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To cite this article: Mike Gregory (2022): Kant and Rehberg on political theory and practice, British Journal for the History of Philosophy, DOI: [10.1080/09608788.2022.2067833](https://doi.org/10.1080/09608788.2022.2067833)

To link to this article: <https://doi.org/10.1080/09608788.2022.2067833>



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Published online: 19 May 2022.



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Kant and Rehberg on political theory and practice

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ABSTRACT

This article examines the under-researched figure A.W. Rehberg in his exchange with Kant over the relationship between theory and practice in the philosophy of right. I argue that Rehberg raises, what I call, two problems of political matter which attempt to show that Kant's overly formal approach to political theory cannot justifiably determine political practice. The first problem is the problem of positive determinations of right, rather than merely negative prohibitions. Rehberg takes this to mean that Kant cannot determine us to a specific form of constitution (the republican constitution). I argue that Kant's innovation of intelligible property functions as a response to this critique in that it provides the possibility of synthetic propositions of right a priori. Second, Rehberg insists that an a priori system of right cannot relate to already formed historical communities. Here Kant's response comes close to agreeing with Rehberg as Kant takes prudential or historical reasoning to harmonize with the demands of a priori right in order to applied to the sensible world. Kant, in this instance, comes closer to Rehberg by denying centralized enlightened monarchy and the reliance on natural and historical development for the application of right.

ARTICLE HISTORY Received 14 June 2021; Revised 25 October, 7 December 2021 and 12 April 2022; Accepted 14 April 2022

KEYWORDS Kant; Rehberg; theory and practice; formalism; political theory

A.W. Rehberg (1757–1836) is normally recognized as the foremost conservative critic of the French Revolution in Prussia. Against the revolutionary trends making their way into Germany, Rehberg became the ideological front-man of the 'Hanoverian Whigs' in Göttingen.¹ Rehberg published scattered critiques of the revolution from 1789 to 1792 in the *Allgemeine Literatur Zeitung* [General Literature Journal], later revising and publishing the essays in *Untersuchungen über die Französische Revolution* [Investigations on the

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¹See Beiser, *Enlightenment*, 302–5 for more on other members of the Hanoverian Whigs.

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French Revolution], which was widely read at the time. In this regard, he is often seen as the Germanic Edmund Burke.

However, Rehberg should not be reduced to his similarities with Burke. Rehberg's position is interestingly distinct from Burke and merits independent philosophical consideration for at least two reasons.

First, Rehberg represents a conservative tradition in Germany that was well-established before Burke's influence.² The influence of historicism in German universities and the particularities of the Prussian political system created a unique context in which Rehberg's conservatism should be understood. Rehberg's philosophy, before its amplification in the 1790s, and before Burke's intervention, already represented a unique approach to the most fundamental philosophical and political questions of his time.

Second, Rehberg's conservatism was developed through his critical engagement with Kant's critical philosophy, which goes well beyond political issues. As a contemporary of Kant, Rehberg penned a widely read review of the second Critique³ and wrote highly regarded critiques of Kant's philosophy of mathematics, which resulted in important correspondence with Kant on the subject (Br, AA 11:195–9).⁴ J.B. Jachmann, Kant's close friend and biographer, in a letter to Kant in 1790, went so far as to call Rehberg "the finest mind among all your students" (Br, AA 11:95).⁵ Beyond his critical engagement with Kant, Rehberg contributed an original perspective to the pantheism controversy and wrote an influential critique of Reinhold's *Elementarphilosophie* [*Elementary Philosophy*], which solidified a trend of skepticism toward Kantian philosophy in the 1790s.⁶ Understanding Rehberg's critical engagement with Kant's philosophy helps to illuminate the distinctive nature of Rehberg's conservatism.

This paper examines the important exchange between Rehberg and Kant in the 'Theory and Practice' debate of the 1790s, which began with Kant's 1793 essay "Theory and Practice", to which Rehberg directly responded. Examining this exchange will reveal Rehberg's significance as an independent thinker, but it will also help us to understand how Kant's own positions can function as responses to Rehberg's critiques. I will focus on Rehberg's main

²See, Epstein, *Conservatism*, 297 and Reill, *Historicism*, 73–4. I consider it inaccurate to call Rehberg, or other conservatives, 'Burkeans' (as in Malik's *Echoes of Revolution* and Hernández Marcos *Rights-Perfectionism*) given that their brand of skeptical conservatism had its roots in Germany and not primarily in Burke's anti-revolutionary writings.

³The review was published in the *Allgemeine Literatur-Zeitung* (ALZ), (1788) No. 188, 345–60.

⁴See also Rehberg's account of the correspondence in the introduction to his *Sämtliche Schriften* (Rehberg, *Schriften* I, 52–60).

⁵Here and throughout I cite Kant's *Akademie Ausgabe*. I use an abbreviated form of the work, followed by the AA volume and page number. The abbreviations are as follows: Br = Correspondence; MS = Metaphysics of Morals; TP = On the common saying: That may be correct in theory, but is of no use in practice; ZeF = Toward Perpetual Peace. All translations are my own, though I follow the Cambridge editions when possible.

⁶See ALZ I (1791) No. 26, 201–8 and No. 27, 209–14.

critique of Kant's political theory, which I call 'the problem of political matter'. Rehberg's skepticism towards Kant's position is grounded in the idea that we need to add a *material* component to a priori principles in order to make them relevant and obligatory for sensible beings. This general skepticism can be divided into two worries: (1) that Kant's a priori principles give only *negative* and no *positive* determinations of right; (2) that a priori rational ideas of right need to, but cannot, apply to already formed historical states. I will argue that Kant answers both of these worries. The first answer, as I will briefly show, lies in his innovation of 'intellectual possession' in the *Rechtslehre*. However, the second problem, which will be my focus, persists. Kant addressed this problem in *Perpetual Peace* by making the consent of the people a necessary condition of just *application* of principles of right. In this case, Kant seems to agree with Rehberg's point that the application of the rule of right must take into account the natural and cultural development of a historical state. However, Kant argues, contra Rehberg, that this does not mean that rationality and nature need be necessarily *opposed* to one another, but that rational principles of right and historically developed societies can, and will, come into an *association* with one another.

In part 1, I provide some context to Rehberg's skeptical approach and outline the two problems of political matter, while also explaining Rehberg's own approach. In part 2, I address how Kant responds to two aspects of the problem of political matter in the *Rechtslehre* and *Perpetual Peace* respectively. I conclude, in part 3, with some observations on how Kant's picture of the moral politician, and political wisdom, bring together both solutions to political matter.

