philosophy of Right* (1821). For some initial thoughts on property in Hegel's PR and its relation to Kant and Marx, see Blumenfeld (2020).
9 On Hegel's philosophical development in Jena in general, see Siep (2014: 41–51), Wildt (1982), Ifergan (2014), Schmidt (1981), Harris (1983), and Franco (1999: 33–80).
10 On this aspect of Hegel's philosophical project, which never went away, see Taylor (1979) and Avineri (1972). For a more recent take on Hegel's Jena philosophy, see Nance (2017).
11 Hegel's influences around 1802 included Holderlin's theory of unification, Schelling's *Naturphilosophie*, Fichte's theory of right, Plato and Aristotle's political holism, British political economy, and a critical attitude toward Kantian individualism. See Honneth (1995: 11).
12 On the tragedy of ethical life in Hegel, see NL (151–2) and Lukács (1971: 398–420).
13 Clarke (2011: 207).
14 Horst D. Brandt edited the German edition with the title: *System der Sittlichkeit* [*Critik des Fichteschen Naturrechts*]. It was published with the Felix Meiner Verlag in 2002. See also Nance (2017: 38).
15 Hegel's fragment on love can be found in ETW (302–8). On love in Hegel, see Williams (1992: 77–81) and Siep (2014: 86–9).
16 ETW (308).
17 *Ibid.*
18 *Ibid.*
19 Marcuse (1960: 34).
20 Marcuse (1960: 53).

21 GC (22).
22 *Ibid.*
23 D (142–52).
24 D (145).
25 FK (182–3).
26 FK (183).
27 *Ibid.*
28 NL (106). See also Honneth (1995: 12–3), Franco (1999: 57–8), and G. Rose (2009: 55–63).
29 On Hegel's other criticisms of Fichte in the NL essay, see Clarke (2011).
30 See PR §189–208.
31 NL (141).
32 The concept of ethical life or *sittlichkeit* is mentioned hundreds of times in NL. It names, among other things, the priority of the universal (state, people, ethical bonds, habits, values, and ways of life) over the individual (virtues, feelings, and beliefs). On the notion of a "system of ethical life," see NL (158–63, 169–80).
33 NL (141).
34 NL (142).
35 NL (138, 147, 151–2). On pure vs. empirical freedom in NL, see Clarke (2011: 217–220).
36 See Honneth (1995: 14).
37 On Hegel's de-transcendentalized appropriation of Fichte's concept of mutual recognition, and his application of it to various forms of reciprocal interaction, see Honneth (1995: 16).
38 On Hegel's view of political economy as a modern science comparable to astronomy, one which finds necessary laws underlying the superficial chaos of contingent movements, see PR §189. On Hegel's reading of Steuart and political economy, see Herzog (2013), Waszek (1988), Avineri (1971), Lukács (1975: 319–37), Macgregor (1996), Maker (1987), Priddat (1990), and Buchwalter (2015).
39 In Hegel's PR, the normative content of the economy is still based on the mutual recognition underlying the division of labor, but it comes via mediating the particular with the universal, the rights of subjectivity with the demands of objective spirit. In the Jena lectures, this mediation of particular and universal is more clearly specified through the property relation itself.
40 Avineri (1971: 97).
41 Parts of this section were published in Blumenfeld (2023c).
42 Lukács (1975: 323).
43 For helpful guides to the SEL, see Marcuse (1960: 56–59), Lukács (1975: 322–26), Harris (1979: 3–87; 1983: 102–43), Honneth (1995: 18–26), Franco (1999: 68–9), G. Rose (2009: 51–98), Clarke (2009: 377–83), Saito (2015: 41–9), and Nance (2017: 38–42).
44 Whereas the *System of Ethical Life* provides only a preliminary account of the development of the consciousness of freedom and its objective realization, Hegel's later *Philosophy of Right* provides the full "phenomenology of the consciousness of freedom" and its objective institutionalization. See Ilting (1984: 212).
45 Nance (2017: 38–9).
46 On the idea of a conflict-theory of recognition, see Bertram and Celikates (2015). While the SEL moves toward such a theory, the focus on conflict as a

key driver of recognition really comes to the fore in Hegel's Jena *Philosophy of Spirit* lectures from 1803–4 and 1805–6. It is reworked into the struggle between lord and bondsman in the 1807 *Phenomenology of Spirit*. By the time of the 1820 *Philosophy of Right*, however, this conflictual pre-history of the phenomenology of right seems to be absent; conflict has disappeared in favor of an integrated totality of right. Yet, on my reading, the mutual recognition produced through struggles over possession is not gone but rather presupposed.

47 Honneth (1995: 17).

48 One of the best attempts to make sense of Hegel's chaotic text is, interestingly, Gillian Rose's *Hegel Contra Sociology* (2009: 51–98), first published in 1981.

49 According to Nance (2017: 42), the originality of the SEL consists "in Hegel's methodological repurposing of modern political economy and Fichte's practical philosophy to provide a conceptual framework for a historical/anthropological account of the development of human consciousness and society via social struggles for recognition." I think this is mostly right, although I would add that Hegel embeds the right to property within a materialist account of the development of labor and exchange. Thus, opposed to Kant and Fichte, Hegel begins not with an abstract justification or deduction of property but with a phenomenology of the appearance of property in relation to need and shows how its own development justifies itself as an expanded relation of universal recognition beyond the family.

50 Franco (1999: 68).

51 Franco (1999: 68–9).

52 One way to interpret natural ethical life is to say that Hegel posits a drive for satisfying material needs and a drive for satisfying sexual needs. The first leads to the institution of property, the second to the institution of family. See Nance (2017: 38). This account of drives is strikingly similar to Freud's early distinction between ego-drives aimed at self-preservation ("hunger") and libido-drives aimed at sexual relations with others ("love"). See Freud (1957: 214–5).

53 Whereas the tool for labor expresses one form of practical intelligence, there is another kind of tool that mediates subjectivity with objectivity in a more ideal way: speech (SEL 114).

54 Saito (2015: 41).

55 Nance (2017: 40).

56 I am referring to SEL 118–9. See also the German, Hegel: *System der Sittlichkeit*, 21–2.

57 Hegel adds a parenthetical comment here, stating that abstraction in itself is not the same as right, for not every kind of abstraction is a legal relation. Rights are rather specifically *formal* relations of recognition, without any determinate content, which means, they can be used in infinite ways for endless ends. See SEL 118.

58 Hegel writes in SEL 118: "The individual is not a property owner, a rightful possessor, absolutely in and of himself. His personality or the abstraction of his unity and singularity is purely an abstraction and thing of thought."

59 That the truth of property comes out in contractually mediated exchange is a lesson the mature Hegel still endorses; see PR §71.

60 See also the German at *System der Sittlichkeit*, 24: "Das Eigentum tritt in der Realität durch die Mehrheit der im Tausch begriffenen Personen, als sich gegenseitig anerkennend auf."

61 See also Hegel's later deduction of *money* as the "materially existing concept" of value in FPS 249. Hegel's claim that value is a real abstraction produced through exchange has resonances not only with Marx's value theory in *Capital* but with many debates in 20th-century critical theory as well (e.g., Sohn-Rethel [1978]). On Hegel as a value-form theorist akin to Marx, see Arthur (2004: 177–99) and Murray (2016: 55–68). Arthur and Murray, like Lukács (1971), read Hegel's early account of value, labor, property, and right as resolutely materialist insofar as Hegel suggests that economic relations precede and disfigure juridical relations. They thus claim that the Jena philosophy is a more advanced account than Hegel's later analysis of property and civil society in the PR, in which juridical relations precede and contain economic ones. Although I am sympathetic to this reading, I believe that Hegel's Jena account of the phenomenology of property and recognition can be read as a necessary *presupposition* to the already constituted categories of right in the PR. The material and normative struggle of workers to be recognized as persons is thus the ground upon which the free will develops its objective existence in abstract rights.
62 As Hegel writes at SEL 125: "A living individual confronts a living individual, but their power of life is unequal."
63 See also Marx (1875) on "equal right" (MECW 24: 86): "[Equal right] *is, therefore, a right of inequality, in its content, like every right*."
64 This is the move from natural *Sittlichkeit* to absolute *Sittlichkeit*, an early account of the development of objective freedom that will come to the fore later in PR §258. Here, however, the relation between subject and *Sittlichkeit* is not as differentiated and self-reflexive as will be in Hegel's later works.
65 See Lukács (1975), Marcuse (1960), and Honneth (1995).
66 On negativity in the SEL, see Nance (2017: 41).
67 Kant 6: 245. See Chapter 1.
68 On Hegel's use of Fichte in SEL, see Nance (2017: 41). Undiscussed here is the influence of Schelling's *Identitätsphilosophie* on Hegel's early Jena system, an important topic beyond the scope of this research.
69 On the nature of moral injury, see Bernstein (2010b, 2015), Congdon (2016), and Honneth (1995).
70 Honneth (1995: 20–21). See also Nance (2017: 41).
71 On the political problem of mixing employers and employees in a single class category, see Lukács (1975: 365–97) and Avineri (1971: 118–9).
72 On Fichte's external, coercive relation to the market and Hegel's internal, ethical relation to the market, see Saito (2015: 45).
73 Fichte uses this term in the *Foundations of Natural Right* to describe the relation between willing and representing (FNR 21), the conceptual activity of human beings (FNR 38), the normative relation between free beings (FNR 42), the concept of right (FNR 51), the ground of recognition (FNR 79), the law of coercion (FNR 133), social relations according to the civil contract (FNR 180), the sphere of property (FNR 183), and the relation between the state and its subjects (FNR 254).
74 See also PR §189.
75 According to Geoff Mann (2017: 119–81), Hegel's claim that the state must apply the science of political economy to the population in order to regulate crises, care for the poor, and save bourgeois society itself—all without closing the market from trade—makes him the first *Keynesian*, one hundred years before Keynes!

76 Hegel seems to think that the transition to a specialized, money-based, market-mediated society is a somewhat natural progression from subsistence labor and barter. This Smithian story, however, is a myth. The real transition (from feudalism to capitalism) is soaked in violence, coercion, dispossession, theft, and war. See Marx on "so-called primitive accumulation" (1990: 873–940) as well as E.M. Wood (2002) and Graeber (2011). This does not, however, change the substance of the argument.

77 Hegel also notes an ecological concern, stating that the "foreignness" of some goods, the fact they are produced abroad, "puts expenses on the whole earth" (SEL 170).

78 Aristotle, *Politics* 1257b.

79 Hegel will struggle with the problem of poverty and inequality throughout his entire life. See Hegel's *Vorlesungen über Rechtsphilosophie*, edited by Ilting, from 1818 to 1831 (VRP I, III, and IV) and the *Lectures on Natural Right* (NR) from 1817 to 1818. See also PR §241–246.

80 In PR §230–256, these two methods become institutionalized in the ethical organizations of the *Police* and the *Corporation*. The former represents external measures against inequality, and the latter, internal measures. See also Herzog (2015).

81 In PR §250–256, Hegel transposes the ethical function of the estates into the *corporation*. Hegel's corporation is like a trade union, social club, and church group mixed into one. Its function is to provide a particular mode of ethical mediation between individuals and the state, such that individuals are acknowledged as honorable and dignified by their peers. Corporations educate, train, and organize its members into skilled laborers who can contribute to society as a whole and not merely to their own self-interest. Moreover, through membership in the corporation, individuals are provided for by each other in times of need, in effect taming the contingency of market dependency. Yet here, in the SEL, the ethical demand to tame the destructive inequality of property is realized in the estate itself as part of its own constitution.

82 On abstract right in general, see PR §34–40; on property in particular, see PR §41–71. For an analysis of property in Hegel's PR, see Knowles (2002: 107–38), Patten (1999: 139–62), Stillman (1980a, 1980b, 1991), Schmidt am Busch (2008), Ritter (1982), and Baumann (2018).

83 While highlighting Hegel's materialist anthropology, I would not want to deny the idealist framing of the argument in logical terms (intuition, concept, subsumption) inspired by Schelling's *Potenzenlehre*. My only claim is that we should not allow this framing to obscure the deeply phenomenological, sociohistorical account underneath it.

84 The idea that social trust underlies ethical life is a key claim in Hegel's early work that continues on through the subsequent Jena *Philosophy of Spirit* lectures into the *Phenomenology of Spirit* all the way to the *Philosophy of Right*. For interpretations of Hegel that center on trust, see Bernstein (2015: 218–57) and Brandom (2019).

