

Fichte and the Relationship between Self-Positing and Rights

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IN THIS PAPER I INTEND TO ELUCIDATE a thesis that lies at the heart of Fichte's theory of rights. This thesis states that rights are the essential foundation of rational political order not only because they govern relations among human beings but also because they help them to realize themselves as free agents. In Fichte's words, rights are the "conditions" under which human beings can become aware of themselves as "self-positing subjects."²

This thesis calls for the rejection of the claim central to natural rights theories that the main task of rights is to protect liberties that human beings have by virtue of their "natural" or "God-given" qualities.³ This is because Fichte's thesis implies that rights are constitutive (at least in part) of free agency. An anticipation of this thesis can be found in Rousseau's idea of moral liberty,⁴ but it is Fichte who develops this thesis into a full-blown theory of entitlement as well as of political government. A version of this thesis later becomes a centerpiece of Hegel's social theory, according to which social institutions are formative of individual identity.⁵

¹I am indebted to Fred Neuhauser, Deanna Nass, and Michelle Kosch for their invaluable comments on an earlier draft of this paper.

²Johann Gottlieb Fichte, *Grundlage des Naturrechts nach Prinzipien der Wissenschaftslehre* (1796/7) [*Naturrecht*], vol. 3 of *Sämmtliche Werke* [SW III], ed. I. H. Fichte (Berlin: Veit & Comp., 1845–46), 1–12. All references to Fichte's works, apart from the *Wissenschaftslehre Nova Methodo*, are to this edition. I have also occasionally consulted *J.G. Fichte. Foundations of the Natural Right*, ed. Frederick Neuhauser, trans. Michael Baur (Cambridge: Cambridge University Press, 2000).

³Richard Tuck, *Natural Rights Theories* (Cambridge: Cambridge University Press, 1979), ch. 1.

⁴J.J. Rousseau, *The Basic Political Writings*, ed. P. Gay, trans. D. Cress (Hackett, 1987), 150–51.

⁵Ludwig Siep, *Praktische Philosophie im Deutschen Idealismus* (Frankfurt am Main: Suhrkamp, 1992), chs. 2–3; Robert Williams, *Hegel's Ethics of Recognition* (Berkeley: University of California Press, 1997) chs. 3–5; Robert Pippin, *Hegel's Practical Philosophy* (Cambridge: Cambridge University Press, 2008), ch. 7; Frederick Beiser, *German Idealism* (Cambridge, MA: Harvard University Press, 2002), ch. 4.

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Yet this thesis creates a tension within Fichte's theory of rights because, contrary to what it asserts, freedom as self-positing seems impossible in a society organized around rights. In the *Foundations of Natural Right* (hereafter *Naturrecht*), Fichte characterizes self-positing as the conscious act of making one's own determinations, or as "self-determination."⁶ Yet what a right-holder may be, do or acquire in a law-governed society is not entirely up to that right-holder, since the content and scope of such liberties would be regulated by the government according to the principles of entitlement that are upheld in that society. And this seems to indicate that rights would hinder rather than facilitate the conception of oneself as a self-determining subject.

Fichte is not unaware of the air of paradox in his thesis; in fact he draws the attention of his readers to it (SW III.85). But in so doing, Fichte's aim is not to admit of a flaw in his reasoning, but to formulate the task that his political theory is intended to accomplish, which is to establish that one can "depend on one's own will" while "standing with others in a state of mutual dependence" that typifies rights-governed relations. Fichte argues further that the conjunction of these two states accounts for the possibility of a "society of free beings." For Fichte, then, what seems to be a paradox is in fact the central task facing a rational political society.

However, despite the centrality of the thesis (regarding rights as constitutive of agency) to his political theory, Fichte makes remarkably little effort to go beyond the provocative articulation of it, and his further relevant remarks are too cursory to add up to a clear and consistent argument. It is therefore not surprising that some commentators have argued that Fichte fails to provide the required link between subjectivity and social membership.⁷ The reason for this failure, it is often argued, lies in the nature of Fichte's political theory, which deals mainly with the question of social peace and therefore is not suited for the task of grounding freedom itself.

