

Interpretation

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Fichte's Deduction of Rights from Self-Consciousness

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The political philosophers of the seventeenth century conceived man as the possessor of inalienable natural rights which, untamed by guarantees of security, could justify any behavior whatsoever in their defense, no matter how extreme, including preemptive strikes on those whom one merely suspects of unpleasant intentions. The theory originated, more or less, with Thomas Hobbes's claim that each man is the possessor of a natural right to life, a right which he possesses not from civil society or from God but, rather, as an inalienable right of nature, "found even in the embryo. . . ."¹ Because of the ignorance each has of future threats to his well-being, including the imaginable threats posed by those whom he has no present reason to distrust, Hobbes acknowledged that one cannot guarantee his preservation without the augmentation of his power and possessions beyond that required by his own simple needs. The natural right to self-preservation, magnified by the fact that no man can be sure which of all the imaginable threats to his life and well-being will turn out to be real, blossomed into a "natural right of every man to everything, even to one another's body."² The natural inclination to secure one's natural right to preservation, Hobbes argued, deteriorates quickly into a war of each against all. It is reason and right, not irrationality, that justifies a preemptive strike on another in the natural condition. John Locke took much the same position as Hobbes, justifying the killing of a thief who has not otherwise caused any injury and whose actions have not revealed any more harmful intentions, simply because there is no reason to assume that one who would take away another's liberty, e.g. by stealing from him, would not take his life as well.³ Rights, from this seventeenth-century perspective, existed as principles of alienation the very nature of which was to clash. The problem for liberal rights-theory was to find a way of rescuing man from the detestable natural condition into which he thrusts himself, by his own natural inclinations, acting on his natural right to preservation, without depriving him of the natural rights that drove him into the natural condition—the condition of mutual hostility and warfare—in the first place.

Locke, Hobbes, and their philosophical contemporaries resolved the problem by arguing that man could be rescued from the self-destructive implications of his behavior only if he were to abandon the natural condition, that is, if he were to subordinate himself to a sovereign authority. Their political theories were, for the most part, attempts to explain how this peace-generating subordination to sovereign authority could safely, intelligibly, be brought about.

The dilemma for rights-theory, never resolved by Hobbes, Locke, and the seventeenth century, was that the sovereign powers invoked to protect individual rights were also possible threats to the very rights they were intended to protect. The only corrective to the possibility of sovereign abuse of powers that Hobbes and Locke could come up with was an appeal to those very rights that the sovereign was invoked to protect. That corrective, when called upon, however, would thrust mankind once again into the detestable natural condition. So long as individuals retained their natural right to life, those rights represented a threat to the very authority on which they depended. The individual acting on his natural rights, concerned fundamentally with his own survival, remained, in an important sense, outside the community, his most vital interests linked only conditionally to loyalty to his sovereign.

The problem for subsequent philosophy was to conceive individual rights and civil association in such a way that this opposition of individual rights and political power was avoided. The solution that political philosophy hit upon was first proposed by Jean-Jacques Rousseau. Rousseau reconciled individual rights with the authority of the community by conceiving them as originating *only* with the community. He abandoned the idea of natural rights, i.e., rights that belong to the individual inalienably, that is, prior to and independent of his political association, and with that he abandoned the idea of inalienable rights as a final justification to which one could appeal to resist the abuse of sovereign authority. Rights were reconceived by Rousseau as exclusively social in their nature and their origins. "The social order," he said, "is a sacred right which is the basis of all other rights. Nevertheless, this right does not come from nature, and must therefore be founded on conventions."⁴ If we accept Rousseau's claim that the sacred right to social order is itself a social convention, then it follows that that right, and all of the other rights of which it is the basis, do not precede society. Sacred though they may be, they are not inalienable, *natural* rights to which man can appeal to justify actions *against* society. Rousseau's revision resolved the friction created by the clash of individual rights and political authority, but it was not clear that individual rights were preserved. In Rousseau's scheme, rights become thoroughly absorbed by the general will, meaning by that not a "majority will," but, rather, what society itself would conceive as its good.

The rights-theory of Johann Gottlieb Fichte was, in a sense, an attempt to carry through Rousseau's solution to the seventeenth-century liberal-rights dilemma, but without denying the absolute character of individual rights as they were conceived by Hobbes and Locke. Fichte believed he could give a deduction which shows how rights properly conceived do not result in the dilemmas that occupied Hobbes and Locke. The key to Fichte's theory is his transfer of the locus of rights away from Hobbesian fear of death to self-consciousness. The freedom that defines self-consciousness exists *only* through reciprocally dependent recognition voluntarily given by free, rational beings to one another

in a community. The reciprocal dependence of freedom eradicates the externality of rights, making them eminently sociable. Fichte's intention, in *The Science of Rights* (1796), was to produce a *deduction* of the concept of rights, employing the transcendental method that was used by Kant to show how rights exist as "a necessary condition of self-consciousness."⁵ This means that where there are no rights there can be no consciousness of self or, to state the logical equivalent, the self-conscious self can be conceived *only* as an agent of rights. Precisely how Fichte deduces rights from self-consciousness we shall see next.

I. FROM SELF-CONSCIOUSNESS TO RIGHTS

In both *The Science of Rights* and the earlier *Science of Knowledge*, Fichte argued that self-consciousness is the most immediate, undeniable character of rational being, a fact so immediate, so self-evident, that it needs no proof or argument. His immediate starting point is his rejection of certain epistemological assumptions made by Kant. Kant had accepted the empiricist critique of rationalism, that there is nothing in intellect that was not first in the senses. That is, all knowledge must begin with sense-experience. We can have no knowledge whatsoever any objects, or any reality, existing outside of and beyond the limits of sense to which our sense intuitions somehow correspond.

Kant accepted this empiricist critique of knowledge, but, nevertheless, did not deny the existence of an external world of things-in-themselves. Accepting the idea of an unknowable thing-in-itself grew increasingly problematical for subsequent philosophers, most especially Fichte. To claim we can have no knowledge of an existing thing-in-itself, after all, is already to know something about it, that it exists, that it is a unit (thing), and that it has certain relational properties (in-itself). The idea of a thing-in-itself, in short, is self-contradictory. "It might be asked," Fichte says, "What reality shall be ascribed to those acts which lie beyond the sphere of consciousness, and are not posited in consciousness, if reality is properly ascribed only to that which is necessarily posited by the Ego? Of course, no reality, except in so far as it is thus necessarily posited."⁶ Consciousness is the one constant, the one self-evidently existing being, which needs no proof, from which all knowledge whatsoever must begin.

Even though it needs no proof, self-consciousness, as an activity, is not possible unless there is also something (an object) of which it is conscious, which, in this case, would be the self itself. Consciousness that is not conscious of anything is no consciousness at all, and in the absence of a thing-in-itself, there is nothing else which could serve as its object. In Fichte's terms, self-consciousness posits itself. That is, since self-consciousness undeniably exists, and since it cannot exist unless there is a self of which it is conscious, we must "posit" the existence of the self as its own necessary precondition.

