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The Rights Recognition Thesis:
Defending and Extending Green

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I. Introduction

In his *Lectures on the Principles of Political Obligation*, T. H. Green characterizes a right as ‘a power claimed and recognized as contributory to a common good’ (*LPPO* §99). Scholars such as Rex Martin have noted that Green’s characterization of a right has multiple elements: it includes social recognition and the common good,¹ as well as the idea of a power. More formally, it seems that Green wants to say that *R* is a right if and only if *R* is (i) a power that is (ii) recognized by some others or by society as (iii) contributing to a common good. Much of the scholarship on Green has been devoted to explicating and defending this third feature, which grounds rights on Green’s core idea of a common good.² In this chapter I shall stress claim (ii)—the recognition thesis—though we shall see that pursuing claim (ii) will enlighten us as to why Green links the recognition thesis to the common good claim, (iii). And claim (i), I shall argue, reinforces the plausibility of the recognition thesis. So

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¹ Rex Martin, ‘T. H. Green on Individual Rights and the Common Good’, in Avital Simhony and David Weinstein (eds.), *The New Liberalism: Reconciling Liberty and Community* (Cambridge: Cambridge University Press, 2001), 49–50. See also Maria Dimova-Cookson, *T. H. Green’s Moral and Political Philosophy* (Basingstoke: Palgrave, 2001), ch. 5.

² And critics have attacked it. For a defence, see Martin, ‘T. H. Green on Individual Rights and the Common Good’. For a criticism of the general form of the argument, see Loren E. Lomasky, *Persons, Rights and the Moral Community* (New York: Oxford University Press, 1987), 60.

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all three of Green's elements work together to form a coherent conception of rights.

I first turn to the rights recognition thesis, claim (ii). Section II analyses the rights recognition claim and, more generally, the concept of a claim right. Section III introduces the idea of moral internalism, and sketches some general considerations in its favour. Section IV shows that Green advocates moral internalism, and that a version of the rights recognition thesis follows from it. Section V analyses the relation of rights to the common good, i.e. claim (iii) above. I shall argue that for Green grounding rights in the common good is not simply a normative claim, but a conceptual feature of rights, one that again relates to his moral internalism and theory of moral motivation. Section VI turns from ethical to political philosophy. I shall argue that, although an analysis of Green's moral internalism provides the basis for an interesting rights recognition thesis, it does not quite justify Green's strong requirement that actual social recognition is necessary for a right to be properly ascribed to a person. Section VII argues that this stronger recognition requirement can be grounded on Green's idea of a right as a recognized *power*, claim (i). Here is where my defence of the rights recognition thesis goes beyond Green: I argue that if Green had grasped better the concept of a power, he would have been led to an even stronger defence of the rights recognition thesis. In light of these discussions, section VIII reconsiders W. D. Ross's famous objection that Green's theory cannot recognize the rights of slaves.

II. The Correlativity of Rights and Duties

(a) *Two Notions of Rights and Recognition: Creating versus Acknowledging a Moral Status*

Green's recognition claim, then, is that 'rights are made by recognition. There is no right but thinking makes it so' (*LPPO* §136). My concern in this essay is the claim that recognition of *R* as a right is a *necessary condition* for *R* being a right. Although Green says that 'rights are made by recognition', he obviously cannot be interpreted as claiming that recognition is sufficient, as he provides two other necessary conditions: that *R* is a power, and that it contributes to the common good. So Green's distinctive recognition claim is that a necessary condition for Alf having right *R* is that *R* is in some way recognized as Alf's right. Green often stresses that for one to be a right-holder, he must be seen by others as an equal; rights 'depend for their existence ... on ... a society of men who recognise each other as *isoi kai homoioi* [equals]' (*LPPO* §116). To be a

right-holder is to be recognized as such by another. This recognition thesis, as I call it, has not only been controversial, it has been largely dismissed.³ The first reaction of most readers is to dismiss it as outrageous. W. D. Ross expresses a typical response:

Now it is plainly wrong to describe either legal or moral rights as depending for their existence on recognition, for to recognize a thing (in the sense in which ‘recognize’ is used here) is to recognize it as existing already. The promulgation of a law is not the recognition of a legal right, but the creation of it, though it may imply the recognition of an already existing moral right. And to make the existence of a *moral* right depend on its being recognized is equally mistaken. It would imply that slaves, for instance, acquired the moral right to be free only at the moment when a majority of mankind, or of some particular community, formed the opinion that they ought to be free, i.e., when the particular person whose conversion to such a view changed a minority into a majority changed his mind. Such a view, of course, cannot consistently be maintained.⁴

As Ross indicates, for a person to recognize something (say, the house in which he was born) implies that the thing already exists, and that *then* the person recognizes it for what it is. Thus for Ross and most rights theorists, it makes perfect sense to say that an entire society is failing to recognize a person’s moral⁵ rights: the rights are there, but people do not recognize them, as they might fail to recognize true genius. Green’s model of recognition, however, seems more akin to a chair at a meeting who, *in recognizing* a speaker *creates a status*; to recognize that someone has the floor just *is* to give him the floor. So it looks as if we have two models of recognition available to us: acknowledging a status and creating a status. So Green cannot be charged with a simple confusion about the way in which the idea of recognition works; it works in two ways. The question, though, remains why we should adopt the status creation rather than the status acknowledgement model of recognition, especially given its apparently counter-intuitive consequences. Let us first explore the case for Green’s recognition thesis, and then, at the end, return to Ross’s complaint.

(b) *The Correlativity of Rights and Duties*

It is often maintained—and, I will argue, ultimately correctly—that Green’s recognition thesis is bound up with his doctrine of the correlativity of rights

³ See Peter P. Nicholson, *The Political Philosophy of the British Idealists* (Cambridge: Cambridge University Press, 1990), 83 ff. For relatively rare, sympathetic treatments, see Rex Martin, *A System of Rights* (Oxford: Clarendon Press, 1993); Derrick Darby, ‘Two Conceptions of Rights Possession’, *Social Theory and Practice*, 27 (July 2001), 387–417.

⁴ W. D. Ross, *The Right and the Good* (Oxford: Clarendon Press, 1930), 51.

⁵ My concern in this chapter is moral, not legal, rights.

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and duties. Green, though, offers not simply one, but at least two core claims maintaining the correlativity of rights and duties.

The first, and Green's most distinctive, correlativity claim maintains:

C1: Alf's claim to possess a right against Betty implies Alf's recognition of Betty's right against Alf.

Green endorses (C1): 'on the part of every person ("*person*" in the moral sense ...) the claim, more or less articulate and reflected on, to rights on his own part is co-ordinate with his recognition of rights on the part of others' (LPPO §26). This may seem bound up with the rights recognition thesis (LPPO §§25–6).⁶ If my claim of a right against you presupposes that I recognize that you have rights against me, it seems that the practice of rights implies that I must see you as a moral agent who also has claims against me. And this, in turn, seems to lead to Green's notion that rights depend on a society whose members recognize each other as moral agents (LPPO §138). Clearly, though, no such conclusion follows. Even granted that my *claiming* a right against you implies a recognition, 'more or less articulate and reflected on', that you have rights against me, nothing follows about mutual recognition as necessary for the right's *existence*. That the practice of *claiming my rights* presupposes recognition of the rights of others does not imply that my actually *having rights* presupposes this. I may be ignorant of my status as a rights-holder, and so I do not claim any rights, and so might not recognize others as rights-holders, but this by no means precludes me having rights. We are back to Ross's original point: what is possessed and what is recognized as being possessed are not equivalent.