1. Rehberg and the problem of political matter

Four years after the storming of the Bastille in 1789, the question of the relation of theory to practice had become a burning question for those who feared or welcomed the influence of the French Revolution. The discussion among public intellectuals in Germany concerned the implications of Kant's critical morality for real-world politics. Rehberg had already, in his *Untersuchungen*, launched an attack on "speculative politics", which attempts to build a constitution derived from rational principles "hovering in the air" (Rehberg, *Untersuchungen*, 19, 55). Rehberg condemned armchair politicians who had none of the essential historical and empirical knowledge necessary for statecraft (Rehberg, *Untersuchungen*, 12–7, 53–4). This led Rehberg to his infamous claim that an unhealthy obsession with "metaphysics" had caused the French Revolution (Rehberg, *Untersuchungen*, 19).⁷ Johann Gottlieb

⁷See also Frederick Rauscher's comments in the introduction to "Drafts for *Theory and Practice*" in the Cambridge volume *Lectures and Drafts in Political Philosophy* (2014).

Fichte attempted to defend what he took to be Kant's rational approach to politics in the pamphlet "Reclamation of the Freedom of Thought" (Spring 1793) and the first instalment of the "Contribution to the Correction of the Public's Judgement on the French Revolution" (May 1793).⁸ Fichte's writings were a sustained attack on Rehberg. In contrast to Rehberg, Fichte developed Kant's early arguments in "What is Enlightenment?" by making the state instrumental for preserving and promoting moral autonomy (Fichte, *Contribution*, 5ff).

In September of 1793, within the context of this conversation, Kant publishes his first treatment of a theory of right in "Theory and Practice". Despite its pregnant moment of publication, the essay does not directly confront the contemporary conversation. Instead, Kant indirectly forges a middle ground between Rehberg and Fichte. On the one hand, he sides with Fichte against Rehberg in holding that there is in fact no gap between theory and practice, and that the a priori constraints – freedom, equality, and independence – really do and should shape political practice. The idea of an ideal constitution, derived from concepts, really does rule out certain forms of political authority (despotism) and distribution of rights (hereditary privilege) (TP, AA 8:290–3).⁹ On the other hand, against Fichte, Kant denies that the state is instrumentally justified in relation to moral autonomy (TP, AA 8:289–90), being founded on personal consent in historical contracts (TP, AA 8:297), and, in a blow to pro-Revolution Kantians, he claims that revolution is never justified and that we have an obligation to obey even unjust rulers (TP, AA 8:299–300). Therefore, Kant's essay, far from determining the place of his political legacy in the conversation surrounding the French Revolution, raised even more questions. Yet, Rehberg, in seeing Kant's essay, interpreted it as a full-fledged endorsement of revolutionary ideology. Rehberg quickly published a response to Kant's essay in the *Berlinische Monatsschrift* in February 1794. Rehberg's response largely repeats the arguments of the *Untersuchungen*, but applies them directly to Kant's system. The main complaint I will focus on here is what I call the problem of political matter, which Rehberg thinks follows from Kant's formalistic approach.

1.1. Rehberg's skeptical dualism

Although Rehberg's main criticism of Kant's position concerns the second part of *Theory and Practice*, which deals directly with civic rights, the charge of formalism relies on Rehberg's skepticism towards the first part, which deals with morality.

⁸Kant also had hope that Fichte would complete a critical metaphysics of right so that he could stop working on the *Metaphysics of Morals* (Br, AA 11:434). Kant, however, continued on, developing his metaphysics of right in a very different direction.

⁹See also MS, AA 6:329–30.

It is an important feature of Rehberg's criticism that he does not deny the a priori rational foundations of morality, as set out by Kant. Yet, he insists that "the highest fundamental law of morality cannot be anything other than a formal one, precisely because it must originate from pure laws of reason" (DH 117).¹⁰ Rehberg endorses the idea that the highest moral law is only a rule of assessment which commands the "complete agreement of all purposes" (DH 118). Here Rehberg relies on previous critiques of Kantian moral philosophy which understood the attempt to prove that the moral law could define its own object, and so determine sensible beings to specific ends, as just the rationalist enthusiasm that Kant was meant to abandon in *Critique of Pure Reason*.¹¹ Rehberg took the moral law, if it was going to be subject to the constraints of transcendental idealism, as necessarily independent of any determinate end, and like concepts in *Critique of Pure Reason*, unable to independently determine judgement. Rehberg's critiques of Kant's positions with regard to right emanate directly from this worry.

Thus, according to Rehberg, while Kant's moral law is able to distinguish between prohibited and permissible action, we cannot derive positive duties.¹² In order to derive positive duties, and therefore a system of obligatory ends for human beings, Rehberg insists that "something empirically recognized must always be added to the highest (formal) law" (DH 118). Rehberg takes Kant's answer to this to be the Formula of Humanity, which adds 'humanity' as an end in itself to the law of morality.¹³

However, Rehberg argues that there is another problem with this – namely, that which is an end-in-itself is not 'humanity' but *reason* in man. That reason should be respected is not at all in question. This is a direct implication of the a priori principles above. Yet, 'humanity' is not exhausted by 'reason'. Human beings are not purely rational creatures but mixed creatures of both rational and sensible components. Kant, of course, does not deny this. In fact, Kant is very clear that human beings are finite creatures with both sensible and rational faculties (KprV, AA 5:25–6), thus admitting that 'humanity' is a wider category than reason. Rehberg takes this to mean that "External freedom (independence from the will of every other person) is therefore only reserved for practical reason, the rational will of the human being" (DH, 118). The rational will must be radically separated from the sensible will whereby "application of his powers is only a tool for arbitrary purposes and, like the rest of nature, is subjected as a means to the intentions of

¹⁰I am here citing my own translation of Rehberg's essay. See Rehberg, "On the Relationship Between Theory and Practice".

¹¹See Rehberg, *Review*, 353ff. Also see Di Giovanni, *Freedom and Religion*, 129–33.

¹²See Malik, *Echoes of Revolution* for an argument for the relationship between conservative critiques and Hegel's empty formalism.

