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The Political Theology of Fichte's *Staatslehre*: Immanence and Transcendence

Fichte's so-called *Staatslehre* (doctrine or theory of the state)¹ from 1813 contains much in the way of religious language. Terms such as 'God' and 'revelation' (*Offenbarung*) are used throughout the text and religious attitudes, views and doctrines are central to parts of Fichte's account of history. The prevalence of religious concepts and the central role accorded to religion in what can be regarded as a form of political history make it tempting to apply the term 'political theology' to Fichte's *Staatslehre*. The precise sense in which it is a political theology is far from clear, however, if one accepts the independence of its main political ideas. Fichte is said to employ traditional religious concepts in accordance with certain wider aims, and in so doing he divests these concepts of obsolete mythical elements and images. The term 'theocracy' is singled out, because for Fichte it signifies the rule of reason and a form of legislation that has freedom as its object, while the heavenly realm (*Himmelreich*) of which he speaks is not an otherworldly realm of God but a spatio-temporal world that, through human thought and activity, is the site of human progress in the form of increasing freedom and rationality (cf. Zöller 2013, 99-100).

According to this type of interpretation of Fichte's *Staatslehre*, this doctrine or theory of the state cannot be classed as a political theology if one accepts that 'authority, revelation, and obedience are the decisive determinations of the *substance* of political theology' (Meier 2006, 23). Here we have a political theology in the clear sense of the idea of a political order whose fundamental basis is provided by religious teachings which are held to have a divine source that is valid independently of any political order. A political order must instead conform to these teachings. Fichte explicitly rejects the claim that a genuine legal and political order ought to be based on the authority and obedience associated with religious faith. Rather, such an order ought to conform to requirements that derive from human freedom and rationality.

This leads him to accord to revelation only a limited, provisional role which amounts to its relegation to a hypothetical, pre-historical phenomenon which philosophical reflection is forced to posit once it encounters limits to its own powers of explanation.

Even if Fichte's *Staatslehre* cannot be viewed as a political theology in the sense that it concerns a political order based on religious teachings that are held to have a divine source and to be valid independently of this political order, it could nevertheless be a political theology in a different sense. Fichte's employment of religious concepts and language in connection with the political and historical reflections set out in his *Staatslehre* might, for instance, be understood in terms of certain analogies and metaphors that have an illustrative function. At the same time, the process of divesting religious concepts of their mystical shell promises to bring to light their implicitly rational, secular content. There is, however, a third possibility that cannot be reduced either to a political theology in the sense of the idea of a political order based on authoritative religious teachings that are believed to have a divine source or to a thoroughgoing secularization of religious concepts.

One of the most influential proponents of the idea of political theology, Carl Schmitt, claims that '[a]ll significant concepts of the modern theory of the state are secularized theological concepts', and he provides an example of the secularization of a theological concept when he claims that '[t]he exception in jurisprudence is analogous to the miracle in theology' (Schmitt 2005, 36). Although the talk of an analogy with the concept of the miracle - a concept that, as we shall see, makes an appearance in Fichte's *Staatslehre* - is compatible with a secularization of religious concepts, a potentially deeper connection is suggested by Schmitt's further claim that the religious category of immanence came increasingly to inform nineteenth-century legal and political thought (Schmitt 2005, 49-50). One example of this phenomenon is the way in which the normal functioning of law within a legal system is held to require that all cases fall *within* the impersonal legal realm, or ought to be made to do so. Thus, one might say

that the religious category of immanence is a property of the legal sphere. Yet the act of determining when a state of emergency applies – an act which for Schmitt defines sovereignty and shows who or what is sovereign – must represent an exception within this picture of a purely immanent legal order, in that it comes from outside this order and suspends it. This would correspond to how a miracle performed by a supernatural being suspends the laws of nature that otherwise provide the framework within which all natural processes, including those governing human life, occur. Thus, in opposition to the view of the legal order and its processes as being strictly immanent, we encounter a moment of transcendence at the political level. It might be claimed, then, that in such cases a theological way of thinking is operative even within a tradition of legal and political thought that takes itself to be free of thinking of this kind. Despite Fichte's repudiation of political theology in the sense of a political theory founded on faith in divine revelation and absolute obedience to the commands of God, I shall argue that his *Staatslehre* is a political theology in the sense that it is informed at a fundamental level by the concepts of immanence and transcendence. There is, moreover, no evidence of Fichte's awareness of the extent to which these concepts are implicitly present in his *Staatslehre*, so that he cannot be said to have secularized them.

Before demonstrating the presence of the concepts of immanence and transcendence in Fichte's *Staatslehre*, I shall first say something more about how Fichte repudiates traditional Christian theology, despite his use of concepts and language derived from it, before going on to look at some of the central problems which he seeks to address in the lectures which make up his *Staatslehre*. This will allow me to show that Fichte's account of history can largely be understood in terms of the concept of immanence, and that there are, nevertheless, places in which Fichte himself introduces a moment of transcendence. Finally, I shall show that there are other places in the *Staatslehre* in which a moment of transcendence is present and threatens to destroy the immanence of Fichte's account of history in a way that he himself does not

acknowledge. Fichte's *Staatslehre* can for this reason be viewed as an especially interesting case of political theology. It is not a political theology in any straightforward sense, since it deliberately seeks to free religious concepts of their theological origins and meaning. Nor, however, is it a political theology in the weak sense that it employs religious concepts in such a way that their genuine content is reduced to a purely secular one. Rather, Fichte's appropriation of religious concepts turns out to be incomplete because at a deeper level the *Staatslehre* operates with such concepts in an unreflective way and thereby introduces a religious content that does not fully escape its theological origins.