85 Hegel's argument about the moral and material dangers of unchecked wealth, poverty, and inequality can thus rightly be called *Keynesian*. See Mann (2017: 119–81).

86 The concept of spirit emerges only after the SEL, in the 1803–4 and 1805–6 Jena lectures on the *Philosophy of Spirit*, discussed below. The concept of spirit develops in various ways from Jena through Hegel's later work, most notably into subjective and objective forms, the latter of which concerns the

actualization of freedom in determinate spheres of practice, such as legality, morality, family, economy, and politics.

87 Honneth (1995: 25).

88 According to Nance (2017: 43), Hegel appropriates three key ideas from Fichte in the FPS:

> First, Hegel comes to regard what Fichte calls the 'self-positing I' as providing a model of the absolute that Hegel seeks to replicate in his account of spirit. Second, Hegel adopts a version of the Fichtean claim that self-conscious rational agency is socially mediated. And third, he uses Fichte's concept of reciprocal recognition (*Anerkennung*) to analyze the constitution of the social fabric of spirit that mediates individual agency.

These suggestions are right, and similar points have been made before by, for example, Habermas (1974), Siep (2014), and Honneth (1994). However, none of the above takes seriously the roles of possession and property in the development of Hegel's (or Fichte's) practical thought. Rather, they tend to focus exclusively on the role of recognition, history, sociality, and conflict, yet all of these elements enter Hegel's argument through the analysis of possession and property.

89 On Hegel's replacement of nature with spirit, see Honneth (1995: 26–7).

90 On this aspect of Hegel's *Philosophy of Spirit* lectures, see Habermas (1974: 142–69).

91 The focus here is on Fragment 22 of Hegel's *Jenaer Systementwürfe I* (217–23); for the English translation, see FPS 235–42. For valuable interpretations of the "struggle for recognition" in the FPS, see Honneth (1995: 27–32), Nance (2017: 46–50), and Franco (1999: 69–73).

92 On the relation between property and exclusion, see the Introduction.

93 Lukács (1975: 330).

94 For Hegel, this *dialectic*, so to speak, is not only normative or political but also metaphysical: it describes the unity of being, negating, and being-as-negation [*Seins, Aufhebens, und Seins als Aufgehobensein*] (FPS 241).

95 Hegel does not really distinguish between an *ontogenetic* and a *phylogenetic* account of the history of spirit's coming to be. In other words, it is seemingly an account of both an individual's development *and* the historical evolution of a species. Unlike Freud, who presents somewhat similar accounts, Hegel does not even suggest something like 'empirical' evidence for his hypotheses of the development of mind and humankind. It is a purely speculative endeavor, anything else would be reductive.

96 For the German, see Hegel's *Jenaer Systementwürfe III*: 171–262.

97 SPS 85–110. For an overview, see Franco (1999: 73–4). Three things to note here: First, Hegel describes *intelligence* itself as a kind of subjective "taking possession" of objectivity (SPS 90), of rendering the world intelligible to oneself, of making it *mine* (SPS 86; see also PR §4A). Second, the practical "I" or *will* satisfies its needs once more through *labor*, or "worldly self-objectification" (SPS 103). Labor creates new mediums of consciousness through its products, particularly in *tools*, but also divides human beings from each other into distinct kinds of knowers. Third, this separation is overcome through the knowledge of *love*, the condition in which "one knows oneself in the other" (SPS 107). Love finds its proper shape in the *family*; as tools embody the permanence of labor, *common possessions* embody the permanence of love—the lasting medium and material ground of the family's existence. In possession, the "I is universal [*Ich ist allgemein*]" (SPS 108n24). The source of universality and the origin of possession are now one and the same: love.

98 On Kant's understanding of the duty to the leave of state of nature, see Chapter 1.
99 See Honneth (1995: 41).
100 For Kant, on my interpretation, *right* is neither a mere product of thinking nor is it dependent on the individual alone. As I argued in Chapter 1, Kant's theory of right is thoroughly interpersonal and requires political action.
101 See Honneth (1995: 41–50, esp. 42).
102 Hegel makes a marginal note next to the phrase "empirical seizure," restating the Kantian idea that possession is a kind of contradiction: it signifies both an immediate *having* in regard to the thing and a mediated relation to oneself insofar as the thing is only one's "own" when it is recognized by others to be so. See SPS 112n30.
103 See also the German at *Jenaer Systementwürfe III* 201.
104 On this point, see also Honneth (1995: 44).
105 See Honneth (1995: 45–6).
106 See Kant's first duty of right to be a *rechtlicher Mensch* (6: 236) and Hegel's commandment of right "to be a person" (PR §36).
107 In a sense, this takes us back to Hegel's account of the negative dialectic between love and possession from his early fragment on *Love*.
108 At SPS 117n38, Hegel makes it clear that presenting oneself as a pure knowing will means abandoning possession as the immediate form of existence for self-consciousness.
109 In the next section of the SPS, Hegel writes in relation to property and exchange, "*das Anerkanntsein ist das Dasein*," and in a marginal note: "*Dasein ist Anerkanntsein*" (JS III 208). On the claim that "to be is to be recognized," see Bernstein (2015: 175–257).
110 Honneth (1995: 47).
111 Honneth (1995: 48–9).
112 Before Honneth, however, Kojève (1980), Bernstein (1984), Benhabib (1984), Siep (2014), Wildt (1982), and Williams (1992) all wrote on recognition in Hegel. But unlike those authors, Honneth gives not only an interpretation of Hegel but a Hegelian social theory. For more recent approaches, see the *Philosophy of Recognition* (2010), edited by Schmidt am Busch and Zurn.
113 See PhS §178–196; PR §34–40, *Encyclopedia III* §430–435, §486–502. See also Hegel's accounts of recognition and right in VRP I, III, and IV as well as NR.
114 For another take on right, recognition and objective spirit in Hegel's Jena writings, see Williams (1997: 93–108).
115 In the NR, VRP, and PR, Hegel often describes "civil society" as if it was a kind of *second* state of nature, a state of socialized contingency. See, in particular, PR §183, §200, and §289R and NR §92 and §102.
116 On this question, see Blumenfeld (2020, 2023b).
117 Fraser and Honneth (2003).

Conclusion

The Social Pathologies of Property

Philosophers who write about property usually do so in very different ways than I have done. As argued in the Introduction, theorists of property tend to develop fine conceptual distinctions based on legal precedents, common sense, and economic data, all the while using premises that are minimal, acceptable, and applicable. But the pay-off from all their rigorous analytical labor ultimately lies in a stronger conceptual and normative foundation for *what already exists*. In other words, philosophers dealing with the question of property have been hard at work with their conceptual tools and moral arguments to justify the status quo distribution of wealth, bolster the economic and legal conditions of ownership, and vindicate the normative basis of the present social order. The *anxiety* concerning the origin and distribution of wealth that arises alongside the philosophical interrogation of property rights gets washed away in utilitarian, libertarian, economistic, legalistic, and historicist accounts. *There is nothing to be worried about*, experts proclaim, *the principles underlying our civilization are righteous, justified, and intact*. As Frank Drebin calmly says in the 1988 film *Naked Gun* to a stunned crowd witnessing a completely chaotic scene: "Nothing to see here! Please disperse! Nothing to see here. Please!"

Of course, there have always been critics, naysayers, and gadflies concerning the role of property in society. There are those who question the right of a single individual to own as much as millions of others combined; there are those who challenge the rationality and rightfulness of the market-based distribution of property, labor, and money in society. There are those who debate the criteria for how one becomes an owner of property at all, whether by first possession, inheritance, contract, labor, use, luck, desert, or force. There are those who seek to place moral limits on ownership, limits on what can be commodified and how much one can own. There are those who emphasize the unjust sources of contemporary property titles in colonialism, theft, robbery, slavery, and war. There are those who wonder why ideas can be owned but never wasted, why homes are not needs but investments, why money can create more money but

DOI: 10.4324/9781003439745-5

labor seems only to make one poorer. Many of these criticisms, however, focus only on the unequal distribution of property and not on the underlying conception of property as the private right to exclude others, a right whose alleged purpose is to protect negative liberty and motivate economic efficiency. Rather, the problem appears to be that property rights have gotten out of hand and need to be reined in, usually by corrective legislative action. The goal is thus to return the distribution of property to its mean.

This is not what I have done here. My philosophical method differs insofar as it does not seek to simply provide a new justification of property or criticize an old one. That has been done ad nauseum and will continue to be done as long as the social order is founded on the security of property rights. Rather, I sought to show what any defense or critique of specific property relations has to incorporate in order to make sense of its object: property itself. While I am clearly critical of a society built upon private ownership of everything, I am more interested philosophically in how the normative frameworks developed above provide social accounts for what makes property valid, accounts that would highly constrain property relations today if they were to be taken seriously.

All arguments about property reflect implicitly or explicitly certain normative visions of how society ought to be. To criticize a certain conception of property is to criticize the society that makes it possible, and to defend a certain understanding of property is to endorse a distinct form of social life as well.[1] But justifications and criticisms of property relations are not just the purview of legal philosophers, sociologists, and economists; they are also expressed in the practical and political actions of ordinary people who struggle every day with the problem of saying "mine" in an unstable world. *Is this job mine? Is this home mine? Is the community mine? Is this money mine? Is this health care mine? Is this bus mine? Is this state mine? Is this world mine? Is this future mine? Is this life mine?* And if so, what does that mean? *Do I control it, do I identify with it, can I leave it, am I dependent on it, do I need it? What duties do I now have to others through it, and what obligations do others now have to me? Am I at home with myself and others in it? Do I find my freedom confirmed, denied, injured, limited, reflected, recognized, or expanded through it?*

As I have argued in this book, answering these questions *on one's own* is impossible, for the very act of claiming something as *one's own* elicits a social question about how we want to live together. To say "mine" in regard to something external, to take possession and claim a right to it, is not to *answer* the question of "What belongs to whom?" but rather to *ask* the question of "How do we want to live together?" It is, in essence, a *summons* to act. And, as a summons, it can be rejected, denied, ignored, misinterpreted, attacked, and thrown back in one's face; but it can also be

welcomed, chosen, accepted, reflected upon, taken up, challenged, reinterpreted, and incorporated into one's own self-conception. One person's self-confirming possession can also be experienced by another person as a morally devastating injury. In excluding someone from a decision which affects their will, another person's "mine" can effectively deny the freedom of someone to determine themselves as a person with equal standing. This injury can lead to a struggle in which each seeks to impose their will on the other so as to be recognized as who they claim to be. But the very act of trying to impose one's unilateral will on another by asserting one's exclusive right to property will always fail, because the very authority of that right relies on the recognition from those who are being excluded. A successful resolution to the struggle occurs only when each party can acknowledge their own desire to be recognized by the other in the very act of excluding them. That is to say, the struggle ends when each possessor is able to unconditionally accept the other as who they present themselves to be, namely as self-authorizing—*even though the authority to determine oneself as self-determining comes from the outside, from the other person*.[2] No matter who one takes oneself to be, the very form of asking for approval and responding with recognition achieves an ethical standpoint in which the moral vulnerability implicit in social interaction can be avowed in a joint political community of equals.

Making explicit all the metaphysical, normative, social, and material conditions it takes to rightfully call something external "mine" accomplishes the task I set out in my reconstruction of the theory of property in classical German *Rechtsphilosophie*. The unifying thread running throughout Kant, Fichte, and Hegel on the topic of property can be put like this: *each claim to possess something exclusively as one's own is implicitly a summons to another person to act, to join together in creating a political community of free equals that can accommodate each other's distinct identities as vulnerable subjects within a system of material and moral interdependence*. Whatever the particular shape of the political community (e.g., constitutional republic for Kant, closed commercial state for Fichte, a system of ethical life for Hegel), only within it can individuals find the material and moral resources for recognizing that the freedom of each is the condition of possibility for the freedom of all. Now whether the *call to action* implicit in the property relation has been taken up in a satisfactory way for all, however, is highly debatable.

Kant, Fichte, and Hegel are all critical of approaches that reduce property to empirical relations to things, to natural pre-political rights, to economic tools of efficiency. But they are not critical of property *itself*. Indeed, Kant and Fichte develop some of the most sophisticated arguments for the validity of property rights—albeit with very high standards for their actual legitimacy. This, in turn, supports the claim that their apologies of ideal

property orders are, in fact, criticisms of actual property relations. Hegel's approach, however, does not vindicate property directly but rather shows how the right to property emerges as a result of a failed struggle for recognition of oneself as self-authorizing, a result that still has to be superseded for freedom to be realized.