¹³Kant formulates the relation of the various formulations of the Categorical Imperative to each other in the *Groundwork* (G, AA 4:436), where the Formula of Universal Law is the form and the Formula of Humanity is the matter. For more on this see Guyer, *Form and Matter*.

every rational being" (DH, 118). Here, again, Rehberg thinks that the strictures of transcendental idealism dictate the strict separation between the rational and natural realms. What is true of the rational realm cannot directly influence the use of the sensible man. Thus, while Kant's principle stands true for the rational will, the sensible will, which necessarily acts through sensible substance, can be treated as a mere means. Rehberg insists that it is just an empirical fact that "intelligible beings (who have freedom and morality) ... reveal themselves to each other and interact in a world of appearances" and that "the material in which they operate and recognize each other is not self-created but given to them" (DH, 118–9).

Rehberg's skeptical dualism was not new. Prior to the French Revolution, he had already developed a skepticism that embraced the notion that, as Fred Beiser puts it, "there is an unescapable gulf between the universal and the particular" (Beiser, *Enlightenment*, 306).¹⁴ In his critique of *Critique of Practical Reason*, Rehberg denied that there was such a thing as 'pure practical reason' by insisting instead that it was simply pure reason applied to the empirical faculty of desire (Rehberg, *Schriften* I, 78). According to Rehberg, Kant had not proven that pure reason could be practical, or that it could be the basis for our actions in the empirical world. Instead, Kant had violated his own strictures in *Critique of Pure Reason* by simply stating that pure practical reason, unlike theoretical reason, could posit its own objects (KprV, AA 5:35).¹⁵ Pure reason could not be *practical* because, as Rehberg argues, the categorical imperative is only a regulative principle which cannot determine positive duties but only rule out inconsistent maxims. Thus, contra Kant's insistence, practical reason is subjected to the same restrictions as theoretical reason: neither can demonstrate the existence of its objects, but must be applied to already given sensible structures.

Here we arrive at the problem of the material object that persists through all of Rehberg's skepticism. Rational principles could not bridge the gap between noumenal and phenomenal, the rational and the sensible. Rather, something sensible, like the manifold in theoretical reason, had to be *added* to the practical principle in order for it to be effective in the sensible world. This addition is what *actually* determines our concrete duties or the set of concrete rights that apply to us.

1.2. The problems of political matter

Rehberg's insistence that intelligible beings must express their freedom in already given material circumstances points to the fact that:

¹⁴See also Rehberg, *Schriften* I, 8. As Beiser rightly complains, there is a tendency to treat Rehberg's politics as distinct from his philosophical positions before the French Revolution (Beiser, *Enlightenment*, 306–7). This contributes to the idea that Rehberg's political positions are merely reactionary.

¹⁵See also Di Giovanni, *Freedom and Religion*, 134–5.

A system of perfect *external* rights can only be derived from the principle that reason in humankind must certainly be treated as an end in itself, under the condition that every rational and free being has a sensible substance added to it, a matter through which it can reveal and communicate itself to others *as it wills*.

(DH, 120–1)

Thus, the human beings to whom the rational law is meant to apply need some pure expression of their freedom in the world, some material substance, through which they can interact *as perfectly free beings*. Demonstrating a priori the possibility of such a ‘metaphysically perfect property’ is, therefore, “the first task on the resolution of which the whole of natural law, in its application to the real world, is based” (DH, 121).

However, “such a property does not exist anywhere in our world. The physical laws to which rational beings are subject in their association with sensibility create conditions which they cannot escape” (DH, 121). Rehberg insists that absolute ownership over one’s body, much less over external things, can never be proven a priori because an agent’s necessary relation to sensibility creates unescapable conditions, ruled by physical laws that cannot be avoided.

Here I take there to be two distinct problems of political matter.¹⁶

The first is the problem of “positive determinations of justice” (DH 126).¹⁷ In opposition to the merely negative principles which demand only omissions of inconsistent maxims, Rehberg takes Kant to be asserting *positive* commissions directed towards an a priori rational constitution. This is unfounded, according to Rehberg, without an a priori metaphysical property. In other words, there needs to be a metaphysical *object* if a priori synthetic propositions of right are to be possible. Without this, a priori principles of right are only capable of ruling out extreme cases and remain neutral with regard to any particular form of the state.

Rehberg proposes his own solution to this problem by insisting that “the only perfect property is free choice (*Willkür*)” and that “it is therefore possible to establish a constitutional law that would be directly derived from the fundamental law of morality and based on principles a priori”. However, this constitution can only be applied (*angewendet*) to people who have

¹⁶Maliks recognizes both ‘problems’ but characterizes them differently. As regards the first problem, he acknowledges the need for an a priori metaphysical property but downplays how this is connected with the possibility of positive determinations of right for Rehberg. As regards the second problem, Maliks characterizes it mainly as a problem of transition and not as another aspect of the problem of political matter and so does not emphasize the ways in which Kant, though critical of Rehberg, comes closer to Rehberg’s own concerns in his solution. See Maliks, *Context*, 58–75. See also Hernández Marcos, *Rights-Perfectionism*.

¹⁷Rehberg likely takes his terminology (*positiven Bestimmung*) from the *Critique of Practical Reason*, where Kant uses it to describe the positive aspect of freedom as a causality which practical reason adds to the negative conception in the *Critique of Pure Reason* (KpV, AA 5:48).

already expressed their freedom in the sensible world through their choice (*Willkür*) (DH, 122). This leads to the second problem of political matter.

The second problem concerns the *application* of these determinations to already given natural circumstances. The solution to this would explain the *applicability* of a pure system of right to the natural world, in which peoples and nations develop organically over time. This is a problem of political matter because it involves the relation of a theory of right to an already given, historically formed state. Kant's insistence in *Theory and Practice* that we only need 'more theory' does not yet answer how the theory is meant to relate to the given sensible world in which politics is already underway. Rehberg takes this to require that we allow the historical development of a particular state to define the just application of rational principles. Solving this last problem, I will argue, requires Kant to concede some ground to Rehberg. Before turning to Kant's solutions to the problems of political matter, we will turn to Rehberg's own theory.