In what follows, I resist this verdict and explain how rights can indeed serve as conditions of subjectivity. The key to this explanation lies in Fichte's account of social interaction, according to which self-determination is possible only in a social setting. The idea is that "social interaction" (*Wechselwirkung*) urges or "summons" (*Aufforderung*) the parties to exercise powers and capacities within themselves, of which they otherwise would not be aware (SW III.33). However, while there can be

⁶Fichte's expressions are *sich selbst bestimmen* (SW III.19) or *Selbstbestimmung* (SW III.32–33).

⁷Ludwig Siep, "Methodische und Systematische Probleme in Fichtes Grundlage des Naturrechts" in *Der Transzendente Gedanke*, ed. K Hammacher (Hamburg: Felix Meiner Verlag, 1977), 290–306; Richard Schotky, *Untersuchungen zur Geschichte der Staatsphilosophischen Vertragstheorie in 17. und 18. Jahrhundert* (Amsterdam: Rodopi, 1995), 162; Frederick Beiser, *German Idealism*, ch. 8; Robert Williams, *Recognition* (Albany: SUNY Press, 1992), ch. 3; Hansjürgen Verwey, *Recht und Sittlichkeit in J.G. Fichtes Gesellschaftslehre* (Freiburg: Karl Alber Verlag, 1975), 85–106; Frederick Neuhouser, "Fichte and the Relationship between Right and Morality," in *Fichte: Historical Contexts/Contemporary Controversies*, ed. D. Breazeale and T. Rockmore (New Jersey: Humanities Press, 1994), 158–80. This criticism was first made by Hegel in the *Differenz des Fichte'schen und Schelling'schen Systems der Philosophie* (Hamburg: Felix Meiner Verlag, 1962), 39–74. For more on Hegel's criticism of Fichte on this point, see Robert Williams, "Recognition, Right and Social Contract" in *Rights, Bodies and Recognition*, ed. T. Rockmore and D. Breazeale (Surrey: Ashgate, 2006), 26–44.

no doubt that Fichte takes social interaction to be necessary for self-consciousness, it is not as clear how he construes the relationship between self-consciousness and membership in a law-governed society. This ambiguity arises since Fichte leaves open the question of why a subject should limit its actions to accommodate the rights of others.⁸ I will argue on Fichte's behalf that respect for the rights of others would follow from the realization that self-determination ultimately calls for participation in a collectively determined social order. This would be a society organized around the mutual rights of its members.

To assess the plausibility of this interpretation and whether it can counter the above criticism, we first need to understand what exactly Fichte means by self-positing or self-determination. Then we must examine his reasons for claiming that such freedom can be realized only in a social setting. Finally, we must clarify the role that rights would play in the kind of social setting that facilitates such freedom. It is crucial to note at the outset that if we can elucidate the link between subjectivity and rights, we will be able to understand not only the thesis that underlies Fichte's political theory, but also how this theory fits into his broader account of the human subject.

1. THE IDEA OF SELF-POSITING

The first point to make about "self-positing" is that Fichte uses this phrase to refer to what he takes to be the essential nature of human consciousness. He believes that consciousness does not have an invariably fixed nature, as it repeatedly reconstitutes itself.⁹ The only general and stable fact about consciousness then is that it "posits itself." On Fichte's account, to say that self-positing is the essence of consciousness is to say that self-positing underlies and makes possible all the basic functions of consciousness including cognition and volition. Here we are interested in the formation of the will and its expression in the sensible world, including the social world. Our task, then, must be to find out how the will's relation to that world can take the form of self-positing. But let us first be clear on what it means for consciousness to posit itself.

In the *Naturrecht*, Fichte makes three central observations about consciousness. The first is that consciousness is capable of engaging in an activity of which it is the "ultimate" ground (SW III.17). Fichte considers cognition and volition as instantiations of such mental activity. Second, consciousness is capable of determining the *content* of its own activity. It does so by "positing" a concept of an object or of an