In this book, I argued that Kant, Fichte, and Hegel can offer us meaningful insight into the paradoxes of the property relation. Allow me to review this argument as a whole. In the Introduction, I claimed that the dominant conceptions of property in legal philosophy tend to run into the pitfalls of *legalism* and *economism*. On the legalistic side, property is conceived as a *formal right to exclude others*, and on the economistic side, property is regarded as an *efficient tool for maximizing welfare*. I argued that these legalistic and economistic tendencies represent botched attempts at synthesizing the protection of personal freedom with the management of social necessity; that is, they fail to treat human beings as both rights-bearing independent persons and need-satisfying social creatures. Reducing property to *exclusion* or *efficiency* reflects an individualistic and limited manner of treating the kinds of social, normative, and metaphysical questions brought up by the very act of claiming something external as one's own. Whether property is justified in order to protect negative liberty or to maximize utility, the result is the same: a highly normative and politically contested relation is taken as a neutral and natural solution to a technical problem of resource management and social coexistence. This allegedly "non-political" analysis of property buries questions of justice and distribution, of class and equality, of normative authority and social obligation, of human flourishing and political vision. Yet these legalistic and economistic approaches are not so neutral after all; they effectively support a *particular* class politics, one which reinforces the hierarchies of the market and the precedents of law so as to redistribute wealth upwards and bolster the rights of those with property over those without. To prove that these conceptions were neither necessary nor final, I provided a genealogy of the concept of property in legal philosophy. First, I showed how different political, legal, and economic conceptions of property changed over time or were in conflict with each other at the same time. Second, I discussed some new paradigms in critically thinking about property as a social-normative relation; such paradigms are committed to providing a more phenomenological, pluralist, democratic, egalitarian, and communitarian theory of property relations. As good as they are, such paradigms remain discursively bound to treat property as a legal problem to be solved and not a philosophical question to be interrogated. With that in mind, I suggested reactivating the dormant tradition of classical German *Rechtsphilosophie* from Kant to Hegel since, through it, we can acquire the philosophical resources to better understand property as a metaphysical, normative, social,

and material relation of right that binds rational, needy, and vulnerable human beings to each other in political communities of freedom and interdependent economies of recognition.

In Chapter 1, I argued that the right to property for Kant was a central metaphysical puzzle he had to solve in order to formulate a consistent theory of external freedom for rational beings. The task was to figure out how persons can have and acquire things as their own—that is, how they can unilaterally claim exclusive rights to use external objects for their own ends against the equally valid claims of others. Since practical reason legislates only over the form of choice between persons, it can neither authorize nor deny any claims of possession to external things. The only innate right of humanity is to freedom, a right which acts as a universal law for coexistence among equals, but this right has nothing to say about how one should exercise their freedom with regard to particular objects in an economy of limited resources with other human beings. To get around this problem, Kant first proposes a juridical postulate of practical reason, which states that there can be no law against persons having external objects as their own (what Kant calls *intelligible possession*); second, he categorizes this postulate as a *permissive law*, which grants normative validity and legal power to acts which are neither prohibited nor mandated, such as unilateral deeds of appropriation. Kant thus "deduces" intelligible possession as an *a priori* concept of right and justifies it as a permissive law of practical reason. Although the private right to property is theoretically justified according to reason alone, any particular appropriation is only *provisionally* rightful until it is publicly authorized in a civil condition according to a united will. Furthermore, the concept of intelligible possession is not only permissible for rational beings but *necessary* for human beings to coexist in equal freedom. Without recognized relations of legal possession, the innate freedom of each remains restricted to the use of one's body alone. However, as economically desiring creatures rooted in particular human communities on a finite planet, we need more than just our bodies to act in the world. We desire other people, other things, other people's desires, and other people's things. Our desired ends extend beyond our given means, our choices conflict and collide, and thus we need to organize our social property relations such that each can use their freedom equally. It is therefore a regulative *duty* for rational beings to form a political state and collectively establish public laws that can authorize property relations for all.

The right to *have* something as my own is one thing, the right to *acquire* it is another. To justify acquisition, Kant incorporates social, material, and anthropological conditions into his reason-centered framework. The spherical shape of the earth, the unavoidability of human community, and the spatial basis for agency all play key roles in developing the theory of

acquisition. Kant postulates two grounds for authorizing the unilateral acquisition of objects in the present: first, a retroactive grounding of acquisition through the idea of an original possession of the earth in common and, second, a political grounding of acquisition through the prospective horizon of an omnilateral will that can publicly enforce, adjudicate, and authorize provisional claims to property as final. These conditions function as ideas of reason which can test the rightfulness of an act of acquisition in thought and practice. Kant's metaphysics of right thus leads to a social-normative theory of freedom in which no one can act rightfully in relation to others—that is, by possessing things, deeds, or statuses—without binding themselves to constructing a political order for universal freedom.

In Chapter 2, I argued that the right to property for Fichte was a necessary moment in the transcendental deduction of the conditions of possibility for self-consciousness. Fichte argues that for any rational being to have self-consciousness, it must first ascribe *efficacy* to itself. To know itself as an efficacious free cause, however, a rational being must have an object against which to act. But this cannot be just any external thing, it must be a particular object that can reflect one's agency back to itself. Or it must provide the occasion for one to exercise efficacy in such a way that one recognizes oneself as the cause. This particular object is another self-consciousness or, more specifically, the *summons* from another self-consciousness to act, to determine oneself as self-determining. In responding to the request from another self-consciousness to act, the rational being takes itself as object, relates to itself as a being which can act or refrain from acting, and realizes its efficacy therein. Individual self-consciousness is thus impossible without the existence of another self-consciousness, particularly one which relates to it in a specifically *intentional* way. But in recognizing the other self-consciousness as a rational being with its own freedom, I *limit* my own efficacy. And in recognizing my freedom, the other being limits its efficacy. Together, we mutually limit ourselves to separate spheres of activity; otherwise, the freedom of each would be not recognized but denied. To recognize and be recognized by another self-consciousness thus means acknowledging implicitly normative claims to separate spheres of freedom. In order for rational beings to recognize themselves as the free beings they posit themselves to be, they must reciprocally recognize each other by limiting themselves. This recognitive relation of self-limitation is called *right*, and thus Fichte "deduces" the concept of right from self-consciousness as the necessary relation between free beings.

Self-limitation through recognition provides the individual with a delimited space of possibilities in which to construct the concept of an end and follow through on it in the world. In other words, it enables efficacy, the first condition of self-consciousness. But in order to exercise one's efficacy

in the sensible world, an individual rational being requires more than just the formal recognition of its sphere of freedom. It must also posit a set of normative conditions so that its deeds can be taken *as* a confirmation of its own self-positing. These conditions form the 'original rights' of personality: rights to one's body (as an inviolable sphere of free action) and rights to property (as an external sphere of free influence). Having a right to property at this juncture means having a certain relation to the sensible world that allows one to perceive oneself as the exclusive cause of modifications in one's objective environment. The ground of property thus lies in the need to stabilize the material, ontological, and epistemological conditions for external action. Otherwise, the perception of oneself as the cause of an effect gets lost in the movement from conceptualization to realization. To recognize one's agency in the world thus requires not only spatial security but *temporal* stability. This demand to stabilize the conditions of efficacy reflects the transcendental ground of the right to property as the right to free action in the sensible world. Property is thus not a right to a thing but a right to a kind of activity. This justification of property, however, does not validate any *actual* property rights. It only says that the right to property as such is a necessary step in fulfilling the demands for individual self-consciousness to know itself as free. For any particular right to property to be valid, it must be justified in relation to its effect on the freedom of others, and it must be enforceable. According to Fichte, these two conditions can be solved by a *property contract*—that is, a voluntary agreement to join wills into a political commonwealth that has the power and authority to secure reciprocally recognized spheres of free activity as coercive rights to property. Unlike with Kant, joining this commonwealth or state is not a duty for Fichte but a contingent choice. No one *has* to live in a community of right, one can also choose the instability, violence, and contingency of life outside law. But only in a community of right can anyone have anything like property at all, since each person commits to treating the claims of others as legally binding, and each person backs this up by offering their own claims as collateral for any failure to do so. This mutual commitment produces the stability needed for property to exist as an objective relation.

The property contract fixes relations between individuals such that each has a coercive right to a recognized sphere of freedom. This sphere is one's property, and while it should allow individuals the stability and exclusivity necessary to pursue their own arbitrary ends, it should also enable each person to *live off* their own activity or labor. This stronger claim arises because Fichte takes the *maintenance of life* to be the ultimate end of all property. Since property stabilizes the conditions of free action and since all action is inherently future-oriented, Fichte concludes that the right to property must also secure the continuity of life such that present action can

have a future purpose. For the property contract to accommodate this high demand, a whole system of labor, classes, and exchange must be organized in the state, a system which can potentially satisfy the needs of all. Fichte's account of property thus leads to a quasi-socialist theory of a closed political economy. Initially, property is justified according to the conditions of free efficacy, but by the end of Fichte's argument, the right to property becomes the right to a specific form of labor which can satisfy the needs of life. Fichte thus recognizes that one cannot be free if one cannot make ends meet, and so he incorporates the right to live off one's activity into his concept of property and then grants property rights to everyone in the state. However, the material presuppositions of freedom should not be confused with the full exercise of freedom. In his late work, Fichte modifies the meaning of property to include a right to *leisure* and not just labor. Reducing the necessary labor time of society to a minimum clears the ground for securing freedom *from* work. Ultimately, to own property means, on the one hand, having a right to a certain kind of labor and its prerequisites and rewards and, on the other hand, having a right to a certain amount of free time in which to develop and educate oneself into a more ethical and spiritual being. Both aspects of property, as the right to necessary labor and the right to necessary leisure, form the foundation of freedom.

In Chapter 3, I argued that Hegel adopts certain elements from Kant's conception of right as a universal law of interpersonal freedom and Fichte's idea of right as a relation of reciprocal recognition between free beings but that he offers a completely different account of what gives this relation its normatively binding status. No more formal deductions of property rights from *a priori* principles of reason alone. Instead, Hegel reconstructs the phenomenological prehistory of right and property from the standpoint of the experience of "needy intelligences" (SEL 121) who love, labor, exchange, and possess things as part of their own self-development into self-consciously *social* beings. The right to *property*, on this account, arises not as a consequence of a natural right to individual freedom but rather as a reparation for the injury of exclusion produced by another person's act of taking possession. To Hegel, it is *in* the struggle to assert oneself as an individual of equal standing that one sacrifices all external conditions of recognition and acquires the unconditional status of being a person capable of binding others and being bound by others within a universal community of right. This status arises as a result of the reciprocal recognition of each as *morally vulnerable* to the injuries of the other, particularly the injuries of dispossession, exclusion, and inequality. The institutional structure of a society founded upon the status of "being-recognized" [*Anerkanntsein*] is composed of rights to property and contract, a social division of labor mediated by money (i.e., "system of need"), and a system of justice administered by government. The satisfaction of need is now mediated

through the labor of others, and the property of each is now secured through the recognition of all. But that does not simply erase the material inequality and moral vulnerability of persons; rather, the property relation in the system of need *universalizes* the possibility of moral and material deprivation since the livelihood of anyone depends on the choices of everyone. That is to say, property rights in the "system of need" *cancel* and *preserve* the exclusivity of possession, the inequality of life, the denial of recognition, the freedom of crime, and the negativity of struggle. Only through the inner constitution of the laboring estates and the political movement of the people can the disaster of poverty be deferred. That, at least, is Hegel's claim.

In terms of the dialectical progression of the argument, one could say that while Kant offers a more social conception of property, even in its most private form, as a relation amongst free and finite beings, he is not explicit enough about the recognitive aspect of this relation and the political economy it entails. Fichte is more explicit about these aspects, and in that sense could be said to complete Kant's picture, but in so doing changes the basic framework toward a more socialist conception of property and the state. Hegel then finally disrupts the *a priori* methodology shared by Kant and Fichte and operates phenomenologically, not deducing the concept of property but rather presenting it as the result of a failed struggle for recognition, leading to a more ambivalent conception of property in its potential for the ethical development of human beings.

So, what is property?