Green, however, advances a more general sort of correlativity claim that most commentators do not distinguish from (C1):

C2: The concept of a right implies the concept of a duty.

Green is clear that moral duties are 'correlative to rights' (LPPO §17). Given this, Green criticizes Spinoza and Hobbes for thinking that there can rights in a condition in which there are no moral duties: 'The cardinal error of Spinoza's *Politics* is the admission of the possibility of a right in the individual apart from life in society, apart from the recognition by members of a society of a correlative claim upon and duty to each other' (LPPO §38). Green makes a similar criticism of Rousseau:

Rousseau, it will be remembered, speaks of the 'social pact' not merely as the foundation of sovereignty or civil government, but as the foundation of morality. Through it man becomes a moral agent; for slavery and appetite he substitutes freedom of subjection to

⁶ See Timothy Hinton, 'The Perfectionist Liberalism of T. H. Green', *Social Theory and Practice*, 27 (July 2001), 473–99, at 489.

self-imposed law. If he had seen at the same time *that rights do not begin till duties begin*, and that if there were no morality prior to the pact there could not be rights, he might have been saved the error which the notion of there being natural rights introduces into his theory. (*LPPO* §116)⁷

How are we to explicate Green's idea that 'rights do not begin till duties begin'? Ross's discussion of the correlativity of rights and duties, which explicitly has Green's theory in mind, is helpful. Ross distinguishes four correlativity claims:⁸

- C3: Alf's right against Betty implies a duty of Betty to Alf.
- C4: Betty's duty to Alf implies a right of Alf against Betty.
- C5: Alf's right against Betty implies a duty of Alf to Betty.
- C6: Alf's duty to Betty implies a right of Alf against Betty.

The first pair ((C3), (C4)) and the second pair ((C5), (C6)) are different types of correlativity claims. The latter pair look more like substantive moral principles according to which a person who has rights against others also has duties to them (C5), and a person has duties to others also has rights against them (C6). Ross suggests that Green's main criticism of natural rights theory is that it ignores (C5);⁹ given Green's insistence that a regime of rights presupposes conditions of mutual recognition of moral personality, it seems certain that Green accepts (C5), and, it would seem, also (C6).

While (C5) and (C6) are substantive moral theses, (C3) seems more like a formal claim about the logic of rights. Ross tells us that (C3) is 'unquestionably true'.¹⁰ Ross also accepts (C4), as long as we restrict ourselves to moral agents (and so, for example, leave aside duties to animals). Together, (C3) and (C4) assert that rights are what Wesley Hohfeld called 'claim rights'. According to (C3)—which I shall call the *basic correlativity claim*—Alf has a (claim) right *R* to *X* against Betty only if Betty has a correlative duty *D* that requires her to perform some action *Y* (which might be, for example, non-interference with Alf's *X*-ing or providing him *X*).¹¹ If one also accepts that (C4)¹² entails that if I have a duty to you, then you have a (claim) right against me, then Alf has a right *R* if and only Betty has a correlative duty *D*.

⁷ Emphasis added. ⁸ Ross, *The Right and the Good*, 48. ⁹ *Ibid.* 52–4.

¹⁰ *Ibid.* 48.

¹¹ For Hohfeld's classic analysis, see his 'Some Fundamental Legal Conceptions as Applied in Judicial Reasoning', *Yale Law Review*, 23 (1913), 16–59. I am drawing here on L.W. Sumner, *The Moral Foundations of Rights* (Oxford: Oxford University Press, 1987), 27. For helpful explications of Hohfeld's analysis, see R. E. Robinson, S. C. Coval, and J. C. Smith, 'The Logic of Rights', *University of Toronto Law Review*, 33 (1983), 267–78; Michael Freedman, *Rights* (Minneapolis: University of Minnesota Press, 1991).

¹² Section VIII presents doubts that we should.

Ross and Green both accept the basic correlativity claim (C₃), as do most contemporary rights theorists. It would thus appear that this basic correlativity claim cannot be at the heart of their dispute about the recognition thesis. However, I shall argue that, despite appearances, it is indeed fundamental to their disagreement. Claim (C₃), when conjoined with certain views of moral judgement and moral motivation, generates Green's advocacy of the rights recognition thesis. (C₃) and (C₄), conjoined with certain other views about moral judgement and motivation, entail Ross's rejection of the recognition thesis. In what follows, Green's more distinctive correlativity claims ((C₁), (C₅), (C₆)) play no role. This is not to deny either that they were important to Green, or that they support the rights recognition thesis (see e.g. *LPPO*, §208). However, they are far more controversial than (C₃) (the basic correlativity claim), which, it will be recalled, Ross called 'unquestionably true'. If it can be shown that the rights recognition thesis can be built on something as uncontroversial as the basic correlativity claim, we will have advanced a strong case for it.

III. Moral Internalism and Externalism

(a) *Ross's Externalism*

Given (C₃) and (C₄), and given his realist account of moral duties, we can see why Ross must reject Green's rights recognition thesis. For Ross a duty is 'an objective fact'¹³ that is not observer-dependent—that is, the fact that '*D* is a duty' does not depend on anyone's observing that *D* is a duty, or concluding that *D* is a duty. So, since moral duties are observer-independent facts in this way, and given (C₄), it follows that rights are observer-independent facts.¹⁴ Furthermore, on Ross's view, the fact that *D* is a duty does not depend on anyone's being motivated to act on *D*. Our objective duty is independent of actual desires or subjective understandings of our duty.¹⁵ Ross thus advocates an *externalist* view of the relation of moral obligation (duty) and motivation. To be more precise, let us say:

Ross's externalism: That (i) '*D* is Alf's moral duty' does not imply either that (ii) Alf understands (acknowledges, etc.) that *D* is his duty or (iii) that Alf is disposed to act on *D*.¹⁶

¹³ Ross, *The Right and the Good*, 20.

¹⁴ Recall that Ross accepts (C₄), so long as we restrict consideration to the class of moral persons.

¹⁵ See W. D. Ross, *The Foundations of Ethics* (Oxford: Clarendon Press, 1939), chs. 8 and 9.

¹⁶ The classic paper on this issue is William K. Frankena, 'Obligation and Motivation in Recent Moral Philosophy', in K. E. Goodpaster (ed.), *Perspectives on Morality: Essays by William K. Frankena*

Ross's externalism, then, grounds his view that a person's rights are not conceptually dependent on what other people understand his rights to be, or what claims they are motivated to fulfil.

(b) *Worries about Externalisms*

Although externalist accounts of moral motivation certainly have supporters,¹⁷ Ross's externalism denies what Michael Smith has called a 'platitude' about morality: that morality is part of practical reason in at least the weak sense that an ideally rational agent, who was aware of all the reasons for action that there are, would necessarily have motivating reasons to act on his moral obligations.¹⁸ To better understand the problems with Ross's externalism, let us focus on a simpler form of externalism that denies this platitude:

Motivational externalism: That (i) Alf is a perfectly rational agent and (ii) Alf acknowledges that '*D* is my moral duty' do not together imply (iii) Alf is disposed to act on *D*.

Motivational externalism differs from Ross's externalism. As I have depicted it, Ross's externalism asserts that the existence of an obligation is external to *both* the recognition of the obligation by an agent and his motivation to act on the obligation. Motivational externalism is not committed to any view about the relation between the existence of an obligation and acknowledgement of it by a perfectly rational agent;¹⁹ what it does say is that even if a fully rational agent acknowledges the duty, there is no necessary, internal tie, between this acknowledgement and motivation to act on the duty. So a motivational externalist would assert that the correct moral judgements of fully rational agents are independent of motivating reasons to do anything about them.