Immanence

Although Fichte states that God reveals himself, he claims that this revelation occurs in the form of knowledge (*Erkenntniß*), and not immediately so in an intuition (*Anschauung*) of God. More precisely, God reveals himself in the act of understanding the knowledge that one has (GA II/16: 24).² This implies the existence of both a first-order and a second-order form of knowledge. In the first case, one knows that p, and in the second case one also knows *how* one knows that p. The second-order form of knowledge consists specifically in knowledge of the highest, in the sense of most general, law that determines that p is necessarily the case and thereby explains why it is the case, thereby providing the 'ground' of p. Thus, a new form of knowledge is generated: knowledge of the highest, most fundamental laws that govern all human mental activity and knowledge. This higher-order knowledge also includes knowledge of the law that *ought* to govern human action. Such higher-order knowledge is achieved only in the philosophical science that Fichte terms *Wissenschaftslehre* and in its various sub-disciplines, which include the doctrine of right (*Rechtslehre*) and the doctrine of ethics (*Sittenlehre*). In the *Wissenschaftslehre*, therefore, one observes not only the fact that one possesses knowledge but also how this knowledge arises from its ground with the aim of

comprehending the law governing it (GA II/16: 25). This philosophical insight (*Einsicht*) must be assumed to be independent of the law which it observes, for otherwise there would be no way of understanding the philosopher's ability to make this same law into an object that it observes and reflects upon.

Fichte identifies the revelation of God with this act of philosophical insight and thereby reduces God to the object of the knowledge of such insight, as opposed to identifying God with a transcendent being that reveals itself in such an act but at the same time exists independently of it. This is not to say that the type of law that the *Wissenschaftslehre* discovers, or its theological expression 'God', lacks objectivity altogether, in the sense that it is reduced to the act of philosophical insight through which it is known and in the absence of which it would not exist at all. Rather, this act of insight discovers and comprehends a law that is already present in human reason as such. Nevertheless, as a law of mental activity in general, or as a law of moral agency in particular, the law is not independent of the activity or agency that it determines. All the act of philosophical insight adds, therefore, is reflective knowledge of the fact that this law is indeed always present *in* such activity and agency and how it is so. Already, then, Fichte's use of a religious concept – in this case, the concept of God – suggests the notion of immanence as opposed to that of transcendence.

Fichte characterizes the direct object of philosophical insight as the image (*Bild*) of a law which determines, and thereby forms or shapes, our experience of being (*Sein*). This object is not, therefore, the law itself, which, as noted above, is not identical with the act of philosophical insight by means of which it is known. He speaks of the law in so far as it forms the direct object of philosophical reflection as the 'first' or 'primary' image (*das erste Bild*) that explains - and in this sense presents itself in - the particular laws governing nature, laws which are thereby reduced to 'depictions [*Abbildungen*] of the law – the visiblensness of this same law' (GA II/16: 21). In the *Staatslehre*, Fichte is concerned with knowledge – and thus

with the image - of a particular law and its application in so far as a legal and political order is a condition of this law's appearance. The law in question is a moral or ethical law (*sittliches Gesetz*) which Fichte describes as the 'image of something supersensible, purely spiritual, thus something that does not exist but that only ought to come to exist through the absolute initiator [*Anfänger*] of being, the will' (GA II/16: 29). This knowledge has to do, then, with insight into something that ought to be, and which must, therefore, enter a process of *becoming* in accordance with the law whose image forms the direct object of the insight in question. Here we can already see why Fichte's *Staatslehre* is primarily concerned with history and, in particular, with the emergence of a state governed by law, whose members are all held to be equal.

A law-governed state and right (*Recht*) more generally are conditions of the moral law's appearance in the world – if not of its existence *qua* law – in the sense that they provide the 'external' conditions of moral or ethical freedom (*sittliche Freiheit*). They do so by guaranteeing to each and every individual the type of freedom that consists in being able to will independently of the choices of others, that is, in accordance with ends that one has set oneself (GA II/16: 31-32). The state also plays an essential role in relation to moral freedom by helping to secure for each and every individual the material conditions of moral agency. Thus, even if self-preservation and personal safety are 'external' ends in relation to moral freedom, in the sense of being mere means to a higher end (that is, moral agency and the realization of the moral law), the satisfaction of the needs connected with them is no less necessary with respect to the appearance of the moral law than is the act of guaranteeing the negative conditions of moral agency (cf. GA II/13: 214).

