

Jürgen Stolzenberg, Karl Ameriks

Einleitung.

Der Begriff des Staates im Deutschen Idealismus

„Über nichts ist, ganz besonders in der Zeitepoche, die wir durchlebt, mehr geschrieben, gelesen, und gesprochen worden, als über den Staat“, so bemerkt Fichte in den *Grundzügen des gegenwärtigen Zeitalters* aus den Jahren 1804/05. Die Zeitepoche, von der Fichte rückblickend spricht, ist die Epoche der Revolution in Frankreich, und es ist zugleich die Epoche, in der sich die kritische Philosophie Kants und die klassische deutsche Philosophie nach Kant, der sogenannte Deutsche Idealismus, ausgebildet haben.

Fichtes Bemerkung ruft die theoretischen Motive in Erinnerung, die das geistige Profil jener Epoche bestimmt haben und die auch dem öffentlichen Diskurs über den Staat zugrunde lagen. Sie sind um den Begriff der Freiheit des Willens zentriert. Nicht die Ordnung des Kosmos, nicht der Schöpferwille oder ein natürliches Gesetz, sondern der freie, sich selbst nach Prinzipien der Vernunft bestimmende Wille ist das gemeinsame Fundament der Theorien des Rechts und des Staates in der Epoche des Deutschen Idealismus. Die drei bedeutendsten unter ihnen, die Theorien Kants, Fichtes und Hegels seien zum Zwecke einer Einleitung in die Thematik des vorliegenden Bandes im folgenden kurz skizziert.

I.

„Die Rechte der Menschheit herzustellen“, war für den Rousseau-Leser Kant früh zur Lebensaufgabe geworden. Sie findet ihren Ausdruck in Kants Charakterisierung der Aufgabe des Philosophen, „die wesentlichen Zwecke der menschlichen Vernunft zu befördern“, und auch Kants Bestimmung des Weltbegriffs der Philosophie, der das betrifft, „was jedermann notwendig interessiert“, ist dieser Aufgabe verpflichtet. Kants Lehre, daß die wesentlichen Zwecke der menschlichen Vernunft unter der Leitung der Autonomie des Willens zu befördern seien, in der die individuellen Handlungsintentionen mit einer von der Vernunft bestimmten allgemeinen Gesetzmäßigkeit vereinigt werden, kann als theoretische Rechtfertigung von Rousseaus Konzept der *volonté générale* verstanden werden. Kants Lehre war es auch, daß die Autonomie des Willens nicht nur als sein Wesen, sondern auch als sein letzter Zweck angesehen werden müsse, der sich im Recht realisiert. Das Recht gilt Kant als Inbegriff der Bedingungen, unter denen Personen ihre äußere Freiheit verwirklichen können, und zwar so, daß die individuelle Freiheit mit der Freiheit

aller anderen nach allgemeinen Gesetzen verträglich ist. Dieser Vernunftbegriff des Rechts ist für Kant das Fundament des Staates: „Ein Staat (civitas)“, so heißt es in den *Metaphysischen Anfangsgründen der Rechtslehre*, „ist die Vereinigung einer Menge von Menschen unter Rechtsgesetzen“ (§ 45). Mit dem so gefassten Begriff des Rechtsstaates hatte Kant dem politischen Selbstverständnis jener Epoche, von der Fichte spricht, einen Ausdruck und eine theoretische Rechtfertigung gegeben, deren Wirkungsmacht bis in die Gegenwart reicht.

Noch vor dem Erscheinen von Kants Rechtslehre war Fichte mit dem Entwurf einer gänzlich neuen philosophischen Theorie des Rechts und des Staates in der *Grundlage des Naturrechts* von 1796/97 hervorgetreten. Hier hatte Fichte die Begriffe des Rechts und des Staates im Kontext einer Theorie des Selbstbewußtseins aus dem Gedanken interpersonaler Anerkennung zu begründen unternommen – einem Gedanken, dessen theoretische Aktualität und Leistungsfähigkeit sich in den sozialphilosophischen Diskussionen der Gegenwart beweist. Auch für diesen Gedanken ist der Begriff der Freiheit des Willens leitend. Ein Wesen, das sich einen freien Willen zuschreibt, kann Fichte zufolge von einem anderen Wesen nur dann als frei erkannt werden, wenn es von sich aus zu erkennen gibt, daß es die Freiheit des anderen anerkennt. Dies tut es, indem es den Spielraum der Freiheit des anderen durch die Einschränkung seiner eigenen Freiheit wahrt. Dieses wechselseitige Anerkennungsverhältnis nennt Fichte „Rechtsverhältnis“. Den Begriff des Staates leitet Fichte aus dem Verhältnis des von ihm sogenannten „Urrechts“ und des „Zwangsrechts“ ab. Während das Unrecht die Freiheit einer Person garantiert, ist das Zwangsrecht in Anwendung zu bringen, wenn dieses Recht verletzt wird. Zu seiner wirksamen und dauerhaften Durchsetzung ist indessen eine überindividuelle zwingende Macht erforderlich, die einem allgemeinen Willen entspringen muß, der die Sicherheit der Rechte aller will. Ein solcher allgemeiner Wille wird im Staatsbürgervertrag realisiert, mit dem das Recht nicht bloß gesichert, sondern konstituiert wird, da verbindliche Rechtspflichten ohne äußeren Zwang nicht möglich sind.

Mit dem Namen Fichtes verbindet sich allerdings auch jene Vision, von der bekanntlich auch das *Älteste Systemprogramm des Deutschen Idealismus* spricht und die bis weit in das 19. Jahrhundert hinein lebendig war, die Vision, daß der staatliche Zustand mit seinem gleichsam mechanisch wirkenden Zwangsrecht nur ein vorläufiger Zustand sei, der im Zuge einer universalen Realisierung der Idee der Freiheit überwunden werden müsse.

Mochte der junge Hegel sich dieser Vision eine Zeit lang angeschlossen haben, so hat er sich in der kritischen Reflexion des Fortgangs der revolutionären Ereignisse in Frankreich, aber auch im Zuge seines Studiums der schottischen „Political Economy“ und deren Theorie der modernen bürgerlichen Gesellschaft davon verabschiedet. Hegels theoretische Anstrengungen sind nunmehr darauf gerichtet, ein Modell des Staates zu entwickeln, das den

spezifischen Erfordernissen der Moderne und dem fortgeschrittenen Bewußtsein der Freiheit und Autonomie gleichermaßen gerecht werden sollte. Die Kräfte und konkurrierenden Interessen des Individualismus der modernen bürgerlichen Gesellschaft lassen sich in Hegels Sicht nur dann dauerhaft regulieren und organisieren, wenn dem individuellen Freiheitsbewußtsein eine allgemeine und substantielle Sphäre seiner Wirklichkeit bereitgestellt wird. Dies soll der Staat leisten.

Mit dieser Skizze sind gleichsam die zentralen Orte einer Landschaft markiert, in der die folgenden Beiträge angesiedelt sind. Ihnen kommt es zu, die vielfältigen Linien auszuziehen, die diese Orte miteinander verbinden. Sie alle gehen darauf aus, die systematischen Zusammenhänge zwischen den alternativen Theorieentwürfen aufzuzeigen und die Debatten zu rekonstruieren, in denen sie sich ausgebildet und gegeneinander profiliert haben. Unter dem Leitfaden des Begriffs des Staates ist auf diese Weise ein Netzwerk von Argumentationen und Positionen entstanden, das durch die Relationen Rousseau-Kant-Fichte, Kant-Hegel, Hegel-Fichte, Hegel-Schelling und Krause-Fichte gebildet wird.

II.

Den Band eröffnet ein Beitrag von *Michael Forster*, der sich dem aufklärerischen Postulat der Denk- und Redefreiheit, das auch in der Epoche der klassischen deutschen Philosophie seine Brisanz bekanntlich nicht verloren hat, unter der Perspektive des Verhältnisses Johann Gottfried Herders und John Stuart Mills widmet. Forster zeigt, daß der englische Liberalismus, für den hier vor allem der Name John Stuart Mills steht, und die von ihm propagierte Denk- und Redefreiheit sowie das liberalistische Prinzip der Individualität ihren Ursprung in der Epoche der klassischen deutschen Philosophie, insbesondere im Werk Johann Gottfried Herders haben, das auch für das staatspolitische Denken Wilhelm von Humboldts, den Mill als eine seiner Quellen nennt, prägend war. Forster begnügt sich nicht mit einem philologischen Beweis dieser These, er bietet darüber hinaus eine systematisch orientierte Argumentanalyse, die eine Bewertung der Leistungskraft der jeweiligen Argumente einschließt. Hier zeigt sich, daß Herder über Argumente verfügt, die Mill entweder zu seinem Nachteil nicht berücksichtigt bzw. verworfen hat oder die seinen eigenen Ausführungen überlegen sind. Dies betrifft am Ende auch das Prinzip des Utilitarismus.

Im Vergleich der staats-theoretischen Konzeptionen Rousseaus, Kants und Fichtes macht *Susan M. Shell* auf ein prinzipielles Problem aufmerksam. Es besteht in der von Rousseau beschriebenen Schwierigkeit, die individuelle naturhafte Organisation des Menschen mit den Erfordernissen seiner gesellschaftlichen Existenz in Übereinstimmung zu bringen. Diese Schwierigkeit

wird in jenen modernen Staatstheorien virulent, die die Idee der Freiheit des Willens mit dem Modell eines lebendigen Organismus verbinden. Hier nämlich soll jedes Mitglied sich aus eigenem Willen von seiner individuellen Natur distanzieren und sich mit einem allgemeinen Zweck identifizieren. Während Kant die Realisierung der darin implizierten Idee einer vollkommenen Übereinstimmung von Natur und Recht einer Betrachtung der Menschheitsgeschichte ‚in weltbürgerlicher Absicht‘ überantwortet, die unter der Leitung der Idee eines verborgenen Plans der Natur, eine solche Übereinstimmung hervorzubringen, unternommen wird, hat Fichte die Realisierung dieser Idee aus dem Begriff der organologischen Struktur der Staatsverfassung selber für möglich gehalten. Der Gang der Geschichte hat keines dieser Modelle begünstigt. Daraus läßt sich am Ende die Vermutung ableiten, daß die moderne Idee, daß gesetzlicher Zwang prinzipiell konsensuell begründet werden kann, einer Revision unterzogen werden muß.

Der Aufsatz von *Allen W. Wood* kann als ein weiterer, mit den Positionen Kants und Fichtes argumentierender pointierter Beitrag zu aktuellen Problemen des politischen und ökonomischen Liberalismus gelesen werden. Gegen eine verbreitete Ansicht zeigt Wood, daß die klassischen Prinzipien des Liberalismus, der Schutz der individuellen äußeren Handlungsfreiheit und des Privateigentums, mit einer von staatlicher Seite geregelten egalitären Verteilungsgerechtigkeit, die vor allem sozial Benachteiligte berücksichtigt, durchaus kompatibel ist. Anhand einer Analyse von Kants und Fichtes Theorien des Rechts und insbesondere Fichtes Konzeption individueller Freiheit zeigt Wood, daß es nicht des Rückgriffs auf die Prinzipien des Utilitarismus bedarf, um die Unverzichtbarkeit liberaler Werte zu begründen. Darüber hinaus läßt sich Wood zufolge zeigen, daß diese Werte auch gegen ihre liberalistische Interpretation und Indienstnahme für die Rechtfertigung kapitalistischer Gesellschaftssysteme, wie es in den USA zu beobachten ist, verteidigt werden können. Es liegt auf der Hand – und darauf macht Wood am Ende seines Beitrags auch aufmerksam –, daß dies Folgen für die Beurteilung der ökonomisch-politischen Problemlagen im Weltmaßstab hat. Folgt man Wood, dann ist von Kant und Fichte auch in dieser Hinsicht einiges zu lernen.

