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# Johann Benjamin Erhard on economic injustice

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## ABSTRACT

Unlike Johann Benjamin Erhard's views on art, right, revolution, and structural misrecognition, his discussion of economic injustice, here understood as the lawful economic oppression of one's end-setting human nature, has garnered little attention. To begin filling this gap, I focus on central passages from his 1795 book *On the Right of the People to a Revolution* wherein Erhard discusses two cases of economic injustice. By reconstructing these claims within his Kantian perfectionist framework, I pursue two goals. First, I seek to demonstrate that his fundamental 'duty to oneself' lays out a comprehensive framework for duties grounding moral obligations to remedy economic practices. My second aim is to utilize this framework to explain how he defends a natural law position that views the legal system as both a remedy for and an ideological tool of economic oppression. I argue that this twofold perspective is a strength of Erhard's theory as it allows for the detection of oppressive economic structures without letting go of a principle of external freedom from where coercive juridical laws can be derived.

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**KEYWORDS** Perfectionism; perfect and imperfect duties; capitalism; Marxism

## 1. Introduction

Unlike Johann Benjamin Erhard's views on art, right, revolution, and structural misrecognition (Batscha, *German Liberalism*; Clarke, "Recognition"; Frank, *Infinite Approximations*; Gilli, "Right to Revolution"; Gottlieb, "A Family Quarrel"; Henrich, "Erhard in Post Kantian Thought"; Maliks, *Kant's Politics in Context*; Nance, "Revolutionary Action"; Oncina, "Faustino"; Schottky, *Explorations*; Seiderer, "A Pure Jacobine"; Sosoe, "The Right of the People"; Tausch, "From Jena to Rome"), his analysis of economic injustice, here understood as the lawful economic oppression of one's end-setting human nature, has garnered little attention. To begin filling this gap, I examine key sections of his 1795 work, *On the Right of the People to a*

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*Revolution* (henceforth abbreviated as *Revolution*).<sup>1</sup> Although other topics take on a more prominent role, Erhard presents two compelling claims against economic injustice. First, he contends that monopoly rights necessitate legal reform when they create prerogatives among citizens. Second, he discusses a more severe form of structural economic oppression, stemming from an unjust division of labour, which calls for revolution. Significantly, Erhard defends a natural law position that views the legal system as both a remedy for and an ideological tool of economic oppression.

This twofold perspective is intriguing. Within the German philosophical tradition, reformist and revolutionary views on economic injustice are usually tackled from differing theoretical frameworks.<sup>2</sup> In the Marxist tradition, positive laws and legal institutions are perceived as ideologically entrenched, merely “mirroring” a social reality shaped by the interests of the powerful, as noted by Rosa Luxemburg (“Reform or Revolution”, 76). According to this view, meaningful reforms are achievable only against the backdrop of a publicly controlled mode of production. Conversely, left-Kantians such as Hermann Cohen, reject this ‘economy first’ approach. They argue instead that establishing a just economic system requires reforming the legal system based on natural law principles (e.g. H. Cohen, *Kant’s Foundation of Ethics*). G.A. Cohen has described this systematic divide among left-wing theorists as the “problem of legality” (*Marx’s Theory of History*, 30; see also Vrousalis, “Socialism Unrevised”; Roemer, “Socialism Revised”). In this paper, I aim to demonstrate how Erhard offers a comprehensive moral theory that, in his moral discussion of economic injustice, unites natural law and ideology perspectives on law. My primary objective is to foreshadow the theoretical groundwork on which he bases these claims.

In pursuing this goal, my first aim is to clarify how we should interpret Erhard. I shall argue that Erhard defends a non-paternalist version of Kantian perfectionism, which allows him to address various forms of oppression, including economic ones. Despite an occasional lack of clarity in Erhard’s writing, I seek to demonstrate that his fundamental ‘duty to oneself’ lays out a comprehensive framework for remedial duties to resist economic practices whose ends are incoherent with the constraints of human personhood and the corresponding human rights derived from it.<sup>3</sup> My second aim is to utilize this framework to explain how he defends a natural law position that views the legal system as both a remedy for and

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<sup>1</sup>In what follows, references to Erhard’s work will correspond to the volume and page numbers of the Hanser edition (*Über das Recht des Volks zu einer Revolution und andere Schriften*), edited by Hellmut G. Haasis. References to Kant’s work refer to volume and page number of the *Akademieausgabe* (*Kants gesammelte Schriften*, Berlin 1902), and translations of the *Cambridge Edition of the Works of Immanuel Kant*.