From what has been said so far, there appear to be no grounds for identifying the God of Fichte's *Staatslehre* with the one found in traditional Christian theology. God is instead identified with the object of philosophical insight into the grounds of all intelligible human

mental activity and agency, that is to say, the fundamental and most general laws governing such activity and agency. For this reason, the revelation of God is identified with the ‘image’ in which these laws appear to the subject or to the agent that comprehends them. These laws do not, however, exist independently of the mental activity and agency that they govern; rather, all philosophical insight achieves is reflective awareness of the existence of these laws in all such activity, and how they govern or ought to govern it together with knowledge of the essential nature of these laws. Fichte does not, therefore, have in mind the idea of a transcendent God in such statements as the following one: ‘Only God exists. Apart from him there is only appearance [*Erscheinung*]’ (GA II/16: 63). In the case of the moral law, moreover, God must first enter a process of becoming in order to appear (or to express the idea in religious language: to reveal himself) at all. This process of becoming is identified with the course of human history up to Fichte’s own time and beyond it. God’s revelation must, therefore, be viewed as incomplete until the historical process in question has been completed. From a Christian perspective this idea is arguably problematic, in that the Incarnation is thereby reduced to a partial revelation of God that must be supplemented by a secular historical process. The coming of Christ is, in fact, reduced by Fichte to part of the same historical process.

In addition to these considerations, the role of the moral law and moral freedom in Fichte’s *Staatslehre* forecloses the possibility of treating this text as a political theology in the sense of a political theory founded not only on faith in divine revelation but also on obedience to the commands of God. By its very nature moral freedom demands that it is the will of the individual moral agent that initiates an action. This will must therefore be undetermined by the will of another individual or by any other external cause. This moral freedom is incompatible with reliance on an external authority and blind obedience to the commands of God precisely because they would amount to an external cause. Genuine moral freedom instead requires insight into the law in accordance with which one acts, and this insight can be attained only by

means of a freely undertaken mental act. Thus, moral freedom requires the kind of insight that Fichte identifies with the revelation of God. There is, moreover, another necessary condition of moral freedom, in that one must also actually will to act in accordance with such insight. The moral law and the moral agent are, therefore, logically independent of each other. This logical distinction between the moral law itself and the moral agent that wills it entails that a moral agent, even when it attains moral insight and acts in accordance with it, does not and cannot become God. The divine will is nevertheless identical with its expression in the moral law, if not with its expression in the will of individual moral agents, which is something secondary. Consequently, there is once again no reason to assume the existence of a transcendent God. Rather, God is held to be identical with a law that is constitutive of rational moral agency as such.

Fichte speaks of certain ancient societies in a way that very much fits the picture of a political theology, because the state and the constitution are said to be viewed as a divinely arranged political order whose authority together with that of its representatives are not to be questioned. Although Fichte here refers to belief or faith in authority (*Autoritätsglaube*) (GA II/16: 113), this state of affairs is, in accordance with the demands of moral freedom, to be replaced in the course of history by a legal and political order that is compatible with, and serves as a condition of, this same freedom. This requires, among other things, granting everyone the same legal and political rights (GA II/16: 119-120). Fichte associates this universal demand for equality and freedom with the coming of Christ (cf. GA II/16: 132). Yet he identifies the actual emergence of this same demand with an emotional and practical need. He does not, therefore, speak of a revelation where we might most have expected him to do so. Thus, even here Fichte does not introduce an element of transcendence in the form of divine intervention in the course of history, that is to say, an act or event which can only be fully explained in supernatural terms. He claims instead that,

Thus around the beginning of Roman world-domination [*Weltherrschaft*] a terror of sin and unholiness had spread everywhere, and a fearful striving to be taken up into the consciousness, the protection and love of the Godhead ... This thirst should now be satisfied in a completely different way, just as it has prepared the way for the success of this means of satisfying it: a thirst that manifested itself in history in this way only twice; at that time, and at the time of the Reformation, and will one day come again for a third time in another form. (GA II/16: 130)

Fichte's introduction of the idea of a necessary historical process driven by certain fundamental human needs, in which moral freedom together with its legal and political conditions become increasingly manifest nevertheless invites the following question: Does he really manage to explain the emergence of a legal and political order that is compatible with moral freedom and is able to serve as a condition of it in a way that remains internal to this historical process? If Fichte is able to do this, the notion of immanence would inform his account of history in such a way as to prevent the need to introduce the transcendence associated with a supernatural event that interrupts the course of history.

Fichte appears to be opposed to theories of history that can be thought to contain a moment of transcendence because they conceive of God as a being that intervenes from outside, as it were, in the course of history so as to realize certain ends; a being which must be thought to exist independently of the historical process that it determines. He criticizes organic theories of history for the way in which they view the history of the human race as akin to the life of a plant, which develops out of a single seed to bloom in the shape of a divine realm of wisdom and virtue, but then explain away evil by means of an appeal to God's purposes and to divine providence. Despite the way in which the metaphor of the life of a plant lends itself to the idea

of an immanent process, this view of history is incompatible with the concept of God as a God of freedom because God would not want to provide us with a good that we desire whose very nature requires that we freely attain it ourselves without any outside intervention, and could not do so in any case (GA II/16: 52). This organic theory of history is fundamentally mistaken in another respect, for it not only introduces God in order to explain away any apparent anomalies, and thereby reduces the extent to which history can be regarded as the work of moral freedom alone, but also leaves no room for this freedom by treating history as a quasi-natural process.