Fichte's concept of self-consciousness is, in one sense, akin to the famous

Cartesian *cogito, ergo sum*, the “I think; I am” that was, for Descartes, the necessarily presumed accompaniment of any thought or perception. Fichte speaks of self-consciousness in much the same way, identifying it as “the primordial, absolutely unconditioned first principle of all human knowledge.”⁷ But, beyond this, the similarities vanish. Fichte’s “first principle” differs from the Cartesian *cogito*, first and foremost, in that it is not substrate, power, or faculty (p. 39). Neither is it, as David Hume would have it, a mere connection of sense impressions, i.e., as an empirical self (p. 37). Self-consciousness, or Ego, exists solely as a self-grounding activity.

So long as it remains this indeterminate, the original activity that constitutes self-consciousness is, strictly speaking, unknowable. Since consciousness can be only of those entities that have knowable or determinate boundaries (something that can be specified or described), self-consciousness cannot be possible unless there is (as a precondition of the possibility of self-consciousness), beyond the self-grounding activity of self-consciousness, a contemplating activity that “has an externality. . . a World for its object” (*The Science of Knowledge*, p. 32; also *Science of Rights*, pp. 40–44). That is to say, self-consciousness is possible only through consciousness of something else, i.e. an object or thing. The “object” here, of course, is sensuous, meaning by that it is something that exists only in consciousness. Consciousness and the object of consciousness stand in a relation of reciprocal determinacy. Every object is an object only of consciousness, and consciousness only exists as consciousness of its object. Self-consciousness (Ego) and object (non-Ego) are, Fichte says, “determined modification(s) of consciousness; and without consciousness there is no Being.”⁸

The Ego, according to Fichte, *posits* the sensuous external world.⁹ (When Fichte says that something is “posited” by consciousness, he means that it must be affirmed as a necessary precondition of the possibility of consciousness, much the way that *space* can be *posited* as the precondition of the possible physical existence of a tree, since *to exist* in this sense means *to occupy space*. So, if trees can be conceived as existing, we must *posit* the concept of space.) Furthermore, it is only through this *positing* activity that the Ego, itself, is knowable, i.e. in the action of being conscious *of* something.¹⁰

In the *Wissenschaftslehre* (*Science of Knowledge*) Fichte develops the epistemological implications of this notion of self-consciousness. Our concern, of course, is not with Fichte’s epistemology per se but with his account of rights, and with his account of self-consciousness only to the extent that it is fundamental to his rights-theory. Much the same as Kant, Fichte anchors rights in freedom, and it is in self-consciousness that freedom comes into being.

Self-consciousness is a self-determining activity and, hence, necessarily a free activity (since self-determination is what is meant by freedom). Freedom, Fichte says, “involves originally only the power, through absolute spontaneity, to form conceptions of our possible causality” (*The Science of Rights*, pp. 18, 54, 91). That is, freedom exists in the ability to conceive oneself as freely

initiating, or causing, something. This does not mean that freedom is wholly without conditions. It, too, cannot be conceived except through limitation. This could mean no more than the fact that no person is free to choose unless he or she is presented with a limited (determinate) set of choices. I am free to choose to eat an apple or a pear if they are offered to me, or I may choose to eat nothing at all; but I am not free to choose without choosing from some such set of alternatives.

To conceive oneself as a spontaneous cause, i.e., a being who initiates causality, rather than serving as a mere medium through which exterior causal forces flow, requires, “that a result in the external world should follow the thinking of his activity, or that he should perceive the effect of his free causality” (*The Science of Rights*, p. 18). That is, freedom cannot be conceived as existing for a rational being without manifesting itself in some possible effect on something. Wherever there is no effect, there can be no cause. The self’s consciousness of itself arises only when it perceives itself in the appearance of objects, i.e., in the knowable effect it has on them as it transforms the objects to suit its will. The sensuous object itself is posited as that which resists, which can be overcome and, therefore, which gives evidence of the causality imposed upon it.

Hence the object must be infinitely changeable through an infinitely changeable conception; that is to say, it must be possible to make out of the object whatever one may possibly will to make out of it. The object is fixed, is permanently determined . . . and may, therefore, by virtue of this its permanency, *resist* the causality of a rational being; but it can not change itself through itself, (it can not *commence* any effort;) and hence it can not *act* contrary or in opposition to this causality of a rational being. (*The Science of Rights*, p. 47)

The self, no doubt, has its existence verified by its causal relationship to objects, but only as a thing causally affecting another thing. Proof of self-consciousness requires something more than evidence of mere causal efficacy. What is needed is evidence of one’s *free* causality. There must be some observable *effect* of *free* causality different from the effects of mere causality per se. *Free* causality is causal activity that is purposive or intentional activity, where the intentions and/or purposes arise solely as a self-determination of consciousness. Proof of *free* causality requires evidence of a *will* at work. For example, a rational being may spontaneously decide to claim a parcel of land for himself. The land itself can give no evidence of this rational being’s intentions. It may *resist* one’s intentions (with earthquakes, droughts, etc.), but it never *opposes* them with a contrary intention. Consequently, it gives no evidence that *free causality* has occurred, only that a causal force has acted on it. The only thing that could offer evidence of one’s free causality is another rational being, e.g., by opposing the original rational being’s intentions, by protesting the takeover or, perhaps, by reluctantly giving recognition to the original rational being’s

claim on the parcel of land as his exclusive sphere of freedom. By responding to my actions as the actions of a free, purposive being, the other provides the necessary condition for bringing my intentions—my will (as opposed to my mere causal efficacy)—into external existence.¹¹

From Fichte's account of the preconditions of self-consciousness it follows that no finite rational being can ascribe to itself a free causality in the sensuous world without assuming the existence of other finite rational beings whose potential opposition must be overcome. Individuals owe their *existence* as self-conscious, free beings to this process of reciprocal recognition, since self-consciousness is not an *object* but an activity, the nature of which is to be free, and which cannot be made determinate in any other way. They do not exist (except as objects or dumb animals) outside it. Fichte explains:

The subject determines itself as an individual and as a free individual through the sphere wherein it has chosen one of the possible acts given in that sphere; and the subject also posits another individual outside of itself, as its opposite, and as determined through another sphere, wherein this other individual has chosen. Hence the subject posits both spheres at the same time, and only thus is the required opposition possible.

The being outside of the subject is posited as free, hence as a being, which *might* also have overstepped the sphere by which it is now determined, and might have overstepped it in such a manner as not to leave to the first subject the possibility of a free acting. It has voluntarily *not* overstepped that sphere, and has, therefore, itself restricted its own freedom, *materialiter*, that is to say, the sphere of the acts, which its formal freedom could have realized; and all this the subject also posits necessarily in that stipulated opposing.

Again: This outside being has addressed a requirement to the subject to manifest free activity; hence it has restricted its freedom by a conception of an end entertained by the subject, wherein the freedom of the subject, be it only problematically, was presupposed; it has therefore restricted its freedom through the conception of the (formal) freedom of the subject.