⁸*Das vernünftige Wesen ist nicht absolut durch den Charakter der Vernünftigkeit verbunden, die Freiheit aller Vernunftwesen ausser ihm zu wollen; dieser Satz ist die Grenzscheidung zwischen Naturrecht und Moral* (SW III.88). Many commentators argue that Fichte's separation of morality and rights complicates his task of accounting for a stable legal system. See, for example, Ludwig Siep, "Naturrecht und Wissenschaftslehre" in *Fichtes Lehre vom Rechtsverhältnis*, ed. M. Kahlo, E. Wolff, and R. Zaczek (Frankfurt am Main: Vittorio Klostermann Verlag, 1992), 71–91; Wolfgang Kersting, "Die Unabhängigkeit des Rechts von der Moral" in *Johann Gottlieb Fichte: Grundlage des Naturrechts*, ed. Jean-Christophe Merle (Berlin: Akademie Verlag, 2001), 21–37; Axel Honneth, "Die Transzendente Notwendigkeit von Intersubjectivität," in *Johann Gottlieb Fichte: Grundlage des Naturrechts*, ed. Jean-Christophe Merle (Berlin: Akademie Verlag, 2001), 63–80; Frederick Neuhouser, Introduction to *J.G. Fichte. Foundations of the Natural Right*, ed. Frederick Neuhouser, trans. Michael Baur (Cambridge: Cambridge University Press, 2000).

⁹*Das Ich ist ins Unendliche bestimmbar* (SW III.28).

end. For example, the material world can be represented only if it is identified or posited by consciousness as an “object” that exists independently of the “subject” (SW III.17). The third observation is that when consciousness posits a particular concept, it becomes “determinate.” This is because it acquires particular qualities as it operates and evolves in line with a specific concept; thus each concept implies a “particular modification of thought” (SW III.53).¹⁰ This means in effect that consciousness fashions itself in line with concepts that it posits for itself. For Fichte, these ideas combine to reveal what consciousness essentially is, namely, an activity that rises above itself, “turns back upon” itself, and enters into a relation with itself through which it constitutes itself. Thus consciousness is essentially the activity of self-positing.

For Fichte, the awareness that one has a self-positing consciousness is the key to self-conception of subjectivity (SW III.20). For one would thus realize that one can determine one’s thoughts and desires without depending on anything external to oneself and, in so doing, think of oneself as a self-standing unit of conscious activity, or as a “subject.” Note that such self-conception would also include the sense of oneself as a “determinate” or “finite” being. For, as indicated, determinacy necessarily follows from the ordinary operations of consciousness: thinking or wanting is always thinking or wanting (the concept of) a particular object. It follows that self-conception of subjectivity involves a determination of *what one is not*: when one commits oneself to a particular cognitive or volitional object, one rules out other possible forms of thinking and wanting. As Fichte himself puts it, “It is the very nature of the human mind to posit itself and to oppose a Not-I to itself.”¹¹

This is not to say that self-conception of subjectivity can be reduced to discrete mental acts of thinking or wanting particular objects. If such self-conception stems from the awareness of the self-positing nature of consciousness, then it would be open to, and inclusive of, all (possible and actual) mental acts without being reducible to any of them. This is because self-positing is the *way* consciousness posits or determines its objects regardless of their *particular contents*. In this regard, consciousness and, with this, self-conception of subjectivity are “infinitely determinable” rather than merely determinate (SW III.28).

For Fichte, however, complete self-conception must somehow synthesize both aspects of subjectivity, i.e. determinateness and infinite determinability. The solution he offers in the *Naturrecht* may be summed up as follows: self-conception of subjectivity involves self-ascription of a consciousness that is the ultimate ground of its own determinations; however, while every conscious act is governed by a freely determined (concept of an) object, consciousness itself cannot be exclusively identified with any particular object, because it can always posit itself “in opposition to” any such object and determine itself in a different way (SW III.28–29, 57,

¹⁰See also J. G. Fichte, *Das System der Sittenlehre nach den Principien der Wissenschaftslehre* (1789) [*Sittenlehre*], SW IV.32–34.

¹¹J. G. Fichte, *Foundations of Transcendental Philosophy. Wissenschaftslehre Nova Methodo* (1796/99), trans. and ed. Daniel Breazeale (Ithaca, NY: Cornell University Press, 1992), 99. For the formulation of the same idea in the *Naturrecht*, see §2.

60–61). This image of subjectivity is consistent with Fichte’s relevant statements in the versions of the *Wissenschaftslehre* in the period of 1796–99.¹²

In any case, Fichte makes it clear that subjectivity entails a great deal more than merely having a self-positing mind. It also calls for the ability to translate one’s thoughts into external action and bring about changes in the sensible world (SW III.9). Thus self-consciousness of subjectivity requires “finding” oneself as such in that world (SW III.33–4). This is not a point Fichte makes in passing; it permeates his practical philosophy, including his political and legal theory.¹³ It is therefore no accident that one of the “theorems” of the *Naturrecht* is that “free efficacy in the sensible world” is part of what it takes to become aware of oneself as a subject (SW III.17).