<sup>2</sup>The ‘revisionism debate’, initiated by Eduard Bernstein (*Social Democracy*), epitomizes this divide.

<sup>3</sup>Throughout this paper, I will frequently employ Kantian terminology. While these concepts are inspired by Kant, I will seek to define them in a manner that accurately reflects Erhard’s own ideas.

an ideological tool of economic oppression. While addressing economic injustices through the interpretative lens of remedial duties to oneself might *prima facie* seem to face some theoretical challenges, I argue that it is a strength of his theory, allowing for a concept of external right that is sensitive to the emergence of economic oppression.

I begin in [Section 2](#) by explaining Erhard's approach to material wrongs on the basis of his Kantian perfectionist take on the relationship between morality and law. In [Section 3](#) and [4](#), I argue that Erhard's reformist and revolutionary obligations derive from the duty to oneself. I will also demonstrate how Erhard's theory accommodates possible objections to this approach. In [Section 6](#), I briefly summarize the main argument.

## 2. Erhard's Kantian-perfectionist approach to material wrongs

Erhard's theory is best explained as an attempt to revive a perfectionist welfare model, though without embracing the paternalism problem that Kant associated with the perfectionist tradition. Perfectionists such as Gottlieb Hufeland (1760–1817) asserted that the primary task of the state is to “promote the perfection of all humanity”, which – among other things – involves the security of the material conditions necessary for cultivating one's rational nature (Hufeland, *Natural Law*, 36). If the state neglects these basic material needs, the people have a right to resist and use force against the state, according to Hufeland (Hufeland, *Natural Law*, 246, see also Maliks, *Kant's Politics in Context*, 34). Although Kant offers other ways of dealing with economic wrongs,<sup>4</sup> he rejects this approach, arguing that perfectionists would fail to “distinguish motives that, as such, are represented completely a priori ... from empirical motives” (Kant, *Groundwork*, 4:391, *Principle of Natural Right*; see also Gottlieb, “A Family Quarrel”). According to Kant, material needs, and the economic systems designed to meet those needs are subjective and, therefore, cannot be generalized on moral grounds. By highlighting that an individual “must never be coerced to be happy in a certain way [...]; instead, each may seek his happiness in the way that seems good to him”, Kant argues that a state must recognize the diversity of needs and individual concepts of happiness, and establish the external conditions under which citizens can decide *for themselves* which welfare model they deem best suited (“Theory and Practice”, 8:290).<sup>5</sup>

<sup>4</sup>Contemporary Kant scholars have pointed out various ways in which Kant's philosophy provides a basis for addressing economic justice (see Hay, “To Resist Oppression”; Hasan, “Freedom and Poverty”; Holtman, “Toward Social Reform”; Vrousalis, “Interdependent Independence”). These interpretations rely heavily on Kant's *Metaphysics of Morals*, which had not yet come out when Erhard conceptualized and wrote *Revolution*.

<sup>5</sup>In his ethics, Kant does not advocate for a duty to pursue happiness because he believes that individuals naturally seek happiness without rational constraints. Material ends can only be “indirectly” subject to moral constraints, as we are morally obligated to promote our perfection (Wood, “The Final Form”, 19).

While Erhard does not devote much effort to specifying the sources of his ideas, his theory integrates both the perfectionist view that welfare measures are essential for the cultivation of rational faculties and Kant's anti-paternalist state model. His Kantian perfectionism drives his distinctive advocacy for separating law from ethics, yet without entirely abandoning the ethical evaluation of substantive laws:<sup>6</sup>

A right (*Recht*) can ... be appropriately explained as follows: it is a legal recognition of unrestricted discretion (*unbeschränkte Willkür*) in certain cases specified by law, or not specifically excluded by the same. If others are excluded from exercising this right by a particular law, not only does 'a' right arise, but 'the' right also arises. The sum of all these cases in which I have a right, whether 'a' or 'the' right, constitutes the totality of my rights. Just as permission out of kindness is insufficient to establish a right, so too is force alone unable to abolish a right. What morality permits is indeed just, but it is not therefore a right; the latter is determined only by legislation. Morality determines what is just, and legal doctrine determines what is the right of a certain person.