Property is neither simply a legal right nor an economic means; it is not necessarily exclusionary, emancipatory, efficient, or useful. It is rather a way of organizing the activity of people according to various norms of how each should relate to one another's use of external things so as to meet their needs and freely pursue their ends separately and together on a shared planet.[3] I call property a mediation between practical freedom and social necessity because it institutes public rules for acting *freely* though *necessarily* in relation to others in regard to external things. Rights to property are publicly authorized rules for securing practical independence within economic interdependence. That is to say, property objectifies reciprocally recognized norms for determining the uses and limits of choice in regard to external objects and for organizing the satisfaction of needs and distribution of labor in regard to society at large. But the law of property is not simply a rule or institution to be enforced without question; it is neither fixed nor final. Every claim of "mine" is a provisional call to others to authorize my freedom, recognize my vulnerability, and include me in society as an equal.

From Kant, I take the idea that property names the provisional right to have a space on earth in which I can use external means and pursue my ends independently or jointly with others. In a Kantian framework, the antithesis

of property is not theft but *homelessness*. The fact of homelessness for anyone would cancel the justification of property for everyone, a justification ultimately tied to the innate freedom of all to use a place on earth independently of coercion from others. Being homeless is to be permanently at the will of others and thus constitutively unfree. With Kant then, I can say that rights to property are publicly authorized provisional rules for securing and distributing the spatial conditions of interpersonal freedom.

From Fichte, I take the idea that property means the right to free action in the sensible world insofar as it allows me to live off my labor; that is to say, having property means having a right to freely control my own *time* for the reproduction of life and the enjoyment of leisure. Such a right is grounded in the reciprocal recognition between free beings who know that each is dependent on the other for their own freedom. In a Fichtean framework, the antithesis to property would be either *unemployment*, as the denial of the ability to live off one's labor, or *overwork*, for the end of property is not only life but *leisure*—that is, the procurement of maximal free time for self-development. With Fichte then, I can say that rights to property are reciprocally recognized rules for distributing labor and leisure in a bound political order.

From Hegel, I take the idea that the right to property objectifies the unconditional recognition of individuals as valid, interdependent, and morally vulnerable persons; the achieved consciousness of the universal need for unconditional recognition is produced by the failed struggle to assert one's own will in the will of another, a struggle itself triggered by the injury of exclusion caused by one's own lack of possessions. The mutual awareness of the dependency on being recognized emerges in the very claim to be self-determining, a claim that means nothing without the approval of another. In a Hegelian framework, the opposite of property would be structural social neglect, i.e., *poverty*. The institutional mediations of family, law, civil society, and the state cannot resolve the sources that cause propertylessness and thus cannot help but reproduce the conditions that lead to crime and the struggle for recognition on a new level. Such struggles will arise as long as property rights and the division of labor continue to *contingently* mediate one's access to the satisfaction of needs and the fulfilment of recognition.

Kant, Fichte, and Hegel give us strong normative frameworks for conceptualizing the specific wrongs of a condition based on rights to property: *homelessness*, *unemployment*, *overwork*, and *poverty*. These are the social pathologies of property, whose conditions of possibility are latent in its very concept.[4] What would it mean to look at property from the perspective of such wrongs?[5] In prioritizing these pathologies of property over the powers of ownership, we may just be forced to rethink what property should do for us. Furthermore, if property relations determine the class distribution of labor in a civil condition, as Fichte and Hegel maintain,

then a more concrete and historical analysis of property should also be able to tell us about the origins and persistence of gender divisions, racial stratification, and national borders, all of which rely on certain ways of excluding some people from access to work and property. To avoid these pathologies may require new forms of property relations, new plans for the distribution of labor, new rights to leisure time, new institutions for recognizing the needs of one another, new means for accommodating our mutual vulnerability. A property order without the possibility of pathology may be impossible, but it is not inevitable that all relations of property are relations of domination. Whereas the property relations of today enable the privation of the planet, those of the future can enable its repair. Instead of promoting a free market economy based on exclusive rights to private property above all, they can foster a democratic economy based on provisional right to have a stable home, meaningful work, disposable time, and communal luxury. To produce in recognition of each other's needs—as free and finite creatures on a shared planet, not denying but embracing our status as vulnerable, dependent, moral beings—would be quite an achievement. But it will not come without struggle. Instituting the right kind of social property relations will not resolve all the problems of our time, but it is hard to imagine solving any without it.

Thinking about property with Kant, Fichte, and Hegel offers an education in the intellectual pre-history of socialism and critical theory, a legacy taken up by Gans, Bauer, Proudhon, Bakunin, Stirner, Engels, and Marx and carried on into the 20th century. As Marx was taught Kant's legal philosophy and Fichte's theory of right by Hegel's best student, Eduard Gans, this line of thought remains unbroken.[6] In 1844, as Marx was struggling to grasp the normative contradiction of property as both a *realization* and *denial* of human freedom and mutual recognition, he scribbles down a cryptic note that speaks almost directly to my concerns here. It says: "We ourselves are excluded from true property because our property excludes other human beings."[7] What is *true* property and how does it relate to *our* property?[8] Can there be a form of property that does not exclude other human beings? If we listen closely to Kant, Fichte, and Hegel, we might just hear the whispers of an answer.

Notes

1 On the concept of a "form of life" and its critique, see Jaeggi (2018).
2 This Fichtean-inspired Hegelian claim about the priority of the *other* in determining one's own subjectivity resonates most of all with the philosophy of Levinas. On the echoes between Levinas, Fichte, and Hegel, see Williams (1992). On the difficult relation between Levinas and Hegel, see Derrida (1978) and Critchley (2015).

3 In this book, I have focused on property as an interpersonal relation, and not as a right to things, since rights to things are nothing but normatively authorized ways of relating to other people in regard to things. But there is another perspective on property which focuses not on rights to things, nor on relations to others, but rather on the distinct sorts of *goods* that are available to ownership in the first place and how such goods put normative constraints on how we are to relate to them. Such a perspective begins from the *object*, not the *subject* of property, but it treats this object not as an abstract "thing" with no qualities but rather as a specific kind of good with its own normative conditions for appropriate use. Such kinds of goods, with their own normative structures, could be differentiated into necessary goods, consumer goods, infrastructural goods, productive goods, natural goods, and so on. For such an approach, see Wesche (2023).
4 On the concept of a social pathology, see Honneth (1996, 2009, 2014), Zurn (2011), Renault (2017), and Neuhouser (2023). For a critique of the concept, see Freyenhagen (2015).
5 There are some recent contributions that are beginning to look at property "from the outside," so to speak. See van der Walt (2009) and Peñalver and Katyal (2010).
6 See Marx's 1837 letter to his father MECW 1: 10–31. On Marx's very early views on law, see Kelley (1978).
7 Marx (1844) MECW 3: 226–7.
8 On property and recognition in the early Marx and its relation to Hegel, see Chitty (2013). According to Chitty, Marx adopts the framework of recognition and objectification that Hegel used in the *Encyclopedia* and PR to justify private property and market exchange, but he does so in order to *criticize* those same relations as alienated forms of human activity (i.e., as objectifications of *mis*recognition, *un*freedom, and *untrue* property). This seems right, but it downplays the role of *exclusion*. True property, in my reading, would thus have to express an unalienated relation to one's own activity such that it does not exclude other human beings. On Marx's idea of property beyond capitalism, see Blumenfeld (2023b).

Bibliography

Alexander, Gregory, *Commodity and Propriety: Competing Visions of Property in American Legal Thought 1776-1970* (Chicago: University of Chicago Press, 1997).

Alexander, Gregory, "The Social-Obligation Norm in American Property Law," *Cornell Law Review*, 94 (2009) 745–819.

Alexander, Gregory, "Pluralism and Property," *Fordham Law Review*, 80 (2011) 1017–52.

Alexander, Gregory, *Property and Human Flourishing* (Oxford: Oxford UP, 2018).

Alexander, Gregory and Peñalver, Eduardo, "Properties of Community," *Theoretical Inquiries in Law*, 10 (2009) 127–60.

Alexander, Gregory S., Peñalver, Eduardo M., Singer, Joseph William, and Underkuffler, Laura S., "A Statement of Progressive Property," *Cornell Law Review*, 94 (2009) 743–4.

Alexander, Gregory and Peñalver, Eduardo, *An Introduction to Property Theory* (Cambridge: Cambridge UP, 2012).

Allison, Henry, *Kant's Theory of Freedom* (Cambridge: Cambridge UP, 1990).

Ameriks, Karl and Höffe, Otfried (eds.), *Kant's Moral and Legal Philosophy* (Cambridge: Cambridge UP, 2009).

Anderson, Elizabeth, *Value in Ethics and Economics* (Cambridge: Harvard UP, 1993).

Aristotle, *Politics*, tr. C.D.C. Reeve (Indianapolis: Hackett, 2017).

Arthur, Christopher J., *The New Dialectic and Marx's Capital* (Leiden: Brill, 2004).

Avineri, Shlomo, "Labor, Alienation, and Social Classes in Hegel's *Realphilosophie*," *Philosophy & Public Affairs*, 1.1 (1971) 96–119.

Avineri, Shlomo, *Hegel's Theory of the Modern State* (Cambridge: Cambridge UP, 1972).

Baumann, Charlotte, "Irrationality and Egoism in Hegel's Account of Right," *British Journal for the History of Philosophy*, 26:6, 2018, 1132–52.

Beck, Gunnar, *Fichte and Kant on Freedom, Rights and Law* (Lanham: Lexington Book, 2008).

Becker, Lawrence, "Too Much Property," *Philosophy & Public Affairs*, 21.2 (1992) 196–206.

Benhabib, Seyla, *Natural Right and Hegel* (Dissertation, Yale University, 1977).

Benhabib, Seyla, "Obligation, Contract and Exchange: On the Significance of Hegel's Abstract Right," in *The State and Civil Society*, ed. Z.A. Pelczynski (1984) 159–77.

Berle, Adolph, "Property, Production and Revolution," *Columbia Law Review*, 65.1 (1965) 1–20.

Berle, Adolph and Means, Gardiner, *The Modern Corporation and Private Property* (New Brunswick: Transaction, 1932).

Bernstein, Jay, "From Self-Consciousness to Community: Act and Recognition in the Master–Slave Relationship," in *The State and Civil Society*, ed. Z.A. Pelczynski (1984) 14–29.

Bernstein, Jay, "Recognition and Embodiment: Fichte's Materialism," in *The Philosophy of Recognition*, eds. Hans-Christoph Schmidt am Busch and Christopher F. Zurn (2010a) 47–87.

Bernstein, Jay, "Suffering Injustice: Misrecognition as Moral Injury in Critical Theory," in *Language without Soil*, ed. G. Richter (New York: Fordham UP, 2010b) 30–51.

Bernstein, Jay, *Torture and Dignity* (Chicago: University of Chicago Press, 2015).

Bertram, G. W. and R. Celikates, "Towards a Conflict Theory of Recognition," *European Journal of Philosophy*, 23.4 (2015) 838–61.

Bhandar, Brenna, *Colonial Lives of Property* (Durham: Duke UP, 2018).

Blackstone, William, *Commentaries on the Laws of England: Volume 2* (Oxford: Oxford UP, 2016).

Blumenfeld, Jacob, "The Abolition of Time in Hegel's 'Absolute Knowing' (and Its Relevance for Marx)," *Idealistic Studies*, 43.1–2, (2013) 111–9.

Blumenfeld, Jacob, "Property and Freedom in Kant, Hegel, and Marx," in *From Marx to Hegel and Back*, eds. V. Fareld and H. Kuch (London: Bloomsbury, 2020) 73–90.

Blumenfeld, Jacob, "Climate Barbarism: Adapting to a Wrong World," *Constellations*, 30.2 (2023a) 162–78.

Blumenfeld, Jacob, "Expropriation of the Expropriators," *Philosophy and Social Criticism*, 49.4 (2023b) 431–47.

Blumenfeld, Jacob, "The Freedom of Crime: Property, Theft, and Recognition in Hegel's *System of Ethical Life*," *British Journal for the History of Philosophy*, 31.1 (2023c) 103–26.

Brandom, Robert B., *A Spirit of Trust: A Reading of Hegel's Phenomenology* (Cambridge: Harvard UP, 2019).

Brandt, Richard, "Das Erlaubnisgesetz, oder: Vernunft und Geschichte in Kant's Rechtslehre," in *Rechtsphilosophie der Aufklärung*, ed. R. Brandt (Berlin: Walter de Gruyter, 1982) 233–85.