I take it that Fichte’s emphasis on world-relatedness stems from his commitment to the unity of consciousness. That is, if self-positing is the essential nature of consciousness, as Fichte maintains, then such activity must underlie all of a subject’s consciously committed deeds, including its deliberate orientation to the sensible world. Otherwise the external deeds of the subject would not be consistent with its nature as a subject. This is, at any rate, an inference that Fichte upholds in the *Naturrecht*, where he stipulates that a subject’s relation to the “outer” world must be consistent with, and indicative of, its “original and essential” nature as self-positing (SW III.9, 19–20).

It should then be fair to say that Fichte’s idea of freedom is more demanding than Kant’s, in that it takes participation in the sensible world as essential to freedom. What matters for Kant is whether the free agent is capable of pure willing, even if such willing is not linked to anything that takes place in the sensible world.¹⁴ From Fichte’s stance, Kant subscribes not only to a narrow conception of freedom, but also to a pessimistic view of the world-interactive capabilities of human beings. We must keep in mind, however, that Fichtean subjectivity does not lend itself to just any form of world-relatedness; it requires that this relation take the form of self-positing.

For Fichte, one can establish such a relation to the sensible world only if one’s external deeds are governed by self-determined “purposive concepts.”¹⁵ That is, one can think of oneself as the “ultimate” ground of one’s world-directed deeds if one’s freely espoused goals (and only they) determine not just *whether* one acts but also *what* one achieves in the world. Fichte also makes it clear, however, that one cannot find oneself as a subject in the sensible world by simply acting on

¹²J.G. Fichte, *Zweite Einleitung in die Wissenschaftslehre* (1797), SW I.477–78. In *Nova Methodo* (122) Fichte writes, “Nothing determinate is possible apart from what is determinable, i.e. without intuiting the one along the other.” In the *Sittenlehre* Fichte expresses the same thought as follows: *Ich folge freilich dem Triebe, aber doch mit dem Gedanken, dass ich ihm auch nicht hätte folgen können ... nur unter dieser Bedingung ist Selbstbewusstseyn und Bewusstseyn überhaupt möglich* (SW IV.135).

¹³*Ich finde mich als wirkend in der Sinnenwelt. Davon hebt alles Bewusstseyn an* (SW IV.3). In *Nova Methodo* (444) Fichte writes, “I am unable to think of my own identity as an active intellect without also thinking of a thing which, in the process of sensibilization, I may be a product of my own physical efficacy.”

¹⁴Kant, *Foundations of the Metaphysics of Morals*, trans. and ed. L. W. Beck, (Indianapolis: Hackett, 1969), ¶¶ 394, 400.

¹⁵*Das Bilden des Begriffes von einer vorgesetzten Wirksamkeit ausser uns, oder von einem Zwecke* (SW III.19).

one's freely espoused goals. Full and effective self-realization requires, further, that one control the environment in which one seeks to realize one's goals. Otherwise one would be confronted with an environment that systematically thwarts rather than facilitates the realization of one's ends. Presumably with his concern in mind, Fichte submits that free efficacy calls for the "capability to alter all matter in the sensible world and mold it according to one's concepts."¹⁶ He sums up these ideas as follows: "as a condition of self-consciousness ... the sensible world must be constituted in a particular way and it must stand in a certain relation to our body" (SW III.71–72). The unstated premise here is that self-conception of subjectivity partly depends on the composition of the sensible world, for one can "find" oneself as such only if one reconstitutes it in line with one's own ends. The question that arises here is how, if at all, this task can be achieved. More concretely, how can a human being acquire the capacity to "modify all matter" and realize himself or herself as a subject in the sensible world?

2. THE SENSIBLE WORLD

So far we have talked about the sensible world in a rather general way, but such talk could be misleading, since Fichte in fact divides this world into two parts. He portrays the first part as "hard and resistant," but the second as "supple and modifiable."¹⁷ The first is made up of material objects and natural events, while the second is constituted by human actions. Though meaningful in theory, Fichte finds this distinction not always clear in practice. This is, first, because it is not immediately clear how free actions can be distinguished in the sensible world from actions from necessity (SW III.45). Second, human beings do not always treat one another as free and rational even when they have reasons to believe that they are in the presence of such a being (SW III.87).