(*Revolution*, 14, inverted commas added)

The moral and legal spheres in Erhard's philosophy are considered fundamentally distinct, requiring separate derivations of norms. Reminiscent of Kant's anti-paternalist state conception and the corresponding notion of external freedom, Erhard argues that the concept of right is meant to ensure the "legal recognition of unrestricted discretion", thereby acknowledging our nature as pleasure-seeking beings with the right to pursue personal happiness unhindered. This principle of non-interference is also echoed in "Devil's Apology", where *Recht* is defined as the "ability to act upon material maxims without violent interference" ("Devil's Apology", 131). Erhard distinguishes between 'a' right – the right to non-interference such as entering legal contracts – and 'the' right – which refers to positive coercive laws that impose 'particular' restrictions on us.<sup>7</sup> For example, if I legally own an object, others are prohibited from using it in the same manner, as my legal ownership imposes restrictions on their actions.<sup>8</sup> In contrast to moral rationality, legal rationality is based on "theoretical reason": a logically consistent application of contracts based on a codified set of laws ("Letter to Forberg", 99).<sup>9</sup> These

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However, while Kant discusses this solely in his ethical philosophy, Erhard extends such considerations to the legal sphere.

<sup>6</sup>In what follows, I understand – similarly to James Clarke – Erhard's 'natural law' as the ethical viewpoint on law, and not the external notion of freedom that sets the foundation for the justification of the juridical state and laws.

<sup>7</sup>Here, Erhard is most likely influenced by Kant, who defines "innate right" in *Theory and Practice* as the "condition of equality of action and reaction of choice limiting one another in conformity with a universal law of freedom" (*Theory and Practice*, 8: 292–3).

<sup>8</sup>Scholars of Fichte have noted Erhard's influence on the development of Fichte's concept of external right (Gottlieb, "A Family Quarrel"; Schottky, *Explorations*).

<sup>9</sup>Gottlieb interprets the characteristic aspect of "theoretical" as referring to "the reciprocal identification (*Erkennung*) of actions as legitimized by consistently reason-based judgements [...] consistently endorsed by others" ("A Family Quarrel", 180).

contracts allow for the pursuit of “selfish drives” without impeding others or being impeded by them (Erhard, “Letter to Forberg”, 131–2; Gottlieb, “A Family Quarrel”, 180).

Erhard also echoes a perfectionist idea when maintaining that positive laws are rightfully coercive if and only if they do not conflict with *ethical* constraints. Erhard distinguishes between legal “right” (“*das Recht*”) and “what is rightful” (“*recht*”) (“Devil’s Apology”, 131). “What is rightful” – or “just”, as he calls it in the above quotation – decides upon “what is *morally possible*” within the bounds of universality mandated by the moral law (*Revolution*, 14, emphasis added).<sup>10</sup> To define the ethical constraints on law, Erhard introduces the pivotal concept of personhood, i.e. “the capacity to determine oneself to actions in accordance with self-chosen laws or to act in accordance with maxims” (*Revolution*, 17). The notion of personhood encompasses the capacity to set one’s own laws, i.e. to act as rationality dictates. For a human being to be recognized in their personhood, the state must create conditions, including material conditions, that allow individuals to live according to their rational nature as end-setting beings. This ethical perspective grounds a fundamental natural right: “Wherever this *capacity* is found, personality must be acknowledged” (*Revolution*, 15, emphasis added). As James Clarke has put it, being treated as a person denotes an attitude of “respect” for one’s moral status, which he calls “recognition” (*Anerkennung*) (Clarke, “Recognition”, 5; see also Gottlieb, “A Family Quarrel”).<sup>11</sup> Erhard outlines an ethical framework that defines the fundamental normative layer of society in terms of an innate right we possess as rational agents. While the concept of law follows its own principle of external freedom, its legitimacy depends on not contradicting the moral right to be recognized as a person.

According to Erhard, laws and states are not only viewed in terms of their role in creating the conditions for external freedom but they are also morally evaluated based on the practices they constitute. If these practices are oppressive – meaning they contradict the notion of moral personhood – remedial duties arise. Remedial duties are duties stemming from a contradiction with our moral personhood, prescribing the alteration of a law, a set of laws, or an entire legal system to establish the moral conditions upon which a legitimate juridical order can set foot.

### 3. Remedial duties to reform economic wrongs

Erhard approaches economic wrongs against the backdrop of remedial duties. He specifically differentiates between two types: the duty to *reform* a law and the duty to *revolutionize* a legal system. To explain the derivation and justification of these duties, I will analyse both in this and the following

<sup>10</sup>As Gottlieb has nicely put it, “morality offers a license to act” (“A Family Quarrel”, 180).