Drei der zwölf Beiträge sind dem Verhältnis Kant – Hegel gewidmet. Sie bringen die systematisch gehaltvollste und wirkungsmächtigste Alternative der Staatstheorien in der Moderne in den Blick. Betrachtet man den Gang der historischen Entwicklung, dann hat sich, wenigstens in der westlichen Welt, offensichtlich die rechtsstaatliche Konzeption Kants durchgesetzt. *Dietmar von der Pfordten*, der in seinem Beitrag eben darauf hinweist, sucht zuerst über die logische Bedeutung der unterschiedlichen Staatsbegriffe, die Kants und Hegels Theorien zugrunde liegen, Klarheit zu gewinnen. In dieser Absicht geht er den Bedeutungsaspekten nach, die mit den verschiedenen Bezeichnungen einer politischen Gemeinschaft verbunden sind und wendet sie auf die Positionen Kants und Hegels an. Lassen sich historisch wie systematisch mit

Bezug auf ein Gemeinwesen die Aspekte des Mitgliedschaftlichen, der Öffentlichkeit, ferner der Aspekt einer auf das Gemeinwohl gerichteten Gemeinschaft, sowie die außenpolitische Repräsentanz und der Anspruch auf ein Gewaltmonopol unterschieden, so läßt sich Kants Staatstheorie als Verbindung des rechtsethischen mit dem mitgliedschaftlichen Aspekt rekonstruieren, während der Staatsbegriff Hegels die Aspekte der Allgemeinheit und der Herrschaft im Sinne des klassischen Staatsbegriffs repräsentiert.

Hegels viel diskutierte Auseinandersetzung mit der Kantischen Ethik ist der Ausgangspunkt von *Ido Geigers* Bestimmung des Verhältnisses von Moralität und Sittlichkeit in Hegels Staat. Sie schließt sachlich insofern an den vorhergehenden Beitrag an, als Geiger die moralphilosophischen und staats-theoretischen Konzeptionen Kants und Hegels als zwei fundamental verschiedene Positionen in der Tradition der neuzeitlichen praktischen Philosophie charakterisiert: Während für Kant Moralität durch das Prinzip einer universalen Gesetzmäßigkeit begründet ist, dem die individuellen Handlungsentwürfe genügen müssen, ist es für Hegel die gemeinsam geteilte Lebensform im Staat, in der die Moralität erst ihre angemessene Wirklichkeit findet. Von dieser Differenz ausgehend, zeigt Geiger, auf welche Weise Hegel Kants Autonomie-Konzept gewürdigt und für seine eigenen Überlegungen fruchtbar gemacht hat. Es erscheint nun als Ursprung eines – von Kant nicht gebilligten – revolutionären Aktes, der sich über vorgegebene soziale und politische Normen, die dem Prinzip vernünftiger Allgemeinheit nicht genügen, hinwegsetzt und dadurch die Funktion einer notwendigen, wenngleich nicht hinreichenden Bedingung für die Etablierung einer moralisch-autonomen Lebensform in einer Gesellschaft erhält. Folgerichtig wendet sich der Beitrag am Ende Kants und Hegels divergierenden Auffassungen über die Rechtfertigung revolutionärer Gewalt zu.

Ein immer wieder, in unseren Tagen verstärkt gegen die Philosophie Hegels vorgebrachter Vorwurf ist das Verdikt des Rückfalls in ein metaphysisches Denken, das das von Kant erreichte kritische Reflexionsniveau in der Form einer letztlich theologisch fundierten Metaphysik des Absoluten preisgegeben habe. Diesem Vorwurf geht der Beitrag von *Paul Redding* genauer nach. Er prüft den nicht selten gegen Hegels Begriff des Staates als der ‚Wirklichkeit der sittlichen Idee‘ geäußerten Verdacht des Rückfalls in eine vorkritische Metaphysik, wie sie etwa in Kants früher Konzeption einer gesetzlich geregelten Gemeinschaft von Substanzen vorliegt, die als Darstellung eines Schemas des göttlichen Intellekts begriffen wird. Hegels These, daß der Begriff des Rechts das Prinzip seiner eigenen Wirklichkeit sei, die sich im Staat manifestiert, sowie das durchaus irritierende Wort Hegels vom Staat als dem „Gang Gottes in der Welt“ bzw. dem „wirklichen Gott“ mögen einen solchen Verdacht stützen. Redding zeigt, was davon zu halten ist. Im Durchgang durch Kants theoretische Entwicklung, sowie im Blick auf Kants kritische Bestimmung der Funktion der Kategorie der Gemeinschaft und insbeson-

dere anhand von Kants Theorie des lebendigen Organismus sucht Redding den komplexen systematischen Zusammenhang der Motive zu rekonstruieren, die sich in Hegels Begriff intersubjektiver Anerkennung verbinden und die ihn zur Grundlage einer Theorie der sozialen Gemeinschaft werden lassen, die den Rückgriff auf einen göttlichen Intellekt ausschließt.

Erst relativ spät hat sich der junge Hegel, motiviert durch Hölderlins Berichte aus Jena, auf Fichte eingelassen. Fichtes neue Rechts- und Staatstheorie in der *Grundlage des Naturrechts* von 1796 wurde für Hegel zum Anlaß eines intensiven kritischen Studiums der Fichteschen praktischen Philosophie. Überblickt man die systematischen Folgen von Hegels Auseinandersetzung mit Fichte, dann wird man sagen dürfen, daß Hegel Fichte auf dem Weg zur Selbständigkeit, den er in Jena beschritt, mehr verdankt, als er später einzugestehen bereit war. Hier ist für die Idealismus-Forschung noch Neuland zu erschließen. Das belegt die vor wenigen Jahren veröffentlichte Neuedition des von Karl Rosenkranz sogenannten *Systems der Sittlichkeit* von 1802/03. Mit Blick auf die für die Entwicklung Hegels höchst bedeutsamen Umstände der Entstehung jenes Manuskripts stellt *Kurt Rainer Meist* Hegels Auseinandersetzung mit Fichte als eine Diskussion über die Frage dar, auf welche Weise das allgemein gewordene Bewußtsein der Freiheit in einer Staatsverfassung seinen angemessenen Ausdruck finden könne. Das Dilemma nicht nur der revolutionären staatstheoretischen Konzeptionen, sondern auch der Theorien Kants und Fichtes sah Hegel in dem nicht zu überwindenden Gegensatz zwischen dem moralisch begründeten Postulat allgemeiner Gleichheit und seiner dauerhaften gesetzesförmigen Institutionalisierung in einer staatlichen Gemeinschaft, die das moralische Bewußtsein von sich aus nicht zu leisten vermag. Die von Kant und Fichte vorgesehene äußerlich erzwingbare distributive Gerechtigkeit überzeugt und genügt deswegen nicht, weil sie dem Bewußtsein der Autonomie der Individuen keine substantielle Sphäre seiner Wirklichkeit zu garantieren vermag. Daher muß die formelle Gleichheit des rechtsstaatlichen, privatrechtlichen Prinzips durch eine gehaltvolle, staatsrechtlich gesicherte Gleichheit aller Bürger eines Staates ergänzt werden. Eine solche Einheit von Politik und Moralität liegt Hegels Idee des Staates als der „Wirklichkeit der sittlichen Idee“ zugrunde.

Thomas Sören Hoffmann geht in seinem Vergleich der Staatstheorien Fichtes und Hegels zurecht von der Feststellung aus, daß die Philosophie des Deutschen Idealismus als eine „Grammatik der Freiheit“ gelesen werden müsse, die in unterschiedlichen Diskursformen zur Sprache gebracht wird. Der Ort, an dem über die gemeinsame Sache der Freiheit gehandelt wird, ist die Theorie des Staates. Insofern der Staat und das im Staat herrschende Rechtsverhältnis in der Sicht Fichtes der gemeinsame Ausdruck des Willens aller zur Rechtlichkeit darstellt, erscheint Fichtes Staat als Ganzer im Modus eines überindividuellen Bildes und eines Projekts der Einbildungskraft, dem der Einzelne sich zwar einfügt, dem aber eben deswegen keine eigenständige

substantielle Wirklichkeit zukommt. Hegels Fichte-Kritik bezieht sich daher auf die logische Verfassung des Freiheitsbewußtseins selbst: Das Bewußtsein, in einem objektiven Sinne frei zu sein, impliziert die Beziehung auf einen Grund, der seine Existenz nicht dem individuellen Willen verdankt, sondern die Bedingung ist, unter der das individuelle Freiheitsbewußtsein sich realisieren kann. Diese Bedingung ist Hegels Staat.

Robert Pippin geht der Rolle von Hegels berühmtem Anerkennungstheorem im Kontext einer aktuellen rechts- und sozialphilosophischen Debatte (Ch. Taylor, A. Honneth u. a.) nach. Sie betrifft die Frage, ob Hegels Theorie der Anerkennung dem liberalistischen Grundprinzip des Individualismus widerspricht. Pippins pointierte These lautet, daß Hegels Anerkennungstheorie vielmehr als Begründung des liberalistischen Grundprinzips verstanden werden muß. Da die freie Entfaltung von Individualität an soziale Handlungskontexte gebunden ist, setzt ein erfolgreiches Handeln die soziale Akzeptanz der praktischen Intentionen und Einstellungen voraus, die einer solchen Entfaltung dienen sollen. Darüber hinaus läßt sich anhand von Hegels *Phänomenologie des Geistes* zeigen, daß ein gehaltvoller Begriff von Individualität nicht die Bedingung, sondern das Resultat eines von sozialer Anerkennung getragenen Lebensentwurfs ist.

Ein aktuelles Sachinteresse liegt auch dem Beitrag von *Myriam Bienenstock* zugrunde. Er widmet sich der Frage, inwieweit die Rede von einem Selbstbestimmungsrecht der Völker ihr theoretisches Fundament zurecht unter Verweis auf die Tradition der klassischen Theorien des Bewußtseins und Selbstbewußtseins beanspruchen kann. Gegen eine verbreitete Meinung betont Bienenstock, daß der Begriff der Selbstbestimmung in der Philosophie Hegels nicht primär in einem praktisch-politischen, sondern einem ontologischen Sinn verwendet wird. Hegels Interesse ist es daher nicht, einen politisch-emanzipativen Sinn von Selbstbestimmung mit Bezug auf ein Volk, das sich eine Verfassung gibt, zu rechtfertigen, sondern die interne Rationalität der politischen Gemeinschaft, die im modernen Staat gegeben ist, aufzuklären.

Die beiden letzten Beiträge erkunden noch wenig erforschte Regionen. Der erste ist Schelling gewidmet. Schellings Theorie des Staates hat bisher noch nicht die ihr gebührende Beachtung gefunden. Der Beitrag von *Hans Jörg Sandkühler* darf daher als Plädoyer für eine Rehabilitierung Schellings als politischen Denker betrachtet werden. Nicht weniger als Hegel hat Schelling auf die politischen Ereignisse seiner Zeit reagiert, so noch als Augenzeuge der Revolution von 1848, deren Gegner er war. Die Erfahrung der Revolution von 1848 ließ den späten Schelling denn auch zu seiner schon früh formulierten Überzeugung zurückkehren, daß der Staat nur die Bedingung individueller Freiheit, nicht ihr Gegenstand und ihr Zweck sein könne. Damit ist die Frontstellung gegen Hegel markiert. Am Ende seiner Analyse der unterschiedlichen Begründungsstrategien Schellings und Hegels gibt Sandkühler aller-

dings dem staatsrechtlichen Modell Schellings den Vorzug. Sandkühlers Argument lautet, daß Hegels substanztheoretisch gedachter, einer material bestimmten Idee der Sittlichkeit verpflichteter Staatsbegriff den Erfordernissen der modernen pluralistischen Gesellschaft kaum gerecht werden kann, während Schellings Staatsmodell eben denjenigen Funktionen gegenüber offen ist, die den modernen Rechts- und Sozialstaat auszeichnen.

Noch weniger und ebenfalls zu unrecht bekannt als Schellings Beitrag zu einer Theorie des Politischen ist die Position Karl Christian Friedrich Krauses im Kontext des Jenaer Idealismus. *Claus Dierksmeier* plädiert dafür, Krause als rechtstheoretischen Denker von Rang ernst zu nehmen. Ein besonderes Interesse kommt hierbei dem Umstand zu, daß Krause seine Position im Zuge einer umfassenden, bis heute so gut wie unbekannt gebliebenen – vernichtenden Kritik des Fichteschen Naturrechts ausgebildet hat, die Dierksmeier vorstellt und kommentiert. Krauses erstaunlich weitsichtiges Engagement für die Einrichtung einer europäischen Union und einer den Vereinten Nationen vergleichbaren Weltorganisation, ferner sein Entwurf eines Systems von Weltbürgerrechten, das weit über die zeitgenössischen Standards hinausreicht und unter anderem auch die Rechte zukünftiger Generationen einschließt, dürften ein hinreichender Beleg für die Aktualität und Attraktivität seines Denkens sein.