Now, through this self-restriction of the other being its cognition by the subject as a rational and free being is conditioned. For the subject has posited a free being outside of itself only by virtue of a requirement addressed to itself to manifest free activity, hence only by virtue of that self-restriction of the outside being. But again: This self-restriction was conditioned also by the cognition on the part of the outside being of the subject as a possibly free being. Hence the conception, which the subject has of the outside being, as a free being, is conditioned by the same conception on the part of the outside being of the subject, and by an acting, determined through this conception. (*The Science of Rights*, pp. 65–66)

Stated somewhat more accessibly, Fichte's point is that another rational being *could* violate the limits that separate his sphere of freedom (e.g., his parcel of land) from mine (e.g., by seizing my land), but he could also choose, instead, to restrict himself voluntarily and leave me to my own unrestricted use of the

land. Were he voluntarily to restrict his activity, it would be a perceived effect of a demand that I lay on him "to manifest free activity," that is, to acknowledge my purposive possession of the land and, thereby, not interfere with my sphere of freedom. He will not do that, of course, without conceiving me as a free and rational being. (We ordinarily ignore the protests of squirrels, rabbits, and birds, when we take possession of, and use, a parcel of land.) Conversely, his voluntary self-restriction (whereby he chooses to make no attempt to interfere with my possession and use of this parcel of land), reveals him to me as a free being (since mere sensuous objects would never restrict themselves voluntarily), and, hence, able to make similar demands on me "to manifest free activity." My voluntary self-restriction in response to his demand is what reveals me to him as a free and rational being for whom he could reasonably limit his own free activity. The result is a reciprocally generated set of rights and obligations. Fichte writes,

The mutual cognition of individuals is conditioned by this, that each treat the other as free, (or, restrict his freedom through the conception of the freedom of the other.) . . . The relation of free beings toward each other is therefore the relation of a reciprocal causality upon each other through intelligence and freedom. No free being can recognize the other as such, unless both mutually thus recognize each other; and no one can treat the other as a free being, unless both mutually thus treat each other. The conception, here established, is very important for our purpose; for it is the basis of our whole theory of Rights.¹²

This mutual recognition given to one another by free beings is the sum and substance of what is meant by the concept of rights. "The conception of Rights is, therefore, the conception of the necessary relation of free beings to each other" (*The Science of Rights*, p. 18).

Now, finally, we understand Fichte's claim that the concept of rights functions as "a necessary condition of self-consciousness." One becomes conscious of himself as a free being only reflexively, by seeing himself in the other's recognition of him as a free, rational being. Consciousness of one's own self is not like consciousness of mere objects. According to Fichte, it is not otherwise possible than through some such reflexive act. One sees the other seeing him as something more than a mere thing, as something capable of possessing rights. Seeing the other voluntarily restrict his freedom to avoid interfering with one's sphere reveals one to oneself as the kind of being to whom alone such recognition can be given, at the same time that it reveals the other, too, as the kind of being from whom such recognition can be received. For Fichte, then, rights are not grounded upon human nature, natural law, or moral imperatives. Rather, rights are posited as necessary preconditions of self-consciousness. Because of the reciprocally dependent determinacy of self-consciousness, i.e., because it exists only in and through the reciprocally interdependent recognition of one

free, rational being (i.e., person) by another, it follows that the concept of right derives from an analysis of the concept of *personality*. Fichte explains:

Now this right, or these rights, are involved in the mere conception of the person, as such, and in so far are called Original (or inalienable) Rights. The Science of these Rights arises through the mere analysis of the conception of personality, in so far as that which this conception involves can be violated by the free acts of others, but must not be so violated in virtue of the conception or Rights. (*The Science of Rights*, pp. 139–40)

II. COMMUNITY

Obviously, Fichte did not believe that the concept of rights could be explained by referring to the actions of a single, solitary being in a Hobbesian state of nature striving to secure his own preservation. In a world governed solely by the forces of natural desire, no recognition of actual rights would ever exist. People would, with Hobbesian inevitability, react to one another as if they were mere objects, interfering with one another, stealing from one another, and attacking one another whenever it appeared to be in their interests to do so. The rights of one individual, existing without limit in a Hobbesian natural condition, would not simply conflict with the rights of every other person, as Hobbes believed; according to Fichte, they would cancel them. Consequently, there are, Fichte concluded, no original, natural rights that people have as individuals, independent of the recognition given them by others. “Man attains rights only in a community with others as indeed he only becomes a man . . . through intercourse with others. Man, indeed, can not be thought as one individual.”¹³ One’s very existence as a free, rational being, i.e., as a person, is created and sustained by the recognition one receives from another free, rational being (person). According to Fichte, then,

Rights can be spoken of only on the condition that a person is thought *as* a person, that is, as an individual, or, in other words, as occupying a relation to other individuals, between whom and him *a community, though not actually posited, perhaps, is at least fictitiously assumed*. For those things which, through speculative philosophy, we discover to be conditions of personality, become rights only if other persons are added in thought, who dare not violate those conditions. Free beings can not, however, be thought as coexisting at all, unless their rights reciprocally limit each other, that is, *unless the sphere of their original rights changes into the sphere of rights in a commonwealth*. It would seem, therefore, impossible to reflect upon rights as original rights, that is, without regard to their necessary limitations through the rights of others. (*The Science of Rights*, p. 160, italics added.)

Fichte found a solution to Hobbes’s problem very similar (so far) to the solution found by Kant. Rights do not exist as principles of alienation in a

natural condition and, hence, as barriers to civil association. They exist exclusively in and through the mutual recognition and voluntary self-restrictions of individuals living with one another in a community.

There is something paradoxical about this argument that Fichte must address. If rights are the result of mutual recognition, i.e., voluntary mutual self-restriction, how, in a community of two or three, could one's rights ever be violated? Were one person to violate the rights of another, his act would serve as evidence that he had not recognized the other's right, in which case no rights would exist to be violated. Either recognition (self-restriction) is given (in which case, rights exist) or it is not (in which case, no rights exist). This is a problem that plagues all rights-theories that make rights a product of mutual recognition. It has become the philosophical underside of a subtle cynicism that rights-talk has not been able to shake. Fichte is aware of this problem and avoids it through the clever stratagem of a double fiction, first, by *assuming* the *existence* of original rights. Fichte acknowledges that, "Original Rights are, therefore, a pure *fiction*, but a fiction necessary for the purpose of Science" (*The Science of Rights*, p. 160). So, original rights (e.g., Hobbesian natural rights) do not exist, but we must assume that original rights do exist in order to put ourselves in a situation where we can demand that they be recognized, thereby bringing them into genuine, albeit communal, existence. Rights, then, are the incredibly fragile products (and preconditions) of community consciousness.¹⁴ They presuppose the possibility that others exist who will, in response to our demand for recognition, voluntarily restrict their freedom. This is the second half of Fichte's double fiction (the fictitiously assumed community) referred to in the above quotation, which must be presumed if we are to explain the original expectation that recognition will ever be given.

The sociability of rights—their existence as the fabric of social existence rather than as the alienating principles of self-preservation that society is created to overcome—comes at some expense. Outside the confines of mutual recognition, i.e., beyond the limits of one's community, nobody can be said to have a right to anything, and we're left with the worst of Hobbesian dilemmas. In such a situation, rights are not merely fictions; they are meaningless fictions. So, if reciprocally generated rights are to be sustained, individuals must be brought into the community.