It may look, then, as if Fichte wants to reject completely the idea of a transcendent God that intervenes in human history and thereby introduces a causal factor that in conjunction with other such factors is designed to produce a certain effect. Rather, human beings alone must determine the course of human history by means of actions that are not themselves causally determined.³ In this regard, the emergence of a legal and political order that is compatible with moral freedom and serves as a condition of it must be shown to be internal to a historical process in which human beings alone are the actors. Fichte's account of history and the idea of God found in his *Staatslehre* thereby reflect a commitment (albeit an implicit one) to the concept of immanence. In the next section, we shall see that Fichte is nevertheless forced to introduce a moment of transcendence, as is signalled by his own use of the term 'revelation'.⁴

Transcendence

In the course of his lectures Fichte sets out certain antinomies – he himself speaks of a 'logical circle' (GA II/16: 69). In each case there is a proposition (or thesis) for which a proof can be offered, and a counter-proposition (or antithesis) that states the opposite but is nevertheless as equally well grounded as the original proposition. Fichte removes these antinomies by means of a third proposition which allegedly combines them. One such antimony concerns the relation

between the concept of freedom and the concept of coercion, both of which are central to Fichte's theory of right and must, therefore, be reconciled if the possibility of the establishment of a rational legal and political order is to be demonstrated. On the one hand, moral freedom demands that everyone be free and able to act in accordance with his or her insight. On the other hand, given that the concept and the existence of right are predicated on the idea that individuals, in virtue of their freedom, may fail to act in ways that respect the freedom of others, and that they may therefore need to be forced to respect it, the concept of right equally entails the legitimacy of coercion (*Zwang*) and the existence of the power (*Gewalt*) necessary to enforce right.

The opposition between these two equally well-grounded propositions can be resolved only by means of the idea of a power that acts to realize the concept of right in a way that is compatible with the rational insight of each and every individual, and for this reason cannot be held to violate an individual's moral freedom even when it coerces him or her. In short, there must be a coercive power that, when necessary, forces individuals to act (or not to act as the case may be) in a way they would have acted (or not have acted) if they had possessed sufficient rational insight and had acted (or not have acted) in accordance with this insight. This is, in effect, a version of Rousseau's claim that individuals can be 'forced to be free' (Rousseau 1997, 53), in the sense that they are coerced into acting in conformity with the conditions of their own freedom. In this particular case, the conditions in question concern the existence of a legal and political order in which the freedom of each and every individual is not only guaranteed, but also limited so as to guarantee the freedom of all. This introduces a further difficulty, however, because the attempt must be made to lead individuals to the standpoint at which they are able to achieve the relevant form of insight, allowing coercion to be replaced by genuine moral freedom, and, for Fichte, the possibility of succeeding in this undertaking must therefore be assumed.

On these grounds, Fichte claims that in addition to a coercive institution (*Zwangsanstalt*) there must be another institution whose task is to lead everyone to the point at which they possess insight into the rightfulness (*Rechtmäßigkeit*) of coercion (GA II/16: 67). Fichte identifies this second institution with the *Zwingherr*. I shall leave this word untranslated: it combines the verb to force, coerce or constrain (*zwingen*) with the word for ‘master’ or ‘lord’ (*Herr*). Although the term ‘*Zwingherr*’ in this way implies domination based on force, we shall see that it is misleading in so far as it suggests the existence of an oppressor or tyrant. In aiming to lead all individuals to the standpoint at which they gain sufficient insight into the conditions under which coercion can be legitimately exercised, the institution of the *Zwingherr* in fact aims at its own abolition.⁵ Nevertheless, for the time being at least, the *Zwingherr* will need to force any individuals who are unwilling to undergo the education that would lead them to adopt this standpoint to undergo it, and in fulfilling the task of educator (*Erzieher*) the *Zwingherr* will have to act as a figure of authority and power, whose intention is to generate in everyone insight into the fact that what they have until now be forced to do was the right thing to do (GA II/16: 67). This role of educator requires possession of the relevant type of insight on the part of the *Zwingherr*. Yet how can the *Zwingherr* know that he possesses such insight? Fichte’s answer to this question is simply that ‘the *Zwingherr* must be able to presuppose that his insight is infallible, and about this he is accountable to his conscience’ (GA II/16: 67). The fact that someone possesses such insight must, however, be regarded as rather miraculous, given that others are assumed to lack it. Thus, the introduction of the institution of the *Zwingherr* already begins to strain the immanence of Fichte’s account of history. It is not in connection with the *Zwingherr*, however, that Fichte himself introduces a moment of transcendence in the form of revelation.

Even if Fichte’s introduction of the *Zwingherr* is assumed to remove the relevant antimony or logical circle, it is only able to do so at the price of introducing either an infinite

regress or another antinomy. The *Zwinger* must be assumed to possess the relevant form of insight. This presupposes, however, the existence of an earlier *Zwinger* who educated a later one with regard to the nature of a social and political order that is compatible with the concepts of right and moral freedom. Yet this earlier *Zwinger* must in turn have been educated by an earlier *Zwinger*. The only option, it seems, is to assume the existence of a human being who possesses the required insight. What is more, the *Zwinger* must also be assumed to possess a moral will, for otherwise his motive for educating others in such a way that they attain the standpoint of moral freedom that he himself has already attained would remain a mystery. This is especially the case when the universal attainment of this standpoint would mean, in effect, the abolition of the institution of the *Zwinger* itself, since to aim at such a thing requires a selfless disposition on the part of the *Zwinger*.