So bieten die hier vorgelegten Beiträge ein facetten- und perspektivenreiches Bild der Staatstheorien im Deutschen Idealismus, das auch für die gegenwärtige rechts- und staatsphilosophische Diskussion von Bedeutung sein dürfte.

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Introduction.

The Concept of the State in German Idealism

In his *Main Characteristics of the Present Age* from the years 1804/05 Fichte remarked, “There is nothing, especially in the era in which we are living through, that has been more written, read, and spoken about than the state.” The era that Fichte was speaking about in retrospect is the epoch of the French Revolution, and at the same time it is the epoch in which the Critical philosophy of Kant and classical German philosophy after Kant were developed.

Fichte’s remark recalls the theoretical motives that determined the spiritual profile of that epoch and that also lay at the basis of public discussion about the state. These motives center on the concept of the freedom of the will. The common foundation of the theories of right and the state in the epoch of German Idealism is the free will that determines itself according to the principles of reason, rather than the order of the cosmos, or the will of the creator, or a natural law. For the purpose of an introduction to the theme of this volume, a brief sketch will be given here of the three most significant of these theories, those of Kant, Fichte, and Hegel.

I.

Early in his career it had become the task of a lifetime for Kant, the reader of Rousseau, “to preserve the rights of humanity.” This task finds its expression in Kant’s characterization of the vocation of the philosopher, “to promote the essential ends of human reason.” Kant’s determination of the cosmic concept of philosophy, which concerns “what everyone has a necessary interest in,” is also devoted to this task. Kant’s doctrine that the essential ends of human reason are to be promoted under the direction of the autonomy of the will, in which the intentions of individual action are to be unified with a universal lawfulness determined by reason, can also be understood to be a theoretical justification of Rousseau’s concept of the *volonté général*. But it was also Kant’s doctrine that the autonomy of the will is to be regarded not only as its essence but also as its final end, which is realized in right. For Kant right is valid as the essence of the conditions under which persons can actualize their external freedom, and indeed in such a way that the freedom

of the individual is compatible with the freedom of all others according to universal laws. This rational concept of right is for Kant the foundation of the state. According to the *Metaphysical Foundations of the Doctrine of Right*, “a state (*civitas*) is the unification of a group of human beings under laws of right” (§ 45). With this kind of conception of the state based on right Kant expressed the political self-understanding of the epoch of which Fichte spoke and provided it with a theoretical justification whose effects extend into the present.

Even before the appearance of Kant’s *Doctrine of Right*, Fichte had come out in his *Foundations of Natural Right* (1796/97) with a proposal for an entirely new philosophical theory of right and the state. Here, in the context of a theory of self-consciousness, Fichte attempted to ground the concepts of right and the state on the basis of the idea of interpersonal recognition – an idea whose theoretical relevance and fruitfulness is evidenced in contemporary discussions of social philosophy. The concept of the freedom of the will is also fundamental to this idea. According to Fichte, a being that ascribes a free will to itself can be freely recognized by other beings only if it makes known on its own part that it recognizes the freedom of the other. It does this in preserving a realm of freedom for the other by making a limitation in its own freedom. Fichte designates this reciprocal relation of recognition the “relation of right.” Fichte derives the concept of the state from the relation of what he designates as “original right” and the “right of coercion.” Original right guarantees the freedom of the person, while the right of coercion is to be applied when the former right is infringed. For an effective and enduring maintenance of this right, a power that goes beyond individuals is required, one which must derive from the general will that wills the security of the rights of all. This general will is realized in the social contract, which does not merely secure right but constitutes it, since binding legal duties are not possible without external coercion.

The “Oldest System Program of German Idealism” expresses the same vision with which Fichte’s name is also associated. According to this vision, which was alive well into the 19th century, the condition of a state with law of coercion working mechanically, as it were, is only a provisional condition that must be overcome in the process of a universal realization of the idea of freedom.

Although the early Hegel had long attached himself to this vision, he departed from it in his critical reflections on the course of revolutionary events in France, as well as in the process of his study of the political economy of the Scots and their theory of modern civil society. Hegel’s theoretical efforts were then directed more toward developing a model of the state that would do equal justice to the specific demands of modernity and the developing consciousness of freedom and autonomy. In Hegel’s view, the forces and competing interests of individualism in modern society can be regulated

and organized in a lasting way only if a universal and substantive sphere is provided for its realization. The state is meant to accomplish this.

This sketch has marked out the main features of the landscape, so to speak, in which the contributions that follow are located. The contributions have the task of drawing out the multifarious lines that connect these features with one another. They all aim at bringing out the systematic connections between alternative theoretical proposals, and at reconstructing the debates in which these developed and contrasted themselves with each other. In this way, under the heading of the concept of the state, a network of arguments and positions has arisen that is constructed out of the relations Rousseau-Kant-Fichte, Kant-Hegel, Hegel-Fichte, Hegel-Schelling, and Krause-Fichte.

II.

With a perspective on the relation of Johann Gottfried Herder and John Stuart Mill, the opening contribution of the volume by *Michael Forster* is devoted to the enlightenment postulate of freedom of thought and speech, which, as is well known, had not yet lost its explosive power in the epoch of classical German philosophy. Forster shows that English liberalism, which here is represented above all by the name of John Stuart Mill and his advocacy of the freedom of thought and expression as well as of the liberal principle of individuality, had its origin in the epoch of classical German philosophy. More specifically, its origin is the work of Herder, which also left an impression on the political thinking of Wilhelm von Humboldt, who Mill names as one of his sources. Forster does not limit himself to a philological proof of this thesis. He offers in addition a systematically oriented argumentative analysis that includes an evaluation of what the relevant arguments can achieve. This shows that Herder has arguments at his disposal that are superior to Mill's own elaborations, or that Mill ignored or rejected to his own detriment. In this end this also applies to the principle of utilitarianism.

In the context of a comparison of the theoretical conceptions of the state in Rousseau, Kant, and Fichte, *Susan Meld Shell* draws attention to a problem of principle. It consists in the difficulty, described by Rousseau, of bringing the natural individual organization of human beings into agreement with the demands of their existence in society. This difficulty becomes severe in modern theories of the state that connect the idea of the freedom of the will to the model of a living organism. On this model each member is supposed to distance itself from its individual nature by its own will and identify with a common end. For the realization of the idea that is implicit here of a perfect agreement of nature and right, Kant gives an answer in terms of a consideration of the history of humanity "from a cosmopolitan intent," which is supposed to bring about this agreement under the direction of the idea of a

hidden plan of nature. Fichte, however, held that this idea could be realized as part of the deep organic structure of the state's constitution itself. The course of history has not favored either of these models. This leads to the suggestion that in the end a revision is needed of the modern idea that the coercion of right can be grounded in a way that is in principle consensual.

The essay of *Allen W. Wood* can be read as a further contribution to assessing the current political and economic problems of liberalism from the argumentative perspective of the positions of Kant and Fichte. Contrary to a widespread view, Wood shows that the classical principles of liberalism, the protection of private property and the individual freedom of public activity, are thoroughly compatible with an egalitarian form of distributive justice that is regulated by the state and that considers the disadvantaged above all. On the basis of an analysis of Kant's and Fichte's theories of right, and in particular of Fichte's conception of individual freedom, Wood shows that a recourse to the principles of utilitarianism is not needed in order to ground the indispensability of liberal values. Furthermore, according to Wood it can be shown that these values can be defended even against the libertarian interpretation and appropriation of them that can be observed in capitalist systems such as the USA. At the end of his contribution Wood also draws attention to the fact that this has obvious consequences for the evaluation of political and economic problems at the global level. If one follows Wood, then there is something to learn from Kant and Fichte in this context as well.

Three of the twelve contributions are dedicated to the relation of Kant and Hegel. They bring into view the alternatives for a theory of the state that are the richest and most influential in modernity. If one observes the course of historical development, then Kant's conception of the state based on right clearly has established itself, at least in the western world. In his contribution, *Dietmar von der Pfordten* refers to this point, but first he tries to make clear the logical significance of the diverse concepts of the state that lie at the basis of Kant's and Hegel's theories. For this reason he attends to the aspects of meaning that are connected with the various characteristics of a political community, and he applies these to the positions of Kant and Hegel. For systematic and historical purposes one can distinguish in a community the aspects of having a membership, of having a public sphere, and, further, of a community's being directed to a common good as well as having representation in foreign policy and a claim to a monopoly on power. In this context, Kant's theory of the state can be reconstructed as one that connects the legal-ethical and membership aspects with the aspect of unifying individual choices under a universal law, whereas Hegel's theory of the state represents the aspects of universality and rulership in the sense of the classical concept of the state.

Hegel's much discussed response to Kant's ethics is the point of departure for *Ido Geiger's* investigation of the relation of morality and ethical life in

Hegel's state. In content this connects with the previous contribution in that Geiger characterizes Kant's and Hegel's conceptions of moral philosophy and the theory of the state as two fundamentally different positions in the tradition of modern practical philosophy. Whereas for Kant morality is based in a principle of universal lawfulness that individual intentions must satisfy, for Hegel morality has its appropriate actuality only in the commonly shared form of life in the state. On the basis of this difference, Geiger shows the way in which Hegel appreciated Kant's concept of autonomy and made it fruitful for his own investigations. It now appears as the origin of a revolutionary act – not approved by Kant – which goes beyond given social and political norms that do not satisfy the principle of rational universality. It thereby preserves the function of a necessary, even if not sufficient, condition for the establishment in a society of an autonomous moral form of life. Consequently, the contribution turns at the end to Kant's and Hegel's divergent interpretations of the justification of revolutionary violence.

An objection that is raised ever and again against Hegel's philosophy, especially vigorously in our times, is the accusation of a relapse to a form of metaphysical thinking that sacrifices itself to what is, from the level reached by Kant's Critical reflection, a kind of metaphysics of the absolute that is based ultimately in theology. The contribution of *Paul Redding* looks closely into this objection. He examines the suspicion, which is brought often against Hegel's concept of the state as the "actualization of the ethical Idea," of a relapse into a pre-Critical metaphysics, such as is found in Kant's early conception of a lawfully regulated community of substances, conceived as the representation of the schema of a divine intellect. This suspicion may appear to be supported by Hegel's thesis that the concept of right is the principle of its own actuality, which manifests itself in the state, as well by Hegel's very bothersome comment that the state is the "path of God in the world," i.e., the "actual God." Redding shows what is to be made of this. Through a review of Kant's theoretical development, as well as a look at Kant's Critical determination of the category of community and especially his theory of a living organism, Redding seeks to reconstruct the complex systematic connection of the motives that are connected in Hegel's concept of intersubjective recognition and that serve as the basis for a theory of social community which excludes recourse to a divine intellect.

The young Hegel came relatively late to focus on Fichte, spurred by Hölderlin's reports from Jena. For Hegel, Fichte's new theory of right and the state in *The Foundations of Natural Right* of 1796 was the occasion for an intensive critical study of Fichte's practical philosophy. If one surveys the systematic consequences of Hegel's response to Fichte, then it can be said that, on the path to independence that he took in Jena, Hegel owes more to Fichte than he was prepared to concede later. Research on Idealism still has new ground to open up here. This is evident from the new edition, published

a few years ago, of what Karl Rosenkranz's called the "System of Ethical Life" of 1802/03. With a view to the conditions of the origination of the manuscript, which are highly significant for Hegel's development, *Kurt Rainer Meist* presents Hegel's response to Fichte as a discussion concerning the question of the way in which a consciousness of freedom that has become universal can find an appropriate expression in the constitution of a state. Hegel saw a dilemma, not only in revolutionary conceptions of the state, but also in the theories of Kant and Fichte, in the irreconcilable opposition between the morally grounded postulate of universal equality and its enduring institutionalization in a legal form in the community of a state, which a moral consciousness cannot accomplish by itself. The vision of Kant and Fichte of an externally enforced system of distributive justice is not convincing or satisfying because it cannot guarantee a substantive sphere of actuality for the consciousness of the autonomy of individuals. Hence the formal equality of the principle of private law in the state based on right must be supplemented by a material equality of all citizens of the state secured by the law of the state. Hegel's idea of the state as the "actuality of the ethical idea" is based on this kind of unity of politics and morality.