According to Fichte, "it is possible in thought to have every member of a community so restrict his own external freedom through inner freedom as to make it possible that all other members shall also be free. Now, this is the conception of Rights . . ." (*The Science of Rights*, p. 19). That is to say, it is possible *in thought*, though not necessarily in fact, to have a whole community of free beings agreeing mutually and voluntarily to restrict their freedoms. It is conceivable, even though there may be no obvious and uncomplicated way for such a community to come into historical being. This community is possible only to the extent that each member voluntarily resolves "never to treat the

others as mere things, but always as free beings” (p. 128, cf. also pp. 131, 161). Fichte, here, calls upon what Kant employed as a validating principle of universality, with what Fichte considers the notable difference that this law is not to be conceived as a moral law that imposes duties. Rather, it is a law of permission that, beyond a specific sphere of restrictions, leaves each person to his own free will, permitting each the free and otherwise unlimited use of his rights (pp. 22–23, 80–81). By applying the law voluntarily to his own free activity, each becomes a lawful member of the community and yet remains entirely free. Of course, only a person who is already a member of a community would ever apply the law voluntarily to his own free activity in the first place. A will that does not conform to such a law is a will that cannot possess rights because it has not fulfilled the minimum conditions under which, alone, mutual recognition of rights is possible. Fichte writes,

If I subject myself to a law which I have examined and approved, (such approval being the exclusive condition of a lawful possibility of my subjection,) then I have not subjected myself to the arbitrary will of a man, but to an unchangeable, determined will, in fact, to the will of Reason in general, or to my own will, as that will must be, if determined by the Conception of Rights; and unless my will is so determined, I have no rights at all, as has been shown. Hence, far from losing my rights by such subjection, I rather first obtain them through it, since only by this subjection have I fulfilled the condition under which alone man obtains rights. Although I am subject, I am subject only to my own will. (P. 152)

The mutual, voluntary subjection of conscious beings to this law creates “an equilibrium of rights” (Fichte’s counterpart to what Kant called the condition of “coexistent freedom”).¹⁵ This equilibrium of rights exists as the necessary precondition of the possibility of anyone’s existence as a free, rational being. Outside it, one has no rights at all. This equilibrium should not be mistaken for a communally shared sense of good will. Free beings who participate in this equilibrium of rights, he says, share “a common recognition, but nothing more.” They recognize one another, voluntarily restricting their own external freedoms, Fichte says, yet “they remain as isolated as before” (*The Science of Rights*, p. 126). That is, the community exists, and rights are conceived as *sociable*, but only as a network of self-restrictions.

All the socializing activity that characterizes Fichte’s community occurs at the level of rights. The will itself is never fully absorbed into the community of rights; in a very important sense, it remains as much outside the community as does the will of Hobbes’s natural man, who contracts with others only out of self-interest. Formally, the community is no more than a haven within which the individual will can freely exercise its own causal activity, restricted to its own sphere, of course.

Fichte’s deduction, he acknowledges, provides only for the *external* (i.e., formal) conditions of the concept of a community of free beings reciprocally

conditioning one another. If it is to be a reasonable object of political action, Fichte suggests, we must also satisfy the *internal* conditions of this community, i.e., we must determine the practical motives that would make it a real possibility (*The Science of Rights*, p. 126). Fichte knows that no equilibrium of rights ever occurs in or by nature. When left to their own contrivances, individuals inevitably trespass upon one another's rights, if only from carelessness (p. 193). Even if people were not careless, the possibility of an uncoerced community is precluded by the fact that "No one can know the inner sentiments of the other" (pp. 148, 145, 191). Ignorance of the intentions of others makes Hobbesian suspicion (and, hence, latent warfare) reasonable. The converse is equally true. No one can prove his own sincerity to another, making the other's suspicion of oneself equally reasonable. Both inwardly and outwardly, we remain strangers. Fichte does not for a moment accept Locke's claim that trust is possible even in the natural condition.¹⁶ Consequently, there is no reason why one should have confidence that the law of freedom will serve as the irrevocable rule of action for each member of the community. If a community is to be a practical possibility, we must be able to guarantee that no member of the community will ever violate the rights of another.

III. THE RIGHTS OF COMPULSION

Once again, Fichte agrees with Kant on the beginnings of a solution to this problem. If persons are to become mutually self-limiting and trustworthy, it will happen only through compulsion. That is, if rights exist only in and through consciousness, then, to guarantee rights, we must control consciousness, without, of course, denying it its freedom. From the unavoidability of this conclusion Fichte derives the necessity of a *right of compulsion* for all those who have voluntarily placed themselves under the law of freedom. The right of compulsion gives each a right to compel others to submit to the law of freedom, i.e., to the law that requires us always to treat others as free beings.

The end of the law is to make a common intercourse of free beings possible. But this is possible only if the person with whom I thus enter into a community has subjected himself to this law, if he has resolved to respect my freedom or my original rights. The law is not at all applicable, however, to a person who has not subjected himself to it, since the end no longer exists for which I adopted that law. Hence, although I have *generally* subjected myself to that law, I have not done so in regard to the particular person, who, for his person, has not adopted it. . . . I have adopted it in general, and have not adopted it in this particular case. Because I have adopted it in general, and have placed myself under the conception of Rights, I act rightfully, and have, therefore, a *Right*; and because I do not adopt it in this particular case, I have a right to compel that other individual by attacking his freedom and personality. My right is, therefore, a *Right of Compulsion*.¹⁷

Fichte's logic here is peculiar. If I have placed myself under the law that requires us to respect the freedom of others, then I have the right to demand of others who have placed themselves under the law that they recognize my rights. But, because I have placed myself under the law *in general*, I have a right to make the same demand of those who have not placed themselves under the law. Either way, I have a right to compel others. The right of compulsion exists as a necessary precondition of both my own freedom and the freedom of those whom I compel, since it forces them into the community. If I am successful in my effort to compel them, those others, having been compelled to submit to the law of freedom, will thereby receive recognition from other members of the community and, consequently, acquire rights. They will have been compelled to be free.

The difficulty with the right of compulsion is that each is necessarily his own judge whether another has violated his rights (*The Science of Rights*, p. 141). One's rightful exercise of the right of compulsion could conceivably (in fact, would probably) be taken by the person on whom that right is exercised as an unjustified attack on him and violation of his original rights.¹⁸ Each is necessarily his own judge! And since just one hostile act on the part of another is sufficient to justify one's suspicion that other hostile acts could follow, one hostile act is enough to legitimize a maximum response. Fichte makes much the same inference that was made over a century earlier by John Locke (cf. n. 1 below). Fichte explains:

One single unlawful act—even after a series of lawful acts—proves that the rule of law is not his irrevocable rule of action, and that his previous lawful acts were induced, not by respect for the law, but by other possible motives. It is this inference which warrants the conclusion that no free being can in safety live together with him, since safety can be grounded only upon the law. The person whose original rights have been violated, thus becomes justified in completely annihilating the freedom of the violator, and in canceling the possibility of ever again coming into contact with him in the sensuous world. The right of compulsion in so far is *infinite*, and has no limit at all. . . . (*The Science of Rights*, pp. 143–44)