Fichte is thereby led to speak of a ‘beginning of the ethical world’ which ‘posits a will that qualitatively, in its own intuiting, is moral, without having made itself so through its own freedom – through its mere existence, through its birth’ (GA II/16: 87). This will possesses a quasi-natural character, in that it is immediately determined by the moral law and could only act in accordance with this law. It would, in short, be reduced to the means of realizing moral ends that it had not itself freely willed. This points to the concept of a divine understanding in which the will of the individual and the end to which the individual’s actions serve as the means are synthetically combined. This concept corresponds to the idea of providence (*Vorsehung*) and expresses a miracle (*Wunder*). In relation to the idea of providence, Fichte even speaks of a ‘divine world plan aimed at the moral education [*Bildung*] of the human race’ (GA II/16: 88).

This appeal to the idea of providence generates another antinomy, however. On the one hand, we have the proposition that there can be no such divine governance of the world. This is because the possession of a moral will must itself be the work of the individual whose will it is, given that moral freedom demands that individuals freely will something, including their

own moral dispositions. The possession of a moral will and moral freedom cannot, therefore, be brute facts about oneself in the same way as physical features and personality traits are. On the other hand, there is the proposition that there must be such governance, because only in this way can the existence of freedom – or ‘the visibleness of freedom’ (*die Sichtbarkeit der Freiheit*) (GA II/16: 89) as Fichte himself puts it – be explained. The solution to this antinomy is, Fichte claims, to be found in the idea that something which is initially merely given may nevertheless subsequently be produced in accordance with a clear concept, and in this way serves in its givenness only as the prefiguration (*Vorbild*) of something that is to be brought about through the exercise of freedom. In other words, a model is provided, but it is a matter of human freedom whether or not individuals subsequently adopt this model as the object of their willing. If this model were universally adopted, a type of historical circle would arise, for history would return to its starting point at the same time as the story of how humanity recreated an initially given moral order through its own free actions would introduce an important qualitative difference, so that it would not be a case of returning to the very same beginning. Fichte goes on to claim that this starting point could only be that of a ‘original humanity that in terms of its quality is moral; whose mere existence brings with it that which in the appearance that proceeds from it is developed with freedom’ (GA II/16: 91). In other words, we must begin with the idea of a race that was miraculously moral in a natural sense and was thereby able to provide a model for future races whose members, or at least some of them, freely adopted it. Fichte is led, then, to introduce another original race; one that is this time ‘without revelation, a free one’ (GA II/16: 103), whereas the first original race appears through a revelation that occurs in time. This ‘first miracle’ is now past, however, and with the new race ‘the development of freedom has entered its natural course’ (GA II/16: 93).

The introduction of the concept of revelation and the concept of a miracle marks a clear concession to transcendence, in that something external to the historical process that forms the

object of history in the *Staatslehre* is introduced to explain the possibility of this same process. This moment of transcendence relates, however, only to human pre-history, and it is only a hypothesis, albeit a necessary one, that is introduced to explain the appearance of freedom in the course of history. The course of history itself, by contrast, remains a matter of immanence in the sense identified earlier. I shall now argue with reference to Fichte's account of the *Zwinger* that a further moment of transcendence appears and does so in such a way that even the course of history itself turns out not to be a purely immanent one. This further moment of transcendence is the result of certain difficulties that arise in connection with the idea of a *Zwinger* and Fichte's judgement of a dominant political figure of his own age, namely Napoleon.

The *Zwinger* and History

The immanence of Fichte's account of history requires avoiding any further moments of transcendence in the form of some miracle or other intervention in the normal workings of history that points to an act performed by a supernatural entity with the intention of producing a certain effect. His immanent conception of history favours a linear model of history characterized by a continuous, progressive line of development which concerns the increasing presence or 'appearance' of the moral law and moral freedom in the world, despite any opposing tendencies exhibited by nature or humanity. A causal nexus that produces historical events, and in which acts of human freedom play a causal role, is here held to be sufficient to produce effects that are compatible with the idea of moral and intellectual progress. As we have seen, the *Zwinger* plays an essential role in bringing about the increasing presence or 'appearance' of the moral law and moral freedom. I shall now argue that the person of the *Zwinger* and the causal contribution that his actions make to the course of human history threaten to introduce another moment of transcendence into Fichte's account of history that implies the

existence of a quasi-religious element in his *Staatslehre* which proves to be resistant to philosophical reflection and explanation.

Fichte spends part of the lectures that make up his *Staatslehre* attempting to answer the practical question of how someone can be recognized as the type of individual with the qualities demanded of the *Zwingherr*. As we have seen, the possession of a moral will and moral insight are the most essential of these qualities. I shall return to Fichte's attempt to deal with this issue in the *Staatslehre*, but first I shall turn to his *Rechtslehre* of 1812, which is based on another series of lectures that Fichte did not himself prepare for publication. This *Rechtslehre* provides a more detailed account of the principles governing the legal and political order that is to be produced in the course of history and forms an essential condition of the appearance of moral freedom in the world. Thus, given that the *Staatslehre* is interested in history only in so far as it concerns the genesis of a legal and political order that is compatible with, and serves as a condition of, moral freedom, the *Rechtslehre* complements the *Staatslehre* by providing an account of the nature of this legal and political order. Moreover, at one point in his *Rechtslehre*, Fichte concerns himself with the specific question of how political authority and power can be combined with a moral will and moral insight, as needs to happen in the case of the *Zwingherr* in his role as an educator of humankind, a role which may require forcing others to undergo an education that will eventually elevate them to the standpoint of moral insight and freedom that he himself already occupies. Not surprisingly, therefore, the *Rechtslehre* and the *Staatslehre* end up being confronted with what appears to be an identical problem.