In his contribution *Thomas Sören Hoffman* pursues a comparison of the theories of the state of Fichte and Hegel on the basis of the contention that the philosophy of German Idealism must be read as a "grammar of freedom" which comes to expression in language in a variety of forms of discourse. The theory of the state is the place in which the common issue of freedom is treated. Insofar as in Fichte's view the state, and the ruling relations of law in the state, represents the common expression of the will of all for right, Fichte's state appears as a whole in the form of a supra-individual image and of a project of the faculty of imagination, which the individual fits in with, to be sure, but which for that very reason does not attain any substantial actuality of its own. Hegel's criticism of Fichte concerns the logical structure of the consciousness of freedom itself: Consciousness of being free in an objective sense implies a relation to a ground that does not owe its existence to an individual will but is instead the condition under which individual freedom of consciousness can realize itself. This condition is Hegel's state.

Robert Pippin pursues the role of Hegel's famous theorem of recognition in the context of a current debate in legal and social philosophy (involving Ch. Taylor and A. Honneth, among others). The question is whether Hegel's theory of recognition contradicts the fundamental liberal principle of individualism. Pippin stresses the thesis that Hegel's theory of recognition should instead be understood as a justification for the fundamental principle of liberalism. Since the free development of individuality is bound to social contexts of action, successful action presupposes the social acceptance of practical intentions and attitudes that can serve this kind of development. Furthermore, it can be shown on the basis of Hegel's *Phenomenology of Spirit*

that a material concept of individuality is not the condition but rather the result of a life plan that is supported by social recognition.

A current issue is also at the basis of the contribution by *Myriam Bienenstock*. He attends to the question of how much discourse about a right to self-determination of peoples can lay claim to having its proper theoretical foundation in a reference to the tradition of the classical theory of consciousness and self-consciousness. Contrary to a widespread opinion, Bienenstock emphasizes that in Hegel's philosophy the concept of self-determination is employed primarily in an ontological rather than practical and political sense. Therefore Hegel's interest is not primarily in justifying a political and emancipatory sense of self-determination with reference to a people that gives itself a constitution, but instead with clarifying the internal rationality of the political community that is given in the modern state.

Both of the two final contributions enter into areas that are still rarely researched. The first is dedicated to Schelling. Schelling's theory of the state has so far still not found the attention that it deserves. The contribution of *Hans Jörg Sandkühler* may therefore be regarded as a plea for a rehabilitation of Schelling as a political thinker. No less than Hegel, Schelling reacted to the political events of his time, even as an eyewitness to the revolution of 1848, of which he was an opponent. The experience of the revolution of 1848 also allowed the late Schelling to return to the conviction that he had formed earlier that the state is the condition of individual freedom but cannot be its object or its end. This marks out a front against Hegel. At the end of his analysis of the diverging justificatory strategies of Schelling and Hegel, Sandkühler nonetheless gives priority to Schelling's theoretical model of the state. According to Sandkühler's argument, Hegel has a concept of the state that is indebted to a materially determined idea of ethical life and a theoretical notion of substance that can hardly do justice to the demands of modern pluralistic society, whereas Schelling's model of the state is open to precisely those functions that distinguish the modern social state and state based on right.

In the context of Jena Idealism the position of Karl Christian Friedrich Krause is also unfairly neglected and is even less known than Schelling's contribution to a theory of the political. *Claus Dierksmeier* makes a plea for taking Krause seriously as first-rate theorist of right. Of special interest here is the circumstance that Krause developed his position in the course of giving Fichte's *Natural Right* an encompassing and devastating critique, one that has remained practically unknown until now and that Dierksmeier presents with a commentary. A sufficient indication of the actuality and attractiveness of his thinking may be found in Krause's astoundingly farsighted engagement in working for the establishment of a European Union and a global organization comparable to the UN, and also his proposal for a system of international civil rights that reaches far beyond contemporary standards and, among other things, also includes the rights of future generations.

The contributions presented here thus provide a multifaceted and multi-perspectival picture of the theories of the state in German Idealism, one that may also be of significance for the contemporary discussion of the state and right.

Michael N. Forster

The Liberal Temper in Classical German Philosophy. Freedom of Thought and Expression

Trotz weitverbreiteter gegenteiliger Annahmen besonders in der angelsächsischen Welt hat der Liberalismus mit seinem Ideal der Gedanken- und Redefreiheit weit zurückreichende und tiefe Wurzeln in der Geschichte der Philosophie und Politik in Deutschland. Auch John Stuart Mill, der mehr als alle anderen angelsächsischen Philosophen mit solchen liberalistischen Idealen in Verbindung gebracht wird, erweist sich mit seinen zurecht gerühmten Argumenten in On Liberty der deutschen philosophischen Tradition verpflichtet. Mehr noch, insbesondere in der durch Johann Gottfried Herder und Wilhelm von Humboldt geprägten Tradition finden sich Überlegungen entwickelt, die Mills eigenen Argumenten in entscheidenden Hinsichten überlegen sind und die sie der Sache nach sogar durch wichtige Argumente ergänzen, die bei Mill fehlen. Insofern vermißt man in diesem Bereich der deutschen Philosophie vor Mill wenig, wenn überhaupt etwas, das in diesem Kontext von wirklicher Bedeutung wäre. Es zeigt sich somit, daß dieser entscheidende, wenn auch vielleicht nicht sehr stabile Grundstein einer liberalen Theorie angelsächsischer Provenienz tatsächlich auf einer solideren und breiteren deutschen Grundlage aufruht.

A central question for any theory of the state concerns the extent to which the state should allow or guarantee its citizens freedom, including freedom of thought and expression. As we shall see, this question also has natural extensions beyond the state, on the plane of the state's relations to other states or cultures, and below the state, at the level of society.

Consideration of the German philosophy and political history of the past century might well give the impression, and often does give foreign observers the impression, that liberalism, including in particular commitment to the ideal of free thought and expression, is only skin-deep in Germany. Were not Heidegger's disgust at *Gerede* (which of course *really* meant the free speech of the Weimar Republic) and Gadamer's defense of "prejudice" and "tradition" more reflective of the true instincts of German philosophy than, say, the Frankfurt School's heavily Anglophone-influenced championing of free thought and expression? Were not the Kaiser and Nazism more telling of Germany's real political nature than the liberalism of the Weimar Republic (a desperate, ephemeral experiment undertaken in reaction to Germany's disastrous defeat in World War I) or the liberalism of (West) Germany since 1945 (in effect forced on the country by the victorious Allies after World War II)?

It can therefore come as a surprise – and an extremely heartening one – to learn that liberalism, including the ideal of free thought and expression,

has long, deep roots in German philosophy and political history. In particular, during the classical period of German philosophy Kant, Herder, G. Forster, Schiller, the young Fichte, the young F. Schlegel, Schleiermacher, W. von Humboldt, and even Hegel all championed versions of liberalism, including freedom of thought and expression.¹ Also (and connectedly), liberalism, including commitment to freedom of thought and expression, constituted a central strand in nineteenth-century German politics.²

That much is beyond serious dispute. But I would like in this article to argue for a more radical and controversial thesis (albeit in a tentative and rather sketchy way). A grudging Anglophone observer might concede what has just been said but reply along roughly the following lines: “To be sure, classical German philosophy embraced liberal political ideals. But it basically just took these over from the English and French Enlightenment. And (aside from some implausible and unhelpful metaphysical elaborations) it contributed little to their development. Where, for example, is the J.S. Mill of German philosophy?” What I want to suggest is that such a reply is in fact deeply mistaken. For one thing (and I merely mention this without elaborating on it), the Germans in question were by no means simply borrowing from the English and the French; they also had their own native tradition of liberalism going back at least as far as, and forcefully expressed in, the Reformation (in connection with freedom of thought and speech, Luther is the central figure). For another thing (and this is the point on which I want to elaborate here), these German thinkers contributed *greatly* to the development of the ideas in question. In particular, the very Anglophone philosopher mentioned in this grudging reply, J.S. Mill, turns out to owe most of his (justly) famous case for freedom, including freedom of thought and expression, to the German tradition. Indeed, important aspects of his case for freedom of thought and expression only become fully intelligible and plausible once its original German form is retrieved and used to supplement or correct what is in effect an incomplete or inferior reproduction of it by Mill. And moreover, there are important additional arguments for freedom of thought and expression which the German tradition either preserved or developed but which Mill omits, whereas there is little if anything of impor-

¹ For an excellent account of liberalism in this period of German philosophy, see Beiser, 1992.

² Some helpful literature on this subject: *Essai sur le libéralisme allemand* (de Grandvilliers, 1914), *German Liberalism in the Nineteenth Century* (Sheehan, 1978), *Liberalism, Nationalism, and the German Intellectuals* (Thomas, 1951). Points similar to the above apply to further enlightened political ideals as well, such as republicanism, democracy, and cosmopolitanism: A focus on German philosophy and political history in the twentieth century might well, and often does, give the impression that these too are only skin deep in Germany. But classical German philosophy, and to some extent also nineteenth-century politics (e.g. the Revolution of 1848), again suggest otherwise.

tance in Mill's case which was not already in the German tradition. In short, unbeknownst to most of us, a vital, if wobbly, cornerstone of Anglophone liberal theory rests on firmer and broader German foundations.

In order to perceive this situation, however, it is essential to look at the *right part* of the classical German philosophical tradition. Initially, focus is likely to turn to the best known philosophers of the period: Kant, Fichte, and Hegel. All three did in one way or another support liberalism generally and freedom of thought and expression in particular. It is probably also true that the predominant philosophical influence on the liberalism in nineteenth-century German politics was theirs.³ However, it is doubtful that they achieved genuine theoretical advances in this area (deeply entangled as they indeed were in questionable metaphysics).⁴ And it is even more doubtful that the

³ See de Grandvilliers, 1914, pp. 143-144; de Ruggiero, 1927, pp. 23, 352-353.

⁴ There is no denying that Kant, Fichte, and Hegel – inspired by the Enlightenment and the French Revolution – all make *freedom* a strikingly central ideal in their philosophies, including their philosophies of politics, law, and society. But, rhetorical support aside, how much do they really accomplish for liberalism?

Kant's political philosophy bases legislation on a principle of reconciling individuals' freedoms with one another (Kant, 1996, pp. 30, 112). But Kant faces an embarrassing question here: On a Kantian view, all that legislation could possibly hope to affect or effect is some sort of *phenomenal* freedom. But what relevance does that have for the *noumenal* freedom which, on Kant's official theory, underpins morality and is what really matters? If, on the other hand, in order to avoid this problem, one detaches Kant's idea that the point of legislation is the reconciliation of individuals' freedoms from the official theory that causes the problem, is it any longer really a new idea?

Kant's main arguments for freedom of thought and expression specifically seem to be threefold: First, this is required for enlightenment, in the sense of thinking for oneself (Kant, 1980, pp. 4-5). Second, it is required for self-government, since enlightenment is in its turn required in order to make people competent for self-government (*ibid.*, p. 10). Third, (in the meantime) freedom of expression is required in order to keep authoritarian but benevolent and open-minded rulers adequately informed (Kant, 1983, pp. 82-83). The first two of these arguments are sensible but unoriginal. The third is, in its assumption of monarchical benevolence and open-mindedness, and of the consequent efficacy of simply informing a monarch, merely a naive and obsequious variant of a much more plausible and important traditional argument to the effect that part of the value of freedom of thought and expression lies in the constraint which it imposes on arbitrary governmental power (a variant which Kant was evidently seduced into embracing by the limitation of his experience to the very atypical case of Frederick the Great, an unusually benevolent and open-minded monarch). On the other hand, Kant *cannot*, it seems, really claim credit for an important argument which has sometimes been credited to him (e.g. by B. Mitchell, in Mitchell 1978, p. 93; cf. Gray, 1996, p. 78), and which will be considered further below: that freedom of thought and expression is required for autonomy and hence for moral responsibility. Kant did probably influence the general idea here that moral responsibility requires self-given laws. But note that he also says that the absence of freedom of thought and expression is a "self-incurred tutelage," the result of "laziness and cowardice" (Kant, 1980, p. 3), i.e. *already* an exercise of autonomy and hence morally blameworthy.