<sup>11</sup>Moving forward, I will adopt Clarke’s use of the concept of recognition in Erhard.

section. Beginning with Erhard's proposal to reform monopoly rights, I will demonstrate that, while remedial duties derive their legitimacy from the moral right to be recognized as a human being, their justification involves an empirical analysis of the given situation. I aim to show that this empirical focus differentiates these duties from rights that are conceptually derived from the notion of moral personhood.

To better understand the derivation of remedial duties, let us first examine the notion of moral personhood and the corresponding right to be recognized and respected as a human being in more detail. Erhard expresses this as a "duty to oneself", which commands individuals to "show personality in everything you do" (*Revolution*, 27; 29). Although Erhard developed his views before the publication of *The Metaphysics of Morals*, this duty bears a striking resemblance to Kant's formulation of the duty to oneself in that work: "Do not make yourself a mere means for others, but be at the same time an end for them" (*The Metaphysics of Morals*, 6:236). James Furner has highlighted that Kant's humanity formula establishes the foundation for both perfect and imperfect duties. According to Furner, the first part of the principle, 'never merely as a means', grounds perfect duties that oppose actions *conceptually* contradictory to our rational human nature ("End in Itself", 8). The second part, 'always as an end in itself', grounds imperfect duties that oppose ends incompatible with the ends of humanity (8).<sup>12</sup> Although Erhard's duty to oneself deviates from Kant's account in crucial ways, his way of dealing with this duty is reminiscent of Furner's interpretation. For Erhard, the duty to 'always show personality' serves as the basis for perfect human rights and duties, opposing conceptual contradictions by adhering to the principle of never reducing oneself to a mere means for others. The end-evaluation test, by contrast, is not meant to highlight contradicting content but to evaluate how laws are applied in practice: the ends of substantialized juridical laws. Perhaps to emphasize his departure from Kant, Erhard avoids the Kantian terms 'perfect' and 'imperfect' and instead introduces the distinction between Reason evaluating law 'in itself' and 'in relation to the end':

Reason evaluates a law in two respects, *in itself*: as appropriate or contrary to the moral nature of a human being and in relation to the *end* to be achieved by the law.  
(*Revolution*, 16, emphasis added)

Erhard contends that the "in itself" test establishes "moral laws", while the "in relation to the end" test addresses "civil laws" (16f). As I understand it, the former grounds principles that hold true irrespective of their context, whereas the latter focuses on real-life practices constituted by substantive juridical laws.

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<sup>12</sup>Carol Hay ("To Resist Oppression") shares a very similar view.

Let us first examine how the ‘in itself’ test is meant to ground perfect rights, that are rights that follow conceptually from the notion of moral personhood. We find this in Erhard’s “Deduction of Human Rights” (*Revolution*, 37):

1. The right to follow what one’s conscience requires.
2. The right to express one’s thoughts.
3. The right to make autonomous use of one’s powers.
4. The right to bodily integrity.
5. The right to move freely.
6. The right to be recognized as a person.
7. The right to equal prerogatives to acquire legal rights.
8. The right to freely enter into contracts.
9. The right to equal claims to enjoyment.

The justification of these “moral rights”, as Erhard terms them, opposes principles that are conceptually contradictory to human personhood, i.e. the capacity to follow one’s own maxims (37). For instance, a state that acknowledges the rational capacity to freely set ends inherently contradicts a state that dictates what maxims to follow (right 1). Similarly, a state that denies ownership over one’s body (right 4) undermines the natural conditions necessary for individuals to utilize their physical bodies in pursuit of their chosen ends. These human rights do not require further evaluation in terms of their ‘ends’. They are directly derived from the concept of human personhood, establishing non-contextual and necessary prerequisites for a legitimate condition.

However, a different evaluative test comes into play when examining existing legal practices. For Erhard, specifying non-contextual principles is not enough; because juridical laws – even when well-intentioned – can become oppressive when misused in practice, the aims of ‘civil laws’ must also be tested against the human rights framework. An illustrative example is found in Erhard’s discussion of monopoly rights:<sup>13</sup>

For the comfort of life ... it is often good for a right that it ... be exclusively granted to one. [...] This is the natural and legal origin of ... monopolies ... These institutions do not inherently violate human rights. However, since they always represent a limitation of the original rights, they must submit to a critique of their necessity for the welfare of society [*Wohl der Gesellschaft*]. As soon as they are not required, they become unjust, and as soon as they aim for the enrichment of individuals as their purpose and outcome, they are introduced not by right or necessity but by arbitrariness, contrary to human rights

(*Revolution*, 33–4)

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<sup>13</sup>Monopoly laws emerged during the new era of Modernity as measures to secure a just economy (Maier, *Constitutional Law*, 65). Erhard appears to specifically reference measures such as granting exclusive rights for measures such as reduced taxes on primary goods or exclusive rights to sell products in certain areas to ensure a sufficient number of essential professionals.