1.3. Theory from experience

Beyond his critique of Kant's theory, Rehberg also develops his own position, which he calls a "theory from experience" (DH, 126). This is not, as it might first appear, a thoroughly empiricist position. Rehberg continually maintained that he recognized non-empirical principles of morality. In his expanded version of the 1794 essay in his 1828 *Sämmtliche Schriften*, Rehberg clearly states that "Something in man, however, has indestructible claims to independence and freedom" (Rehberg, *Schriften* I, 103).¹⁸ This means, for instance, that no one can legitimately force me to be happy in his own way or that no one can force me to do anything immoral. Rehberg thinks that this does in fact rule out certain extremes of dependence where someone's "reason is deprived of all influence over his action" (Rehberg, *Schriften* I, 110). It is not, therefore, that Rehberg abandons justice and right entirely to the realm of the empirical. Rather, the rational principles are meant, albeit in a very limited way, to rule out certain relations of dependence in the sensible realm as incoherent or inconsistent. Thus, Rehberg thinks that:

From the limitation of both, mutually limiting principles (the *independence* of each one, as a rational being and purpose in himself and the *dependence* on his sensible nature, as a means to the ends which he or someone else sets before himself) there arises a great variety of circumstances, none of which run counter to reason; therefore they cannot be declared to be absolutely reprehensible. Only the two most extreme points are there: a complete independence, whereby a person was able to completely withdraw himself from

¹⁸Rehberg edited his own three-volume *Sämmtliche Schriften* (1828–1831), which included commentary on many of his writings from the previous decades. The quotations here are from his expanded commentary on the 1794 essay.

the dominion which reason could exercise over him through the respect of another: and a submission, whereby the whole person surrenders to the choice of another, and his own reason was deprived of all influence on his actions. Between the two lies the dependence of one on the other, in innumerable degrees and under various conditions.

(Rehberg, *Schriften I*, 111)

Rehberg's picture of the relation between theory and practice is that theory determines the extremes that limit what sort of relations I can enter into with others. In 1828, he gives the example of slavery in the West Indies to illustrate his point.¹⁹ Though a certain kind of servanthood can be justified, insofar as it is part of an institution which benefits an association of which the servants are a part, the principle of freedom does indeed eliminate a certain kind of slavery in which the slave-owners' "right to rule" is turned into "arbitrary rule without any limits" (Rehberg, *Schriften I*, 112). This is apparently because without slave-owners subjecting themselves to limiting laws, the position of the slave could easily deteriorate below "the limits of human nature" (Rehberg, *Schriften I*, 112). By this, Rehberg appears to mean that the treatment of a person should still recognize that this person is capable of rational behaviour and is not merely a tool or animal.²⁰

Yet, universal theory only gives us a formal outline to be filled in and given its particular reality in the realm of practice. As Rehberg says elsewhere:

The power to extend his mental powers, in particular directions and applications, to a greater or lesser extent, and the relations which spring from them, and the inequalities, not only of the possessors, but also of the share in common affairs: all this is not determined by mere reason, but is left to the choice (*Willkür*) of man.

(Rehberg, *Schriften I*, 110)

The level of domination or freedom, equality or inequality, independence or dependence, is a product not of rational determinations but of "the particular state of man's culture and of the degree to which his reason is developed" (Rehberg, *Schriften I*, 111).

Thus,

The civil order can be created only by the *understanding* (*Verstand*), which is given to the human being so that he forms his natural abilities, through his

¹⁹At the time of Rehberg's writing here, the British Empire was debating whether to eliminate slavery in the colonies, particularly the huge slave holding estates in the West Indies. This eventually resulted in the enactment of the Slavery Abolition Act in 1833, three years before Rehberg's death. While Rehberg, in his late writing, clearly saw the purely economic arguments made by the defenders of slavery, he also seems to suggest that a form of slavery mixed with the rule of law that provided minimal protections for slaves would be a permissible form of society. It appears that he thought that the authority of the slave-holder had to be subject to checks by state authorities to prevent ill treatment of slaves (Rehberg, *Schriften I*, 110–4).

²⁰Notice that this is different from Kant's own Formula of Humanity in that it insists only that we treat people in such a way that they can be recognized as possible rational agents. Rehberg here only asks that human beings are minimally distinguished from non-rational beings or tools.

own efforts, whose development other creatures owe to a blind activity of their forces.

(Rehberg, *Schriften* I, 122)

This should remind us of the criticism of Kant's *Critique of Practical Reason* above. Recall that Rehberg denied that there was such a thing as pure *practical* reason, arguing that it was actually just pure reason (understanding) applied to practical issues. This meant that concepts like freedom had to be filled in discursively, through contingent particulars given in nature. Rehberg, therefore, understands the proper author of the civil constitution to be the discursive activity of our understanding, whereby human beings react to given circumstances in nature, and develop themselves and their cultures in accordance with it. Thus, Rehberg understands civil order as an organic and scientific enterprise which must be carried out over a long period of time by the subjective choices of peoples and cultures.

Rehberg gives his own solution to the problem of political matter in the 1794 essay. He concludes:

The only perfect property is free choice (*Willkür*) itself; the first origin of perfect ownership of external things can therefore only be thought of by voluntary agreement, and the public law on which civil society is based requires such agreement in its first basic conditions.

(DH, 122)

Rehberg understands choice as the only pure expression of freedom in the sensible world. Civil society is formed by the choice of real human beings, which is continuously informed by the understanding which develops our natural abilities in reaction to our given circumstances.²¹ This is why, for Rehberg, we must not only defer to those with the most experience and well-tuned skill of judgment, but also to tradition, as it is the knowledge preserved for us from the hard-won experience of previous generations. Rehberg's "Theory from Experience" puts collective human action, over the course of the cultural and political life of a people, rather than reason, front and centre.

The implication of Rehberg's view, then, is that legislation cannot be simply imposed on a people by an enlightened monarch, but must, through a historical process, arise from the cultural character of the people itself. Rehberg, along with other conservatives of his day, was deeply skeptical of the 'centralized planning' of the rational sovereign for just this reason: legislation needed to be confirmed by the people, as cultural and sensible beings determined by particular circumstances.²² This is what underlies Rehberg's commitment to

²¹This does not mean, *contra* Maximiliano Hernández Marcos, that Rehberg is a "political immobilist" (Hernández Marcos, *Rights-Perfectionism*, 51–2). As Reill has pointed out, while Rehberg certainly depended on traditions, he also advocated for reforms of the system of hereditary nobility (Reill, *Historicism*, 66; see also Beiser, *Enlightenment*, 309ff).

²²Note that Rehberg by no means thought that voting rights should be extended to all people, but rather only to a noble class of well-educated and propertied elite. Although checks on absolutism were

the *Standesstaat* system, whereby individual estates function as semi-autonomous political bodies (with rights and duties) which have the power to ratify or veto potential legislation.²³ Rehberg took *Estates* to be in a better position to judge the agreement of centralized legislation with context-sensitive, local agreements among populations. Thus, Rehberg took historical collective choice or agreement as the main object of political action. Legislation should therefore agree with, or at least be in continuity with, the historical agreements and cultural traditions of a people.