Bray, Zachary, "The New Progressive Property and the Low-Income Housing Conflict," *BYU Law Review* (2012) 1109–67.

Brenner, Robert, "Property and Progress: Where Adam Smith Went Wrong," in *Marxist History-Writing for the Twenty-First Century*, ed.C. Wickham (Oxford: Oxford UP, 2007) 49–111.

Brooks, Thom, *Hegel's Political Philosophy*, 2nd edition (Edinburgh: Edinburgh UP, 2013).

Brudner, Alan, *The Unity of the Common Law*, 2nd edition (Oxford: Oxford UP, 2013).
Buchwalter, Andrew (ed.), *Hegel and Capitalism* (Albany: SUNY Press, 2015).
Burke, Barlow and Snoe, Joseph, *Property: Examples and Explanations*, 5th edition (New York: Wolters Kluwer, 2016).
Byrd, B. Sharon, "Intelligible Possession of Objects of Choice," in *Kant's Metaphysics of Morals*, ed. Lara Denis (2010) 93–110.
Byrd, B. Sharon and Hruschka, Joachim, *Kant's Doctrine of Right: A Commentary* (Cambridge: Cambridge UP, 2010).
Calabresi, Guido and Melamed, A. Douglas, "Property Rules, Liability Rules, and Inalienability: One View of the Cathedral," *Harvard Law Review*, 85.6 (1972) 1089–128.
Chitty, Andrew, "Recognition and Property in Hegel and the Early Marx," *Ethical Theory and Moral Practice*, 16.4 (2013) 685–97.
Christman, John, *The Myth of Property* (New York: Oxford UP, 1994).
Clarke, James, "Fichte and Hegel on Recognition," *British Journal for the History of Philosophy* 17.2 (2009) 365–85.
Clarke, James, "Hegel's Critique of Fichte in the 1802/3 Essay on Natural Right," *Inquiry*, 54.3 (2011) 207–25.
Coase, Ronald, "The Problem of Social Cost," *The Journal of Law & Economics*, 3 (1960) 1–44.
Cohen, Morris, "Property and Sovereignty," *Cornell Law Review*, 13. 1 (1927) 8–30.
Cohen, Felix, "Dialogue of Private Property," *Rutgers Law Review*, 9.2 (1954) 357–87.
Cohen, G. A., *Self-Ownership, Freedom, and Equality* (Cambridge: Cambridge UP, 1995).
Cohen, G. A., *If You're an Egalitarian, How Come You're So Rich?* (Cambridge: Harvard UP, 2000).
Comay, Rebecca, *Mourning Sickness: Hegel and the French Revolution* (Stanford: Stanford UP, 2011).
Congdon, Matthew, "Wronged beyond Words: On the Publicity and Repression of Moral Injury," *Philosophy and Social Criticism*, 42.8 (2016) 815–34.
Conklin, William, *Hegel's Laws* (Stanford: Stanford UP, 2008).
Cornell, Drucilla, Rosenfeld, Michel, and Carlson, David C., *Hegel and Legal Theory* (New York: Routledge, 1991).
Critchley, Simon, *The Problem with Levinas*, ed. A. Dianda (Oxford: Oxford UP, 2015).
Dagan, Hanoch, *Property: Values and Institutions* (Oxford: Oxford UP, 2010).
Dagan, Hanoch, *A Liberal Theory of Property* (Cambridge: Cambridge UP, 2021).
Demsetz, Harold, "Toward a Theory of Property Rights," *The American Economic Review*, 57.2 (1967) 347–59.
Denis, Lara (ed.), *Kant's Metaphysics of Morals: A Critical Guide* (Cambridge: Cambridge UP, 2010).
Derrida, Jacques, "Violence and Metaphysics," in *Writing and Difference*, tr. A. Bass (Chicago: University of Chicago Press, 1978) 79–153.
Dodson, Kevin, "Kant's Socialism," *Social Theory and Practice* 29.4 (2003) 525–38.

Dorfman, Avihay, "Private Ownership," *Legal Theory*, 16 (2010) 1–35.
Edwards, Jeffrey, "Unity of All Places on the Face of the Earth," in *Reading Kant's Geography*, eds. S. Elden and E. Mendieta (Albany: SUNY Press, 2011) 233–63.
Eich, Stefan, *The Currency of Politics* (Princeton: Princeton UP, 2022).
Ellickson, Robert C., "Property in Land," *Yale Law Journal* 102 (1993) 1315–400.
Ellis, Elisabeth, *Kant's Politics: Provisional Theory for an Uncertain World* (New Haven: Yale UP, 2005).
Ellis, Elisabeth, *Provisional Politics: Kantian Arguments in Policy Context* (New Haven: Yale UP, 2008).
Ellis, Elisabeth (ed.), *Kant's Political Theory: Interpretations and Applications* (University Park: Pennsylvania State UP, 2012).
Epstein, Richard, *Takings* (Cambridge: Harvard UP, 1985).
Essert, Christopher, "Property and Homelessness," *Philosophy and Public Affairs*, 44.4 (2016) 266–95.
Fichte, J. G., *Grundlage des Naturrechts nach Prinzipien der Wissenschaftslehre* (1796-7), ed. Manfred Zahn (Hamburg: Felix Meiner Verlag, 1979).
Fichte, J. G., *The Science of Knowledge* [1794], tr. P. Heath and J. Lachs (Cambridge: Cambridge UP, 1982).
Fichte, J. G., *Foundations of Natural Right* [FNR] (1796-7), ed. Neuhouser, tr. M. Baur (Cambridge: Cambridge UP, 2000).
Fichte, J. G., *The System of Ethics* [1798], tr. D. Breazeale and G. Zöller (Cambridge: Cambridge UP, 2005).
Fichte, J. G., "*Rechtslehre: Nachschrift Halle* [RL] (1812)," in *J.G. Fichte Gesamtausgabe: Band IV,6: Kollegnachschriften 1812–1814* eds. E. Fuchs et al. (Stuttgart-Bad Cannstatt: Frommann-Holzboog, 2010) 1–70 (190–290).
Fichte, J. G., *The Closed Commercial State* [CCS] (1800), tr. Anthony Curtis Adler (Albany: SUNY Press, 2012).
Flikschuh, Katrin, "On Kant's *Rechtslehre*," *European Journal of Philosophy* 5.1 (1997) 50–73.
Flikschuh, Katrin, *Kant and Modern Political Philosophy* (Cambridge: Cambridge UP, 2000).
Flikschuh, Katrin, "Kant's Indemonstrable Postulate of Right: A Response to Paul Guyer," *Kantian Review*, 12.1 (2007) 1–39.
Flikschuh, Katrin and Ypi, Lea (eds.), *Kant and Colonialism* (Oxford: Oxford UP, 2014).
Franco, Paul, *Hegel's Philosophy of Freedom* (New Haven: Yale UP, 1999).
Fraser, Nancy and Honneth, Axel, *Recognition or Redistribution: A Political-Philosophical Exchange* (New York: Verso, 2003).
Freud, Sigmund, "The Psycho-Analytic View of Psychogenic Disturbance of Vision (1910)," in *The Standard Edition*: *Volume XI* ed. James Strachey (London: Hogarth Press, 1957) 211–18.
Freyenhagen, Fabian, "Honneth on Social Pathologies: A Critique" *Critical Horizons* 16.2 (2015) 131–52.
Friedman, Milton, *Capitalism and Freedom* (Chicago: University of Chicago Press, 1962).

Garnsey, Peter, *Thinking about Property: From Antiquity to the Age of Revolution* (Cambridge: Cambridge UP, 2007).
Gordon, H. Scott, "The Economic Theory of a Common-Property Resource: The Fishery," *Journal of Political Economy*, 62.2 (1954) 124–42.
Gottlieb, Gabriel (ed.), *Fichte's Foundations of Natural Right: A Critical Guide* (Cambridge: Cambridge UP, 2016).
Gottlieb, Gabriel, "Fichte's Developmental View of Self-Consciousness", in *Fichte's Foundations of Natural Right*, ed. G. Gottlieb (2016) 117–37.
Graeber, David, *Debt: The First 5,000 Years* (Brooklyn: Melville House, 2011).
Gregor, Mary, *Laws of Freedom* (New York: Barnes & Noble Inc, 1963).
Gregor, Mary, "Kant's Theory of Property," *Review of Metaphysics*, 41.4 (1988) 757–87.
Grey, Thomas, "The Disintegration of Property," in *NOMOS XXII: Property*, eds. J. Roland Pennock and John W. Chapman (New York: New York UP, 1980) 69–85.
Guyer, Paul (ed.), *The Cambridge Companion to Kant* (Cambridge: Cambridge UP, 1992).
Guyer, Paul, *Kant on Freedom, Law, and Happiness* (Cambridge: Cambridge UP, 2000).
Guyer, Paul (ed.) *The Cambridge Companion to Kant and Modern Philosophy*, (Cambridge: Cambridge UP, 2006).
Guyer, Paul, "Kant's Deduction of the Principles of Right," in *Kant's Metaphysics of Morals*, ed. Mark Timmons (2002) 23–64.
Habermas, Jürgen, *Theory and Practice* tr. John Viertel (Boston: Beacon Press, 1974).
Hale, Robert, "Coercion and Distribution in a Supposedly Non-Coercive State," *Political Science Quarterly*, 38.3 (1923) 470–94.
Hardimon, Michael, *Hegel's Social Philosophy* (Cambridge: Cambridge UP, 1994).
Hardin, Garrett, "The Tragedy of the Commons," *Science*, 162.3859 (1968) 1243–8.
Harris, H. S., "Hegel's System of Ethical Life: An Interpretation," in *Hegel: System of Ethical Life (1802/3) and First Philosophy of Spirit (1803/4)*, eds. and tr. H. S. Harris and T. M. Knox (Albany: SUNY Press, 1979) 1–96.
Harris, H. S., *Hegel's Development: Night Thoughts 1801-6* (Oxford: Clarendon Press, 1983).
Harris, Cheryl, "Whiteness as Property," *Harvard Law Review*, 106.8 (1993) 1707–791.
Harris, J. W., *Property and Justice* (Oxford: Clarendon Press, 1996).
Hasan, Rafeeq, "The Provisionality of Property Rights in Kant's *Doctrine of Right*," *Canadian Journal of Philosophy*, 48.6 (2018a) 850–76.
Hasan, Rafeeq, "Freedom and Poverty in the Kantian State," *European Journal of Philosophy*, 26.13 (2018b) 911–31.
Hasan, Rafeeq and Stone, Martin Jay, "What Is Provisional Right?" *The Philosophical Review* 131.1 (2022) 51–98.
Hegel, G. W. F., *Encyclopedia of Philosophical Sciences: Part III: Philosophy of Mind*, tr. William Wallace and A.V. Miller (Oxford: Clarendon Press, 1971).