Monopoly laws are neither inherently “appropriate” nor contrary to the moral nature of human beings, to use Erhard’s terminology (16). While monopoly measures can be “required” for welfare, as prerogatives they can also be misused for personal gain. Therefore, we must examine whether these laws serve ends that align with the moral constraints of personhood and corresponding human rights. If they align with human rights constraints, they are justified; however, if they are “arbitrary” and “contrary to human rights” (16), monopoly measures must be reformed.

*Prima facie*, there seems to be a simpler and more straightforward way of understanding Erhard as deploying a human rights framework, which he then applies to the monopoly rights case. Why take the detour of using this twofold test?<sup>14</sup> Though I believe it is technically not wrong to put it this way, we miss an important nuance Erhard seeks to draw. According to Erhard, we must differentiate between laws *inherently* conflicting with the notion of moral personhood, and laws whose legitimacy can only be determined by their practical *use*. There is an important systematic reason for distinguishing between the evaluation of a law ‘in itself’ and ‘in relation to the end’: Some economic practices are conceptually to be dismissed, without further examining the practice they constitute. For instance, there is no need to ask whether the ‘end’ of slavery is just. In every perceivable context, slavery – an economic model where individuals serve as mere means – is conceptually undermined by the imperative to not being misused as a mere means. Other norms, however, are conceptually neutral. Their rightness can only be determined by the practice following from the instantiation of laws. Monopoly laws belong to the latter. They are not conceptually to be dismissed or – as Erhard says in the quotation above – they “do not *inherently* violate human rights”. Monopoly measures are justified if and only if the end of the practices conflict with human rights.

Now, if human rights provide a foundation for testing ends, it seems that they merely indicate whether or not a law or a set of laws is permissible. It is hard to see how this test is meant to prescribe *positively* what action to take, that is whether we have an obligation to perform a reform or revolution. In the Kantian context, we typically think of duties to adopt ends as *wide* duties, allowing for various ways to realize a moral end. Consider, for instance, an activist who aims to advocate for a specific cause. Participating in a demonstration is one way of pursuing her goal, but it does not exhaust all possible options to realize this end. Moreover, occasionally foregoing an opportunity to advocate for the cause is morally permissible as long as she seizes enough opportunities to reasonably be considered an advocate for the cause. Although Erhard’s evaluation of ends differs in other respects from the

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<sup>14</sup> I am very grateful to an anonymous reviewer of the *British Journal of History of Philosophy* for raising this issue.

Kantian approach, his discussion of the moral end of monopoly laws can be construed in a similar manner. We lack a strict duty to adopt specific economic measures; however, the only constraint on adopting economic measures is that its end does not contradict human rights. Understood in this way, the concern is that the normativity of coherence among ends does not provide a sufficient normative basis for prescribing one measure over another. There are other moral concerns that might justify this hierarchy, for instance, the prevention of violence or the stability of institutions. However, these ideas stem from a concern of how to treat *others* or a *juridical* duty not to overthrow otherwise stable conditions – not, as my reading of Erhard suggests – from the duty to *oneself* to adopt only laws whose ends are consistent with human rights. If both reform and revolution are effective in removing the obstacles that prevent us from showing our personality, how can the evaluation of an end, which merely tracks the permissibility of a law, lead to a positive duty, prescribing that a law ought to be changed in a specific way?