Motivational externalism understands moral judgements as purely theoretical claims about what one should do, rather than as inherently practical. That is, just as one might accept a theoretical claim in science but not be moved to do anything on the basis of it, so one can accept a moral judgement but not be moved to do anything about it. One might have a comprehensive catalogue

(Notre Dame, Ind.: University of Notre Dame Press, 1976), 49–73. For a more sophisticated analysis, which makes some of the distinctions I shall use here, see Stephen Darwall's nice overview, 'Reasons, Motives, and the Demands of Morality: An Introduction', in Stephen Darwall, Allen Gibbard, and Peter Railton (eds.), *Moral Discourse and Practice* (Oxford: Oxford University Press, 1997), 305–12.

¹⁷ J. S. Mill was an externalist. See his *Utilitarianism* (Indianapolis: Bobbs-Merrill, 1957), ch. 3. For a criticism of Mill's externalism, see Christine Korsgaard, *The Sources of Normativity* (Cambridge: Cambridge University Press, 1996), 78 ff.

¹⁸ Michael Smith, *The Moral Problem* (Oxford: Blackwell, 1994), 7 ff.

¹⁹ Thus one motivational externalist might hold that it is a necessary truth that a fully rational agent would acknowledge all her moral duties, while another might hold that, say, even fully rational Athenians could not have grasped all their moral duties, given the limits of their intellectual horizon. Much depends here on what one packs into 'fully rational', an issue I avoid here.

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of correct moral judgements and be fully rational, and yet be not be disposed to act on any of these duties. Now this seems to miss the real practical crux of the moral 'ought': to truly accept that one morally ought to do something is to be moved to do it. Moral discourse has an ineliminable practical side: when someone seeks to show you that the poor in Africa have a right to assistance, she is not simply trying to get you to believe 'The poor in Africa have a right to assistance': she is trying to get you to act—to assist them—*because* you recognize their right. Getting you to recognize the right is itself a motivational lever in getting you to act. To a motivational externalist, however, that Betty shows a fully rational Alf that he has a moral duty to help her, that he accepts this, and that he is a rational agent, need not have the practical effect of even disposing Alf to help her. In addition, external inducements, some extra desire to be a moral person, and/or persuasion are necessary to actually move Alf to help.

This is a serious drawback to motivational externalism: it denies any necessary internal tie between awareness that one has a moral duty and doing anything about it. To the motivational externalist the recognition of the moral 'ought' can be motivationally inert even in a fully rational agent, because the 'ought'—the call of duty—remains external to the agent's motivational set. Knowing what is right has no inherent link to doing what is right. To many, perhaps especially in the British tradition of moral philosophy, an adequate account of morality must show how recognition of an 'ought' moves one to do something about it.²⁰ Those who endorse this link between recognition that one ought to do something (duty requires it) and actually doing one's duty thus advocate at least:

Motivational internalism: If (i) Alf is a perfectly rational agent and (ii) Alf acknowledges that '*D* is my moral duty', then (iii) Alf is motivated to act on *D*. Alf may have conflicting motivations; at least for present purposes, let us allow that Alf might be perfectly rational, sees that *D* is his duty, but also sees that acting in accord with *D* will be very costly to his values or interests, so he is not ultimately moved to so act. The important point of motivational internalism is that the recognition of moral obligation in a rational agent is itself a motivating influence, even if not the most powerful influence.

Unless we are prepared to deny the practical nature of morality, we must at least embrace motivational internalism. However, the following hybrid view is possible:

The hybrid view (existence externalism/motivational internalism): That (i) '*D* is Alf's moral duty' does not imply that (ii) a fully rational Alf understands

²⁰ See Stephen Darwall, *The British Moralists and the Internal 'Ought': 1640–1740* (Cambridge: Cambridge University Press, 1995).

(acknowledges, etc) that D is his duty (existence externalism); but (iii) if Alf does come to believe ‘ D is my duty’, a rational Alf is disposed to act in accordance with D (motivational internalism).

On the hybrid view, acknowledging a moral duty does have the practical effect of disposing to action, but whether one has a moral duty is an entirely external—let us say, an ‘objective’—matter. The hybrid view is certainly more attractive than motivational externalism, since it preserves the practical core of morality. The worry, though, is that we are confronted with a mystery: although that D is one’s moral duty is an entirely external fact, someone who forms a true belief about this fact also develops a motivation to act.²¹ What is it about knowledge of *this* sort of fact that coming to believe it moves one to act, while coming to believe other sorts of facts does not have that effect? One can see why internalists are apt to see these external moral facts as ‘queer’ entities, for knowledge of them affects us in ways quite unlike other types of knowledge.²² In contrast, what we might call existence internalism does not have any difficulty explaining why recognition of moral ‘oughts’ motivate: moral oughts, says such an internalist, move people to action because moral convictions are expressions of one’s desires, will, or self-understanding, not simply attempts to track an external truth. Some internalists such as Hobbes held that moral convictions stem from the self because they are ways to achieve the ends of the self; others, closer to Kant (and Green), hold that moral oughts are matters of self-legislation and express the demands that the rational will imposes on itself.²³ In any event, the crux of all existence internalist accounts is that moral oughts arise from within the agent, and this explains why they have the power to determine action.

The question is: From where does power of an ‘ought’ to move us come? The hybrid view seems to say that although oughts are external facts, they are external facts that have a power over us: to believe them is to be induced to act. Existence internalists insist that this is no answer at all: it just asserts that some external facts are motivating without explaining how they are. In contrast, the existence internalist gives us a clear explanation of the power of moral judgements over us: a genuine moral requirement must express our (rational) will or desires. This line of thinking thus leads to:

Strong (recognition & motivational) internalism: That (i) ‘ D is Alf’s moral duty’ implies (ii) that under conditions C (iii) Alf recognizes D as his duty and (iv) Alf is motivated to act in accord with D .

²¹ Ibid. 11.

²² See J. L. Mackie, *Ethics: Inventing Right and Wrong* (Harmondsworth: Penguin, 1977), 39–40.

²³ See Darwall, *British Moralists and the Internal ‘Ought’*, chs. 1, 3, and 4.

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Strong internalism is almost the opposite of Ross's externalism: whereas Ross's externalism sees no necessary tie between the existence of moral duty and either acknowledgement or motivation, strong internalism insists on a necessary connection between the existence of Alf's duty and Alf's acknowledgement of it, and between his acknowledgement of it and his motivation to act on it. So if Alf under conditions *C* does not acknowledge *D* as his duty, then it is not his duty. It is important to add the second clause, about the conditions *C* under which Alf recognizes *D* as his duty. Any fully specified version of strong internalism will specify some conditions under which a person recognizes something as his duty. The most permissive version might suppose that actual recognition is required; more demanding is that a suitably reflective agent would recognize the duty; stronger still is that the agent, if deliberating in a rational way, would do so.²⁴

IV. Green's Moral Internalism: The Basic Rights Recognition Thesis

(a) *Green's Moral Internalism*

Green's account of moral obligation and motivation belongs to the family of internalist theories. According to Green, morality is practical in so far as terms such as 'ought' and 'right' get their meaning only when they enter into practical guidance in people's dealings with each other (*LPPO* §116). The meanings of the terms are inherently practical in so far as they depend on people's recognition of common interests in their dealings.