Fichte's *Foundations of Natural Right* of 1796-97 (Fichte, 2000) attempts to establish an elaborate system of liberal rights by showing them all to be "deducible" from the

Anglophone liberal tradition ever found much to learn from them (healthily skeptical as it has always been of such metaphysics).

principle of the self's self-positing (itself a sort of freedom). This "deduction" – Fichte's most distinctive theoretical contribution – is extremely implausible. If, on the other hand, one detaches his system of rights, and his detachable arguments for them, from this highly implausible foundation, then they constitute a mixed bag – some conventional others not, some attractive others not.

Concerning freedom of thought and expression specifically, in an early essay, *Demand for the Return of Freedom of Thought from the Princes of Europe, who hitherto Suppressed It* from 1793 (Fichte, 1964), Fichte maintained that freedom of thought was an inalienable right (pp. 174, 180, 187), and gave several arguments for this: it is purely inner (p. 174), it defines what it is to be a human being (p. 175), and (more specifically) it is part of our rational nature (pp. 182-3). Also, he argued that free expression was a right, derivable from a more basic right each of us has to hear others' opinions (pp. 177, 183). This early position seems dubious. It relies on a naive theory of natural rights (borrowed uncritically from the French revolutionaries) and it raises more questions than it answers. For example, why would pure innerness entail an inalienable right? And even if a measure of freedom in thinking were essential to human nature, or more specifically to rationality, might this not be a measure consistent with all the limitations on freedom of thinking that despots ever want to impose? In the *Foundations of Natural Right* Fichte takes the starkly different position that there can be no right to freedom of thought (only a duty), since it is something inner beyond the power of others (Fichte, 2000, pp. 51, 102). His reasoning here seems dubious (surely, thought is all too vulnerable to various sorts of coercion by others), and the elimination of any right to freedom of thought seems retrograde, indeed disastrous. Finally, in his later period Fichte showed little respect for freedom of thought and expression, instead embracing very paternalistic views. (Concerning this, see Berlin, 2002a, pp. 195-197.) Berlin's essay also contains penetrating criticisms of Kant's and Hegel's forms of liberalism which complement the ones sketched here.)

Despite the centrality of a notion of "freedom" in his system, Hegel is not as readily classifiable as a liberal. Still, his recognition of a set of characteristically liberal institutions and rights (e.g. protection of property, political representation, separation of church and state, religious toleration, and a significant measure of freedom of thought and expression) does warrant such a classification. Hegel's overall liberalism is vulnerable to a criticism similar to that recently leveled against Fichte's, however. In his *Philosophy of Right* (Hegel, 1976) Hegel in effect offers a twofold metaphysical grounding of his system of liberal rights: first, a "deduction" of it from the nature of the will (this is Hegel's counterpart to Fichte's "deduction" from the self's self-positing, by which it was clearly inspired) and, second, a "deduction" of it from the structure of the "Idea" (as expounded in Hegel's *Logic*). Both "deductions" are highly implausible (in the latter case on two levels). If, on the other hand, one detaches Hegel's set of liberal institutions and rights, and his detachable arguments for them, from this dubious foundation, while they certainly then look more sensible, they also form a miscellany of quite variable originality and quality.

This is also true of Hegel's liberalism concerning thought and expression in particular: His metaphysical explanation and justification of this institution is primarily that (like monarchy) it represents the modern state's principle of *subjectivity*, a principle derived from the Idea (Hegel, 1976, p. 295). That could only be an impressive rationale if one accepted the strange metaphysics of the Idea. Abstracting from this, his rationale for the institution appeals rather to such diverse and variably impressive considerations as the following: First, free thought and speech are important in order for individuals to come to understand why the legal-ethical principles which they observe deserve

The German thinkers to whom one *should* look for important theoretical advances in this area which proved influential on the Anglophone tradition are instead, I suggest, a roughly contemporary group dominated by Herder – saliently including, besides Herder himself, W. von Humboldt, G. Forster, Schiller, Goethe, and Schleiermacher.⁵

I.

J. S. Mill's *On Liberty* clearly owes a large debt to this group of thinkers for its general liberalism.⁶ Von Humboldt's *Ideas for an Attempt to Fix the Boundaries of the State's Operation* was written in 1792, but was only published in German in 1851 and in English translation in 1854. Mill began writing *On Liberty* in 1854, publishing it in 1859. Both in *On Liberty* itself and in his *Autobiography* (1873) he pays rich tribute to von Humboldt's work and to its influence on his own. In *On Liberty* Mill in particular acknowledges a debt to von Humboldt's central principle of *individuality*.⁷ In his *Autobiography* he adds Goethe and "a whole school of German authors" as further influences on his own adoption of this principle in *On Liberty* (Mill, 1965a, p. 150).

Herder is the real father of this ideal of individuality.⁸ For, while all the members of the group listed above embraced it, they did so mainly as a result

recognition (ibid., p. 294). Second, people want some share in debate and decision-making, and will put up with more impositions put upon them if they get it (ibid.). Third, the strong rationality of the modern state can tolerate such freedom, since, and as long as, such freedom remains without any real effect (ibid., pp. 173, 206). The first of these arguments is sensible but unoriginal; the second either sensible but unoriginal or disturbingly cynical, depending on whether the emphasis is on its former half or its latter; the third cynical and unedifying.

In sum, once one sees past their rhetoric and their dubious metaphysics, the liberalism of Kant, Fichte, and Hegel look startlingly short on substance. Perhaps nineteenth-century German liberalism's lamentable lack of staying power was not unconnected with its tendency to follow these false prophets of liberalism.

⁵ There are several further subject areas in and connected to philosophy concerning which a similar moral applies. For example, if one is interested in the birth of modern philosophy of language, interpretation theory ("hermeneutics"), translation theory, or anthropology, Kant, Fichte, and Hegel provide fairly slim pickings; but if one turns instead to Herder and his group one finds riches.

⁶ For some suggestive observations about the essay's resemblances and debts to the ideas of this group, see Barnard, 1965, pp. 77-78, 167-168.

⁷ Mill uses a passage from von Humboldt on this principle as his motto for *On Liberty*: "The grand, leading principle, towards which every argument unfolded in these pages directly converges, is the absolute and essential importance of human development in its richest diversity" (*Collected Works*, X, p. 215). He also explicitly credits von Humboldt for this principle in the main body of the work, quoting further passages from von Humboldt on it (ibid., pp. 261-262).

⁸ Since this article will largely be devoted to tracing Mill's ideas concerning liberty back

of Herder's leading influence. Herder had from an early period championed especially the individuality of *cultures* – for example, in his *This Too a Philosophy of History for the Formation of Humanity* (1774). But he had also championed the individuality of *persons within* a culture – for example, in his *On Thomas Abbt's Writings* (1768) and *On the Cognition and Sensation of the Human Soul* (1778).⁹ The combined impact of these two Herderian positions was mainly responsible for the deep commitment to individuality found in this whole group of thinkers.

to Herder, it is worth noting here at the outset that Mill's *general* philosophical profile is strikingly reminiscent of Herder's. In addition to the liberalism discussed in this article, some further areas of striking agreement between Mill and Herder are: empiricism; recognition of thought's intimate dependence on and boundedness by language; sentimentalism in ethics; recognition of the importance of poetry for cultivating the moral sentiments; commitment to republicanism and democracy; feminism; cosmopolitanism; and the ideal of progressing "humanity." How much of this agreement is merely accidental, how much merely the result of shared influences, and how much the result of Herder's (indirect) influence on Mill? The answer is not entirely clear. However, my suspicion is that the role of (indirect) influence is significant. Mill's works contain a number of explicit references to Herder (see the index to *Collected Works*); there are also a fair number of (arguable) allusions to Herder, including for example the reference quoted above to "a whole school of German authors"; and by Mill's day Herder's influence on European thought had become so widespread that indirect influences are often likely even where Mill was not conscious of them. One example of a case in which a conscious influence can be identified with some confidence: Mill's late ideal of a "religion of humanity," in the sense of a conviction in and commitment to the progressive improvement of humanity over history (*Collected Works*, X, p. 420 ff.). This ideal has usually been seen as an inheritance from Comte (see e.g. Ryan, 1974, chapter 8; Himmelfarb, 1990, pp. 88 ff.), and no doubt there is much truth in this. But Mill was quite critical of Comte's relevant views, and observe that by contrast already in his essay *Coleridge* from 1840 he praised "that series of great writers and thinkers, from Herder to Michelet, by whom history, which was till then 'a tale told by an idiot, full of sound and fury, signifying nothing,' has been made a science of causes and effects; who, by making the facts and events of the past have a meaning and an intelligible place in the gradual evolution of humanity ["Humanity" is a distinctive and central Herderian term, concept, and ideal.], have at once given history, even to the imagination, an interest like romance, and afforded the only means of predicting and guiding the future, by unfolding the agencies which have produced, and still maintain, the present" (Mill, 1965b, p. 316; Mill's approving remarks on Herder's philosophy of history continue over pp. 316-317). Indeed, Mill had already alluded approvingly to Herder and his school of historical writing in *The Spirit of the Age* from 1831 (see *ibid.*, p. 52; also, note that the very title of this essay was originally a Herderian coinage [*Zeitgeist*], and that the essay's relativistic defense of the Middle Ages and criticisms of hereditary monarchy are indebted to Herder's historical writings).

⁹ For instance, in *On Thomas Abbt's Writings* Herder states that "a human soul is an individual in the realm of minds: it senses in accordance with an individual formation, and thinks in accordance with the strength of its mental organs [...]. My long allegory has succeeded if it achieves the representation of the mind of a human being as an individual phenomenon, as a rarity which deserves to occupy our eyes" (Herder, 2002, p. 167).

However, Mill's debt to these German thinkers in *On Liberty* clearly also extends well beyond this principle of individuality which he explicitly credits to them.¹⁰ Here are two further examples, both, like the principle of individuality, fundamental to the work's general liberalism. First, Mill primarily applies this principle of individuality in order to justify maximal freedom of *action*. (*Collected Works*, XVIII, p. 260 ff.) But in doing so he is again following von Humboldt. For von Humboldt had written in his work that "that on which the whole greatness of a human being in the end rests, for which the individual human being must strive eternally, and which he who wants to affect human beings may never lose sight of, is individuality [*Eigentümlichkeit*] of force and culture," and that "this individuality is effected through freedom of action." (Humboldt, 1903, I, p. 107) (Mill quotes from the former part of this passage, but obscures the latter part, (*Collected Works*, XVIII, p. 261)¹¹ and thereby the identity of von Humboldt's argument with his own.)

Second, Mill famously in *On Liberty* articulates what he goes as far as to call the "one very simple principle" which it is "the object of this essay [...] to assert," namely "that the sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number, is self-protection. That the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant." (*Collected Works*, XVIII, p. 223)¹² Mill disallows treating mere annoyance to others (in contrast to harm) as a ground for interference: "There are many who consider as an injury to themselves any conduct which they have a distaste for, and resent it as an outrage to their feelings [...]. But there is no parity between the feeling of a person for his own opinion, and the feeling of another who is offended at his holding it [...]." (*Collected Works*, XVIII, p. 283) And he also includes consensual acts between more than one person in the protected sphere: this sphere is one "comprehending all that portion of a person's life and conduct which affects

¹⁰ It was not for nothing that Mill suggested in letters to Gomperz and Ruge that the essay was needed less in German "than here" (*Collected Works*, XIV, pp. 539, 598).

¹¹ Mill does, however, note that for von Humboldt individuality has "two requisites, 'freedom and variety of situations.'"