All the same, Fichte argues that human beings cannot realize themselves as subjects through their relations to the material world, but they can find themselves as such in the company of others.¹⁸ This thesis breaks into two sub-claims. The first is that membership in a well-constituted social order is a "condition" of self-conception of subjectivity;¹⁹ and the second sub-claim is that a "summoning" impact by another human is the "point of origin" of human consciousness (SW III.53, 61–62). Both claims are stipulations about the makeup of the sensible world and therefore are consistent with Fichte's account of "finding" oneself as a subject in that world. In this section and next I consider the first sub-claim, and I leave the discussion of the second to the last section.

The claim concerning the link between self-conscious subjectivity and social membership may come as a surprise, for it seems to contradict Fichte's remarks about the difficulties of inter-human relations. It also seems paradoxical to argue

¹⁶*Die Kraft alle Materie in der Sinnenwelt zu modificieren und sie nach meinen Begriffen zu bilden* (SW III.68–69).

¹⁷Fichte's expressions are *subtile und feine Materie, modificabel durch den blossen Willen*, and *zähe haltbare Materie* (SW III.61–80).

¹⁸*Dass das vernünftige Wesen sich nicht als ein solches mit Selbstbewussteyn setzen kann, ohne sich als ein Individuum, als Eins unter mehreren vernünftigen Wesen zu setzen* (SW III.8).

¹⁹*Gemeinschaft freier Wesen ... als Möglichkeit des Selbstbewusstseyns* (SW III.7–9, 72–73).

that social association facilitates true freedom while social life typically calls for the limitation of the freedom of the parties. Fichte is not unaware of these challenges. He realizes that a well-constituted society requires that each limit his or her “freedom through the freedom of all others” (SW III.15). Fichte also admits that the possibility of mutual aggression cannot be fully eliminated in inter-human relations.²⁰ But none of this prevents him from restating this claim throughout the *Naturrecht*. More crucially, he regards this claim as providing a link between his political theory and his account of subjectivity (SW III.1–12). Accordingly, he motivates his political theory as follows:

Persons as such must be absolutely free and dependent solely on their will. Persons, as certainly as they are persons, must stand with one another in a state of mutual influence, and therefore not depend solely on themselves. The task of the science of rights is to show how both can be held. And the question that lies at the heart of such science is: *How is a society of free beings as such possible?* (SW III.85).

Fichte submits here that the members of a well-constituted society would depend “solely” on their own wills. Yet he also admits that “dependence on others” is inevitable in social life. This is partly because whether and to what extent one is free in a society depends on the approval of others. Interestingly, Fichte does not regard these two states as mutually exclusive; on the contrary, he submits that volitional independence is compatible with dependence on others (in certain respects). He also asserts that this compatibility is characteristic of membership in a rational political order—which is yet to be described. So it is not surprising that Fichte considers the elucidation of this compatibility as the central task of his political theory.

Fichte clearly follows Rousseau in so formulating the aim of his political theory, since Rousseau also wants to portray a society that allows each to be (in some sense) autonomous. Fichte keeps with Rousseau also in supposing that the “society of free beings” is possible only under commonly accepted laws. Yet the accord between Fichte and Rousseau ceases once we move beyond this general way of describing their theories. Fichte does not share Rousseau’s hope that in a well-ordered society each would be “as free as before.” Instead he argues that human beings first become aware of their capacity for freedom upon their entry into society. Fichte also rejects Rousseau’s claim that, in a well-ordered society, there would be no need for institutions that protect the interests of the people *vis-à-vis* the “legislator” since it would presumably embody the general will.²¹ For Fichte, such institutions are essential to defending the interests of the people from the threat of tyranny of majority or of political leadership. These differences are crucial not only to grasping Fichte’s political theory, but also to correctly identifying its place in the history of ideas. Before reaching a verdict on the distinctiveness of Fichte’s views, however, we must look closely at how he justifies his claim that volitional independence of individuals would not be compromised in a society.

²⁰Das aber nachdem Selbstbewusstseyn gesetzt ist immerfort vernünftige Wesen auf das Subject desselben vernünftigerweise einwirken müssen ist dadurch nicht gesetzt (SW III.87).

²¹Rousseau, *The Basic Political Writings*, 162–65.