In the *Prolegomena to Ethics* Green tells us that in those who have a desire for self-realization, this desire

will express itself in their imposition on themselves of rules requiring something to be done irrespective of any inclination to do it, irrespectively of any desired end to which it is a means, *other than this end, which is desired because conceived as absolutely desirable*. With the men in whom, and at times when, there is no such desire, the consciousness of there being something absolutely desirable will still be a qualifying element in life. *It will yield a recognition of those unconditional rules of conduct to which, from the prevalence of unconformable passions, it fails to produce actual obedience*. It will give meaning to the demand, without which there is no morality and in which all morality is involved, that 'something be done merely for the sake of its being done,' because it

²⁴ That Green's ethical theory specifies *C* in terms of rational deliberation, but his political theory does so in terms of actual recognition, is the concern of sects. VI and VIII below.

is a consciousness of the possibility of an action in which no desire shall be gratified but the desire excited by the idea of the act itself as something absolutely desirable in the sense that in it the man does the best that he has it in him to do. (*PE* §193)²⁵

In this important passage Green is seeking to reconcile the notion of a categorical morality, in which one's duty does not depend on one's desire to perform it, i.e. with moral internalism.²⁶ We can see that Green insists here that either a desire to act, *or at least some sort of recognition of the desirability of acting on duty, is always present* in an agent who deliberates rationally.²⁷ On the part of those with the desire for the good (of self-realization), Green acknowledges—indeed, he stresses in italics—that this desire is actually present; for those who, because of their unruly passions, do not possess this desire, they too at least *recognize* the moral duty, because they see that the act is *desirable in expressing the best for man*. Throughout, the concern is to show that categorical moral law is meaningful and practical because it expresses the self, and that is why it is a practical demand on us. Without this practical pull, terms such as 'ought' and 'right' would have no meaning.

Notice, then, that Green does not quite advocate strong internalism, which, it will be recalled, holds that recognition of an obligation implies motivation to act on it. In these passages, then, Green seems closer to a view that we might call

Green's recognition internalism: 'D is Alf's moral duty' only if, when rationally deliberating, Alf recognizes the absolute desirability of acting on D (his duty). It is *generally true* that Alf is then motivated to act in accord with D.

For Green, then, the critical tie is between the claim that a moral duty pertains and its rational recognition; the relation between recognition and motivation is close, but not necessary. So in the *Prolegomena* Green does not quite advocate motivational internalism, but a sort of 'recognition existence internalism', which internally and necessarily ties the existence of a duty to its recognition

²⁵ Emphasis in 'other than this end ...' original; emphasis in 'It will yield a recognition' added.

²⁶ David O. Brink analyses this section (193) of the *Prolegomena* thus: 'Because the demands of self-realization depend only on those deliberative capacities that make one a responsible agent, they are categorical imperatives.' On Brink's analysis as well, the categorical imperative arises from within agency (*Perfectionism and the Common Good: Themes in the Philosophy of T. H. Green* (Oxford: Oxford University Press, 2003), 41; see also pp. 92 ff.). Whether or not Kant himself was an internalist or an externalist is a matter of debate. Christine Korsgaard has provided an important internalist reading of Kant in her *Sources of Normativity*.

²⁷ In order to fully explicate 'rational' here, we would need to analyse Green's concept of the rational will, something that goes beyond the scope of this chapter. See my 'Green, Bosanquet and the Philosophy of Coherence', in S. G. Shanker and G. H. R. Parkinson (general eds.) *The Routledge History of Philosophy*, vii: *The Nineteenth Century*, ed. C. L. Ten, (London: Routledge, 1994), 408–36. On self-realization, rational deliberation, and recognition of an internal ought, see Brink, *Perfectionism and the Common Good*, 40–1.

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in a rational consciousness. So, in contrast to strong internalism, Green can allow that in some atypical circumstances rational people (with unruly passions) may not be motivated act on what they see as their moral duty. It is robustly internalist, though, in so far as people never have obligations that are not part of their practical considerations, at least to the extent that in their rational deliberations they recognize moral action as desirable.

(b) The Basic Argument for the Rights Recognition Thesis

The extent to which Green's argument for the recognition thesis manifests a commitment to moral internalism has not generally been noticed.²⁸ I am not claiming that everything Green says about the rights recognition thesis follows from recognition internalism—clearly Green sees a connection between correlativity claims (C1) and (C5) (section IIb) and the rights recognition thesis (see also section VI). I do wish to claim, though, that a robust version of the rights recognition thesis can be derived from his internalism conjoined with a conception of rights that embraces (C3). So, the basic argument:

- (1) The first step is the correlativity of rights and duties, as expressed in (C3) (section IIb above). So, Alf has a right *R* against Betty only if Betty has a duty *D* to Alf.
- (2) So if Betty does not have *D*, Alf cannot have *R*.
- (3) To this we add recognition internalism: '*D* is Betty's moral duty' implies that a rational Betty recognizes *D*.
- (4) Assume: rational Betty does not recognize *D*.

Therefore:

- (5) *D* is not Betty's moral duty.
- (6) It follows given Alf does not have *R*.

Recognition internalism, along with correlativity, thus implies a rights recognition thesis of the form:

- (7) Alf has right *R* only if *R* implies some duty *D* on Betty that in her rational deliberation Betty acknowledges (and so is generally motivated to act on).

Rights, then, must be recognized in this sense: recognition of a correlative duty *D* by a rational agent subject to *D* is necessary for the existence of a right. If no rational agent thinks that she has a duty *D* or if no such agents are usually moved to act on *D*, there is no right. As Green puts it, 'it is not a question

²⁸ An exception is Rex Martin, both in his scholarly work on Green's philosophy and in his own account of rights, which is inspired by Green's. See his 'T. H. Green on Individual Rights and the Common Good', 55–6; *idem*, *A System of Rights*, 77 ff.

whether or no it ought to be claimed as a right; it simply can *not* be claimed on this condition' (*LPPO* §143).

It might be queried why the focus of the analysis is on the recognition of the duty correlative to *R*, rather than the recognition of *R* itself. Isn't this an argument about the recognition of obligations rather than rights? For one thing, Green himself tells us that it is the recognition of duties which underlies the rights recognition thesis: remember his claim that Rousseau failed to grasp that 'rights do not begin till duties begin'. So for Green the crux of the issue was the beginning of duties. Moreover, the real problem of moral motivation—how do oughts motivate?—applies only to duties: it is the recognition of duties that must motivate. Rights only raise the question of moral motivation on their duty side—when they instruct the person against whom the right is claimed that she ought to act. As Hohfeld famously pointed out, when we talk about a right that is not correlative to any duty, no strict 'ought' follows. In such a case, to say that 'Alf has a right to *X*' is merely to say that he has 'no duty to refrain from *X*-ing'—he is at liberty to *X*. But merely to have a liberty to *X* does not imply that Alf ought to *X* or that Betty ought to let him. The classic example is the liberty of two pedestrians to pick up a dollar bill lying on the sidewalk. Neither has a duty to refrain from picking it up, but neither has a claim on the other to stand aside and let him pick it up. Such 'naked liberties' often characterize competitions; people have the liberty to win, but no one has a claim to win. So if we are to analyse the ways in which rights make moral demands on us, we must focus on the duties involved in claim rights. Thus the implication of Green's internalism for the theory of rights must come via his account of duty.

V. Internalism, Rights, and the Common Good

As we saw at the outset (section I above), Green's statement of his rights recognition thesis refers to the common good. Throughout the *Lectures on the Principles of Political Obligation*, Green almost always ties together the recognition and common good claims (*LPPO* §§25, 26, 48, 99, 103, 106, 113, 139, 143, 144, 145, 148, 207; for exceptions see §§23, 24, 124, 116, 142). The precise relation between the recognition thesis and the claim that rights are based on the common good is a matter of dispute. Maria Dimova-Cookson sees a conflict between the recognition and common good claims,²⁹ while Rex

²⁹ Dimova-Cookson, *T. H. Green's Moral and Political Philosophy*, ch. 5.