2. Kant and the problems of political matter

Having attained a clear picture of Rehberg's critique of Kant's political theory and of Rehberg's own 'theory from experience', we are now in a position to address Kant's responses. Kant only addressed Rehberg's critical essay in a letter to Biester, saying:

In reading [Rehberg's essay], I found that, as regards the infinite disparity between rationalist and empiricist interpretations of concepts of justice the answering of his objections would take too *long*; with regard to his principles of justice grounded on power as the highest source of legislation, the answering would be too *dangerous*; and in view of his already having decided in favor of the powers that be (as on page 122), the answering would be in *vain*.

(Br, AA 11:496)

Kant did not think that it was worth his time to argue against what he saw as a fundamentally different approach to justice. For Kant,

Rehberg wants to bring together the actual lawyer (who puts a sword on the scales of justice to balance the side of rational grounds) with the philosopher of law and the inevitable result is that practice (*Praxis*) extolled as so necessary ... (though they really want to replace theory with practice) will turn out to be *trickery* (*Praktiken*).

(Br, AA 11:496–7)

This was perhaps a too simplistic view of Rehberg. Rehberg, though historically inclined, was not proceeding from empiricist principles but rather began his critiques from Kantian tenets such as the separation of rational and sensible realms. Rehberg took a priori principles to be a necessary starting point for any theory of morality or justice, but insisted that this was only a small part of the story and that the rest needed to be written in the sensible world.

However, despite Kant's explicit refusal to respond, some scholars have pointed out that the conversation continued in Kant's published work.²⁴

central to the conservative position, this only meant minimal aristocratic checks on monarchical power. See Oz-Salzberger, *Translating Enlightenment*, 245ff.

²³See Berdahl, *Prussian Nobility*, ch. 3.

²⁴Maliks, *Context*, 61–4; Hüning, *Kant's Rechtslehre*; Klemme, *Einleitung*.

Indeed, in his lectures on ethics as well as in publications, Kant continued to criticize the empirical approach to justice. Just a year later, in *Perpetual Peace*, Kant describes the practical man with the same language he used to describe Rehberg to Biester a year earlier: “he puts the sword in the scales of justice” (ZeF, AA 8:369), deals in “trickery” to achieve his pre-established ends (ZeF, AA 8:372), and, Kant here adds, “frames a morals to fit the statesman’s advantage” and is “unprincipled” (ZeF, AA 8:373).

This has been taken as a clear indication of Kant’s wholesale rejection of the conservative position in the 1790s. However, I am now going to argue that Kant’s constant critiques of the ‘empirical’ position only apply to what I called the first problem of political matter – namely, the problem of deriving *positive* determinations of right a priori such that the metaphysics of morals could deliver a vision of original contract which was not merely prohibitive. In this endeavour, Kant zealously defends his rationalism. Principles of right are able to give us a positive vision of justice that prescribes, as well as prohibits, modes of governance and shapes of institutions. I will briefly show how Kant does this explicitly in his *Rechtslehre*. However, I will argue that there is a persistent problem of political matter which is concerned with the legitimacy of the *application* of these principles to natural and historically formed human beings. Here, Kant comes closer to Rehberg by affirming the necessity of the *actual* consent of citizens for the just application of rational principles. This might be worrying because it makes bringing about a just state contingent on the wills of citizens. However, Kant reintroduces his own teleological view of nature in order to suggest that the empirical will of citizens, through mere understanding (*Verstand*), will indeed progressively choose more rational legislation.

2.1. Synthetic a priori propositions of right in the *Rechtslehre*

Here I will briefly address the first problem of political matter. Rehberg critiqued Kant for the inability of a priori principles to give us positive determinations because this would require a metaphysically perfect, a priori property, which Rehberg took to be impossible. Indeed,

The possibility of acquiring unconditional *property* ... is therefore the first task on the resolution of which the whole of natural law, in its application to the real world, is based, and is therefore rightly regarded as the basis of the whole of natural constitutional law.

(DH, 121)

This is the first task because if natural law cannot even give us positive determinations a priori, then it is indeed an insufficient system which leaves rights undetermined. Recall that Rehberg was convinced that because there was no possibility of a priori property, the practical principles could not have a

matter, by which positive determinations of right could be derived, other than the given and historically defined practices of property right. Thus, the principles of freedom and equality remain dependent, like the principles of theoretical understanding, on sensibly given objects *for their content*.

Some scholars, such as Maliks and Dieter Hüning, have pointed out that Kant's innovative argument for an 'intelligible property', in the *Rechtslehre*, functions as a response to Rehberg's call for a "metaphysically perfect property".²⁵ Indeed, the language of the private right section suggests that Kant might have had this critique in mind. Kant seems to recognize that there is a step missing between the demands of reason and the idea of possession: reason demands that people can use objects they are not holding, but empirical possession can only be understood as physically holding the object (MS, AA 6:254). Without a general concept of possession that can capture non-empirical possession, the principles of right could not admit of synthetic a priori propositions, and could not give positive determinations of right (MS, AA 6:253). Thus, Kant does seem to understand the private right section as, in some sense, providing an object, an a priori idea of possession, that will allow the formal principle of right to give us positive determinations of right, i.e. right to something.

Indeed, Kant makes sure to point out the analogy and disanalogy with the theoretical synthetic a priori. He refers directly to the "Transcendental Analytic" of the first *Critique*, which investigates the object to which concepts were meant to apply (MS, AA 6:249). In the theoretical case, Kant denies that we can have knowledge of objects-in-general because we can only have knowledge of objects as appearances (KrV, B 146). Recall that Rehberg took this critical limitation to be applicable to the practical case as well, so that objects of practical reason had to be objects of *experience*. However, Kant here says that we can have knowledge of objects-in-general since, in the practical case, we can have knowledge of the thing-in-itself. Kant, therefore, doubles down on the ability of practical philosophy to overcome this theoretical limitation, while also affirming that, like the faculty of understanding, we need to define an object for the principles of right.

In an a priori *theoretical* principle, namely, an a priori intuition would have to underlie the given concept (as was established in the *Critique of Pure Reason*); and so something would have to be *added* to the concept of possession of an object. But with this practical principle the opposite procedure is followed and all conditions of intuition which establish empirical possession must be *removed* (disregarded), in order to *extend* the concept of possession beyond empirical possession and to be able to say: it is possible for any external object of my choice to be reckoned as rightfully mine if I have control of it (and only insofar as I have control of it) without being in possession of it.