To determine the appropriate action in response to a violation of the fundamental moral right requires more than identifying practices that contradict human rights; it also necessitates consideration of the options available to promote change. Erhard identifies three distinct levels at which misrecognition can occur: (i) within the “administration”; (ii) in the “current constitution”; and (iii) at the level of the “basic laws” (*Revolution*, 49). If misrecognition occurs at the first two levels, it necessitates reform. However, if misrecognition occurs at the level of basic law – “the fundamental normative infrastructure defining the community of right” (Nance, “Revolutionary Action”, 82) – it constitutes “structural” misrecognition, which calls for revolution (Clarke, “Recognition”, 14; Nance, “Revolutionary Action”, 86–7). Erhard illustrates this with an example contrasting an innocent person forced into slave labour with a serf born into slavery (*Revolution*, 49–50). Although both are victims of misrecognition, the former injustice occurs within a system that allows for rectification, whereas the latter injustice is embedded in a system that is inherently unjust. Subsequently, Erhard assesses the appropriate responses to these injustices. For an innocent person wrongly imprisoned, the remedy depends on the nature of the injustice: applying existing laws more effectively in the case of administrative errors or advocating for legal reforms if the injustice stems from a flawed legal system. In contrast, in cases of structural misrecognition at the level of ‘basic laws’,<sup>15</sup> Erhard argues that revolution is the justified response (Clarke, “Recognition”, 16–17). We see here that Erhard’s evaluation of ends not only seeks to track the permissibility of (economic) practices; we also need to consider the available options to remedy a wrong. This

<sup>15</sup>For a detailed exploration of the distinct functions of ‘basic laws’, see Clarke (“Recognition”, 7–8).

justifies a specific hierarchy: The duty to reform is the primary end at hand, while revolution appears as the last resort.

The normative role of this hierarchy stems from an analysis of empirical circumstances. Although there is a duty to adopt economic measures aligned with human rights, the lack of viable options in cases where revolution is the necessary course of action serves as justification for such acts. While Erhard's approach to end-evaluation differs from Kant's treatment of imperfect duties in other respects, it provides a useful foundation for considering the justification of this hierarchy. In situations where reform is possible, various avenues exist to promote change. Like an activist who can choose among several strategies to achieve her goal, there are multiple ways to initiate reform a reform of laws: I might engage in public debate, launch a petition, or vote for a party committed to enacting the desired change. This contrasts fundamentally with situations that demand revolution. In this case, the empirical circumstances limit our options to a single course of action. It is within this context that Erhard asserts that revolutions are justified only if "all possible cases that seem to affirm this aim have been faithfully examined" and it becomes evident that only revolutionary action can establish the moral foundation for a legitimately coercive state (*Revolution*, 46). Identifying a situation as meeting the necessary and sufficient conditions for revolution undoubtedly presents various epistemic challenges, which I will not address here.<sup>16</sup> The issue I seek to highlight, however, is that the duty to revolution is strictly action-guiding not due to its formal structure but rather because the empirical circumstances leave no other option for asserting one's personhood in the case of revolution.

#### 4. Remedial duties to revolutionize economic wrongs

In the beginning, I claimed that Erhard combines two approaches to law: a natural law perspective and an ideological perspective. I have demonstrated that Erhard's natural law is grounded in a duty to oneself to adopt only laws whose ends align with human rights. We have also seen that empirical circumstances play a crucial role in determining remedial duties: While the normative foundation of the coherence of ends indicates the (im)permissibility of existing legal practices, empirical conditions are decisive in determining the appropriate remedial action. In this context, the discussion of more severe cases of economic structural misrecognition, which necessitate revolution – a process Erhard understands as the transformation of fundamental

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<sup>16</sup>Nance ("Revolutionary Action") has conducted a thorough examination of these conditions, concluding that a situation qualifies for a revolution if: (i) it is necessitated and motivated by duty; (ii) it involves a case of structural injustice; and (iii) one is either a direct victim of the oppression or there is a high likelihood of the revolution's success. Especially the latter disjunct of the third condition presents epistemic challenges.

infrastructure – is instructive (*Revolution*, 43, 91; and Nance, “Revolutionary Action”, 82). As I seek to show, this is where we find Erhard’s discussion of an irrational thought system that obscures our rational understanding of ourselves and the structures to which we are subjected.

The duty to revolution belongs to the same type as the duty to reform: Both are *remedial* duties prescribing to change a law, a set of laws, or a legal system preventing us from living in a society that misrecognizes my fundamental human rights. *Prima facie*, this seems to differ fundamentally from Kant’s formulation of a perfect duty prohibiting revolution due to a contradiction in conception. In the *Doctrine of Right*, Kant argues that the concept of revolution contradicts the notion of a “supreme ruler” because a revolution implies that something is more supreme than the supreme ruler, leading to a contradiction in conception (*Metaphysics of Morals*, 6:319). Erhard agrees with Kant on this point, arguing that from a *juridical* perspective, a revolution “cannot be determined by external law” as there cannot be such a thing as a coercive right to revolution that contradicts the constraints of external freedom (*Revolution*, 92). Nevertheless, Erhard emphasizes that from an ethical or natural law perspective, it can indeed be justified. The maxim of revolution, i.e. ‘overturning the fundamental laws’, neither conceptually contradicts nor logically follows from the right to be recognized as a person and the duty act as a person. The maxim ‘to initiate a revolution’ is, like the maxim ‘to adopt monopoly laws’ *neutral*, meaning that it does not establish a context-independent rights and duties. Whether or not a revolutionary act is justified is dependent on the empirical circumstances, that is whether our options to remove these obstacles is reduced to only one. A revolution is rightful, meaning it is truly justified by the reason, if and only if it is initiated (i) to end injustice or make justice possible (49), or (ii) to enable the conditions for enlightenment (95) – even if it requires the use of “violence” (18).