To begin, it may be helpful to briefly consider why Fichte believes that involvement in the material world cannot lead to self-conception of subjectivity. This belief rests on two observations. The first is that the material world is “neither produced nor producible” by human beings (SW III.29); the second is that the material world operates according to “mechanical” natural laws, such as the law of gravity, that cannot be violated or altered by human beings (SW III.115–16, 216). Such laws limit not only *what* human beings can achieve but also *how* they can act in the material world.

These findings do not establish, however, that human beings are paralyzed by the material world (SW III.28–29, 82–85, 116). That world does not interfere with the human capacity to set one’s ends and look for ways of actualizing them in the world. Also, human beings can enhance their world-interactive capabilities and so expand the scope of their efficacy. So, for example, thanks to the agricultural technologies they develop, human beings can determine the amount of food supplies at their disposal without depending on the accidents of nature. So it is not just that human beings choose the way they relate to the material world, but also that they can realize some of their ends independently of it. Yet none of this can alter the fact that the material world puts certain insurmountable limitations on human *striving*, limitations over which human beings have no control whatever.

The social world, in contrast, is controlled entirely by human beings, as it is constituted by human beings in the first place (SW III.9–16, 73). This does not mean that all human beings are always fully aware of the role they play in the formation of the social order, nor that they always agree on all aspects of it. Fichte’s point is merely that human beings are capable of determining the nature of the society they live in. He thus subscribes to an account of the social order that is espoused by all theories of social contract, namely, that it is ultimately up to human beings to decide how they relate to another.

But it is crucial to note that Fichte differs from his predecessors about the best way of instituting a society. Unlike Locke or Kant, he does not think that society is best organized around a particular public morality or religion that is conceived independently of, or prior to, social practice. Fichte also rejects Hobbes’ claim that social peace is possible only under absolutist rule. According to Fichte, human beings can determine the norms or institutions of their association without necessarily needing an external moral or political authority.

Most of the *Naturrecht* is devoted to explaining how such a society is possible. Such a society requires, above all, that each limit his or her “freedom through the freedom of all others” (SW III.15). That is, each must enjoy an inviolable “sphere” of liberty. Yet each must do so in ways that are acceptable to others. Thus the Fichtean society would be organized around commonly acceptable limits on external freedom. The assumption here is that human beings can agree on the *content* of the constraints that can bind all. Yet once again, this agreement would not be deduced from an abstract morality or religion; rather it is a matter of finding a “balance” (*Gleichgewicht*) among the interests of the parties (SW III.120–36). Accordingly, Fichte believes that part of the interactions among human beings always take the form of a negotiation that is intended to yield such a balance or a decision to uphold a previously established one (SW III.15–16).

So Fichtean society does not emerge “behind the backs of” human beings; it is an intended creation of the parties involved. But it is also clear that such society generates constraints on how one may act in public. From this, it seems to follow that social association does not remove the constraints on human freedom; rather it adds to the already existing ones, namely, those human beings encounter in the material world. If so, the critics seem right in raising doubts as to the coherence of Fichte’s claim that social membership leads to self-conception of subjectivity.

Fichte does not deny that human beings must limit their external actions in some way to peacefully coexist in the world, but he does not regard such self-limitation as a limitation of freedom as such.²² On the contrary, he argues that the decision to self-limit to leave room for the actions of others is a “distinctive criterion” of freedom.²³ Such freedom can be portrayed as being the “sole” ground of one’s determinations in the sensible world, or as “self-determination.” The idea here is that by limiting one’s actions to a particular external sphere, one not only realizes one’s will in a determinate way, but also initiates a particular kind of relationship to others; one determines oneself as sociable (SW III.46).

But merely asserting that voluntary self-limitation can be seen as an instance of self-determination is not the same as explaining why self-determination takes the form of self-limitation. It is also unclear whether and how self-determination, so actualized, can lead to self-conception of subjectivity.

3. SUBJECTIVITY AND THE SOCIAL WHOLE

Part of Fichte’s response to these questions comes in his account of citizenship. On this account, individual citizens are at the center of social life. Thus, social institutions do not take on a life of their own and cast out the agents who create them; rather they are the modifiable results of the mutual actions and commitments of individual citizens. For Fichte, as we shall see, participation in this collective process of defining and/or redefining social institutions is what it means to be self-determining in society. And such freedom, I will argue, is what in turn makes self-ascription of subjectivity possible. In other words, subjectivity in the sensible world takes the form of self-determining individuality in a suitably organized social order.