Hegel, G. W. F., *Vorlesungen über Rechtsphilosophie* [VRP] 1818-1831 (4 vols.), ed. K.-H. Ilting (Stuttgart-Bad Cannstatt: Frommann-Holzboog, 1973).
Hegel, G. W. F., "Love" (1797/8), in *Hegel: Early Theological Writings* [ETW], tr. T.M. Knox (Philadelphia: University of Pennsylvania Press, 1975) 302–8.
Hegel, G. W. F., *The Difference between Fichte and Schelling's System of Philosophy* [D] (1801), tr. H.S. Harris and Walter Cerf (Albany: SUNY Press, 1977a).
Hegel, G. W. F., *Faith and Knowledge* [FK] (1803), tr. H.S. Harris and Walter Cerf (Albany: SUNY Press, 1977b).
Hegel, G. W. F., *Phenomenology of Spirit* [PhS], tr. A. V. Miller (Oxford: Oxford UP, 1977c).
Hegel, G. W. F., "System of Ethical Life" [SEL] (1802/3), in *Hegel: System of Ethical Life and First Philosophy of Spirit*, eds. and tr. Harris and Knox (1979a) 99–186.
Hegel, G. W. F., "First Philosophy of Spirit" [FPS] (1803/4), in *Hegel: System of Ethical Life and First Philosophy of Spirit*, eds. and tr. Harris and Knox (1979b) 205–65.
Hegel, G. W. F., *Hegel: System of Ethical Life (1802/3) and First Philosophy of Spirit (1803/4)*, eds. and tr. by H. S. Harris and T. M. Knox (Albany: SUNY Press, 1979c).
Hegel, G. W. F., "Second Philosophy of Spirit" [SPS] (1805/6), in *Hegel and the Human Spirit*, ed. and tr. Leo Rauch (1983a) 85–183.
Hegel, G. W. F., *Hegel and the Human Spirit*: *A Translation of the Jena Lectures on the Philosophy of Spirit (1805-6)*, ed. and tr. Rauch (Detroit: Wayne State UP, 1983b).
Hegel, G. W. F., *Jenaer Systementwürfe I: Das System der spekulativen Philosophie*, eds. Klaus Düsing and Heinz Kimmerle (Hamburg: Felix Meiner Verlag, 1986).
Hegel, G. W. F., *Jenaer Systementwürfe III: Naturphilosophie und Philosophie des Geistes* [JS III], ed. R.-P. Horstmann (Hamburg: Felix Meiner Verlag, 1987).
Hegel, G. W. F., *Elements of the Philosophy of Right* [PR] (1821), ed. Allen W. Wood, tr. H.B. Nisbet (Cambridge: Cambridge UP, 1991).
Hegel, G. W. F., *Lectures on Natural Right and Political Science: The First Philosophy of Right* [NR], tr. J. Michael Stewart and Peter C. Hodgson (Berkeley: University of California Press, 1995).
Hegel, G. W. F., "German Constitution" [GC] (1798-1802), in *Political Writings*, eds. Laurence Dickey and H.B. Nisbet (1999a) 6–101.
Hegel, G. W. F., "Essay on Natural Law" [NL] (1802-3), in *Political Writings*, eds. Laurence Dickey and H.B. Nisbet (1999b) 102–80.
Hegel, G. W. F., *Political Writings*, eds. Laurence Dickey and H.B. Nisbet, tr. H.B. Nisbet (Cambridge: Cambridge UP, 1999c).
Hegel, G. W. F., *System der Sittlichkeit* [*Critik des Fichteschen Naturrechts*], ed. Horst D. Brandt (Hamburg: Felix Meiner Verlag, 2002).
Herzog, Lisa, *Inventing the Market: Hegel and Smith* (Oxford: Oxford UP, 2013).
Herzog, Lisa, "Two Ways of 'Taming' the Market: Why Hegel Needs the Police *and* the Corporations," in *Hegel and Capitalism*, ed. Andrew Buchwalter (2015) 147–62.

Höffe, Otfried, "Kant's Innate Right as a Rational Criterion for Human Rights," *Kant's Metaphysics of Morals*, ed. Lara Denis (2010) 71–92.
Hohfeld, Wesley Newcomb, "Some Fundamental Legal Conceptions as Applied in Judicial Reasoning," *Yale Law Journal*, 23.1 (1913) 16–59.
Honneth, Axel, *The Struggle for Recognition* tr. Joel Anderson (Cambridge: MIT Press, 1995).
Honneth, Axel, "Pathologies of the Social: The Past and Present of Social Philosophy," in *Handbook of Critical Theory*, ed. David Rasmussen (Oxford: Blackwell, 1996) 369–98.
Honneth, Axel, "Die transzendentale Notwendigkeit von Intersubjektivität (Zweiter Lehrsatz: §3)," in *Johann Gottlieb Fichte: Grundlage des Naturrechts*, ed. Jean-Christophe Merle (2001) 63–80.
Honneth, Axel, *Pathologies of Reason: On the Legacy of Critical Theory* tr. James Ingram (New York: Columbia UP, 2009).
Honneth, Axel, *Freedom's Right* tr. Joseph Ganahl (New York: Columbia UP, 2014).
Honoré, A. M., "Ownership," in *Oxford Essays in Jurisprudence*, ed. A. G. Guest (Oxford: Oxford UP, 1961), 107–47.
Horn, Christoph, "Kant's Political Philosophy as a Theory of Non-Ideal Normativity," *Kant-Studien* 107.1 (2016) 89–110.
Horstmann, Rolf-Peter, "The Role of Civil Society in Hegel's Political Philosophy," in *Hegel on Ethics and Politics*, eds. R. Pippin and O. Höffe (2004) 208–38.
Horwitz, Morton, *The Transformation of American Law, 1780-1860* (Cambridge: Harvard UP, 1977).
Houlgate, Stephen, "Property, Use and Value in Hegel's *Philosophy of Right*," in *Hegel's Elements of the Philosophy of Right: A Critical Guide*, ed. David James (2017) 37–57.
Hruschka, Joachim, "The Permissive Law of Practical Reason in Kant's *Metaphysics of Morals*," *Law and Philosophy*, 23.1 (2004) 45–72.
Ifergan, Pini, *Hegel's Discovery of the Philosophy of Spirit* (New York: Palgrave Macmillan, 2014).
Ilting, Karl-Heinz, "The Dialectic of Civil Society," in *The State and Civil Society*, ed. Z.A. Pelczynski (1984) 211–26.
Jaeggi, Rahel, *Critique of Forms of Life* tr. Ciaran Cronin (Cambridge: Harvard UP, 2018).
James, David, *Fichte's Social and Political Philosophy* (Cambridge: Cambridge UP, 2011).
James, David, "Conceptual Innovation in Fichte's Theory of Property," *European Journal of Philosophy* 23.3 (2012) 509–28.
James, David (ed.), *Hegel's Elements of the Philosophy of Right: A Critical Guide* (Cambridge: Cambridge UP, 2017).
James, David, *Property and Its Forms in Classical German Philosophy* (Cambridge: Cambridge UP, 2023).
James, David and Zöller, Günter (ed.), *Cambridge Companion to Fichte* (Cambridge: Cambridge UP, 2016).
Kant, Immanuel, *Practical Philosophy*, tr. and ed. Mary Gregor (Cambridge: Cambridge UP, 1996a).

Kant, Immanuel, *The Metaphysics of Morals, Part I, Metaphysical First Principles of the Doctrine of Right* in Kant, *Practical Philosophy*, ed. M. Gregor (1996b) 364–506 (6:203–372).
Kant, Immanuel, *Groundwork of the Metaphysics of Morals* in Kant, *Practical Philosophy*, ed. M. Gregor (1996c) 37–108 (4:385–463).
Kant, Immanuel, *Critique of Practical Reason* in Kant, *Practical Philosophy*, ed. M. Gregor (1996d) 139–271 (5:1–163).
Kant, Immanuel, *Metaphysische Anfangsgründe Rechtslehre der*, ed. Bernd Ludwig (Hamburg: Felix Meiner Verlag, 2009).
Katz, Larissa, "Exclusion and Exclusivity in Property Law," *University of Toronto Law Journal*, 58.3 (2008) 275–315.
Kaufman, Alexander, *Welfare in the Kantian State* (Oxford: Oxford UP, 1999).
Kaufmann, F. W., "Fichte and National Socialism," *The American Political Science Review*, 36.3 (1942) 460–70.
Kelley, Donald R., "The Metaphysics of Law: An Essay on the Very Young Marx," *The American Historical Review*, 83.2 (1978) 350–67.
Kennedy, Duncan, "The Stakes of Law, or Hale and Foucault!" *Legal Studies Forum*, XV. 4 (1991) 327–65.
Kennedy, Duncan and Michelman, Frank, "Are Property and Contract Efficient," *Hofstra Law Review*, 8.3 (1980) 711–70.
Kersting, Wolfgang, "Politics, Freedom and Order," in *The Cambridge Companion to Kant*, ed. Paul Guyer (Cambridge: Cambridge UP, 1992) 342–66.
Kersting, Wolfgang, *Wohlgeordnete Freiheit: Immanuel Kants Rechts- und Staatsphilosophie*, 3rd edition (Paderborn: Mentis Verlag, 2007).
Keynes, J. M., "Economic Possibilities for our Grandchildren," in *Essays in Persuasion*, ed. J. M. Keynes (New York: W. W. Norton & Co., 1963) 358–73.
Kleingeld, Pauline, "Kant's Second Thoughts on Colonialism," in *Kant and Colonialism*, eds. K. Flikschuh and L. Ypi (2014) 43–67.
Knowles, Dudley, *Hegel and the Philosophy of Right* (London: Routledge, 2002).
Kojève, Alexandre, *Introduction to the Reading of Hegel*, ed. Allan Bloom (Ithaca: Cornell UP, 1980).
Kosch, Michelle, "Fichte on Summons and Self-Consciousness," *Mind*, 130.517 (2021) 215–49.
Kühl, Kristian, "On How to Acquire Something External," in *Kant's Moral and Legal Philosophy*, eds. O. Höffe and K. Ameriks (Cambridge: Cambridge UP, 2009) 231–45.
Locke, John, *Two Treatises on Government*, ed. Peter Laslett (Cambridge, Cambridge UP, 1988).
Loick, Daniel, *The Abuse of Property* tr. Jacob Blumenfeld (Cambridge: MIT Press, 2023).
Lu-Adler, Huaping, *Kant, Race, and Racism: Views from Somewhere* (Oxford: Oxford UP, 2023).
Ludwig, Bernd "Whence Public Right? The Role of Theoretical and Practical Reasoning in Kant's *Doctrine of Right*," in *Kant's Metaphysics of Morals*, ed. M. Timmons (2002) 159–83.
Lukács, Georg, *History and Class Consciousness* tr. Rodney Livingstone (Cambridge: MIT Press, 1971).

Lukács, Georg, *The Young Hegel* tr. Rodney Livingstone (London: Merlin Press, 1975).
MacGregor, David, *Hegel, Marx, and the English State* (Toronto: University of Toronto Press, 1996).
Mackinnon, Catharine, *Toward a Feminist Theory of the State* (Cambridge: Harvard UP, 1991).
Macleod, Adam, *Property and Practical Reason* (Cambridge: Cambridge UP, 2015).
Macpherson, C. B., *The Political Philosophy of Possessive Individualism* (Oxford: Oxford UP, 1962).
Macpherson, C. B., "The Meaning of Property," in *Property: Mainstream and Critical Positions*, ed. C.B. Macpherson (Toronto: University of Toronto Press, 1978) 1–13.
Maker, William (ed.), *Hegel on Economics and Freedom* (Macon, GA: Mercer UP, 1987).
Mann, Geoff, *In the Long Run, We're All Dead: Keynesianism, Political Economy and Revolution* (New York: Verso, 2017).
Marcuse, Herbert, *Reason and Revolution* (Boston: Beacon Press, 1960).
Martin, Wayne, "Fichte's Transcendental Deduction of Private Property," in *Fichte's Foundations of Natural Right*, ed. G. Gottlieb (2016) 157–76.
Marx, Karl, *Capital, Vol. 1* tr. Ben Fowkes (London: Penguin Classics, 1990).
Marx, Karl, *Grundrisse* tr. Martin Nicolaus (London: Penguin Classics, 1993).
Marx, Karl, "[Letter from Marx to his Father in Trier]" (1837), in *Marx & Engels Collected Works* [MECW], Vol. 1 (New York: Lawrence & Wishart, 2010a) 10–31.
Marx, Karl, "Debates on the Law on Thefts of Wood" (1842), in *Marx & Engels Collected Works* [MECW], Vol. 1 (New York: Lawrence & Wishart, 2010b) 224–63.
Marx, Karl, "Comments on James Mill" (1844), *Marx & Engels Collected Works*, Vol. 3 (New York: Lawrence & Wishart, 2010c) 211–28.
Marx, Karl, "Preface", *Contribution of a Critique* (1859), in *Marx & Engels Collected Works*, Vol. 29 (New York: Lawrence & Wishart, 2010d) 261–5.
Marx, Karl, *Critique of the Gotha Program* (1875), in *Marx & Engels Collected Works*, Vol. 24 (New York: Lawrence & Wishart, 2010e) 75–99.
Merle, Jean-Christophe (ed.), *Johann Gottlieb Fichte: Grundlage des Naturrechts* (Berlin: Akademie Verlag, 2001a).
Merle, Jean-Christophe, "Eigentumsrecht (§§ 18-19)," in *Johann Gottlieb Fichte*, ed. J-C. Merle (2001b) 159–72.
Merle, Jean-Christophe, "Fichte's Political Economy and His Theory of Property," in *The Cambridge Companion to Fichte*, eds. D. James and G. Zöller (2016) 199–221.
Merrill, Thomas, "Property and the Right to Exclude," *Nebraska Law Review* 77.4 (1998) 730–55.
Merrill, Bruce, "Fichte's Materialism," in *Rights, Bodies and Recognition*, eds. T. Rockmore and D. Breazeale (2006) 107–16.
Merrill, Thomas and Smith, Henry, "What Happened to Property in Law and Economics?" *The Yale Law Journal* 111.2 (2001) 357–98.