¹² It is by no means clear that this really is the "one very simple principle" of the essay. For example, what about the recently mentioned ideal of individuality? (In his *Autobiography* Mill indicates that *that* is the "single truth" of which *On Liberty* is "a kind of philosophical textbook" [Mill, 1969, p. 150].) And what about knowledge of truth (as we will see shortly, another central concern of the essay's)? And what about (moral) autonomy (as we will see later, yet another concern of the essay's)? And what about the essay's officially overarching principle of utility? Still, the principle in question is at least *an* important principle of the essay's.

only himself, or if it also affects others, only with their free, voluntary, and undeceived consent and participation.” (*Collected Works*, XVIII, p. 225) Now this principle again comes from von Humboldt’s work (with only slight modification).¹³ Thus von Humboldt writes that “every effort of the state is to be rejected to interfere in the private affairs of the citizens anywhere where they do not have immediate relation to the injury of the rights of the one person through the other,” (Humboldt, 1903, I, p. 111; cf. pp. 129, 134) and that “to punish actions which bear solely on the agent or happen with the consent of the person they affect is forbidden by just the same principles which do not even permit them to be limited; and therefore, not only may none of the so-called crimes of the flesh (except rape), whether they annoy or not, attempted suicide, etc. be punished, but even the murder of another person with his consent would have to remain unpunished were it not that in this last case the too easy possibility of a dangerous misuse made a punishing law necessary.” (Humboldt, 1903, I, p. 207; cf. pp. 182, 190)

In this case the ulterior debt via von Humboldt to Herder is weaker than in the case of individualism, but still significant. For, while one side of Herder is at odds with von Humboldt’s position here, namely a side which, insofar as it endorses the state, conceives the state in more paternalistic terms, for example as having some of the functions of a modern welfare state, another side of Herder very much anticipates von Humboldt’s position, and probably helped to inspire it, namely passages in which Herder looks forward to a sort of withering away of the state.¹⁴

This situation surely suggests the possibility that *On Liberty* may owe even *further* debts to the German thinkers in question which Mill fails to acknowledge explicitly. In this essay I want to argue that that is indeed the case, particularly in connection with the work’s arguments for *freedom of thought and expression*.

II.

As I read Mill’s *On Liberty*, the work gives four main arguments for freedom of thought and expression, which can be roughly summarized as follows: (1) The “one very simple principle” protects all thought, and thereby, due to an

¹³ The slight modification consists mainly in the fact that whereas von Humboldt is exclusively concerned with the *state’s* right to interfere, Mill is also concerned with the right of groups or individuals within a state to do so.

¹⁴ See for instance the following censored and unpublished passage from the *Ideas for the Philosophy of History of Humanity* (1784-91): “The people needs a lord as long as it has no reason of its own. The more it acquires this and knows how to govern itself, the more the government must soften or finally disappear. The noblest purpose of government is therefore that it become dispensable and that each person govern himself” (S, XIII, p. 456).

intimate connection between thought and expression, virtually all expression too. (2) Freedom of thought and expression is necessary in order to make possible progress in knowledge of truth and avoidance of error. (3) Freedom of thought and expression is necessary for individualism. (4) Freedom of thought and expression is necessary for autonomy and hence for (moral) excellence. (Officially, these arguments are all supposed to be subsumable under a higher utilitarian principle of maximizing happiness.) It seems to me that all four of these arguments are indebted to the Herderian tradition, which moreover in certain respects develops them in ways that are superior to Mill's. In order to show this, let me consider each of them in turn.

Mill's first argument goes like this: He argues that, since thought is purely inner, his "one very simple principle" that only harm to others can justify limiting a person's freedom guarantees complete freedom of thought. He then adds that this entails that freedom of expression is guaranteed as well because freedom of expression is "practically inseparable" from freedom of thought.¹⁵

We have already seen one important respect in which this argument is indebted to the Herderian tradition: namely, for the "one very simple principle," which Mill borrows from von Humboldt. But I would like now to focus on a further debt.

What is the basis of Mill's claim that freedom of expression is "practically inseparable" from freedom of thought? That they *are* practically inseparable is by no means obvious. Locke, for example, had argued that, at least on certain matters, freedom of thought ought to be allowed but freedom of public expression not. (Locke, 2000, pp. 141-142)

Part of Mill's implicit answer to this question seems to lie in a plausible thesis that agility in thought is causally dependent on practice in linguistic expression. For instance, he notes in this spirit in his *Autobiography* that "among the ordinary English [...] the habit of not speaking to others, nor much even to themselves, about the things in which they do feel interest, causes [...] their intellectual faculties to remain undeveloped."¹⁶

¹⁵ "[Liberty] comprises, first, the inward domain of consciousness; demanding liberty of conscience in the most comprehensive sense; liberty of thought and feeling; absolute freedom of opinion and sentiment on all subjects, practical or speculative, scientific, moral, or theological. The liberty of expressing and publishing opinions may seem to fall under a different principle, since it belongs to that part of the conduct of an individual which concerns other people; but, being almost of as much importance as the liberty of thought itself, and resting in great part on the same reasons, is practically inseparable from it [...]. From [the Liberty of Thought] it is impossible to separate the cognate liberty of speaking and of writing" (*Collected Works*, XVIII, pp. 225-227).

¹⁶ Mill, 1965a, p. 43. Similarly, in his *Grote's History of Greece [II]* (1853) Mill approvingly quotes Grote's opinion that the distinctive ancient Greek tradition of public speaking was an essential causal factor in the extraordinary development of ancient Greek thought (*Collected Works*, XI, pp. 297-298).

A further part of Mill's answer can be seen from his *System of Logic* (1843). On a standard Enlightenment model of the relation between thought and linguistic expression (assumed by Locke, for example), these had been conceived in sharply dualistic terms: thought was at least in principle capable of occurring in complete separation and autonomy from linguistic expression, the latter being merely a contingent means for its communication, and perhaps a radically inadequate one. On such a model, it would naturally seem that at least in principle thought might quite well go its own merry way whithersoever it liked without linguistic expression even needing to occur at all, let alone in similar ways. However, in his *System of Logic* Mill rejects that standard Enlightenment view, committing himself instead to a contrary principle that thought is deeply dependent on and bounded by linguistic expression.¹⁷

Now it seems to me that here again Mill's argument is deeply indebted to the Herderian tradition. Herder and his tradition had certainly already recognized the causal principle to which Mill appeals. For example, Herder's essay *On the Ability to Speak and to Hear* (1795) is full of this principle. But more strikingly, it was also Herder and his tradition that had introduced the revolutionary principle, sharply at odds with most of the Enlightenment, that thought is deeply dependent on and bounded by linguistic expression. To quote one of Herder's early statements on this subject, from his *Fragments on Recent German Literature* (1767-1768): language is "the form of cognition, not merely in which but also in accordance with which thoughts take shape, where in all parts of literature thought sticks to expression, and forms itself in accordance with this. [...] Language sets limits and contour for all human cognition."¹⁸

Moreover, Herder had himself already pointed out precisely the sort of consequence of these two principles for freedom of expression to which Mill implicitly appeals, namely that facility in thought requires facility in linguistic expression, so that in order for the former to be really free the latter must be so as well. For example, in *On the Ability to Speak and to Hear* Herder writes in this vein: "Hagedorn says: whoever may think freely, thinks well. Ought

¹⁷ Thus Mill begins the book with a chapter significantly titled "Of the necessity of Commencing with an Analysis of Language" in which he argues that so commencing is necessary because (1) "reasoning, or inference [...] is an operation which usually takes place by means of words, and in complicated cases can take place in no other way," and especially (2) "a proposition [...] is formed by putting together two names [...], is discourse, in which something is affirmed or denied of something" (*Collected Works*, VII, pp. 19-21).

¹⁸ G, I, pp. 556-557. Several other thinkers in the Herderian tradition embraced versions of this principle as well, including von Humboldt and Schleiermacher. For a discussion of the history of this principle, see Forster, 2002, Forster, 2003a, and Forster, 2003b.

one not to say with equal right: ‘Whoever *can* and *may* speak correctly, purely, appropriately, forcefully, concisely, cannot but think well’? If the language of a human being, of a human society, is sluggish, hard, confused, forceless, indeterminate, uncultured, then certainly the mind of these human beings is so too, for of course they think only in and with language.” (S, XVIII, pp. 384-385. Cf. pp. 386-387)

Nor did Herder and his tradition merely develop these considerations *first*; they also did so *more deeply* than Mill. Unlike Mill, Herder has sophisticated, compelling arguments for the principle of thought’s deep dependence on and boundedness by language. In particular, he grounds it on an equally important and revolutionary further principle which he introduces, namely that concepts or meanings are to be identified – not, as many previous philosophers had believed, with such items, independent of language, as the referents involved, Platonic forms, or mental “ideas” – but with *usages of words* (a further principle for which he in turn develops several subtle and plausible arguments).¹⁹

Besides thus providing deep arguments for this principle which are missing from Mill’s case, Herder also supplies something else that is missing in Mill. Mill’s insight into thought’s dependence on and boundedness by language might reasonably still leave one asking the following question: Granted that linguistic expression is required for thought in this way, why could it not take the form of merely *private* linguistic expression? Why is it not compatible with refraining from expressing oneself to *other people*? Unlike Mill, Herder has an answer to this question. Already in his *Treatise on the Origin of Language* (1772) he argues plausibly that linguistic expression has a social telos. And in later works such as *On the Cognition and Sensation of the Human Soul* (1778) he plausibly adds that linguistic expression’s very foundation is social as well.²⁰

One reason why this second debt in Mill’s argument deserves special emphasis is the following. As has sometimes been pointed out by critics,²¹ Mill’s argument is problematic: If thought seems to be protected by the “one very simple principle” because it is purely inner, but then on closer scrutiny turns out to be inseparable from expression, which is not purely inner and so may well harm others, is not the proper conclusion to draw that freedom of

¹⁹ For detailed discussion, see Forster, 2002, and Forster, 2003a.

²⁰ Herder does not advance this latter thesis in the very strong form which some subsequent thinkers have given it – e.g. Hegel, later Wittgenstein, Kripke, and Burge, all of whom have argued in one way or another that communal language-use is *essential* to linguistic meaning. Rather, he advances it as a simple claim of causal dependence. However, this may well put him on firmer philosophical ground than they are on. And even in this modest form, his thesis can serve to plug the gap in Mill’s case mentioned above.

²¹ See e.g. Watkins, 1966, pp. 159-160.

thought is after all *not* protected by the principle *either* (rather than that, because it is, and because expression is inseparable from thought, freedom of expression is so as well)?²² This problem even threatens to undermine the “one very simple principle” itself, namely by throwing into doubt whether there are any significant general categories of activity which it would protect after all.²³ However, even if Mill’s argument does succumb to this problem, and indeed even if this problem (or another) does damn the “one very simple principle” itself, he has still made one very important and plausible point, namely that because thought and expression are “practically inseparable,” the right to freedom of thought either stands or falls together with a right to freedom of expression, so that anything which really does establish the former thereby also establishes a version of the latter. For there may well be other considerations besides the “one very simple principle” which establish the right to freedom of thought, and whose extension in this manner to establish a right of freedom of expression does *not*, like the attempt so to extend the “one very simple principle,” prove self-defeating. Examples might be the arguments for freedom of thought from *individuality* and *autonomy* to be discussed below, or the simpler consideration (also discussed below) that freedom of thought is just *intrinsically valuable*.

Mill’s second, and perhaps central, argument for freedom of thought and expression in *On Liberty* is a quite different one. Famously, it is that freedom of thought and expression are vital because they make possible *progress in knowledge of truth and avoidance of error*.

Mill assumes that human cognition is of its nature profoundly fallible. Given this fallibilist assumption, he identifies several main ways in which freedom of thought and expression are vital for advancing knowledge of truth and avoidance of error: (1) Both the genesis and the communication of new truths require that inquirers be and feel free to think and express them. Thus Mill writes that “genius can only breathe freely in an *atmosphere* of freedom,”²⁴ and that denying people freedom is robbing mankind of the opportunity to exchange error for truth. (*Collected Works*, XVIII, p. 229) (2) Free criticism and controversy are required in order to expose and correct old errors. (*Collected Works*, XVIII, pp. 231-233) (3) Free testing of the truth by criticisms and even errors is necessary in order for people’s grasp of it to

²² It is indeed tempting to suggest that Mill is guilty of an outright inconsistency in the argument: in order to justify freedom of thought, he starts out assuming a conventional Enlightenment picture of thought as radically inner, but then, in order to extend his argument to justify freedom of expression as well, he assumes a quite contrary picture of thought as deeply dependent on outer expression.

²³ The principle may well prove problematic for other reasons too – for example, the notorious difficulty of defining its notion of “harm” satisfactorily.