The right of compulsion, as Fichte conceives it, is infinite, containing within it a right to cancel the possibility of ever again coming into contact with one's nemesis in the sensuous world. Ironically, Fichte's description of the right of compulsion makes it virtually indistinguishable from the right of nature that thrusts the Hobbesian natural man irrevocably into a war of each against all, especially since there is no objectively determinate way to establish in fact that one's rights have been violated, and no way to know for sure that the other is not harboring—perhaps with justification—the conviction that *his* rights have been violated and that that justifies his own appeal to the right of compulsion. According to Fichte, the only thing that would limit one's exercise of the right of compulsion is the other's decision to repent and submit himself voluntarily

to the law of freedom. It is highly improbable that this can happen, however, since there is no way to verify his sincerity and no way to be sure that he does not intend to renew his attack on the rights of his victim as soon as the opportunity returns. Consequently, Fichte says, the right of compulsion is in contradiction with itself.¹⁹ Its intent is to force another person to submit to the law, but it is not possible to know if the attempt has been successful. If it has (i.e., if the other has truly submitted to the law), any further exercise of the right of compulsion on him would be unlawful. Unfortunately, no one has any way of knowing for sure if it has. Unavoidable ignorance of the intentions of others is enough to entangle all people in an unresolvable contradiction. Fichte recognizes this dilemma, deriving from it the necessary conclusion that the mutual liberation of the opposed parties is not possible unless they all have complete and infallible knowledge of the whole future, i.e., of how all others will exercise their free activity. The only way such knowledge is possible is if all parties place their entire power in the hands of a *third party* in whom they all trust, transferring to him the right of deciding this dispute and all future disputes as well (*The Science of Rights*, p. 148). This third party would, then, exercise the right of compulsion for all the parties to any disputes. Because all the others are compelled, we can know infallibly how they will act.

As reasonable as this contractual agreement seems, it is a mystery, nonetheless, how the original transfer of right to a third party can come about without presuming at the outset the very same trust that the transfer of right is supposed to make possible. According to Fichte, it cannot happen without the benefit of a "contrivance" which operates "with mechanical necessity so as to cause each lawless act to result in the very opposite it was intended to produce" (*The Science of Rights*, pp. 194–95). The contrivance must operate as a system of "springs and wheels" (p. 276), to "make the violation of the rights of the other a violation of my own rights" (p. 198), in that way assuring the creation of a common will and the external realization of rights.²⁰ It must be a contrivance which does not depend on individuals acting from good will, since there is nothing which assures us that any individual will ever exhibit a good will. In fact, Fichte says, it must even cause the person who acts solely from a bad will to want to avoid violating the rights of others no less that he labors to protect his own rights against them. The contrivance that will do this, Fichte says, is to be found in the *Law of Compulsion* itself by which all parties to the law would agree to unite against anyone who violates the rights of any other.

Were the universal adoption of a Law of Compulsion merely an agreement entered into by the individuals themselves, Fichte observes, it would still involve a contradiction. Whenever a situation would arise where the law was applicable, i.e., when one person violated the rights of another, the law would require the aggressor to repel his own attack or at least voluntarily submit to his own punishment. Either way, his actions would involve self-contradiction. Furthermore, were an aggressor willing to submit to punishment, Fichte says, he

would need “an impossible confidence in the justice and wisdom of the victim” that the law of compulsion would not be applied excessively, since there is no other judge than the victim to adjudicate the dispute (*The Science of Rights*, p. 201).

Obviously, establishing a law of compulsion (to support the establishment of a third party who is empowered to judge disputes) is not possible without a compulsory power by which “private and common will are synthetically united,” one that can punish those who violate the rights of others (*The Science of Rights*, p. 206). To establish this compulsory power, Fichte says, each individual must, in effect, enter into three separate contracts: (1) each person must contractually agree not to violate the property of any other person, and (2) each must agree to assist in protecting everyone else’s property (p. 218). One acquires the right to expect others to protect one’s rights only on the condition that one actually protects their rights in return. This mutual protection of rights cannot be assured, however, unless (3) the contract into which the individuals enter also provides for a “protective power, to which each member of the organization must furnish his contribution” (p. 224). In effect, each must willingly make himself an arm of the law. No one would do that, of course, if he thought that the organization would turn its power against himself. Individuals can reasonably enter into this contract, however, Fichte explains, because “the conception of the individual to be protected is . . . an undetermined conception.” This is the real contrivance Fichte employs to rescue the reciprocal recognition of rights. Each is able to “believe that the whole contrivance has been established solely for his particular benefit” (*The Science of Rights*, p. 225). Every person can believe that the entire agreement exists for his benefit because none can know against whom the authority of the third party will be directed. The contract looks beneficial to a person—and so he throws his support to it and contributes his powers enthusiastically to the punishment of violators—because he has no reason to suspect that he might one day be identified as one of its violators and become one of the punished.²²

The result of the blissful ignorance generated by the indeterminacy inherent in the generality of the contract is the creation of a common will. Fichte insists that the common will “is not merely imaginary . . . but . . . *actual*; a Whole not merely of all individuals, but of a totality” (*The Science of Rights*, pp. 224–25). What was formerly a mere aggregate of individuals now exists as a Unity, a common will, Fichte says, because of the indeterminacy of the agreement or, better yet, because of the credulity of the people, their capacity for believing that the indeterminacy of the contract is a guarantee of its benevolence.

Fichte’s invocation of his contrivance recalls to mind an earlier contrivance, the myth of metals in Plato’s *Republic*, invoked by Socrates for very similar reasons, with this difference: Socrates knew that the contrivance would not work. Fichte’s contrivance, it could be argued, has no greater chance of success than Socrates’. There is no reason why the indeterminacy of the Law of Com-

pulsion would not be as likely to make everybody apprehensive and insecure as it would be to create the politically unifying confidence that Fichte claims for it. At the very least, each person will know that the only basis the compulsory power has for judging disputes is the welfare of the whole. Beyond his concern for the welfare of the whole, the judge has no interest in the interests of the parties to a dispute. Any party to the contract would know that, were his condemnation and punishment to benefit the whole, his innocence would not really be a concern. The mere suspicion that innocent persons can suffer punishment because it is in the interest of the whole community is enough to make obvious the fact that no person would have any power to guarantee his own security under this contract. Clearly, his innocence would not guarantee it. The neutrality of the contract to the welfare of its separate citizens (i.e., its indeterminacy) is, at the same time, an indifference to their welfare *as individuals*. Nevertheless, Fichte, with far greater trust than Socrates had in man's ability to believe fictions, makes this contrivance the real tie of the union (*The Science of Rights*, p. 225). The doubtful possibility that each citizen could be made to believe that the entire agreement exists for his benefit is made even more doubtful by the additional requirement that each citizen "must become convinced that the subjection and unlawful treatment of *one* member of the state will infallibly result in his own subjection and unlawful treatment" (p. 239). This, designed to convince a miscreant that the rule of his own mischievous conduct will at some future time be turned against him, must also work to prevent his finding comfort in the indeterminacy of the law.