Martin maintains that the recognition thesis is a conceptual claim about the nature of rights, whereas Green's insistence that rights rest on the common good is a distinct justificatory claim.³⁰ Given that Green repeatedly conjoins the recognition and common good claims, often in the same sentence, we might look for an interpretation in which they are intimately and consistently related.

The internalist interpretation of the rights recognition thesis, I believe, allows us to see why it is so closely bound up with the common good in Green's eyes. The crux of the matter is Green's theory of motivation as presented in the *Prolegomena to Ethics*. According to Green, a rational agent is not simply motivated by his 'desires but seeks to satisfy himself in gaining the objects of his desires; [he] presents to himself a certain possible state of himself, which in the gratification of the desire, he seeks to reach; in short, [he] wills' (*PE* §175). 'The "motive" which the act of will expresses is the desire for this self-satisfaction' (*PE* §104). 'This motive does indeed necessarily determine the act; it is the act on its inner side' (*PE* §105). In this sense, rational action is directed to what the agent considers good. And crucially, Green adds: 'It is superfluous to add, good to *himself*; for anything conceived as good in such a way that the agent acts for the sake of it, must be conceived as his own good' (*PE* §92). For Green, then, a rational will is a will that is seeking self-satisfaction, seeking its own good.

This immediately raises a problem for moral motivation: if all motivation is for one's own good, morality cannot be understood as acting contrary to one's own good and instead acting for the good of others. Interestingly—and puzzlingly for interpreters of Green³¹—Green seems to acknowledge that we have 'generous impulses' to help others in pain, 'simply as such', that do not apparently aim at self-satisfaction, but he is quick to insist that morality cannot be founded on them, though they 'co-operate' with the desire to act morally (*PE* §235). Given that the rational will aims at self-satisfaction—the good of the individual—a motivating morality must be consistent with such a will. Hence, on Green's conception of moral motivation, 'the opposition between self and others does not enter' (*PE* §§235, 232). Thus, 'the true good must be good for all men' (*PE* §218). Morality must identify a common good: rational self-seeking beings could all be guided by such a morality, as it does not ask of them the rationally impossible—to put aside their self-seeking to aid others. For one to live a moral life, it must be the case that 'His

³⁰ Martin, 'T. H. Green on Individual Rights and the Common Good', 58–9.

³¹ See Nicholson, *The Political Philosophy of the British Idealists*, 68–71.

own permanent well-being he thus necessarily presents to himself as a social well-being' (*PE* §232).

Martin, who has done the most to show the contemporary relevance of Green's work, seeks to depict this argument as justifying morality on the grounds of mutual benefit, in a way that brings Green closer to David Gauthier's contractualism, albeit 'unlumbered with the Gauthierian baggage of atomistic individualism, non-cooperative bargaining strategies, and the maximization of rational self-interest'.³² Martin is especially keen to avoid interpreting the notion of the common good in any way that even has a 'whiff' of Green's controversial claims that 'the good of each includes within it the good of all others (or is non-competitive with the good of others or is the same for everyone), that critics of Green have seized on time and again'.³³ Now it is important to see why Green is led to the controversial claim that 'the distinction commonly supposed to exist between considerate Benevolence and reasonable Self-Love, as co-ordinate principles on which moral approbation is founded, is a fiction of philosophers' (*PE* §248). Given his analysis of rational action, and given his internalist conception of morality in which it is linked to motivation, Green cannot allow morality to be a limit on self-satisfaction. It thus cannot be constituted by a bargain in which we compromise, both gaining but sometimes having to forgo opportunities for self-satisfaction. Unlike Gauthier, who seeks to show that non-maximizing behaviour can be rational, or Kurt Baier,³⁴ who seeks to show that there are dictums of social rationality that override individual self-seeking, Green equates the rational will with a will seeking its good. Thus for the rational will to abide by morality, morality must be its good. And this means that the good of others must converge with one's own good—morality must articulate a common good.

Given this, it follows that a necessary condition for rights to be rationally recognized is that they are understood as promoting a common good. Given the account of motivation, individuals could not be moved to act on rights unless they are (i) recognized as (ii) contributing to a common good, for only then would acting on the correlative duty be consistent with rational self-seeking action. Mutually recognized claims must be recognized as promoting a common good. If they were not, then the duties they imply would not generally motivate. And given that Green, in both his moral and his political theory, ties morality to a tendency to generally motivate, duties divorced from our motivational set could not be duties at all.

³² Martin, 'T. H. Green on Individual Rights and the Common Good', 64. Cf. David Gauthier, *Morals by Agreement* (Oxford: Clarendon Press, 1986), esp. ch. 5.

³³ Martin, 'T. H. Green on Individual Rights and the Common Good', 62.

³⁴ See Kurt Baier, *The Rational and the Moral Order* (Chicago: Open Court, 1995).

VI. The Rights Recognition Thesis in Green's Political Philosophy

(a) *A Partial Reconciliation of the Rational and Actual Recognition Theses*

At this point I have defended a rights recognition thesis (call this the rational recognition thesis) according to which one can have a right against a person only if that person's rational deliberations lead her to recognize the correlative moral duty. This, of course, is an idealized recognition claim, as it applies to what is recognized in rational deliberation. Just because an irrational person does not recognize that *D* is his duty does not show that there is no correlative right *R*. Now the question is: how does this internalist recognition thesis relate to Green's claim in his political philosophy—call this the actual recognition thesis—that rights must *actually* be generally recognized in society (*LPPO*, §§103, 142, 145). Certainly, these two recognition theses can split apart. On what we might call the *pessimistic assumption*, we might suppose that in our society few individuals rationally deliberate. On the pessimistic assumption, then, there will be a sharp split between what rights are justified under the rational recognition and the actual recognition theses: few people will actually recognize the demands of their rational selves. On the other hand, on an *optimistic assumption*, we would suppose that *generally* people approach rationality in their moral deliberations; if so, then what is generally recognized by most people should pretty well track what is justified by rational recognition. Last, we could adopt a *utopian assumption* and assume that everyone actually engages in rational reflection. In that case what is morally justified under rational recognition would converge with universal actual recognition.

Green looks to be neither a pessimist nor a utopian. In his political philosophy he argued that right must be recognized by society in general. The obligation, says Green, must be one that is recognized by the mass of people, or by society generally. To say that rights depend on 'social recognition' is, then, to say that, within society *S*, *D* is generally recognized. On the optimistic assumption, it makes perfect sense, in an inquiry into what our rights are, to identify them as those that are generally recognized. As long as people *generally* deliberate rationally, what is actually recognized *generally* will express what is morally justified. Indeed, we can see on this interpretation why the condition of *general* actual recognition is not a mere compromise with the necessities of practice: general actual acknowledgement is all one would expect from a society in which most, but obviously nothing like all, rationally deliberate.

(b) The Limits of the Reconciliation Proposal

Our reconciliation proposal can explain, simply on the basis of Green's rational recognition thesis and the optimistic assumption, the truth of the important rights recognition thesis:

The importance of recognition: One has good grounds for ascribing Alf right R only if R 's correlative duty D is generally recognized in his society.

Add to this our:

The rational recognition thesis: Alf does not have a right R against others generally if in their rational deliberations they do not recognize the correlative duty D .