(MS, AA6:251–2)

²⁵See Maliks, *Context*, 75ff and Hüning, *Kant's Rechtslehre*, 301.

Therefore, instead of adding an object of experience to the concept, we abstract from “all spatial and temporal conditions and the object is thought of only as under my control” (MS, AA 6:253). Through this abstraction, Kant distinguishes between empirical possession, which is merely physical ‘holding’ and intellectual possession, which is ‘control’ as a mere “concept of the understanding” which can be “subsumed under concepts of right” (MS, AA 6:253). Intellectual possession is an a priori concept of property which allows for synthetic propositions of right.

By identifying a priori concept of possession that is abstracted from all empirical, and therefore particular, conditions, Kant shows how synthetic a priori propositions of right are possible. Against Rehberg, the metaphysics of right can give itself an object, an a priori notion of possession, which can produce positive determinations of right.

Therefore, the point here is not just about property, but about how the principles of right can give us a *positive* idea of justice. As Kant says, the necessity of the state proceeds from private right (MS, AA 6:307), and from the very idea of the forming of a state comes the idea of an original contract (MS, AA 6:315). Kant’s solution, then, gives us the possibility of duties to specific visions of justice such as the original contract which does not simply necessitate us to *omit* certain harmful action but necessitates us a priori to a particular form of rightful relation. Kant is able to show how the rational idea of right implies a duty to bring about a specific constitutional form.

However, the ‘object-in-general’ might answer the first problem of political matter, but it does not yet answer the second: how the metaphysics of right relates to already formed historical realities. The concept of possession is still an abstract concept, and synthetic a priori propositions of right are still a priori. The problem of political matter persists when we ask how the metaphysics of right is made manifest in a historical world. I will now show how Kant responds to the second problem of political matter in *Perpetual Peace*.

2.2. *Politics and nature in Perpetual Peace*

Kant had been aware of the problem of the application of the metaphysics of right to historical realities from at least 1789.²⁶ In that year, Kant received a letter from Ernst Ferdinand Klein who was commissioned to frame the new civil constitution for Prussia and wanted to know whether the legislator should attempt to bring about what is required by right all at once or should implement it gradually. Klein concludes that the people cannot mature all at once, but need to be brought gradually into conformity with right. This has been called the problem of transition, but it is more than

²⁶See Maliks, *Context*, 76, Brandt, *Erlaubnisgesetz*, and Hernández Marcos, *Rights-Perfectionism*.

merely the transition from an unjust state to a just one. Rather, in *Perpetual Peace* Kant is considering the second problem of political matter, which considers not only the transition to the pure republic, but also how the *subjective* choice of the members of states is meant to relate to the *objective* standards of right.²⁷

It is therefore significant that Kant, beginning in *Perpetual Peace*, emphasizes that legislation requires the *actual* consent of citizens.²⁸ In his earlier political essays and lectures, as early as the “*Naturrecht Feyerabend*” lecture notes in 1784, Kant took state laws to not require actual citizen consent to be just (V-NR/Feyerabend, AA 27:1382). For laws to be just, all that is needed is that the citizens *could* have consented to the legislation. This is the standard that Kant maintains in “*Theory and Practice*”, where he says that the original contract, as an idea of reason, is “to bind every legislator to give his laws in such a way that they *could have arisen* (from the united will of a whole people)” (TP, AA 8:297 emphasis mine). Indeed this seems to be a criticism of the conservative position where

it would first have to be proved from history that a people, into whose rights and obligations we have entered into as descendants, once actually carried out such an act, and that it must have left some sure record or instrument of it, orally or in writing, if one is to hold oneself bound to an already existing civil constitution.

(TP, AA 8:297)

Against this historical approach, we are to think of the original contract as only an ‘idea of reason’, which serves as the normative principle of justice. Thus, the idea of the possible consent of the citizens serves as the standard for the just *content* of legislation. This means that the laws of a despot, or an enlightened monarch can be just because they legislate laws that are just *in their content* (V-NR/Feyerabend 27:1382).

However, in *Perpetual Peace*, Kant drops the idea that the laws of the despot can be fully just by requiring that, in addition to the just content of the legislation, legislation must be genuinely *representative* of the actual will of the people. Here Kant insists that in order to be in full conformity with right, government has to be *republican*, which he contrasts with despotism. Despotism is “high-handed management of the state laws *the regent*

²⁷The focus on the problem of transition in Maliks, *Context*, 76ff, and Hernández Marcos, *Rights-Perfectionism*, 63ff, for example, tends to underappreciate the background assumption of the problem of transition – namely, that piecemeal transition is not just a pragmatic commitment but also a normative one, because implementing the rule of right at once would be not only impractical but also be an *injustice* to the people. However, Hernández Marcos and Maliks do point to the fact that Kant’s treatment in “*Theory and Practice*” leaves him open to Rehberg’s complaint that one still has to address the problem of application. Hernández Marcos in particular seems to recognize that there are two ‘moments’ in Kant’s interaction with the empiricist jurists: one about the empirical content of the law and the other about the application of the law to historical states (60–1).

²⁸See Kleingeld, *Autonomy* and Cavallar, *Kant’s Judgement*, 105 for similar claims about how Kant changes his mind in the 1790’s; for opposing views, see Taylor, *Absolutism*.

himself has given, inasmuch as he handles the public will as his private will" (ZeF, AA 8:352). Republicanism is the separation of executive and legislative authority, where legislative government must "have a representative system [of legislation] in which alone the republican kind of government is possible and without which the government is despotic and violent" (ZeF, AA 8:353). Indeed, one of the reasons why Kant takes the republican constitution to promote perpetual peace is that "when the consent of the citizens of a state is required (*die Beistimmung der Staatsbürger dazu erfordert wird*)" (ZeF, AA 8:350) to decide whether to go to war or not, they will be more hesitant. In non-republican states, in 'which subjects are not citizens', deciding to go to war is easy for the head of state, who is completely unencumbered. Contrast this with Kant in "Theory and Practice", where, as an example of an application of the possibility condition, he says:

If, e.g. a war tax were imposed proportionately on all subjects, they could not, because they found it oppressive, say that it is unjust because in their opinion the war may be unnecessary; for they are not entitled to appraise this but instead, because it is still always *possible* that the war is unavoidable and the tax indispensable, the tax must hold in a subject's judgement as in conformity with right.