Fichte's calling upon the common will as the ground of civil association is often taken as evidence of Rousseau's influence. Regardless of the functioning of this common will, individuals are to remain omnipotent existential atoms. Fichte, admittedly, implies that the common will is the equivalent of an organic unity when he likens it to a tree whose existence and health depends on the mutual dependency of its parts, where each and every part must necessarily identify itself with the whole. By implication, each must also identify with the well-being of the other parts on which the whole depends.²³ We should not be misled by Fichte's rhetoric. When a tree dies, so too do the branches. Not so with Fichte's common will and its members. The interests of the members of the community remain united only by the contrived belief that their interests are as dependent on the welfare of their community as the welfare of the branches is on the health of the tree. Fichte believes he has found a way of making this illusory unity believable—by calling on the indeterminacy of the law as a way to domesticate the private will without violating its freedom.

The product of the contractual agreement entered into by individual wills is the state organization. With the appearance of the state, new changes take place. "As soon as the government has been established," Fichte says, "the people, as a unity, cease to exist" (*The Science of Rights*, pp. 265, 256). They can have no separate will as a People, i.e., no independent authority and right, so long as

they are governed by an executive power or state government to whom that authority has been transferred and in whom that authority resides. The people reduces, once again, to an aggregate of individuals, now subject individually to the government. The government considers each only as an individual and considers itself the sole expression of the common will. The dissolution of the people (i.e., the common will) as a unit of political authority is the only way to be sure that the common good and the private interests of the supreme power remain unified. This is an important, Hobbesian provision, since we do not want the *people* to overthrow their own government; they will destroy their own rights in the process. As a practical precondition, to make sure that the executive power does not acquire interests that conflict with the welfare of common will, Fichte says that the executive power (the sovereign) must have an independent and sufficient income (to make him less susceptible to bribery), and few friends (to assure his impartiality). It is equally important, Fichte says, that all the actions of the executive power receive the greatest publicity (public exposure), to promote executive honesty (pp. 254–55).

Nevertheless, Fichte did not think independent wealth, few friends, and the threat of public exposure would be sufficient safeguard against the possibility of the misuse of executive power. He disagreed with Kant, too, “in his statement, that the division of legislative and executive power is sufficient to secure the maintenance of rights in a state” (*The Science of Rights*, p. 23). Fichte, clearly, had no confidence, as Kant appears to have had, in “nature” to transform despotisms into republics and no confidence in the power of republics to protect rights. He believed that the rights of individuals can be preserved from the possible abuse of executive power only if yet another special power is established by the constitution; to supervise the conduct of the executive power and hold it accountable (pp. 259, 243). This special power, referred to by Fichte as the “Ephorate,” would have to have the power “to utterly suspend the administration of law and the government in all its branches” were government discovered to have violated the rights of its citizens.²⁴

Fichte’s Ephorate would have only an absolute prohibitory power. Its function would be to suspend all government whenever the executive power has given evidence of violating rights, and in that way to serve as an expression of the common will. To assure the incorruptible functioning of the Ephorate, Fichte considered it important that the individual members of the Ephorate be elected, that they be very well paid (again, to be less susceptible to bribery), and not dependent on government for their personal welfare. The least violence against them would have to be regarded as high treason (*The Science of Rights*, pp. 265–66). Given the powerless character of their situation and likelihood of executive reprisals, it is not surprising that Fichte also recommended that none but old and experienced men should be elected as Ephors, old enough, one suspects, not to value added years of life too highly (p. 263).

Lacking any power of enforcement, the Ephorate would have power to pro-

duce its suspension of government only by exposing its abuses through a public announcement, an administrative *fourth estate* of sorts (*The Science of Rights*, p. 260). A condemnatory announcement from the Ephorate would make all subsequent acts of government illegal and would reduce all state officials to mere private persons. The suspension of government would also imply a call for a convention of the people. Presumably, the Ephorate's suspension of government would have the effect of reconstituting the unity of people by re-awakening their desires to maintain their freedom and knowledge of their rights (p. 273). Fichte assumes that, after the Ephorate's announcement, all those who had received negative judgments from the government would refuse to recognize government authority anymore, and those who had received favorable judgments from the government would suspect that they cannot rely on them. Consequently, everybody would acknowledge the suspension. The citizens would then assemble to judge one party—the executive power or the Ephorate who have raised accusations against the executive power—guilty of high treason. According to Fichte, the vote of the people against government would have to be unanimous. That is not much of a concern for Fichte, however, since he assumes that any dissenting group would endorse the vote of the majority, making the vote technically unanimous. His assumption is anchored in the idea that, were a minority to refuse to endorse the vote of the majority they would thereby cease to be citizens of the state, would lose their rights as citizens, and, consequently, unanimity would be obtained anyway (p. 269). It would not be exceedingly difficult, then, to obtain a unanimous vote.

Were the people to disregard the Ephorate's charges and not convene, Fichte says, that would be sufficient to prove either that the violation of rights has not become sufficiently severe or that it never existed, thereby exonerating the executive power. Fichte says that it could also indicate that the people themselves are not yet fit to decide the dispute and, therefore, do not deserve any better government. (He does not consider yet another possibility, that they could be too oppressed to respond.)

Fichte was also concerned about what could be done were the executive power to combine forces with the Ephorate to suppress the people. To prevent this possibility, Fichte declared, the Ephorate must not have friendly or social relations with the government and not be dependent upon the executive power. The political independence of the Ephorate, Fichte thought, would be established by their being elected. Ephors, depending upon the electoral process, would not want to lose the confidence of the people. But, he says, were it to happen that the Ephorate collaborated with the executive power, then one or more private persons would have to call upon the whole people to come together in convention. This would amount to rebellion, of course. And, if the actions of the private person were unsuccessful in rousing the people to action and assembly, that would be enough to justify condemning him of high treason. Fichte assures us, nevertheless, that the people will answer the revolutionary

call of an individual, if the charges against the executive power are justified, because “an unjust power is always weak, because it is illogical.”²⁵

In the 1812 version of *The Science of Rights*, Fichte retracted his advocacy of the Ephorate as a checking power on government because of its impracticability. “For, who shall again check the Ephorate, that it may not commence a revolution for some reason or another, although the government has not violated the law? Again: Will not the government having all power in its hands, try to suppress the Ephorate at the very start?” (*The Science of Rights*, p. 284). Fichte didn’t deny the necessity of some such checking power, only that an Ephorate could not provide it. Some checking power is needed to mediate the rights of individuals and the power of the executive. In his retraction, Fichte says that this checking power already exists wherever civilized people are found, in the expression of public opinion which governments do not dare ignore. Fichte never found any solution to the problem other than this.

CONCLUSION

Fichte claims to have provided us with a deduction of the concept of rights by working back to them as the transcendental preconditions of self-consciousness. Rights, he wants to show, are created and sustained by the relationship of reciprocal recognition and mutual self-restriction, the relationship in which a community of individuals voluntarily restrict their freedom so as not to violate the spheres of freedom claimed by others.

No *original* rights exist prior to this act of mutual recognition, and, of course, no rights can belong to any person outside this reciprocal relationship, which is all Fichte means by “the community.” Everything else in Fichte’s political philosophy is intended to support or augment this fundamental argument.

There remain a couple of obvious ambiguities in Fichte’s theory: rights are made dependent on mutual recognition. When one person violates the rights of another there is obviously no recognition, and where there is no recognition, there are no rights. There is nothing to violate. Likewise rights and community are reciprocally dependent. One cannot precede the other, and yet, each must exist originally as the agent which brings the other into existence. Rights, mediated by the contract, create a community, and the community, through reciprocal recognition, creates rights. Each precedes and preconditions the other, and that is precisely what they cannot do.