In the section on the constitution in his *Rechtslehre* from 1812 (GA II/13: 279-286), Fichte views the dangers of transferring power from the people to a single person or group of people in terms of the problem that the person or people invested with political authority could be mistaken about the demands of absolute justice or may fail to subordinate their private wills to that which they nevertheless recognize the idea of justice demands. In other words, the ruler

or rulers could lack either moral insight or a moral will, or both of these things at the same time. Fichte identifies two general solutions to this problem. The first solution is that sovereignty should be invested only in the person whose own private will happens to be identical with, or most closely approximates to, a truly just one. Fichte expresses this solution in terms of the demand that the best person ought to rule. Given his formulation of the problem of political authority in his *Rechtslehre* from 1812, by the best person Fichte must be taken to mean the person who has insight into what justice demands and possesses a moral will which ensures that this insight is not ignored or misrepresented for the sake of private interests. Already, then, we can see how the ruler will need to possess the same qualities that the *Zwingherr* must possess. The second solution is that the private will of the person who happens to rule *becomes* truly just or as close as possible thereto.

Fichte mentions various problems in relation to both solutions. These problems include the infinite regress generated by the idea that the will of the ruler, like the will of every private person, must be subject to a law of coercion, so as to ensure that it itself wills in accordance with the demands of justice, for this demand presupposes the existence of another will capable of applying the law of coercion. Yet what guarantee is there that this second will's intentions and actions will always be in accordance with the demands of justice, apart from the existence of another will capable of applying the law of coercion and so on *ad infinitum*? This leads Fichte to argue that we must simply accept the existence of a sovereign will that coerces others but is not itself coerced; an assumption that simply confirms the need for a ruler who already possesses moral insight and a moral will. Thus, as in the *Staatslehre*'s positing of an original moral people, Fichte is driven to accept the existence of a moral will which itself lacks moral freedom, in that its moral nature is something merely given, as opposed to being something that is itself freely chosen, as it must be if it is to be the work of moral freedom. This time,

however, it is not a matter of a hypothetical race existing in a pre-historical age, but, rather, a matter of the type of person who is qualified to govern a modern state.

In response to the suggestion that the rulers could be given an excellent education (*Erziehung*), Fichte recognizes that the following question then arises: Who would educate the educator himself along with those individuals who are to choose an educator on behalf of the future ruler? Once again, an infinite regress arises. Fichte also claims that even if the existing rulers were to recognize one's individual's superiority, they would not give up their power to this individual, and the masses would not elect such an individual because only the good can recognize others of their kind, while even among an assembly of the best people it may happen that each of them would want to be ruler, trusting himself more than others. This particular problem relates directly to a key idea that Fichte introduces in order to explain how someone can be recognized to possess the qualities required of a *Zwingherr*.

In the *Staatslehre* Fichte claims that the appointment of the sovereign (*Herrscher*) must be decided by an estate of teachers (*Lehrstand*), for only the members of this estate would be qualified to judge whether or not someone has shown himself through his deeds to possess the greatest understanding among his peers (GA II/16: 78). In addition to the problem concerning whether one can in fact rely on the members of this estate to make the right choice, we once again encounter an infinite regress similar in kind to the one generated by the *Zwingherr*'s role of educator. The very existence of a learned estate with the ability to judge this matter correctly presupposes that the members of this estate have themselves been educated to the standpoint of moral insight and moral freedom, and this in turn presupposes the existence of an educator who must in turn have been educated. Fichte recognizes this problem, and in the *Staatslehre* he even speaks of it in terms of an act on the part of a supernatural being: 'We are directed to an estate that does not posit itself, but is in fact a product of God's grace' (GA II/16:

76). In the face of such difficulties as the ones outlined above, Fichte is forced to conclude in the *Rechtslehre* that

the task of constructing right, which has now been led back to the task of making the most just person of his age and nation into the ruler of the same, cannot be solved by means of human freedom. It is therefore a task for the divine governance of the world. Justice in the state depends, however, on the resolution of this task; this is therefore also a task for the divine governance of the world. (GA II/13: 285)

The matter is, in short, to be decided by the course of history, which is itself held to be determined by some kind of divine plan and is not, therefore, the product of the free actions of human moral agents who execute this plan. Fichte assumes, then, that history will bring about the advance of moral insight and thus the possibility of moral freedom, and we can here see how he attempts to cling to the notion of immanence by entrusting a certain outcome to a linear historical process which unfolds without any outside intervention. At the same time, however, Fichte views this process itself, and thus the outcome in question, as being determined by some kind of divine plan.