²⁴ *Collected Works*, XVIII, p. 267. Mill had already developed this point much more fully in *Grote’s History of Greece [II]* (1853) (*Collected Works*, XI, pp. 320-321).

achieve clear understanding, sureness, and vitality. (*Collected Works*, XVIII, pp. 229, 243-252, 258)

Now it is a striking fact that Herder had already argued for freedom of thought and expression in almost exactly the same terms. Thus, Mill's assumption of the deep fallibility of human cognition was also Herder's.²⁵ And like Mill, Herder on the basis of this assumption gave the above three arguments for the vital importance of freedom of thought and expression for advancing knowledge of truth and avoidance of error: (1) Like Mill, he stressed its importance for the genesis and communication of new truths.²⁶ (2) Like Mill, he stressed its importance for eliminating errors through criticism.²⁷ (3) Finally, like Mill, he stressed the importance of free testing of the truth through criticisms and errors for any clear understanding and sure grasp of it.²⁸ A more compressed form of this Herderian case for freedom of thought and expression can also be found in Forster and von Humboldt.²⁹

²⁵ For example, in the *Ideas for the Philosophy of History of Humanity* Herder argues that just as we only learn to walk by falling so we only progress toward the truth through error (G, VI, p. 145).

²⁶ For example, in the *Letters for the Advancement of Humanity* (1793-7) Herder writes: "Should not [...] the voice of each citizen, even assuming that it appeared in print, be considered a freedom of the fatherland [...] ? [...] [Especially] valuable for the man of understanding are the hints and looks of those who see further. They inspire to activity when everyone is asleep; they sigh perhaps when everyone is dancing. But they do not only sigh; they show higher results in simpler equations by means of a certain art. Do you want to make them be silent because you calculate merely according to the common arithmetic? They go silent easily and continue to calculate; but the fatherland counted on these quiet calculators. A single step of progress that they successfully indicated is worth more than ten thousand ceremonies and eulogies" (Herder, 2002).

²⁷ For example, in the *Letters for the Advancement of Humanity* Herder writes: "Free investigation of the truth from all sides is the sole antidote against delusion and error of whatever sort they may be [...]. The river current of human cognition always purifies itself through oppositions, through strong contrasts. Here it breaks off, there it starts; and in the end a long- and much-purified delusion is regarded by human beings as truth" (Herder, 2002, pp. 370-371). Cf. Herder's point there in support of "the communication of thoughts" that "the mistake gets discovered, the error gets corrected" (ibid.). Cf. also S, XVIII, p. 385 and S, XXIV, pp. 92-93.

²⁸ For example, in the *Letters for the Advancement of Humanity* Herder writes: "Let the deluded person defend his delusion, the person who thinks differently his thought; that is *their* business. Even if both of them fail to be corrected, for the unbiased person there certainly arises out of every criticized error a new reason, a new view of the truth" (Herder, 2002, p. 370). Cf. *On the Ability to Speak and to Hear*, where he notes in support of freedom of expression: "we see everywhere that men in whom there was a great drive to become acquainted with the truth from *all* sides sought even on remote sides intercourse with people *who dared to speak freely*" (S, XVIII, p. 386). Cf. also S, XXIV, p. 92.

²⁹ Thus Forster writes in his *Fragment of a Letter to a German Author on Schiller's "Gods of Greece"* (1789): "If there is a universal truth which is to be acknowledged by all then no other path leads to it but this: that each person says and defends what *seems* to him to be the truth. From the free expression of all diverse opinions, and their equally free

One cannot be certain of an influence here. It is possible that Mill simply came up with the same line of argument independently of Herder and his tradition. Also, there are earlier sources of such a line of argument which might have influenced Mill (and Herder too). One is Milton's *Areopagitica* (1644).³⁰ Another is Helvétius.³¹ Nonetheless, I strongly suspect that Herder and his tradition *did* influence Mill here.³²

However, Herder's case is again not only prior but also arguably superior to Mill's in certain ways. Mill does not offer the above considerations in an a priori spirit. Rather, that freedom of thought and expression is important for advancing knowledge and avoiding error is for him basically an empirical claim made in the light of historical evidence, the above considerations constituting his explanation of why the empirically observable connection has obtained and can be expected to obtain in the future.³³ Accordingly, in *On Liberty* he adduces three historical examples of periods in which he alleges that freedom of thought and expression proved fecund for new ideas: the

testing, it is inevitable that in the end – to the extent that this limited, shortsighted species is capable of such a cognition at all – the pure truth will emerge as a result intelligible and welcome to each sense, filling each sense, will be *voluntarily* accepted by all, and will then govern us in peace alone" (Forster, G., 1967, III, p. 33). Similarly, von Humboldt in the work already cited at least notes that part of the "harm of limiting freedom of thought" concerns "the results of inquiry," "incompleteness or incorrectness in our scientific cognition" (Humboldt, 1903, I, p. 160).

³⁰ Milton's *Areopagitica* had already made the cause of knowing truth and avoiding error the core of its case for freedom of thought and expression, and had indeed already developed versions of points (1)-(3). See Milton, 1973, esp. pp. 5, 23, 32-33, 40 for (1); pp. 14, 35-36, 41 for (2); and pp. 29-30, 41 for (3).

³¹ Helvétius had already argued for freedom of thought and discussion in terms of its necessity for discovery of the truth, and had (in still closer anticipation of Mill) added that discovery of the truth was important because it promoted human happiness. See Martin, 1929, pp. 184-185.

³² The closest thing to direct evidence of this that I have found occurs in Mill's essay *Coleridge* (1840), where he explicitly discusses Herder and his tradition, and where he writes: "Among the truths long recognized by Continental philosophers, but which very few Englishmen have yet arrived at, one is, the importance, in the present imperfect state of mental and social science, of antagonistic modes of thought; which, it will one day be felt, are as necessary to one another in speculation, as mutually checking powers are in a political constitution. A clear insight, indeed, into this necessity, is the only rational or enduring basis of philosophical tolerance; the only condition under which liberality in matters of opinion can be anything better than a polite synonym for indifference between one opinion and another" (Mill, 1965b, p. 295).

³³ This is an example of the "inverse deductive method" which Mill advocates for the social sciences – that is, a method in which a law is first suggested by some factual evidence which it is adduced to explain but then verified by reference to higher-level law(s) (see Mill, *System of Logic*, in *Collected Works* VIII, p. 911 ff.). In the spirit of this method, Mill for example praises de Tocqueville for combining, on the one hand, a reliance on empirical evidence with, on the other hand, an "a priori" explanation of the phenomena thus empirically discovered (meaning by this, roughly, an explanation in terms of general psychological laws) (Mill, 1965c, p. 108).

post-Reformation period, the second half of the eighteenth century on the Continent, and the Goethe-Fichte period in Germany. (*Collected Works*, XVIII, p. 243)

By contrast, he implies there that the ancient republics did not respect freedom generally, or the freedom of thought and expression in particular, that they instead required individuals to conform to their notion of social excellence. (*Collected Works*, XVIII, p. 226) And in this spirit he cites the case of Socrates, whose death sentence illustrates that “we do not now inflict so much evil on those who think differently from us, as it was formerly our custom to do.” (*Collected Works*, XVIII, p. 241; cf. p. 235)

This part of Mill’s case is problematic. There are four main problems with it. The first two concern the modern periods mentioned by Mill. For it is by no means clear that these support his claim of a correlation between freedom of thought and expression, on the one hand, and advances in knowledge of truth and avoidance of error, on the other. First, concerning the post-Reformation period (and especially the scientific revolution), while there are some cases which favor Mill’s claim, such as Boyle and Newton, what about such cases as Copernicus, Galileo, and Descartes, all of whom accomplished what they accomplished rather in the face of persecution for their thought and expression?

Second, the Goethe-Fichte period in Germany is a strangely equivocal example for Mill to appeal to. For, on the one hand, it is not clear that major advances in knowledge of truth were achieved then. And on the other hand, this was anyway by no means a period of unbridled freedom of thought and expression.³⁴

Third, *On Liberty*’s assessment of the ancient republics seems both factually false and a huge missed opportunity for its empirical case: Athens in its heyday was in fact strongly and self-consciously committed to the ideal of individual freedom, including freedom of thought and expression (as can be seen from Pericles’ Funeral Speech, for example). Nor does Socrates’ trial constitute convincing evidence of the contrary: Socrates was a principled enemy of democracy,³⁵ and of freedom, including freedom of expression.³⁶

³⁴ Think, for example, of Fichte’s *Atheismusstreit*, Herder’s struggles with the censors when writing his *Ideas for the Philosophy of History of Humanity* and *Letters for the Advancement of Humanity*, and Kant’s problems with censorship in connection with his *Religion within the Bounds of Reason Alone*.

³⁵ For example, in Plato’s *Apology* and *Crito* Socrates argues that in matters of virtue it is the advice of the one or few experts, not that of the many, which should be followed; and in the latter work he holds up Sparta and Crete as his models of good government.

³⁶ For example, in Plato’s *Apology* he champions a principle of obedience to betters; Xenophon reports on his special liking for the Thersites episode in the *Iliad*; and Plato’s *Republic* depicts him discussing freedom, including freedom of speech, in the most disparaging terms (557b-c).

Also, he had mentored two of the leaders of the recent anti-democratic, anti-liberal putsch by the Thirty Tyrants (Critias and Charmides). And it seems pretty clear that his trial was basically punishment for these political positions and activities (conducted under the cover of specious charges trumped up due to an amnesty which prevented prosecution for aiding the Thirty Tyrants).³⁷ Moreover, the fact that classical Athens was normally a committed champion of freedom of thought and expression opens up a vital opportunity for someone like Mill who is seeking an empirical correlation between freedom of thought and expression, on the one hand, and advances in knowledge of truth and avoidance of error, on the other. For what richer source of such advances (in science, philosophy, history, politics, art, etc.) could one think of than Athens in the classical period?³⁸

Fourth, in order to make a convincing empirical case, Mill would have had to show, not only that freedom of thought and expression was historically correlated with advances in knowledge of truth and avoidance of error, but also that its *absence* was historically correlated with the *absence* of such advances. But he fails to do this.

Now Herder's position in this area had been significantly different from, and much more plausible than, Mill's. In his *Dissertation on the Reciprocal Influence of Government and the Sciences* (1788) Herder too had sought to develop an empirical case for a connection between freedom (of thought and expression) and advances in knowledge of truth and avoidance of error. But his case has marked advantages over Mill's:

³⁷ For a plausible argument along these general lines, see Stone, 1988. (Stone is not a professional classicist, but his book is much more illuminating than most of the more professional literature on this topic.)

³⁸ It is indeed one of the mysteries about *On Liberty* that just a few years earlier, in the review essay *Grote's History of Greece [II]* (1853), Mill had followed Grote in taking an almost diametrically opposite position on classical Athens – agreeing with Grote, on the basis of such evidence as Pericles' Funeral Speech, that classical Athens had been emphatically committed to freedom, including freedom of thought and expression, and that it had therefore richly illustrated the value of such freedom for progress in knowledge (*Collected Works*, XI, pp. 318-321, 324-325). Why did Mill abandon this early, correct position for his incorrect one in *On Liberty*? A likely factor is an intervening misinterpretation of the historical Socrates and his trial. Mill seems to have come, on the basis of evidence in such dialogues as the *Phaedo*, to a picture of Socrates as a champion of free thought and expression (see e.g. *Grote's Plato* [1866], in *Collected Works*, XI, pp. 424-425). Such a picture is a mistake. However, given that Mill came to see Socrates in such a light, he would then have been tempted to see the Athenians' trial of Socrates as an attempt to suppress freedom of thought and speech (as he does in *On Liberty*), rather than as the (perhaps misguided) attempt to defend such freedom that it really was. And he would then, by a further (shaky) step of inference, have been tempted to see the trial (so interpreted) as reflecting a more general anti-liberal streak in Athenian democracy (as he again does in *On Liberty*).