Together, we have an interesting and important version of the recognition thesis. We only have rights if rational others recognize the correlative duties, and unless a right is actually generally recognized, we do not have good grounds for ascribing it to people. This, I think, is enough to make opponents of the rights recognition thesis bristle. But in two crucial ways it still falls short of Green's own, more robust claims about the necessity of social recognition.

First, and most obviously, it shows that general actual recognition is crucial evidence as to what our moral rights are only on the optimistic assumption. It remains possible that for any given right R , it would be recognized in people's rational deliberations, but has somehow failed to be actually recognized. In that case, R would indeed be an unrecognized moral right of ours; but Green clearly insists that rights *must* be generally recognized. So we have failed to justify this strong actual recognition claim.

Second, Green not only insists that R must be generally recognized; there must also be a general habit of acting on it, just as in his ethical theory Green insists on both recognition *and* a tie to motivation. This indeed looks as if the actual recognition thesis is simply an application of the rational recognition thesis. However, here we come to an important difference between Green's ethical and political theories. Although in the *Prolegomena* he holds that recognizing the moral law generally leads to action on the basis of that recognition, in the *Lectures on the Principles of Political Obligation* Green connects general recognition of an obligation with people having a general habit of acting on it, 'whether the habit be founded on an imagination of pleasures and pains or on a conception of what ought to be' (*LPPO* §208). So in his account of rights in his political theory, Green argues that for D to be an obligation in society S , while it is necessary that people generally conform to D , it is not necessary that in general people act on D for the right reason, i.e. that they

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have a moral duty to do so. Although, as Green argues, some may act on ‘a conception of what ought to be’ others may be motivated simply by projected pleasures and pains (i.e. punishments and rewards). The important point is that a normal person is motivated to act on *D*.

On the face of it, this seems an odd claim for an internalist like Green to make. Recall the motivational internalist’s complaint about externalism: the externalist has no intrinsic tie between moral judgement and moral motivation; the externalist needs to supply some additional, ‘external’ motivation to act morally (Section IIIb above). Green, though, allows what would seem to be an ‘external’ motivation—habit based on imagination of rewards and punishments—to qualify as an ‘internal’ tie. Still, this is a bona fide internalist view, as the existence of the obligation is tied to the obligation’s ability to produce action in people (through habit or otherwise). If it is generally the case that, when people conclude that Alf has a right, they act on their supposed duty (either because of good moral reasons or simply out of habit), then the duty exists because it is internally connected with recognizing the obligation. So the internal tie between obligation and action need not be simply a desire to do the right thing, but any desire to act that is linked to the duty. The doctrine remains internalist because, in the absence of this habit, there is no moral obligation.

Even given all of this, the requirement that there be an actual habit of acting on the right does not appear in any way justified by the rational recognition thesis. Yes, it still qualifies as a sort of internalism, and it stays true to the internalist insistence that recognition of duty is a practical matter that motivates. But by bringing in rewards and punishments, Green has added a new dimension. Green’s ‘political internalism’ is not simply an application of his moral internalism. Not only must we show *how* moral rights can motivate rational agents, we must show *that* they do motivate most people. And it does not matter that they act *on* morality, only that they act *in accord* with it. This is a new element in his account of the way rights function, adding a practical dimension that does beyond the moral internalism.

VII. Extending Green’s Recognition Thesis: Rights as De Jure Moral Authority

(a) *Claim Rights Securing Abilities Distinguished from Rights as Powers*

I believe that a friend of Green’s can motivate his stronger claims about the necessity of social recognition by appealing to the usually overlooked third

element of his conception of a right—the idea of a power. A closer analysis of this third element of his analysis of rights leads us to see that many (perhaps most) rights depend on social recognition in a sense other than the one I have been examining.

Although Green characterizes a right as ‘a power claimed and recognized as contributory to a common good’, by ‘power’ Green apparently has in mind ‘ability’.³⁵ Indeed, it seems wrong for Green to say that a right *is* a power: what he often seems to have in mind is that a right is correlative with a duty that allows one to exercise an ability, or a duty that gives one the ability to act. Thus Green suggests that rights *secure* the ‘free exercise of powers’ (*LPPO* §25). But that a right is a claim implying a duty, which, in turn, secures one with a power, does not make the right a power. That is, we should not confuse ‘*R* is a power’ with ‘*R* is a recognized claim that enables the right-holder to exercise a power’. This is clear if we employ a schema to describe claim rights: $\text{Alf}(R(X))$: $\text{Betty}(D(Y))$, which reads ‘Alf has right *R* to *X* against Betty such that Betty has duty *D* to do *Y*’. We can see that *X* may be a power or ability that Betty’s *Y*-ing secures, or it may be the case that Betty’s *Y*-ing creates an ability *X* that Alf did not previously possess. But in both cases the ability is the *content* of the right: it is not itself the right. Although Green talks as if the right is a ‘recognition’ of ‘certain powers’ (*LPPO* §24), much of the time at least he seems to think that the recognition of the right implies an effective duty that *in turn* either allows or creates certain abilities.

Now *sometimes*, says Hohfeld, we mean by a right a *power*. Someone has a power if he or she can alter other people’s liberties, claim rights and duties. Such rights are associated with *authority* to legislate. For example, that the United States Congress has the right to make laws shows that Congress has the legal power to alter the legal duties and claim rights of American citizens. It can create new duties and rights or abolish old ones. If Congress has the power to make such changes, citizens have a corresponding ‘liability’—their claim rights and duties are subject to alteration by Congress.

Although many of our individual rights are partially claim rights, many of our rights are also powers. Because the employment of rights is generally at the discretion of the right-holder, the right-holder has the power to either invoke a duty owed by others or to give them a liberty (what Hohfeld describes as a ‘no-duty’). If I have signed a contract according to which I have the right to buy property from you at a certain date, then you have a duty to sell it to me under the contract, though I have the power to abolish this duty, i.e. waive the right. Rights of property are associated with a wide range of powers; I can

³⁵ Nicholson, *Political Philosophy of the British Idealists*, 85.

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sell my property to you, which will change the duties of my tenants; instead of owing me a monthly rent, they will owe it to you.³⁶ In so far as rights involve the discretion and decisions of the right-holder, they provide him with powers over others: he has the normative authority to alter the moral duties, claims, and liberties as he sees fit. Such rights thus empower each person with a local moral authority over others.³⁷

I think it is clear that Green did not fully appreciate the sense in which a regime of rights is a regime of dispersed moral powers, and this despite his characterization of rights in terms of powers. Bernard Bosanquet's characterization is much closer to what Green has in mind: 'A right is a *claim* recognized by society.'³⁸ For Green, rights really are claims that are reflections of duties (thus (C4) seems in some ways the basic correlativity thesis for him). Once we see the extent to which rights really are moral powers, however, there is no temptation to reduce them to the reflection of duties. Rights typically, I think, involve moral authority.

The role of rights as delegators of localized moral authority is easily overlooked.³⁹ Many philosophers take what might be called a comprehensive planning approach: a good system of rights is a scheme of well-defined claims that secures to each what he is due under a morally optimal distribution of resources, primary goods, etc. This is manifest in Ronald Dworkin's famous account of liberalism: the core liberal principle is one of equality of resources, and justified schemes of rights secure the favoured distribution.⁴⁰ The problem with such accounts is that they blind us to the way in which rights help us to cope with deep moral disagreements about what the optimal distribution is. Given the complexity of our pluralistic society and intricacies of moral relations, we often disagree on the morality of acts—what (if any) God to worship, what images to look at, whether to preserve a coastline or build a resort, whether to abort a foetus—as well as what distributions are just—how

³⁶ See my 'Property, Rights, and Freedom', *Social Philosophy and Policy*, 11 (Summer 1994), 209–40.