Merrill, Thomas and Smith, Henry, *The Oxford Introductions to U.S. Law: Property* (Oxford: Oxford UP, 2010).
Moggach, Douglas, "The Construction of Juridical Space," *The Proceedings of the Twentieth World Congress of Philosophy* 7 (2000) 201–9.
Moyar, Dean, "Fichte's Organic Unification: Recognition and the Self-Overcoming of Social Contract Theory," in *Fichte's Foundations of Natural Right*, ed. G. Gottlieb (2016) 218–38.
Mulholland, Leslie, *Kant's System of Rights* (New York: Columbia UP, 1990).
Mulvaney, Timothy, "Progressive Property Moving Forward," *California Law Review Circuit*, 5 (2014) 349–73.
Munzer, Stephen, *A Theory of Property* (Cambridge: Cambridge UP, 1990).
Munzer, Stephen (ed.), *New Essays in the Legal and Political Theory of Property* (Cambridge: Cambridge UP, 2001).
Murray, Patrick, *The Mismeasure of Wealth: Essays on Marx and Social Form* (Leiden: Brill, 2016).
Muthu, Sankar, "Productive Resistance in Kant's Political Thought: Domination, Counter-Domination, and Global Unsocial Sociability," in *Kant and Colonialism*, eds. K. Flikschuh and L. Ypi (2014) 68–98.
Nakhimovsky, Isaac, *The Closed Commercial State* (Princeton: Princeton UP, 2011).
Nance, Michael, "Recognition, Freedom, and the Self in Fichte's *Foundations of Natural Right*," *European Journal of Philosophy* 23.3 (2012) 608–32.
Nance, Michael, "Hegel's Jena Practical Philosophy," in *The Oxford Handbook of Hegel*, ed. Dean Moyar (Oxford: Oxford UP, 2017) 31–57.
Nance, Michael, "Property and Economic Planning in Fichte's Contractualism," *European Journal of Philosophy* 27.3 (2019) 643–60.
Nedelsky, Jennifer, *Private Property and the Limits of American Constitutionalism* (Chicago: University of Chicago Press, 1990).
Neuhouser, Frederick, *Fichte's Theory of Subjectivity* (Cambridge: Cambridge UP, 1990).
Neuhouser, Frederick, *Foundations of Hegel's Social Theory* (Cambridge: Harvard UP, 2000).
Neuhouser, Frederick, "Fichte's Separation of Right from Morality," in *Fichte's Foundations of Natural Right*, ed. G. Gottlieb (2016) 32–51.
Neuhouser, Frederick, *Diagnosing Social Pathology* (Cambridge: Cambridge UP, 2023).
Nichols, Robert, *Theft Is Property!* (Durham: Duke UP, 2019).
Nomer, Nedim, "Fichte and the idea of liberal socialism," *Journal of Political Philosophy* 13.1 (2005) 53–73.
North, Douglass C. and Thomas, Robert Paul, *The Rise of the Western World* (Cambridge: Cambridge UP, 1973).
Nozick, Robert, *Anarchy, State, and Utopia* (Oxford: Blackwell, 1974).
Nuzzo, Angelica, "The Role of the Human Body in Fichte's *Grundlage des Naturrechts* (1796-97)," in *Rights, Bodies and Recognition*, eds. T. Rockmore and D. Breazeale (2006) 71–89.
Nuzzo, Angelica, "Fichte's Foundations of Natural Right and its Relation to Kant," in *Fichte's Foundations of Natural Right*, ed. G. Gottlieb (2016) 12–31.

Olson, Mancur, *The Logic of Collective Action* (Cambridge: Harvard UP, 1965).
Ostrom, Elinor, *Governing the Commons* (Cambridge: Cambridge UP, 1990).
Pallikkathayil, Japa, "Persons and Bodies," in *Freedom and Force*, eds. Sari Kisilevsky and Martin J. Stone (Oxford: Bloomsbury, 2017) 35–54.
Patrone, Tatiana, *How Kant's Conception of Reason Implies a Liberal Politics: An Interpretation of the "Doctrines of Right" (Rechtslehre)* (Lewiston: Edwin Mellen Press, 2008).
Patten, Alan, *Hegel's Idea of Freedom* (Oxford: Oxford UP, 1999).
Patterson, Dennis (ed.), *A Companion to Philosophy of Law and Legal Theory*, 2nd edition (West Sussex: Wiley-Blackwell, 2010).
Pelczynski, Z. A. (ed.), *Hegel's Political Philosophy* (Cambridge: Cambridge UP, 1971).
Pelczynski, Z. A. (ed.), *The State and Civil Society: Studies in Hegel's Political Philosophy* (Cambridge: Cambridge UP, 1984).
Peñalver, Eduardo and Katyal, Sonia, *Property Outlaws* (New Haven: Yale UP, 2010).
Penner, J. E., *The Idea of Property in Law* (Oxford: Oxford UP, 1997).
Peperzak, Adriaan, *Modern Freedom: Hegel's Legal, Moral and Political Philosophy*. (Dordrecht, The Netherlands: Kluwer, 2001).
Pinheiro Walla, Alice, "Human Nature and the Right to Coerce in Kant's *Doctrine of Right*," *Archiv für Geschichte der Philosophie*, 96.1 (2014) 126–39.
Pinheiro Walla, Alice, "Common Possession of the Earth and Cosmopolitan Right," *Kant-Studien* 107.1 (2016) 160–78.
Pippin, Robert, "Mine and Thine: The Kantian State," in *The Cambridge Companion to Kant and Modern Philosophy*, ed. P. Guyer (2006) 416–46.
Pippin, Robert, *Hegel's Practical Philosophy* (Cambridge: Cambridge UP, 2008).
Pippin, Robert and Höffe, Otfried (ed.), *Hegel on Ethics and Politics* (Cambridge: Cambridge UP, 2004).
Pistor, Katharina, *The Code of Capital* (Princeton: Princeton UP, 2019).
Posner, Richard, *Economic Analysis of Law* (New York: Wolters Kluwer, 1973).
Postone, Moishe, *Time, Labor and Social Domination* (Cambridge: Cambridge UP, 1993).
Priddat, Birger, *Hegel als Ökonom* (Berlin: Duncker & Humblot, 1990).
Purdy, Jedediah, *The Meaning of Property* (New Haven: Yale UP, 2010).
Radin, Margaret Jane, *Reinterpreting Property* (Chicago: University of Chicago Press, 1993).
Reich, Charles, "The New Property," *The Yale Law Journal*, 73.5 (1964) 733–87.
Renault, Emmanuel, *Social Suffering: Sociology, Psychology, Politics* (London, Rowman & Littlefield International, 2017).
Ripstein, Arthur, "Authority and Coercion," *Philosophy & Public Affairs*, 32.1 (2004) 2–35.
Ripstein, Arthur, *Force and Freedom* (Cambridge: Harvard UP, 2009).
Ripstein, Arthur, "Kant's Juridical Theory of Colonialism," *Kant and Colonialism*, eds. K. Flikschuh and L. Ypi (2014) 145–69.
Ritter, Joachim, "Person and Property," in *Hegel and the French Revolution*, tr. Richard Dien Winfield (Cambridge: MIT Press, 1982) 124–50.

Rockmore, Tom and Breazeale, Daniel (eds.), *Rights, Bodies and Recognition* (Burlington: Ashgate, 2006).
Rose, Carol, *Property and Persuasion* (Boulder: Westview, 1994).
Rose, Carol, "Canons of Property Talk, or Blackstone's Anxiety," *The Yale Law Journal*, 108 (1998) 601–32.
Rose, Gillian, *Hegel Contra Sociology* (London: Verso, 2009).
Rosser, Ezra, "The Ambition and Transformative Potential of Progressive Property," *California Law Review* 101 (2013) 107–71.
Ruda, Frank, *Hegel's Rabble* (London: Continuum, 2011).
Russon, John, "The Body as Site of Action and Intersubjectivity," in *Fichte's Foundations of Natural Right*, ed. G. Gottlieb (2016) 138–56.
Ryan, Alan, "Hegel on Work, Ownership and Citizenship," in *The State and Civil Society*, ed. Z.A. Pelczynski (1984) 178–96.
Saito, Kohei, "Beyond Recognition in Capitalism: From Violence and Caprice to Recognition and Solidarity," in *Hegel and Capitalism*, ed. A. Buchwalter (2015) 35–51.
Schmidt Am Busch, Hans-Christoph, "Personal Respect, Private Property, and Market Economy: What Critical Theory Can Learn from Hegel," *Ethical Theory and Moral Practice* 11.5 (2008) 573–86.
Schmidt Am Busch, Hans-Christoph, "Personal Freedom without Private Property? Hegel, Marx, and the Frankfurt School," *International Critical Thought*, 5.4 (2015) 473–85.
Schmidt Am Busch, Hans-Christoph and Zurn, Christopher (eds.), *The Philosophy of Recognition* (Lanham: Lexington Books, 2010).
Schroeder, Jeanne L., "Chix Nix Bundle-O-Stix: A Feminist Critique of the Disaggregation of Property," *Michigan Law Review*, 93.2 (1994) 239–319.
Schroeder, Jeanne L., *The Triumph of Venus: The Erotics of the Market* (Berkeley: University of California Press, 2004).
Shklar, Judith, *Legalism* (Cambridge: Harvard UP, 1964).
Siep, Ludwig, *Anerkennung als Prinzip der praktischen Philosophie* (Hamburg: Felix Meiner Verlag, 2014).
Singer, Joseph William, *Entitlement: The Paradoxes of Property* (New Haven: Yale UP, 2000).
Skees, Murray, "The *Lex Permissiva* and the Source of Natural Right in Kant's *Metaphysics of Morals* and Fichte's *Foundations of Natural Right*," *International Philosophical Quarterly* 49.3 (2009) 375–98.
Smith, Steven, *Hegel's Critique of Liberalism* (Chicago: University of Chicago, 1989).
Smith, Henry, "Mind the Gap: The Indirect Relation between Ends and Means in American Property Law," *Cornell Law Review* 94 (2009) 959–89.
Sohn-Rethel, Alfred, *Intellectual and Manual Labour* (London: Macmillan Press, 1978).
Stillman, Peter, "Person, Property and Civil Society in the Philosophy of Right," in *Hegel's Social and Political Thought*, ed. D. P. Verene (New Jersey: Humanities Press, 1980a) 103–17.
Stillman, Peter, "Property, Freedom and Individuality in Hegel's and Marx's Political Thought," in *NOMOS XXII: Property*, eds. J. Roland Pennock and John W. Chapman (New York: NYU Press, 1980b) 130–67.