Fichte, we have seen, escapes this circularity by bringing back the *original rights* which he originally abandoned in order to escape the state-of-nature dilemmas of Hobbes and Locke. But he brings them back only as *fictions*. This is comparable, perhaps, to the more current anchoring of rights in “rights-talk.” Fichte, then, appears to be in the awkward position of positing a community in

which rights (the rights of reciprocal recognition) exist by building on the authority of original rights which do not.

One might argue that the ambiguities in Fichte's rights-theory are taken care of by the fact that the rights the community creates through reciprocal recognition are different than the *original* rights that precede the community. *Original* rights are only fictional, invoked as a conceptual device which enables us to initiate the act of recognition. Community, too, is only fictional, however (*The Science of Rights*, p. 160). It, too, is an assumption, a necessary condition of the transformation of original rights into the rights of reciprocal recognition. An actual community can come into existence only with the establishment of a system of enforcements, and that cannot occur without people working together in a community relationship recognizing each others' rights. The problem for Fichte, then, is determining how to maintain these fictions in the individual consciousnesses of those who, by virtue of these fictions, are to constitute a community.

When a community is created, individual rights, according to Fichte, are never surrendered. Theoretically, the individual remains absolute, his rights existing as an absolute and infinite liberty to do whatever he wills within his own sphere of freedom, with no special concern for the rights of others except insofar as his own rights are guaranteed by their security.²⁶ Since the original rights of every individual (which, incidentally, are no less absolute and infinite for being fictional) precede and provide the basis for community, and the community is the necessary prerequisite to the realization of rights (the rights of mutual recognition), it is, by implication, the absolute and infinite (i.e., original) right of every individual to compel all others to enter into those community relations under which alone their reciprocally generated rights can exist. This is the Fichtean counterpart to Rousseau's declaration that, if necessary, we must force people to be free, and is the way out of the dilemma that is created by the fact that individual rights and community precede and precondition each other. Fichte writes,

Now, since the Conception of Rights can not be realized except through a universal commonwealth of all mankind, the right to realize it must always remain a right of each individual; and it is this right to realize a true lawful relation between mankind, which is the *legal* ground, why each individual, besides his particular limited sphere in space selected as his exclusive possession, has a right to claim all the rest of the world as a sphere of causality. (*The Science of Rights*, p. 218)

Absolute freedom of will authorizes each individual to exercise his right of compulsion on the rest of the world in order to create a commonwealth in which everybody can be free, if only because that is the only way that the commonwealth can be brought about. By implication, it also authorizes every

individual—in the name of original rights—to reject any compulsion exercised against him as an unacceptable limitation of his freedom.

It should come as no surprise that Fichte claimed that the source of all the evil states at his time was “disorder.” He believed that disorder could be relieved and freedom restored, in part, through laws giving police the right (or power) to “know pretty well where each citizen is, and what he does at every hour of the day,” the power to prevent citizens from assembling in homes, streets, market-places, etc., even the power to prevent citizens from walking the streets at night without a light, since under the cover of darkness it is easier to violate someone’s right (*The Science of Rights*, p. 386). These conclusions have caused many of Fichte’s readers to associate the theory found in his *Science of Rights* with the philosophical foundations of the Reign of Terror (1793–94) in which the French Revolution eventually culminated, and with its self-destructive overthrow of all authority structures, including its own, all in the interest of securing collectively defined individual freedom.²⁷ Fichte himself enthusiastically defended the underlying principles of the revolution, the overthrow of feudal monarchy, and, most importantly, the radical transformation of political philosophy that accompanied it.

So, individual rights, in Fichte’s theory, are simultaneously (1) absolute (within a community) and (2) subject to the transcendental preconditions of reciprocal recognition. The conditions of reciprocity (reciprocal recognition) that govern rights make the guarantee of rights dependent on the control of consciousness. The problem which Fichte never resolves, and hence the problem facing rights-theory after him, was to determine how the guaranteed existence of individual rights is to be reconciled with—i.e., kept from being eradicated by—its own transcendental preconditions.²⁸

NOTES

1. Thomas Hobbes, *De Corpore*, vol. 1 of *The English Works of Thomas Hobbes*, ed. Sir William Molesworth (London, 1839; reprinted London: John Bohn, 1966), chap. 25, art. 12, p. 407.

2. *Leviathan*, vol. 3 of *The English Works*, chap. 14, p. 117.

3. “This makes it lawful for a man to *kill a thief*, who has not in the least hurt him, nor declared any design upon his life, any farther than, by the use of force, so to get him in his power, as to take away his money, or what he pleases, from him; because using force where he has no right, to get me into his power, let his pretense be what it will, I have no reason to suppose, that he, who would *take away my liberty*, would not, when he had me in his power, take away every thing else. And therefore it is lawful for me to treat him as one who has *put himself into a state of war* with me, i.e. kill him if I can; for to that hazard does he justly expose himself, whoever introduces a state of war, and is aggressor in it.” John Locke, *Second Treatise of Government*, ed. C. B. Macpherson (Indianapolis: Hackett Publishing Co., 1980), chap. 3, sec. 18. Cf. also secs. 17 and 19.

4. Jean-Jacques Rousseau, *The Social Contract*, Bk 1, chap. 1, p. 182 in *The Social Contract and Discourses*, trans. G. D. H. Cole (London: J. M. Dent and Sons, 1988).

5. J. G. Fichte, *The Science of Rights*, trans. A. S. Kroeger (London: Routledge & Kegan Paul, 1970), p. 17.

6. *Philosophy of Rights*, p. 42. Cf. George Armstrong Kelley, *Idealism, Politics and History: Sources of Hegelian Thought* (Cambridge: Cambridge University Press, 1969), pp. 201–5. It is not

clear how this is to be reconciled with Frederick C. Beiser's warning that we "must not be misled by Fichte's metaphysical language," that Fichte's idealism is an ethical idealism rather than the subjective or absolute idealism often attributed to him. It is the failure to realize this, the tendency to misinterpret his idealism, that, Beiser says, has been the "fundamental obstacle to understanding the unity of philosophy and politics in Fichte's thought." The misinterpretations, according to Beiser, cause scholars to find inconsistency in Fichte's philosophy. "The inconsistency is only a reason to relinquish the interpretation." Of course, the possibility remains that Fichte was, in fact, inconsistent. That does not necessarily make his writings any the less perceptive. *Enlightenment, Revolution & Romanticism: The Genesis of Modern German Political Thought 1790–1800* (Cambridge: Harvard University Press, 1992), pp. 70, 60–62.

7. *The Science of Knowledge*, ed. and trans. Peter Heath and John Lochs (New York: Meredith, 1970), p. 93. "The self posits itself simply because it exists. It posits itself by merely existing and exists by merely being posited" (p. 98).

8. *The Science of Knowledge*, p. 10. "We cannot abstract from the self," *The Science of Knowledge*, pp. 71; 98, 64.