For Erhard, violence is not an inherent feature of resistance. Just as reforms can be both peaceful *and* violent,<sup>17</sup> he acknowledges the possibility of a peaceful revolution, which he calls “evolution” (*Revolution*, 96).<sup>18</sup> But how is violence justified? Erhard stresses that we need “to evaluate both the end and the means proposed or used for it, and then, if not only the end but also the means are consistent with the moral law, to act in a way that prevents abuse” (53). How can violent means be justified if, as he says, not only the end but also the means need to be consistent with the moral law? Or,

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<sup>17</sup>Erhard deems insurrections as the appropriate response in cases where, for instance, the people demand the “removal of a corrupt official” or “the release of an unjustly imprisoned person” (Nance, “Revolutionary Action”, 82).

<sup>18</sup>Nance has provided a careful examination of this case, demonstrating that, in this scenario, one is permitted to act in the name of others if the success of the revolution is guaranteed (Nance, “Revolutionary Action”, 90–91; 94–6).

differently, put: How can a duty to oneself to remedy an injustice justify the neglect of someone else's right to be respected as a moral person?

Although Erhard does not explicitly address how he seeks to justify using force against individuals, I believe we can find an answer in the structure of the duty to oneself. Erhard argues that a person has a "right to follow his own will and to resist the opposing will of the other by force (*mit Gewalt*)" (18). When someone employs force against another in a manner that prevents them from asserting themselves as an end in themselves, it is the *oppressor* who is committing a wrong, not the victim *reclaiming* their right to be recognized as a person. The means and forces required to instantiate this right cannot be disconnected from the underlying duty to oneself. Since it is the most fundamental principle that provides the normative bedrock of every society, the integrity of the oppressor's personhood does not hold the same weight as our right to claim our right to recognition. This does not mean that a victim cannot act wrongly. I previously mentioned two justificatory reasons to initiate a revolution: to end an injustice or make justice possible, and to create the conditions for enlightenment. Erhard refers to these as "excusing reasons" (*Gründe zur Entschuldigung*) (*Revolution*, 49). We have excusing reasons to use violence if and only if revolution counts as the only viable option to claim our right to be recognized as a person and to realize the duty to only adopt laws that respect us as such.

Now, does this mean that someone who does not engage in a revolution fails to take the means to claim their personhood and is committing a wrong against themselves? Consider, for instance, a parent who fears that their participation in a revolution could have fatal consequences for their children. Though it is true that framing remedial duties as duties to oneself implies that *everyone* facing economic oppression is morally obliged to resist such powers, it does not entail that someone is necessarily blameworthy for not actively participating in a revolution. Just as the duty to revolution is contingent on the oppressive circumstances, the contextual sensitivity of the remedial duty to revolution provides conceptual space for assessing individual degrees of involvement.<sup>19</sup>

Let us now turn to the contextual qualification of revolution, which is where I see Erhard introducing a notion of ideology *avant la lettre*. Erhard discusses a case of an unjust division of labour that deprives the oppressed from cultivating their rational faculties, making them susceptible to irrational faith.

When the labor practices (*Arbeiten*) of the people are so oppressive that they are not allowed any time to engage in anything human, but everything is rather designed to keep them in the stupidity of a beast of burden, then they have the right to a revolution. However, they [the people] will not easily know

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<sup>19</sup>This argument is inspired by Carol Hay, who examines a comparable case from a Kantian perspective concerning the oppression of women ("To Resist Oppression", 39–40).

how to make use of this right, and the nobility would certainly be safe if humanity had solely a sense of justice, without religion. Such a people [whose sense of justice is based on religion] lets God lead them out of servitude through the path of religion.