Stillman, Peter, "Hegel's Civil Society: A Locus of Freedom," *Polity*, 12.4 (1980c) 622–46.
Stillman, Peter, "Property, Contract and Ethical Life," in *Hegel and Legal Theory*, eds. D. Cornell et al. (1991) 205–27.
Stilz, Anna, "Provisional Right and Non-State Peoples," in *Kant and Colonialism*, eds. K. Flikschuh and L. Ypi (2014) 197–220.
Taylor, Charles, *Hegel and Modern Society* (Cambridge: Cambridge UP, 1979).
Tierney, Brian, "Kant on Property: The Problem of Permissive Law," *Journal of the History of Ideas*, 62.2 (2001) 301–12.
Tierney, Brian, *Liberty and Law: The Idea of Permissive Natural Law*, 1100-1800 (Washington DC: Catholic University of America Press, 2014).
Timmons, Mark (ed.), *Kant's Metaphysics of Morals: Interpretative Essays* (Oxford: Oxford UP, 2002).
Tomasello, Michael, *Why We Cooperate* (Cambridge: MIT Press, 2009).
Underkuffler, Laura, *The Idea of Property: Its Meaning and Power* (Oxford: Oxford UP, 2003).
Van der Walt, A. J., *Property in the Margins* (Portland: Hart Publishing, 2009).
Von Redecker, Eva, "Ownership's Shadow," *Critical Times*, 3.1 (2020) 33–67.
Waldron, Jeremy, *The Right to Private Property* (Oxford: Clarendon Press, 1988).
Waldron, Jeremy, "Homelessness and the Issue of Freedom," in *Liberal Rights*, ed. J. Waldron (Cambridge: Cambridge UP, 1993) 309–8.
Waldron, Jeremy, "Property Law," in *A Companion to Philosophy of Law and Legal Theory*, ed. Dennis Patterson (2010) 9–29.
Waszek, Norbert, *The Scottish Enlightenment and Hegel's Account of 'Civil Society'* (Dordrecht, The Netherlands: Kluwer, 1988).
Weinrib, Ernst, "Law as a Kantian Idea of Reason," *Columbia Law Review*, 87.3 (1987) 472–508.
Weinrib, Ernst, *The Idea of Private Law* (Cambridge: Harvard UP, 1995).
Weinrib, Ernst, "Poverty and Property in Kant's System of Rights," *Notre Dame Law Review*, 78.3 (2003) 795–828.
Weinrib, Ernst, "Legal Formalism," in *A Companion to Philosophy of Law and Legal Theory*, ed. D. Patterson (2010) 327–38.
Wesche, Tilo, *Die Rechte der Natur* (Berlin: Suhrkamp, 2023).
Westphal, Kenneth, "Do Kant's Principles Justify Property or Usufruct?" *Jahrbuch für Recht und Ethik*, 5 (1997) 141–94.
Westphal, Kenneth, "A Kantian Justification of Possession," in *Kant's Metaphysics of Morals*, ed. M. Timmons (2002) 89–109.
Wildt, Andreas, *Autonomie und Anerkennung* (Stuttgart: Klett-Cotta, 1982).
Willaschek, Marcus, "Which Imperatives for Right? On the Non-Prescriptive Character of Juridical Laws in Kant's *Metaphysics of Morals*," in *Kant's Metaphysics of Morals*, ed. M. Timmons (2002) 65–87.
Williams, Howard, "Kant on Property," *The Philosophical Quarterly*, 27.106 (1977) 32–40.
Williams, Robert, *Recognition: Fichte and Hegel on the Other* (Albany: SUNY Press, 1992).
Williams, Robert, *Hegel's Ethics of Recognition* (Berkeley: University of California Press, 1997).

Wood, Allen W., *Hegel's Ethical Thought* (Cambridge: Cambridge UP, 1990).
Wood, Allen W., *Kant's Ethical Thought* (Cambridge: Cambridge UP, 1999).
Wood, Ellen Meiksins, *The Origin of Capitalism* (London: Verso, 2002).
Wood, Allen W., *The Free Development of Each: Studies on Freedom, Right, and Ethics in Classical German Philosophy* (Oxford: Oxford UP, 2014).
Wood, Allen W., *Fichte's Ethical Thought* (Oxford: Oxford UP, 2016a).
Wood, Allen W., "Fichte's Philosophy of Right and Ethics," in *Cambridge Companion to Fichte* eds. D. James and G. Zöller (2016b) 168–98.
Wright, Erik Olin, *Understanding Class* (London: Verso, 2015).
Ypi, Lea, "A Permissive Theory of Territorial Rights," *European Journal of Philosophy* 22.2 (2014) 288–312.
Zurn, Christopher, "Social Pathologies as Second-Order Disorders" In: *Axel Honneth: Critical Essays*, ed. D. Petherbridge (Leiden: Brill, 2011) 345–70.

Index

abstraction 41, 52, 105, 129, 159, 186, 188–92, 201, 203, 211, 216, 241–2
Alexander, Gregory and Peñalver, Eduardo 26, 33–5
Aristotle 30, 202, 239
autonomy 12, 35, 38, 47–8, 67, 73, 163, 231
Avineri, Shlomo 183

Babeuf, François-Noël 103
Bentham 18, 30, 99
Blackstone, Sir William 15–6, 20
body 48, 52–3, 57, 59, 65, 92, 95–6, 107–9, 115, 119–22, 128, 130–2, 134–5, 155, 156, 158, 163–4, 169, 195, 213, 225, 250, 252
bundle of rights 2, 5, 11, 13, 16, 25, 31, 32, 99

capitalism x, 12–3, 19, 84, 106, 162, 168, 216, 243, 257
class 1, 3, 36, 146–50, 152–5, 158, 160, 167–71, 181, 184, 193, 202–3, 221, 238, 242, 249, 255
coercion 20, 29, 37, 39, 45–6, 48, 50, 53, 56, 59–60, 64–5, 67–9, 73, 77–8, 83, 85–8, 91, 103, 105–9, 119–20, 125–6, 129–32, 137–8, 140, 145, 150–1, 154–5, 158, 163–4, 168, 174, 178–81, 194–5, 200–1, 205, 207, 242–3, 252, 255
Cohen, Felix 29
colonialism 3, 37, 72, 84, 87–9, 100, 246
common property 8, 17–8, 32, 74, 78, 80–2, 84–5, 126, 148, 179, 186, 193, 208, 230, 233, 244
crisis 149, 151, 194, 212–3

Dagan, Hanoch 28
Dorfman, Avihay 19
dispossession 12, 77, 89, 220, 228, 230–2, 234–5, 238, 243, 253
domination 28, 30, 47, 59, 67, 70, 75, 86–7, 90, 98, 185, 193, 202–3, 256

economic planning 146, 167, 199
economism x, 3–7, 9, 14, 18, 21, 23, 25, 27, 30–2, 36, 90, 99, 102, 127, 140, 246, 249
efficacy 3, 103, 107–32, 134–7, 139, 142–5, 147, 149, 154–5, 157, 164–5, 170, 175, 222, 227, 251–3
efficiency ix–x, 1–3, 5–7, 9–11, 15–7, 19, 22–30, 34, 65, 84, 90, 93, 124, 152, 170, 247–9, 254
Ellis, Elisabeth 83
exclusion ix, 1–5, 7, 9–23, 25, 27, 29–32, 36, 52, 61, 66, 72, 74–5, 77, 93, 99, 102, 109, 125–6, 129, 133–4, 143–5, 147–8, 166, 170–2, 177, 179, 188, 209, 212–6, 218–21, 223–31, 234, 237–8, 247–50, 252–7

family 107, 173–7, 181, 184, 186, 191, 193–4, 198, 206, 208, 210–3, 215–6, 220–1, 226–34, 241, 244, 255
feminism 3, 12, 30, 35
feudalism 1, 19, 158–9, 243

free-rider problem 17–9, 34
French Revolution 103, 158
Freud, Sigmund 241, 244

Hobbes, Thomas 16, 18, 79, 118, 140, 168, 180, 208, 212, 236
Hohfeld, Wesley 11
homelessness 44, 94, 97, 151, 255
Honneth, Axel 93, 162, 183, 197, 207–9, 223, 229–30, 233–4, 237–42, 244–5, 257
housing 43, 107, 156, 161

idealism ix–x, 5, 50, 64, 105, 126, 140, 164, 168, 176, 181, 243
individuality 10–1, 29, 32, 65, 111, 115, 117, 135, 145, 150, 154, 159, 166–7, 175–6, 184–5, 192–3, 198, 209, 222, 233, 237
injury 2, 4, 76, 109, 120, 142, 163, 171–2, 196–8, 209, 211–4, 219–21, 223, 226, 230–1, 233–4, 236–8, 242, 248, 253, 255

Katz, Larissa 19
Keynesianism 103, 155, 159–60, 168, 242–3

land 1–2, 8, 10–3, 16–7, 21, 23, 27, 29, 36–7, 72, 75–82, 84, 86–91, 100, 105, 107, 109, 136, 140, 147–8, 154, 162, 166, 168, 171, 213, 219, 220–1, 224, 226, 228–32
law and economics 7, 11, 22–4, 29, 34
legalism x, 3–7, 9, 14, 21, 23, 25, 27, 30–2, 36, 90, 99, 102, 127, 140, 246, 249
labor x, 2–4, 11, 17, 18, 21, 23, 39, 36, 73, 84, 93, 103, 105–8, 124–7, 138, 140, 143, 145–62, 164–5, 167–72, 175–7, 180–91, 193–4, 198–07, 209–11, 216–20, 225, 228, 230, 235, 237–44, 246–7, 252–6
leisure 3, 103, 138, 152–61, 169–70, 253, 255–6
liberalism ix, 12, 16, 22, 28, 30, 35, 44, 48, 72, 93–5, 103–4, 121, 126, 159–60, 168, 177
libertarianism ix–x, 9, 12–4, 16, 25, 27, 29–30, 33–4, 93–5, 98–9, 246
Locke, John x, 4, 9, 12, 30, 33–4, 73, 77, 84, 95, 99, 114, 140, 147, 180, 187, 224, 236
love 26, 163, 178–9, 191, 220–1, 226, 230–5, 238–9, 241, 244, 245, 253
Lukács, Georg 99, 183, 216, 238–40, 242, 244

Macpherson, C.B. 35, 100, 140, 166
Marcuse, Herbert 238–40, 242
Martin, Wayne 161–2, 164–5
Marx, Karl 1, 12, 30, 32, 98–9, 147, 153, 155, 158, 165, 167–9, 217, 239, 242–3, 256–7
materialism 50, 75, 99, 126, 131, 144, 164, 176, 181, 203, 241–3
Merrill, Thomas 16, 33–5, 99
money 23, 53, 90, 107, 149–50, 154–6, 158–9, 167, 188, 190–2, 198–9, 235, 242–3, 246–7, 253

Naked Gun 246
nationalism 103, 159

pain 144
Patrone, Tatiana 62, 94–8
personality 12, 30, 33, 73, 95, 115, 118, 120, 122, 129, 134–5, 137, 186–7, 189, 193, 197, 235, 241
Pinheiro Walla, Alice 94, 97, 100–1
Pippin, Robert 61, 70–1, 94, 96–9, 239
Plato 239
possessive individualism 100, 140, 166
private property 1, 6, 8–9, 12, 17–20, 22, 25, 28–30, 34, 75, 79, 84, 94–5, 102, 104–5, 126, 137, 140, 143, 149, 164, 167, 178, 193, 213, 235, 247, 256–7
progressive property 26–8
property law 1, 8, 12–3, 16, 28, 33, 35, 148
property rights 1–3, 5–6, 9–14, 18–26, 29–30, 33, 39, 51, 60, 60, 70, 72, 74–5, 80, 82, 84, 86–7, 89, 93, 95–6, 98–00, 105–6, 108–10, 122–7, 129, 133–4, 137, 140–1, 143–5, 147–9, 151–2, 157, 159–61, 164–5, 170, 172, 177–8, 181–2, 185, 192, 198, 200–1, 208, 220, 237, 246–7, 252–5

propertyless 1, 29, 106, 151, 158, 160, 162, 168, 198, 201, 255

Ripstein, Arthur 33, 35, 94–00
Rose, Carol 20–1, 33–5, 99
Rousseau, Jean-Jacques 102, 142, 178

Saito, Kohei 162, 240–2
Schelling, FWJ 177, 239, 242–3
Schroeder, Jeanne 8–9, 32–5
Shklar, Judith 5, 32
Singer, Joseph William 9, 25–6, 33–5
Smith, Adam 147, 243
social contract 103, 109, 118, 137, 139, 141–2, 160, 163, 201, 220, 223, 226
socialism x, 8, 93, 95, 103–4, 140, 158–60, 168, 253–4, 256
sociality 2, 7, 10, 29, 32, 166, 196, 244
social pathology 255–7
Sohn-Rethel, Alfred 242
Stilz, Anna 83, 88, 100
Steuart, James 182, 240
struggle for recognition 133, 174, 192, 209–11, 215–6, 220, 230–4, 238, 242, 244, 249, 253–5
summons 112–4, 117–8, 145, 150, 162–3, 167, 208, 212, 231, 247–8, 251

theft 4, 30, 77, 107, 171, 183–4, 190, 196–9, 205, 207–8, 243, 246, 255
tragedy of the commons 17, 19, 34
transaction costs 6, 17–8, 23–4, 34
true property 106, 256–7
trust 21, 28, 136–7, 163, 174, 185, 195, 201, 205, 206, 210, 234, 243

unemployment 103, 138, 146–52, 160, 168, 255
utilitarianism ix, x, 4, 9, 11, 12, 16, 17, 19, 21–2, 25–7, 29, 33–4, 80, 99, 246

value 149, 154–5, 167, 190, 199–01, 204, 217–8, 242

Waldron, Jeremy 6–9, 32–3, 94, 97
war 18, 87, 100, 133, 138–9, 166, 181, 208, 212, 243, 246

Ypi, Lea 83, 94, 97, 100