9. *The Science of Knowledge*, p. 40; Dieter Henrich observes that Fichte never defined his use of the term "positing." See "Fichte's Original Insight," in *Contemporary German Philosophy, Volume 1*, ed. Darrel E. Christensen (University Park: The Pennsylvania State University Press), p. 25.

10. In spite of the fact that all objects are "determined modifications of consciousness," Fichte does not deny their reality. The reality, or objectivity, of objects of consciousness is rescued much the way it was by Kant. Fichte says, "objects are said to have Reality. The criterion of all reality is the feeling of being forced to represent something in the manner in which it is represented," *The Science of Knowledge*, p. 11; cf. *The Science of Rights*, p. 13: Experience of the object as an independently existing thing-in-itself arises merely from thinking of the object of consciousness and, at the same time, neglecting our own apprehending activity. Fichte writes, "If I have regard to the object merely, and thinking of it forget my own thinking, I am held and restricted by this sphere; as happens throughout from the standpoint of ordinary thought," *The Science of Knowledge*, p. 64. This, Fichte says, is the way merely ordinary consciousness perceives the world.

11. "If I as a free being am to sense my freedom, then another must be free; or, in Fichte's words: 'no free being becomes conscious of itself without at the same time becoming conscious of other similar beings,'" Kelly, *Idealism, Politics and History*, p. 223 (quoting Fichte's *Wissenschaftslehre* of 1801, p. 138).

12. *The Science of Rights*, pp. 67–68. "Something becomes my property only because others renounce their right to it, respecting my desire to keep it for myself. This act of renunciation by all, and this alone, is the basis of my right," Johann Gottlieb Fichte, *The Closed Commercial State*, in H. S. Reiss, ed., *The Political Thought of the German Romantics 1793–1815* (Oxford: Basil Blackwell, 1955), pp. 88–89.

13. *The Science of Rights*, p. 160. "Man becomes man only amongst men" (p. 60). Cf. also pp. 81–82, 170.

14. Frederick Neuhouser argues that a discontinuity exists in Fichte's argument. Fichte shifts, he says, from a concept of individuality conceived as a discrete unity of causality to a concept of individuality that desires to have his sphere respected by others. Neuhouser acknowledges in a footnote that he ignores the inherently reciprocal nature of recognition. "Fichte on Right and Morality," in Daniel Breazeale and Tom Rockmore, eds., *Fichte: Historical Contexts, Contemporary Controversies* (Atlantic Highlands, NJ: Humanities Press, 1994), p. 170. Neuhouser's discontinuity vanishes once one considers the discrete individual and the sociable person as the mutually dependent dimensions of reciprocal relationship.

15. *The Science of Rights*, p. 189. Cf. Immanuel Kant, *The Metaphysics of Morals*, Part One—"Metaphysical First Principles of the Doctrine of Right," trans. Mary Gregor (New York: Cambridge University Press, 1991), pp. 56, 63, 71.

16. Cf. Locke, *Second Treatise of Government*, sec. 14; cf. Gary Herbert, "John Locke: Natural Rights and Natural Duties," *Jahrbuch für Recht und Ethik*, 4 (1996): 597.

17. *The Science of Rights*, pp. 140–41; "Kant's assertions that the state of peace or of law amongst men is not a condition of nature, but of art; and that we have the right to compel persons, though they have not attacked us, to submit to the supremacy of government as the only security

against future possible attacks from them; agree wholly with our science, and are deduced in our science in the same manner as in Kant's work" (p. 23).

18. "If one persons says to the other, 'Leave that alone, it limits my freedom!' why should not the other reply, 'But it limits my freedom to leave it alone?'" *The Science of Rights*, p. 173.

19. For an excellent, but somewhat different, account of this contradiction, see Susan Shell, "A Determined Stand: Freedom and Security in Fichte's *Science of Right*," *Polity*, 25, no. 1 (Fall, 1992): 102.

20. Fichte's choice of words invites references to Thomas Hobbes's "Introduction" to *Leviathan*, where sovereign power is analogously identified with springs, strings, and wheels.

21. *The Science of Rights*, p. 224. The indeterminacy of the contract is the contrivance which functions in Fichte's theory in a way that anticipates the "veil of ignorance" employed by John Rawls to permit the impartial selection of the principles of justice. John Rawls, *A Theory of Justice* (Cambridge: Harvard University Press, 1971), pp. 136–42.

22. Susan Shell suggests that this represents a counterpart to Rousseau's general will. "Fichte thus unites what Rousseau kept separate—the theoretical question of what a General Will is and the practical question of how it can be made effectual. The latter, according to Rousseau, requires, above all, an habituation on the part of citizens to virtue. Fichte, by way of contrast, looks not to inner virtue, but to the perfect application of outer or compulsive law, to bring about the requisite harmony of individual and universal." "A Determined Stand," pp. 104–5.

23. "If you give each separate part of the tree consciousness and a will, then each part, as it desires its own preservation, must also desire the preservation of the whole tree, because its own preservation is possible only on that condition. Now, what, then, is the tree? The tree in general is nothing but a conception, and a conception cannot be violated. But the part wills that *not a single* part of all the parts shall be violated, because that violation would inevitably be felt by it too. It is different with a mound of sand, where each part exists separately, and can, therefore, be careless as to what other parts are separated, trodden down, or scattered away." *The Science of Rights*, p. 226.

24. *The Science of Rights*, pp. 259–60. John Locke would have argued against the need for an ephorate simply because the people never dissolves. It merely gives fiduciary authority to the sovereign. The public can take back its trust from the governing power whenever it—a majority—"feels" that its interests have been violated. Public lethargy during anything but a time of crisis is a sufficient protection against excessive political enthusiasm, so there is no need to remove power from the people as Fichte maintained.

Fichte's Ephors have their obvious antecedents in the five Ephors of ancient Sparta, who were elected annually to serve as a check on the powers of the two Spartan kings, whom they could prosecute before the Spartan council of elders. Unlike Fichte's Ephors, the Spartan Ephors also had certain executive powers in the areas of taxation, education, and foreign policy.

25. *The Science of Rights*, p. 272. "The more unjust it is, the more impotent and weak; and the more probability, therefore, that those persons who have called the people together will escape the clutches of government" (p. 273).

26. *The Science of Rights*, p. 174. Fichte says, "we may express this in the following formula: *each one subordinates the common end to his private end*," *The Science of Rights*, p. 205.

27. Cf. J.-F. Suter, "Burke, Hegel, and the French Revolution," in Z.A. Pelczynski, ed., *Hegel's Political Philosophy: Problems and Perspectives* (Cambridge: Cambridge University Press, 1971), pp. 54–55; Stanley Rosen, *G. W. F. Hegel: An Introduction to the Science of Wisdom* (New Haven: Yale University Press, 1974), p. 182.

28. By 1812, in the later edition of the *Science of Rights*, the centrality and importance of compulsion and nationalism as the prerequisites of rights grew stronger in Fichte's thinking. There he makes explicit ideas that are implicit in the earlier edition. He writes, "Right is coercive power which, through art, is directed toward a purposive concept [*Zwekbegriff*; i.e. morality]. All right is the right of the state; outside the state there is no right. No one has rights but a citizen," Fichte, *The Science of Rights* of 1812, N.W. II, 502, quoted in Kelly, *Idealism, Politics and History*, p. 227.