³⁷ I have argued this case more fully in my *Justificatory Liberalism* (New York: Oxford University Press, 1996), 199–204.

³⁸ Bernard Bosanquet, 'The Philosophical Theory of the State', in Gerald F. Gaus and William Sweet (eds.), *The Philosophical Theory of the State and Related Essays* (Indianapolis: St Augustine Press, 2001), 196; emphasis original. Bosanquet adds, however, that a right is 'enforced by the State'. On Green's rights as claim rights and their relation to powers, see Geoffrey Thomas, *The Moral Philosophy of T. H. Green* (Oxford: Clarendon Press, 1978), 353 ff.

³⁹ For important exceptions, see Eric Mack, 'In Defense of the Jurisdiction Theory of Rights', *Journal of Ethics*, 4 (Jan.–March 2000), 71–98; Randy Barnett, *The Structure of Liberty: Justice and the Rule of Law* (New York: Oxford University Press, 1998), 138 ff.

⁴⁰ See his classic essay 'Liberalism', in Stuart Hampshire (ed.), *Public and Private Morality* (Cambridge: Cambridge University Press, 1978), 113–143, esp. 129 ff. Justifying liberty rights on this distributional account is especially difficult; see Dworkin, *Sovereign Virtue* (Cambridge, Mass.: Harvard University Press, 2000), ch. 3.

are partners to divide the benefits of their joint endeavour? A core liberal insight is that, rather than seeking a single morally sanctioned answer in each case, a better moral response is to delegate moral authority: in a wide range of cases the best thing to do is to leave the decision in the hands of the agents involved. But constant moral negotiation between the people involved would be a hopelessly inefficient system; if, as Green and almost all other rights theorists argue, a system of rights is supposed to allow for smooth social co-operation, it must try to at least minimize the matters that require negotiation. Transaction costs are significant impediments to achieving our aims. In this light, a regime of rights requires delegation of bits of moral authority to different people, allowing each a moral sphere to determine when the duties of others are to be invoked, when others are to be left at liberty, and when the duties of others might be altered. As one recent philosopher of rights has aptly put it, ‘rights stake out chunks of moral turf’.⁴¹

(b) *De Jure Moral Authority and Recognition*

This brings us to a different defence of the rights recognition thesis. In the *Lectures on the Principles of Political Obligation* Green considers the distinction between *de facto* and *de jure* sovereignty. Green resists the idea that *de jure* sovereignty is simply ‘rightful authority’ that has no practical force, as when appeal is made simply to a ‘general will, or the mere name of a fallen dynasty exercising no control over men in their dealings with each other’ (*LPPO* §105). Instead, Green argues, the distinction ‘has natural meaning in the mouths of those who, in resisting some coercive power that claims their obedience, can point to another determinate authority to which they not only consider obedience due, but to which obedience in some measure is actually rendered’ (*LPPO* §105). Green’s point, and he seems entirely right here, is that a political authority that has no practical effect is no political authority at all, as it cannot perform its main task of sorting out disagreements and harmonizing rights. To be any sort of authority at all, there must be some general recognition of it; only then can it perform its designated tasks. If it is not generally recognized as an authority, we might argue that it *ought* to be an authority, but cannot claim that it now is.

It is important to distinguish this argument for the necessity of social recognition of authority—call it the *argument from the point of view of authority*—from another Greenian case that can be made. We could argue for the necessity of social recognition of authority by simply applying moral internalism

⁴¹ Lomasky, *Persons, Rights, and the Moral Community*, 5.

and a correlativity thesis to authority—that is, by employing the internalist recognition argument to the concept of authority. Assume that if Alf has authority over Betty, Betty has some obligation to obey Alf; that is, obligations are correlative to authority.⁴² Given moral internalism, for Betty to have an obligation to obey an authority, there must be some internal connection (such as recognition). So there is no obligation unless there is at least a rational recognition of the obligation. Now, if there is no recognition of the authority, there cannot be rational recognition of the obligation to obey it. So, on this line of reasoning, the very pre-condition of authority—that those subject to it have some obligation to obey—presupposes rational recognition of the authority. This internalist argument for the recognition of authority is distinct from the argument from the point of view of authority: for while this argument requires rational recognition, the argument from the point of view of authority requires actual social recognition. According to the latter argument, the job of authority is to regulate and co-ordinate social interaction; if so, an authority that is not socially recognized simply is unable to perform the office of an authority, as one who is not socially recognized as a leader is unable to fulfil the position of ‘group leader’. We can say that a person who is not recognized—either explicitly or implicitly—as a leader ought to be the leader, but not that he is the leader. The argument from the point of view of authority, then, does not depend on moral internalism or a correlativity thesis.

The application of Green’s analysis of sovereignty—understood in terms of the point of view of authority argument—to rights *qua* dispersed moral authority is manifest. To the extent that the function of rights is to localize moral authority by dispersing moral powers, they cannot fulfil this function at all if they are not generally recognized. If there are no recognized rights, we are in a state akin to civil war, each side seeking to construct its own preferred system of authority. But, as Green observes, in situations like this, there really is no sovereignty at all (*LPPO* §105). Rights as powers (dispersed moral authority) are thus defined by social recognition. Without general social recognition, no authority exists. This is, I think, a compelling defence of Green’s strong social recognition claims about rights; it more directly hinges on concept of a right *qua* power. We cannot even imagine such a non-recognized right, except as something like a mere name of a fallen dynasty, or a fantasized one, exercising no control over men in their dealings with each other.

⁴² Compare Gerald Gaus, *Political Concepts and Political Theories* (Boulder, Colo.: Westview Press, 2000), ch. 10, and Christopher McMahon, *Collective Reasoning and Collective Rationality* (Cambridge: Cambridge University Press, 2001), ch. 3.

VIII. Ross's Slave Objection Again

Having presented two arguments in favour of rights recognition theses—from moral internalism and from the social role of rights as dispersed authority—let us return to Ross's slave objection (section IIa above).

To begin, it should be stressed that although Green advocates a robust social recognition thesis (section VIb), he does not advocate, as many appear to think, a political recognition thesis according to which *D* is a moral duty in society *S* only if the state acts to ensure that people act according to *D*. Although Green certainly believes that the core function of the State is to maintain a system of rights, and in so doing it will clarify the limits of various rights (*LPPO* §143), he also accepts that there can be socially recognized rights and duties that are not recognized politically. Thus Green tells us that a legal slave can have 'rights the state neither gives nor can take away' (*LPPO* §145; see also §141). This is because, Green argues, the slave is engaged in social relations in which others implicitly recognize duties and obligations. If he has a family, he has rights in that family; if he engages in co-operative activities with citizens, he has the rights implicit in those practices.

Recall Ross's complaint that Green's account of rights implies that slaves acquired the 'moral right to be free only at the moment when a majority of mankind, or of some particular community, formed the opinion that they ought to be free, i.e., when the particular person whose conversion to such a view changed a minority into a majority changed his mind. Such a view, of course, cannot consistently be maintained.'⁴³ On the interpretation I have given, we need to be a bit more careful. Three points need to be kept in mind.

First, we must admit that if no rational agents acknowledge a duty to the slave, then the slave would have no correlative rights; that certainly follows from Green's moral internalism.