First, Herder is well aware of the sort of *prima facie* counterevidence from the post-Reformation period that I recently mentioned as posing a problem for Mill.³⁹

Second, nor is Herder tempted to misrepresent the Goethe-Fichte period as evidence for the connection. For one thing, he has a much humbler assessment of the advances in knowledge achieved in this period than Mill does.⁴⁰ For another, he is innocent of Mill's delusion that this is a period of great freedom of thought and expression.⁴¹

Third (and most importantly), Herder recognizes that classical Athens was committed to freedom, including freedom of thought and expression, and he uses the correlation between this freedom and the great Athenian advances in knowledge as his central empirical evidence. For example, he writes in his essay: "It is evident that the specifically Greek sciences and arts, unsurpassed by those of any other age or peoples after more than two thousand years, have been daughters of Greek legislation, Greek political institutions, and especially of Greek freedom." (Herder, 1969, p. 239)⁴²

Fourth (and connectedly), Herder complements his more plausible case for a correlation between freedom of thought and expression and advances in knowledge of truth and avoidance of error with a plausible case for a correlation between its *absence* and the *absence* of such advances. For in his essay, he argues plausibly that with the curtailing of such freedom in Athens toward the end of the fourth century, the sciences (and arts) lost their vitality, and that this sorry combination continued in the Roman period.⁴³

The jury should perhaps still be out on the question of a significant empirical correlation between freedom of thought and expression, on the one hand, and advances in knowledge of truth and avoidance of error, on the other. But Herder at least provides a much more compelling case for such a correlation than Mill does.

³⁹ For example, Herder writes in his essay: "The first inventions and experiments were the undertakings of private persons, for genius is fated to make its own way [...]. Descartes was banished from his fatherland; Copernicus revealed his system of the heavens only on the day of his death, and Galileo had to bear chains because of his discoveries in the heavens" (S, IX, p. 351).

⁴⁰ For example, Herder is critical of Goethe's ethical views, has no sympathy with Fichte's theories, and is highly skeptical of Kant's critical philosophy.

⁴¹ Herder was himself a victim of censorship, and was acutely aware of its burdens on his fellow Germans. If he was not entirely gloomy about it, this was because he believed that the political fragmentation of Germany made it relatively ineffective except in a local way (see S, XXIV, p. 108).

⁴² Cf. S, IX, p. 330. Von Humboldt too interprets the historical nature of ancient Athens correctly: the ancients enjoyed "unlimited freedom of thought, boundless tolerance" (*On Religion* [1789], in Humboldt, 1903, I, p. 51).

⁴³ Herder, 1969, pp. 239-240. Herder also argues (perhaps more questionably) that in the modern period lands in which the Inquisition has been active have seen less scientific advances than lands in which it has not (S, IX, p. 358).

An additional arguable superiority of Herder's case over Mill's can be seen from the Herderian passages recently cited as well: Unlike Mill, Herder embeds his argument for the importance of freedom of thought and expression for advancing knowledge of truth and avoidance of error within a broader argument for its importance for mental progress more generally ("sciences *and arts*"). Progress in the arts is not (primarily) a matter of progress in knowing truths and avoiding errors, but is it not (virtually) as valuable, and is it not just as dependent on freedom of thought and expression (as the case of classical Athens again illustrates)?

A third argument for freedom of thought and expression which Mill gives draws on the principle of *individuality* discussed earlier. Mill primarily bases his case for freedom of thought and expression on the arguments considered above, and then invokes the ideal of individuality as a reason for protecting freedom of *action* as well. However, it is probable that he really here means freedom of "action" in a broad sense which *includes* freedom of thought and expression, so that he is (among other things) implying a self-standing argument for freedom of thought and expression based on the ideal of individuality. (Thus it is in this context that he writes that "genius can only breathe freely in an *atmosphere* of freedom." (*Collected Works*, XVIII, p. 229) And it at least seems clear that this *should* be his position.

Now not only had von Humboldt, inspired by Herder, already developed the ideal of individuality to which Mill is appealing here, and Mill's primary application of it to argue for freedom of action (as we have seen), but he had also already developed this Millian application of it to argue for freedom of thought and expression. Thus he argues in his essay that free inquiry is vital for producing "self-activity," "autonomy" in thought and action,⁴⁴ and that individualities require a free reciprocal self-revelation to and influencing of one another for their development.⁴⁵ Such an argument can already be found in Herder as well. For example, in *On the Ability to Speak and to Hear* he writes that people who are not permitted to speak and hear about subjects inevitably have souls which remain "unpolished and clumsy in these areas," whereas by contrast "every lover of the *individuality* [*Eigentümlichkeit*] of human thoughts proceeded on this path; indeed every human being who wants to become truly and many-sidedly cultured [*gebildet*] knows no other." (S, XVIII, pp. 386-387)

Finally, Mill in *On Liberty* has a fourth argument for freedom of thought and expression, closely connected with, but distinguishable from, his argument from individuality: such freedom is required for *autonomy*,⁴⁶ which is

⁴⁴ Humboldt, 1903, I, p. 160.

⁴⁵ Humboldt, 1903, I, pp. 122-123, 128. An argument of this sort is also central to an essay of Schleiermacher's from 1799, *Toward a Theory of Sociable Conduct*.

⁴⁶ Concerning Mill's commitment to an ideal of autonomy, cf. Gray, 1996, pp. 55, 74 ff. In order to see that the two ideals of individuality and autonomy are distinct, note that

in turn required for (moral) excellence. Mill articulates this argument in the course of paying tribute to von Humboldt.⁴⁷

Mill is here once again drawing on an argument from the Herderian tradition, namely an argument that freedom of thought (and expression) is a precondition of the sort of autonomy in decision-making that is required for genuine moral virtue (or vice), so that, since genuine moral virtue is of immense positive value, freedom of thought (and expression) is so as well. This argument is salient in Forster and von Humboldt. For example, Forster writes in support of freedom of thought and expression that “*self-determination*, or in other words moral freedom, is the sole possible source of human virtue, and all the functions of the laws [...] must limit themselves exclusively to its protection.”⁴⁸ Similarly, as we saw, von Humboldt argues in his work that free inquiry is essential for producing “self-activity” and “autonomy” in thought and action, and in an essay *On Religion* (1789) he argues more elaborately that freedom of thought (and expression) is vital for generating reflection, self-consistency, and deep grounding in the principles which guide our actions, and for self-activity as opposed to reliance on foreign authority, that in these ways it is essential for moral character, (Humboldt, 1903, I, pp. 73-74) and that, since man’s very *raison d’être* lies in his development of moral character, freedom of thought (and expression) is therefore of vital importance too. (Ibid., p. 76) Here again, though, it is arguably Herder who is the ultimate source of the argument. For already in his *Letters concerning the Study of Theology* from 1780-1781 Herder had written in support of freedom of thought and expression: “Freedom is the foundation stone [...] of all voluntary virtue in the human heart [...]. ‘But surely a freedom with laws?’ Certainly with laws, but ones which the sound understanding recognizes as such, which freedom *elects* for itself.” (S, XI, p. 202)

the latter could in principle be achieved even if everyone in fact thought and acted in the same way, whereas the former, individuality, could not.

⁴⁷ “The human faculties [...] and [...] moral preference, are exercised only in making a choice. He who does anything because it is the custom, makes no choice. He gains no practice either in discerning or in desiring what is best. The mental and moral, like the muscular powers, are improved only by being used. The faculties are called into no exercise by doing a thing merely because others do it, no more than by believing a thing only because others believe it [...]. It really is of importance, not only what men do, but also what manner of men they are that do it. Among the works of man, which human life is rightly employed in perfecting and beautifying, the first in importance surely is man himself. Supposing it were possible to get houses built, corn grown, battles fought, causes tried, and even churches erected and prayers said, by machinery – by automatons in human form – it would be a considerable loss to exchange for these automatons even the men and women who at present inhabit the more civilized parts of the world, and who assuredly are but starved specimens of what nature can and will produce” (*Collected Works*, XVIII, pp. 262-263).

⁴⁸ *Fragment of a Letter to a German Author on Schiller’s “Gods of Greece,”* in Forster, G., 1967, III, p. 34.

III.

Having seen the great extent to which Mill's arguments for freedom of thought and expression resemble and probably derive from the Herderian tradition's, note also that there are several further compelling arguments for freedom of thought and expression which play no significant role in Mill's work but which the Herderian tradition had rightly stressed.

A first such argument is the extremely simple, but also extremely important, one that freedom of thought and expression should be protected because they are *intrinsically* valuable. I suspect that if one had asked the average ancient Athenian why he valued freedom in general, or freedom of thought and expression in particular, he would have given an answer of just this sort: they are valuable in themselves.⁴⁹

Philosophers often tend to neglect such simple but vitally important possibilities, and Mill in *On Liberty* does so in a rather extreme way, arguing in effect that respect for freedom of thought and expression is required in order to abide by the "one very simple principle," advance knowledge of truth and avoidance of error, promote individuality, establish the autonomy required for (moral) excellence, and via these things maximize human happiness, but *not* that it is valuable in its own right.

By contrast, Herder and his tradition show much greater sensitivity to this simple but important argument. For example, in this vein, Herder writes: "Should not ... precisely in the spirit of the ancients, the voice of each citizen, even assuming that it appeared in print, be considered a freedom of the fatherland, a holy court of ostracism? The poor man was perhaps able to do nothing else than write [...] – do you want to rob the sighing man of his breath that goes forth into desolate emptiness?" (Herder, 2002, p. 376)

A further argument neglected by Mill in *On Liberty* but properly emphasized by the Herderian tradition is that freedom of thought and expression is valuable because it helps to curb tyranny. Predecessors such as Hume had long given an argument of this sort. (Hume, 1985, p. 12)⁵⁰ In *On Liberty* Mill *in a way* accepts it, but he claims that it has become less relevant due to the securely democratic environment of his own day. (*Collected Works*, XVIII, p. 228) However, this claim is surely dubious even by his own lights, given his recognition of the importance of *sustaining* democracy, and also his deep concern about democracy's *own* tyrannical potentials.

⁴⁹ Cf. R. Rhees, who writes (somewhat overstating the point): "For the man devoted to liberty, there is nothing which *makes* liberty important. And he has no reasons for his devotion" (Rhees, 1969, p. 84).

⁵⁰ As Himmelfarb notes, Bentham, James Mill, and even the young J.S. Mill himself had all used this argument too (Himmelfarb, 1990, pp. 33-34).

Herder, by contrast, keeps faith with this important traditional argument. His *Dissertation on the Reciprocal Influence of Government and the Sciences* is especially significant in this connection, for (as the “Reciprocal” hints) he argues there, not only that liberal republicanism benefits freedom of thought and expression and hence the sciences and arts, whereas despotism undermines them, but also that freedom of thought and expression and the consequent health of the sciences and arts benefit liberal republicanism, whereas their absence facilitates despotism: “Free states owe themselves to enlightenment, to science.” (S, IX, p. 383)

A final important line of argument which Mill lacks but which is rightly stressed by the Herderian tradition concerns, not so much the principle of respecting freedom of thought and expression per se, but rather its extension on an international plane.

Mill’s case for respecting freedom, including freedom of thought and expression, does extend beyond national boundaries, but only to a severely limited degree. According to *On Liberty* and *A Few Words on Non-Intervention* (both 1859), a nation must respect the freedom (of thought and expression) of other “civilized” nations, but, in sharp contrast, this does not apply to “barbarians,” who should instead be treated with benevolent despotism, or even benevolent aggression. Thus in *On Liberty* Mill writes that his ‘one very simple principle’ “is meant to apply only to human beings in the maturity of their faculties. We are not speaking of children. [...] For the same reason, we may leave out of consideration those backward states of society in which the race itself may be considered as in its nonage [...]. Despotism is a legitimate mode of government in dealing with barbarians, provided the end be their improvement, and the means justified by actually effecting that end. Liberty, as a principle, has no application to any state of things anterior to the time when mankind have become capable of being improved by free and equal discussion. Until then, there is nothing for them but implicit obedience to an Akbar or a Charlemagne, if they are so fortunate as to find one.” (*Collected Works*, XVIII, p. 224)⁵¹

One problem with this position lies in its naive faith in the noble motives and the beneficial effects of (a significant number of) colonialists and imperialists. (*A Few Words on Non-Intervention* is a paean to the motives and

⁵¹ Cf. *A Few Words on Non-Intervention*: “To go to war for an idea, if the war is aggressive, not defensive, is as criminal as to go to war for territory or revenue; for it is as little justifiable to force our ideas on other people, as to compel them to submit to our will in any other respect. But there assuredly are cases in which it is allowable to go to war, without having been ourselves attacked, or threatened with attack [...]. There is a great difference (for example) between the case in which the nations concerned are of the same, or something like the same, degree of civilization, and that in which one of the parties to the situation is of a high, and the other of a very low, grade of social improvement” (*Collected Works*, XXI, p. 118).