(*Revolution*, 92–3)

Erhard describes here a society divided in two classes defined by their labour. The nobility enjoys the leisure required to cultivate their rational capacities to make full use of their end-setting nature, while the people are deprived of the means to establish theirs. In this situation, it is not simply a law or a set of laws that appear as obstacles for a just condition; it is the basic social norms and the justification of them that are – to put it in Mike Nance’s words – “corrupt”, meaning that “society is rotten all the way down, leaving no normative or institutional basis for reform” (“Revolutionary Action”, 82). The people are suffering under the existing organization of labour as they are prevented from developing their rational faculties. Although Erhard believes that, in principle, a peaceful revolution or ‘evolution’ can be justified in certain instances, in the specific circumstances he describes, a revolution is justified only when initiated by the people themselves.

A revolution of the people can mean nothing else but the people using violence to assert their rights of maturity [*Mündigkeit*] and seeking to abolish the relationship between themselves and the nobility. The concept we provided for a revolution thus far is a transformation of the fundamental constitution of a state. Now, when we specify the author of the revolution more specifically [the people], the change of the basic laws [*der Verfassung*] must be *in favor of the rebels*.

(*Revolution*, 91, emphasis added)

One reason Erhard might believe the people need to undertake a revolution is that the ruling class has an interest in protecting the structures from which they benefit. Erhard discusses a case where the nobility is “deliberately aiming to keep the people immature” for their own selfish ends: a situation Erhard labels as “high treason against humanity” (*Revolution*, 82). If the nobility is understood as seeking to maintain their power rather than relinquishing it, we can see why Erhard would consider the people the only group capable of initiating a revolution as only they have the right intention. It would also explain why the revolution must be violent. Given that the people fight against the interests of the establishment, a harmonious transition is unlikely.

However, Erhard defends an even stronger claim, in which the ideology of religion plays a critical role. According to him, religion not only disables people from rationally evaluating the severity of their situation but also poses a danger to the nobility. Erhard suggests that – likely in reference to the German Peasants’ War – the behaviour of citizens remains unpredictable and irrational in a religiously minded society, which might even be less favourable to those in power than a society with a just division of labour. In this context, Erhard argues that a revolution must not be initiated by

those in power because it would undermine the desired change of the people breaking with the existing power that put them into their oppressive state in the first place. This is reflected in Erhard's distinction between a "revolution of the people" (*Revolution des Volkes*) and a "revolution through the people" (*Revolution durch das Volk*) (82). In the latter case, it is the nobility that decides to reform the fundamental laws. However, even when initiated for the right moral reasons, Erhard fears that the nobility would continue to rule in the name of the people, leaving them in their immature state. In this context, they are merely "used" by the ruling class for a revolution (94–5). Only a 'revolution of the people' can, under these specific circumstances, lead to meaningful change.

While the people may lack the skills to justify their revolutionary engagement from a rational standpoint, the revolutionary act must be undertaken by the people themselves as a necessary step out of their "self-imposed immaturity" (*Revolution*, 91ff), allowing them to free themselves from ideological beliefs and understand the oppressive structures to which they had been subjected (91ff). A revolution, in this case, involves not only a change of the constitution; it must moreover be a revolution of thought to break free from the ideological power that has kept them in a state of self-imposed immaturity. With this revolutionary step, "humanity has by no means yet achieved its perfection [...], but it now knows its dignity and seeks to act in accordance with it" (95). According to Erhard, revolution is not only a fundamental change of the basic laws of a society; in cases where an irrational thought system obscures their understanding of their rights, it also becomes a necessary condition that the revolution be carried out by the oppressed themselves. For Erhard, it is not enough to establish just conditions. With his keen sensitivity to the practical use of laws, he argues that only when the people's mindset has undergone a fundamental change, we are assured that the newly founded constitution and its corresponding laws are used rightfully.

## 5. Conclusion

In the history of left-wing German philosophy, economic justice has often been perceived through differing views on legality: either as a remedy for economic wrongs or as an ideological tool. In this paper, I sought to show that Erhard provides a comprehensive natural law theory that allows for an ethical evaluation of substantialized laws and legal systems while maintaining a separate legal domain, from which coercive juridical laws are derived based on an external notion of freedom. I have further argued that we find a fruitful foundation for addressing economic wrongs in his defense of context-sensitive remedial duties, specifically the duty to reform and the duty to revolutionize. I have shown that in cases where a law or set of laws serves inhumane purposes,

Erhard's account calls for a more consistent application or the reform of laws. In more severe cases of economic oppression, where existing legal institutions operate entirely in service of a harmful ideology – perhaps as Erhard would view capitalism – natural law calls for revolution.

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