Second, however, we must be clear that even if the slave has no right in such a case, it still would not follow that the slave-owner's actions are justified. Recall that recognition is a necessary, not a sufficient, condition for a justified moral right. Thus, even though the slave-owner's right, and the correlative duties of a slave, are socially recognized, since such rights do promote a common good, they are not justified. So while the slave cannot, say, invoke a right *qua* equal, neither can the slave-owner invoke a right *qua* slave-owner, for no such right exists. So the slave does no wrong in running away or refusing to co-operate.

⁴³ Ross, *The Right and the Good*, 51. See p. 000.

Third, and most important, we must distinguish between the actual and the rational recognition theses. If a slave-owner rationally recognizes that the common good requires that he acknowledge a duty to the slave, then the slave has a moral claim right on him. Green, I think, failed to appreciate this, and so moved far too quickly from rational to actual recognition.⁴⁴ Given all claim rights for which both C₃ and C₄ (section IIb) hold (rights imply duties, and duties imply rights), if a rational moral agent would acknowledge a moral duty to the slave, then the slave has a corresponding right in relation to *that* person. So, even if the slave does not have a generally *socially* recognized right to be free, he still can have a rationally recognized right *vis-à-vis* those rational agents who have the requisite internal connection. So if our concern is the recognition thesis implied by moral internalism—the rational recognition thesis—then, when rational slave-owners reflecting on the common good recognize that they have a duty to the slave, they *ipso facto* create the correlative right, and the right is recognized. The only rights that are not recognized by the rational recognition requirement are those that imply duties that rational slave-owners could not recognize. We must distinguish, then, the thesis that rights depend on recognition by *others* from the claim that they depend on *general social* recognition.

However, if we focus on rights as recognized powers, then the recognition that is required is general actual recognition. These sorts of moral powers—delegated moral authority—do indeed require that the authority is actually recognized. Such rights are not the mere reflection of rationally recognized moral duties. To see this better, consider the rights of parents over their children. Parental authority might be distributed in a variety of reasonable ways, many of which can make out a reasonable claim to be advancing the common good. The parents may have sole authority over their children's education, or the more extended family, or the community, may have a say; mother and father may have exactly the same authority, or it may differ in some ways; the authority may wane in children's early adolescence, or not. Now suppose that in a society teenage parents are not recognized as having parental rights; since teenagers are themselves seen as children, they are not accorded this authority, and all parental rights are vested in the grandparents. Suppose that there is a good moral argument that teenage parents in late adolescence should be accorded full parental authority—that the best arrangement from the perspective of the common good is that they have these rights. The question is: can we infer from the premiss 'morally speaking, these teenage parents ought to have full parental rights' the conclusion that 'morally speaking, these teenage

⁴⁴ As I did in 'Green's Rights Recognition Thesis and Moral Internalism'.

parents do have full parental rights? Ross would seem committed to the inference. Proponents of the actual recognition thesis plausibly disagree. They would point out that if one accepts the inference, it follows in this case that an enlightened babysitter has a moral duty to ask the teenage parents rather than the grandparents for permission for the child to watch reality television, even if no one—including the parents—recognizes that teenage parents have such rights. Suppose the babysitter asks the teenage parent, and the parent agrees; are they morally required to follow the instructions of the teenage parent even in the face of disagreement by the grandparents? Proponents of the recognition thesis insist that it would be morally wrong to do this; while flawed, the current system allows us to agree on who has moral authority over what decisions. It would be morally bad for each person to call on their own understanding of the common good, and accord authority to whom they believe it ought to be vested in; some might seek the permission of teenage parents, some consult grandparents, while some might believe that in this case aunts or uncles have the moral right to decide. This would undermine the great moral good of a consensus on who has authority over the decision; so long as the actual system can reasonably be understood as based on a notion of the common good, the rights actually recognized can do a morally required job that no idealized set of rights could possibly do. They provide actual moral consensus. This great moral good of a system of recognized authority is undermined by each person deciding for himself what is the best distribution of moral authority, and acting on that ideal.

In defence of their position, strong externalists might still hold that the enlightened babysitter, insisting that the parental moral rights reside solely in the teenage parents, is morally 'progressive'. However, in saying this, strong externalists—and this probably includes most contemporary advocates of human and natural rights—seem caught in something of paradox. On the one hand, strong externalists such as Ross think that it is a definitive criticism in a case like this that the proponent of the recognition thesis cannot say that teenage parents have the moral right even though society does not recognize it. Why is it thought to be so important to say this? It cannot be simply the value of a catalogue of true moral beliefs. No doubt the force of the criticism is that the strong externalist thinks it important that the moral rights of the teenage parents actually be respected. But strong externalism is based on the claim that true moral judgements have no inherent tie to motivation, so the strong externalist is himself unable to show that what he thinks is so important to accept as true—'Teenage parents now have rights'—matters for practice, as his entire account has been based on denying the inherent link between the truth of 'ought statements' and motivation. The strong externalist looks as if

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he is giving a practical criticism of the actual recognition thesis: it does not allow ‘progressive’ claims about unrecognized rights, but the foundation of strong externalism undermines the practical effect of holding these progressive views, as it insists on a gulf between true moral belief and action. Indeed, on the strong externalist account, even if everyone comes to acknowledge that teenage parents have parental rights, this still would not itself account for people *acting* on this recognition. *That* is truly counter-intuitive.

Any moral philosophy according to which moral rights are partially justified because they co-ordinate our activities must accept some version of an actual recognition thesis because unrecognized co-ordinators do not co-ordinate. This does not mean that proponents of such views must be morally conservative, accepting whatever rights are recognized socially. As we have seen, socially recognized rights such as those of slave-owners may be immoral. And some rights not presently recognized morally ought to be. ‘To say that he [the slave] is capable of rights, is to say that he ought to have them, in the sense of “ought” in which it expresses the relation of man to an end conceived as absolutely good, to an end which, whether desired or no, is conceived as intrinsically desired’ (*LPPO* §25).

IX. Conclusion

Green’s rights recognition thesis is widely rejected. I have argued in this chapter that, so far from being an idiosyncratic doctrine of nineteenth-century British Idealism, a rights recognition thesis is compelling. Although an externalist such as Ross is perfectly justified in insisting that the existence of rights is independent of anyone’s recognizing them or being moved to act on them, this common view is at odds with moral internalism and the practical nature of morality. I have tried to show how internalism conjoined with a generally embraced analysis of rights leads to some version of the rights recognition thesis. In doing so, I have maintained that Green’s moral theory can be described as a form of moral internalism, and that his defence of the rights recognition thesis derives at least partially from his internalist commitments.

Green scholars may resist interpreting Green as a moral internalist. He is not especially clear about just what version of the thesis he endorses, though the *Prolegomena* is clear in linking up the argument for the common good with an analysis of the rational will as self-satisfying, and the *Lectures* are clear that the existence of rights requires a habit of obedience. Understanding Green’s account of rights in terms of his commitment to what is nowadays called internalism explains the connection between the recognition thesis and the

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common good components of Green's theory of rights, and why he almost invariably links them in his characterizations of rights. I have argued that, for Green, rather than being a justificatory concern independent of the conceptual analysis of rights, appeal to the common good is part of his internalist analysis of the concepts of duties and rights.

Green's characterization of rights refers not simply to the recognition thesis and the common good, but to the claim that rights are powers. I have argued that if Green had taken more seriously the conception of rights as powers, rather than only as claims, he would have been led to compelling justification for his strong social recognition claims about rights that go beyond those justified by his moral internalism. A crucial function of rights is to disperse moral authority; taking up Green's own analysis of the necessity of social recognition of *de jure* authority, we see that rights cannot perform their function unless they achieve a degree of social recognition. Green's moral and political theory thus points to two powerful arguments supporting versions of the rights recognition thesis.