(TP, AA 8:298)

In *Perpetual Peace*, Kant has clearly adopted the further requirement that the republican constitution makes the consent of actual citizens necessary.

In *Metaphysics of Morals*, which Kant was already working on when writing *Perpetual Peace*, he writes that the only constitution that accords with right is a true republic which "is and can only be a *system representing* the people ... by all the citizens uniting and acting through their delegates (deputies)" (MS, AA 6:341). In fact, against earlier formulations, Kant insists that even reforms in the government could not be administered through the sovereign alone because "it could still do the people (*Volk*) an injustice (*unrecht*), since the people itself could abhor (*verabscheuen*) such a constitution and find one of the other forms more to its advantage" (MS, AA 6:340). This means that despite our obligation to bring about the ideal government, "different forms of states ... may therefore remain as long as they are taken, by old and long-standing custom (and so only subjectively), to belong necessarily to the machinery of the constitution" (MS, AA 6:340). Thus, actual legislation, and governmental reform, are contingent upon the actual will of the people, insofar as the reform is meant to *represent* their (actual) will.

To be clear, this does not mean that the possibility condition, as discussed above, disappears, but only that it becomes necessary but *not sufficient* for just legislation. Indeed, whether a people *could have* chosen a particular reform might specify the just *content* of the legislation in accordance with the original contract as an idea of reason. However, to this Kant adds that

just *application* of a piece of legislation depends upon the *actual* will of the people. This is precisely the two problems of political matter, the first concerning the inclusion of positive determination into the *content* of justice and the second concerning the way in which this notion of justice relates to the historical world. Thus, Kant is addressing the latter problem by extending the idea of just legislation to include not only just content but also just application of the law, where just application requires agreement with the actual will of the people.

Kant's addition to the criterion of just legislation brings him closer to Rehberg's emphasis on the relation between the a priori principles of justice and the historical agreements of a people, while maintaining his consistent critique of the 'empirical' approach to justice. The difference between the two thinkers is between their respective ideas about the source of the content of the law, but they both agree that, in order for the law to be justly applied, there needs to be some association with historical reality. For Kant, what *is* just is determined a priori by the idea of the original contract, but just *legislation* of the standards of justice in a particular political community requires that it corresponds to what the people understand to be in their own best interest.

However, this amendment immediately suggests a problem: how do we know that people will ever take the a priori requirements of justice to *actually* be in their interest? If people never actually take the rational demands of right to be in their interest, then Rehberg's skepticism is warranted and the just state can never be implemented in the historical world. However, in the first supplement to the definitive articles in *Perpetual Peace* Kant, though never mentioning Rehberg, directly addresses Rehberg's skeptical dualism between a priori reason and historical nature. Kant now draws upon his own teleological arguments from the 1780s for the purposiveness of nature to provide a 'guarantee' that "what man *ought* to do in accordance with laws of freedom but does not do, it is assured he *will* do" (ZeF, AA 8:365). Kant argues that in "the mechanism of nature, to which the human being (as a sensible being) belongs, there is evidently a form lying at the basis of its existence" (ZeF, AA 8:362). This form can be understood only as (divine) *providence*: the prior determination of nature towards humanity's ultimate end. This is not, Kant insists, something we cognize or infer through theoretical reasoning, but is rather a moral-practical idea that must be added to the thought of the mechanism of nature (ZeF, AA 8:362). This idea allows us to see the historical condition in which we find ourselves, not as a series of arbitrary choices made in reaction to disparate circumstances, but as nature's preparatory conditions for perpetual peace. Agricultural development, diet, climate, wars, treaties and culture are all being guided by nature to further the ultimate rational end. Kant relates this

immediately to the problem of theory and practice, acknowledging Rehberg's challenge that Kant's system was only for a "republic of gods" (DH 126):

Now the republican constitution is the only one that is completely compatible with the right of human beings, but it is also the most difficult one to establish and even more to maintain, so much so that many assert it would have to be a state of angels because human beings, with their self-seeking inclinations, would not be capable of such a sublime form of constitution. But now nature comes to the aid of the general will grounded in reason, revered but powerless in practice, and does so precisely through those self-seeking inclinations, so that it is a matter only of a good organization of a state (which is certainly within the capacity of human beings)

(ZeF, AA 8:366)

Thus, the ideal of the republican government is powerless (*ohnmächtigen*) in practice precisely because its implementation requires that the people see its demands in their own interest. Yet, nature, as a force which progresses us toward this ideal, uses natural and non-moral tendencies to lead us to this end. Indeed, Kant immediately gives his infamous example of a nation of devils which could solve "the problem of establishing a state" only on the basis of their understanding (*Verstand*) (ZeF, AA 8:366).²⁹ All that one needs to do is to play individual self-interests off one another so that they "check each other in their public conduct [so that] the result is the same as if they had no such evil dispositions" (ZeF, AA 8:366). Kant insists that establishing a state, and good citizens, is not a result of moral improvement but merely of the mechanism of nature. Thus, states can, and according to Kant, do, continually conform to the standards of right, not because of inner morality, but because of the 'will of nature' through the counter-acting interests of individuals.

This argument 'from nature' is the supplement Kant needs to address Rehberg's skeptical dualism while conceding that the application of right requires coordination with the sensible world. Kant concedes that the application of right requires that people find right to actually be in their interest as sensible beings in the world. In other words, the implementation of the rule of right is powerless in practice if the people, as a historical and cultural entity, do not see a rightful constitution to be in its interest. For Rehberg, this caveat meant that a theory of rights could never actually be implemented in the sensible world; there was an unbridgeable gap between a priori right and sensible nature. However, Kant denies that Rehberg's exclusive dualism remains because nature, through the selfish interests we already have, is itself moving nations and peoples toward the ideal merely through the application of their theoretical understanding to the mechanism of nature. Thus,

²⁹That Kant's theory of the rational devils was a response to Rehberg has already been suggested by Malikis, *Context*, 64 and by Bernd Ludwig, *Condemned*, 190.

Rehberg's dualism loses its absolutism: our actions in the sensible realm are themselves oriented, without us even realizing it, to the rightful end. This gives Kant the ability to agree with Rehberg's insistence that the metaphysics of right by itself was powerless in the sensible world without conceding that this meant that the republican ideal could not be implemented in the sensible world.