Although Fichte's talk of 'divine governance' may be intended in a purely figurative sense, it suggests the existence of a transcendent being that determines the course of history in accordance with certain intentions that it has. This is because the notion of a plan implies the existence of an intelligent being which first devised it. Although one might respond that this intelligent being could be immanent to history in the sense of being identical with the rational plan which unfolds in the course of history, the problem then arises as to how the realization of this plan is to be guaranteed, if there is not some kind of transcendent being that may intervene in the course of history with the aim of ensuring that history develops in accordance

with such a plan. Otherwise one would simply have to trust the historical process itself to produce the required rational outcome, namely, a legal and political order compatible with the concept of right and moral freedom, which in turn requires the possession of moral insight and moral freedom on the part of the *Zwingerherr*. Yet this would sit uncomfortably with Fichte's talk of 'divine governance of the world', which implies that the task of ensuring that history takes the right course is part of an ongoing process. Thus a causal factor that is external to the historical process determined by it is introduced, and the immanence at which Fichte's account of history aims is thereby broken. Unlike the case of the original people, however, where the moment of transcendence is found at the very beginning of human history, this moment of transcendence is more far-reaching, in that it concerns a rational plan that must determine history whenever the normal causal series of historical events produces outcomes that threaten the realization of the rational plan in accordance with which the world is to be governed. The problems that lead Fichte to introduce this moment of transcendence taken in conjunction with his own account of certain recent historical developments suggest, in fact, that some form of quasi-divine intervention in the course of human history will be needed just as much in the case of the modern state as at the beginning of history.

As Fichte's account of the role of the *Zwingerherr* and the idea of a divine governance of the world show, something more than the happy coincidence of a moral will and moral insight in a single person is required to establish a legal and political order that is compatible with the concept of right and moral freedom. Rather, a moral will and moral insight must be accompanied by possession of the power to force others to obey one's will, and the emergence of such a state of affairs cannot be left to chance. Without this power the *Zwingerherr* would only be able to influence those individuals who are already willing to undergo the form of education for which he is responsible. This power is, in short, needed to force those unwilling to undergo this form of education to undergo it and to become in time morally free. The *Zwingerherr* would

not, in fact, be a *Zwingherr* if he possessed a moral will and moral insight but lacked the power to enforce his will. Yet how likely is it that a moral will and moral insight will be combined with political power as the means of enforcing obedience in the same historical person? The prospect of their being combined as a result of the chance coming together of various causal factors, including conscious human actions, in the course of history are arguably slim, especially when the fulfilment of the task entrusted to the *Zwingherr* will require a long period of time, as is surely the case with an educational process that aims to raise the human race, and not just isolated individuals, to the standpoint of moral insight and moral freedom. Fichte himself witnessed a phenomenon which, by his own account, shows that it is just as likely, if not more so, that history when left to itself will produce individuals who possess the necessary power but completely lack a moral will and moral insight. The phenomenon in question is Napoleon, about whom Fichte has the following to say:

Those people who want to speak as badly of him as possible always point only to the bloody corpse of the Prince d'Enghien, as if this was the pinnacle of his deeds. I mean another one, however, in relation to which the murder of Enghien pales in comparison almost to nothing ... The French nation was struggling to attain the realm of freedom and right ... As this self-knowledge began to dawn, the supreme direction of affairs – I shall remain silent about through which means – fell to this man ... If there had been any affinity with this concept [of freedom] in his way of thinking ... he would not have given up this end, but instead sought the means to it. The fact would not have remained hidden from him that a regular education of the French nation towards the standpoint of freedom lasting perhaps for several generations is this means ... What he instead did, how he cunningly and slyly cheated the nation of its freedom, need not be set out here. (GA II/16: 61-62)⁶

What is of particular relevance in this passage is the way in which Fichte explains Napoleon's betrayal of the ideals of the French Revolution in terms of his lack of any personal identification with the concept of freedom, and that this lack of personal identification with the concept of freedom explains why Napoleon was incapable of comprehending, let alone implementing, the means of realizing these ideals, namely, an education that would raise the nation to the standpoint of moral freedom. This education must take place over a long period of time, and it thus assumes that the necessary moral insight will be transmitted directly from generation to generation. There will, in short, have to be a succession of *Zwingerherren*. Clearly, however, Napoleon lacks the essential qualities required of a *Zwingerherr*, which are a moral will and moral insight, while possessing in abundance something that the *Zwingerherr* must also possess, if only as a means of fulfilling the task with which he has been entrusted, namely, political authority and the coercive means of enforcing his will. Therefore, Napoleon must be held either to break the series of *Zwingerherren* that had already been established and is necessary to establish 'the realm of freedom and right' or to be incapable of forming the first member of such a series. In either case, the immanence of the process of historical development in accordance with the idea of a divine governance of the world would be broken, and the need would accordingly arise for some kind of external intervention in the historical process to remedy this defect.