The fact that Rehberg, even well after Kant's death, still argued that Kant had the same problem indicates that Rehberg did not find this solution satisfying.³⁰ This is hardly surprising, since Rehberg would have likely taken the notion of providence in nature to be an unfortunate backslide into the realm of metaphysics. Regardless, Kant's arguments here should be seen as giving a response to Rehberg's exclusive dualism between a priori and sensible realms as well as to his reduction of practical reason to theoretical understanding.

3. On political wisdom

In the appendix to *Perpetual Peace*, Kant addresses the relationship between morality and politics in the reasoning of politicians themselves. He contrasts two approaches – that of the despotizing (*despotisirende*) moralist and that of the political moralist – and then defines the moral politician, and political wisdom, as occupying the appropriate middle ground between the two.

Kant's main opponent is the political moralist, whom he characterizes as a "*Praktiker* (for whom morals is a mere theory)" (ZeF, AA 8:371) and as a lawyer who only wants to maintain the status quo (ZeF, AA 8:376), thereby clearly associating him with Rehberg. The political moralist "pretends to see in advance, from the nature of the human being, that *he is never going to will* what is required in order to realize that end leading toward perpetual peace" (ZeF, AA 8:371). Thus, the political moralist glosses over political principles and declares human beings incapable of what is good, thereby "mak[ing] improvement *impossible* and perpetuat[ing] ... violations of right" (ZeF, AA 8:373). What the political moralist fails to do, is to *subordinate* political prudence to morality, thereby making morality the condition for prudence.³¹ Therefore, Kant clarifies his appeal to prudential reasoning in the case of the nation of devils by insisting that we cannot therefore *reduce* the problem of perpetual peace to a technical problem (ZeF, AA 8:377). The political moralist does not understand that the end to which prudential

³⁰See Rehberg, *Schriften* I, 95–112.

³¹Joel Thiago Klein, in a recent and enlightening article (Klein, "Serpents and Doves"), argues for a systematic relation between morality and prudence. He argues that prudence and morality have a simultaneous, three part relation: unification, subordination, association. I will not deal with the first, but the second kind of relation is what I mean here by 'subordination' and will use Klein's terminology of association with regard to political wisdom below.

judgement aims must itself be defined through a priori moral considerations. Kant takes Rehberg to be abandoning the definition of justice to natural development, and so “putting the cart before the horse” by defining principles, i.e. what is just, through historical development (ZeF, AA 8:376). Again, it is unclear whether Rehberg actually holds such a radical position, since he does recognize the role of a priori principles in the definition of freedom and justice. However, Rehberg does take these a priori principles to be formally empty, and so to severely underdetermine what it means to be free or what it is to be just in the sensible world.

The despotizing moralist, by contrast, errs by offending against political prudence by attempting to implement the rule of right wholesale, severing the union of a common will by violent revolution (ZeF, AA 8:372), or by making use of one’s right with “utmost rigor” (ZeF, AA 8:379). While the role of the despotizing moralist in *Perpetual Peace* is often overlooked, Kant clearly took it to represent an important instance of political *imprudence*, in which an enlightened monarch blindly applies the conditions of right. The despotizing moralist *wrongs* the people by attempting to bring about the rule of right without any recourse to the historical process that will make the people ripe for reform.

The failure is here *prudential* in that it ignores the relationship of the demands of right to the historical people to whom it is meant to apply. The despotizing moralist is ‘despotizing’ precisely because he ignores whether the reforms he implements are *representative* of the people to whom they are meant to apply. Kant explicitly suggests that a government, and so politicians, can be either despotic or republican with regard to how the state “makes use of its plenary power” (ZeF, AA 8:352). Despotism is the “high-handed management of the state by laws which the regent has himself given” and so does not recognize the merely passive and distinct power of the executive from the legislative authority of the people (ZeF, AA 8:352). Political reform must precede through, or in association with, nature, which here is understood as the historical and cultural development of a people.

It seems that Rehberg can agree to this, insofar as he was equally opposed to the construction of political states without any supplement from nature or history. Kant agrees that the politician ought to be informed by the historical development and subjective interests of the people; he thus admits that insight into the requirements of the moral law is, *by itself*, insufficient for carrying out our duty to *bring about* the moral end. As noted above, morality is itself powerless without the aid of nature, which itself ‘wills’ the moral end.

Both approaches take morality and nature, theory and practice, as contrasting viewpoints. However, Kant carves out a position between the despotizing and political moralist for the moral politician, who brings

morality and political prudence together. The moral politician takes the moral end as his maxim but sees the mechanism of nature as the given means to achieve this end and thus “takes the principles of political prudence in such a way that they can coexist with morals” (ZeF, AA 8:372). The moral politician does this by taking it to be his duty to correct deviations from the rational ideal, thereby making it his maxim to bring about the rational end (ZeF, AA 8:372). However, because this end cannot be achieved all at once, reason gives us permissive laws by which states of partial injustice can persist until “a more favorable time” (ZeF, AA 8:373–4). Thus, in order to bring about this end, the moral politician must be supplemented with political prudence, which allows him, through his understanding, to see the right time to implement rational reform. This is what Kant calls political wisdom (*Staatsweisheit*):

... political wisdom, in the condition in which things are at present, will make reforms in keeping with the ideal of public right its duty; but it will use revolutions, where nature of itself has brought them about, not to gloss over an even greater oppression, but as a call of nature to bring about by fundamental reforms a lawful constitution based on principles of freedom, the only kind that endures.

(ZeF, AA 8:374)

Thus, political wisdom takes the objectivity necessity of the moral law as its guide while using the subjective conditions of the natural and sensible world as its means.

In political wisdom, then, morality and prudential politics, rationality and nature, are brought into *association* with each other. Following Joel Thiago Klein, the association between morality and prudence should be understood under two complementary models, where under the first morality conditions prudence as a means towards the moral end and under the second prudence conditions the application of morality to the historical world (Klein, *Serpents and Doves*, 95). Thus, in political wisdom, we see both solutions to the problems of political matter come together as mutually limiting conditions.

Acknowledgements

This paper has benefited from the comments of members of the “Kant, Kantianism and Morality” research group at the University of Groningen, Pauline Kleingeld, anonymous referees at the BJHP, and the editors of this issue: James Clarke and Gabriel Gottlieb. I would also like to thank Marshanda Gregory for her continued support.

Funding

The research presented here was generously supported by a grant from the Nederlandse Organisatie voor Wetenschappelijk Onderzoek.

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