If history is as likely to produce a figure such as Napoleon, in whom political authority and power are detached from a moral will and moral insight, as it is likely to produce an individual in whom all these attributes are combined, and if such figures tend to have considerable influence on the further course of history, as was arguably the case with Napoleon, the historical appearance of a *Zwingerherr* or series of *Zwingerherren* capable of fulfilling the task assigned to this institution in Fichte's *Staatslehre* looks far from certain. One might even be

tempted to say that it is so unlikely that only an act of divine intervention could secure the appearance of this *Zwingherr* and the continuation of this institution until the establishment of a realm of right and freedom. History could then no longer be understood in terms of the idea of immanence but would instead require a moment of transcendence. The appearance of the *Zwingherr* would then rival the Incarnation, though this time it would not be a case of the miraculous coming together of the divine and the human, but the coming together of a moral will and moral insight with political authority and power. The moment of transcendence here is admittedly weaker, since in the Incarnation that which is divine and eternal miraculously becomes human and finite, despite the fact that the first set of terms and the second set of terms are mutually exclusive.⁷ Although this time there is no logical contradiction, and the coming together of a moral will and moral insight with political authority and the power to enforce one's will in a single person in the course of human history is therefore conceivable, the *Zwingherr* can be thought to have something in common with the historical Christ if Fichte's characterization of Napoleon is anything to go by, in that the coming together of these attributes in a single person begins to appear miraculous.

I have shown that Fichte's *Staatslehre* can be understood in terms of the religious concepts of immanence and transcendence, even though Fichte himself does not explicitly invoke these categories, and despite his intention to employ religious concepts in a secularized way. Fichte's conception of history in particular can be explained in terms of the concept of immanence. Yet his attempt to offer a purely immanent account of historical development is only partially successful even by his own account, since he is forced to introduce a moment of transcendence at the very beginning of history. I have argued, moreover, that there are grounds for claiming that an element of transcendence is also present in Fichte's account of the history of the modern state, given what is required of the *Zwingherr* on whom the emergence of a legal and political order compatible with the moral freedom of all individuals depends and his

characterization of Napoleon. It might here be said that it is not surprising that the *Staatslehre*, contrary to Fichte's intentions, should represent a political theology in the robust sense that religious concepts inform it in a way that does allow their reduction to a purely metaphorical or illustrative status when the Christian world view of his own time and society informs his lectures. Thus, despite the way in which his use of religious concepts can at one level be explained in non-theological, purely philosophical terms, at a deeper level Fichte cannot help letting such concepts determine his account of the modern state and its history together with the philosophical standpoint from which this account derives. Yet there is no reason to think that religious concepts such as immanence and transcendence might not also underlie political theories which forsake such religious concepts altogether and regard their own secularity as self-evident. Indeed, Fichte's *Staatslehre* represents a particularly interesting case in this connection, in that it self-consciously seeks to deprive religious concepts of their theological origins and meaning. On the one hand, this reflective use of religious concepts might be thought to promise a more thorough, if ultimately incomplete, attempt to avoid the unwitting introduction of a political theology through the uncritical employment of secularized versions of these concepts long after the political theology of the past has allegedly been consigned to the dustbin of history. On the other hand, the fact that Fichte's attempt to transcend political theology turns out to be incomplete may make one more cautious about claiming that political theology is something that does indeed belong to the past.

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¹ This work was not prepared for publication by Fichte himself. Rather, the text was prepared for posthumous publication on the basis of the notes for a series of lectures he gave at the University of Berlin shortly before Fichte's unexpected death in the same year. The full title given to the published version of the lectures was *Die Staatslehre, oder über das Verhältniss des Urstaates zum Vernunftreiche (The Theory of the State, or concerning the Relation between the Original State and the Realm of Reason)*. This title is not one that Fichte himself gave to his lectures.

² In what follows the critical edition of Fichte's works (Fichte 1962-2012) will be cited as GA according to series (Roman numeral), volume (Arabic numeral) and page number.

³ It has been argued that the *Staatslehre* is based on a religious view of world history that excludes the possibility of a failure of history to achieve its final end, and that in this respect it differs from the view of history found in the earlier *Addresses to the German Nation (Reden an die deutsche Nation)* which speaks of only the possibility of achieving this final end. Cf. Metz 1990, 129-130. This invites the question, however, as to how this historical

necessity can be reconciled with the moral freedom that is a central concern of the *Staatslehre*. On the one hand, historical necessity threatens moral freedom, in that human actions are then ultimately determined by the end towards which history tends. On the other hand, moral freedom threatens historical necessity, in that it introduces an element of contingency.

⁴ Fichte's interest in this concept extends right back to his first (anonymously) published work, *Attempt at a Critique of All Revelation* (*Versuch einer Kritik aller Offenbarung*). See GA I/1; Fichte 2010.

⁵ This idea relates to a theme that is already present in Fichte's defence of the French Revolution published in 1793 (cf. GA I/1: 253), namely, that by playing its part in bringing about the universal reign of the moral law among human beings, the state aims at his own abolition. For more on this theme, see James 2015, Chapter 5.

⁶ Fichte had already written a critical piece on Napoleon entitled *Concerning the Nameless One* (*In Beziehung auf den Namenlose*) in 1806. See GA II/10: 83-85.

⁷ This explains Kierkegaard's association of the Incarnation with the absurdity of that which he calls the 'absolute paradox'. Kierkegaard 1992, 217-218. Kierkegaard describes the Incarnation as 'a break with all thinking' (Kierkegaard 1992, 579), and he speaks of the 'crucifixion of the understanding' (Kierkegaard 1992, 564) in connection with it.