A concise statement of Fichte’s account of citizenship can be found in his assertion that “the state is nothing but an abstract concept; only citizens as such are the actual persons.”²⁴ Fichte’s point here is not to deny the existence of the state, but to clarify the sense in which it can be said to exist: it exists only as a concept that arises from and reflects the nature of interactions among individual citizens. That is, the state is a set of rules or norms that human beings deliberately create and uphold in their mutual relations. For Fichte, then, the concept of the state

²²*Da sie aber frei gesetzt sind, so könnte eine solche Grenze nicht ausserhalb der Freiheit liegen, als wodurch diese aufgehoben, keineswegs aber als Freiheit beschränkt würde* (SW III.9).

²³*Welche Selbstbeschränkung eben das ausschliessende Kriterium der Vernunft ist* (SW III.66).

²⁴*Der Staat an sich ist nichts als ein abstracter Begriff: nur die Bürger, als solche, sind wirkliche Personen* (SW III.371).

cannot have any meaning “in and for itself,” as Hegel has it;²⁵ it is only what individual citizens think and make of it.

For Fichte, the claim that individual citizens are the only actual agents of the social world is bound up with the further claim that they are also the only sources of value. The latter claim has two aspects. The first is that each citizen is equally worthy, which is a reiteration of Kant’s idea that each human being is an end in itself (SW III.80–85). The second aspect of Fichte’s claim is that society has value only if it has value *for* individual citizens.²⁶ So it is only in a manner of speaking that institutions or norms are inherently valuable; the “sole” goal of social association, and whatever it entails, is the protection of the interests of citizens regarded *one by one*. Note that this claim is not about the *content* of human interests, but about their role in grounding social values; so it can lend itself to a variety of interpretations of the value of social association. According to this claim, for example, it would not be irrational for individual citizens to regard social ends as part of their final ends or appreciate the company of one another for its sake.

Fichte does not work out these claims in detail, but he indicates the reasons for his unwillingness to ascribe agency to social institutions such as the state. One of these reasons is that social institutions are open to the manipulation of individuals or groups at the expense of others (SW III.155–58). This may not be a drawback for institutions that are intended to promote the interests of particular groups, such as trade unions. But it would be damaging to legislative or judicial institutions, such as the courts, that are intended to be impartial (SW III.167). Partiality in such institutions may generate inequalities of power and wealth and thus jeopardize the social peace. Fichte’s point in any event would remain the same: neutrality of social institutions is not a matter of course; an institution can exemplify that virtue only if the people involved decide to organize themselves in that way.

A further reason for not ascribing agency to institutions is that they cannot adapt to changes in society all of their own accord.²⁷ Fichte takes it that the human society is shaped to a large extent by “material” conditions, i.e. by such socio-economic factors as the size of the population, the level of technology, and the character and size of the economy (SW III.14–15, 106–7, 160–61).²⁸ Such objective yet variable facts are pertinent not just to the quality of life, but also to the distribution of material resources in a society. Thus, Fichte submits, the laws of a well-constituted society must always be consistent with the material conditions of that society. But he realizes that this does not occur automatically. This is, first, because laws cannot anticipate and address all possible changes in material conditions.²⁹ Also, and more crucially, institutions, including those involved in

²⁵G.W.F. Hegel, *Elements of the Philosophy of Right*, ed. A. Wood, trans. H.B. Nisbet (Cambridge: Cambridge University Press, 1991), §§142–45, 258.

²⁶*Freie nur von sich selbst abhängige Person, und diese Freiheit eben ist es, die ihm durch die Staatsgewalt gesichert ist, und um deren willen allein er den Vertrag einging* (SW III.206).

²⁷*Die zwingende Macht müsse ... eine solche seyn deren Selbsterhaltung bedingt sey durch ihre stete Wirksamkeit: die sonach, wenn sie einmal unthätig ist, auf immer vernichtet wird; ... da diese Ordnung der Dinge nicht von selbst eintreten, wenigstens nicht nach einer Regel und ununterbrochen stattfinden dürfte* (SW III.157).

²⁸For more on this point, see my “Fichte and the Idea of Liberal Socialism,” *Journal of Political Philosophy* 13 (2005): 53–73.

²⁹*[D]as Gesetz muss sich jetzt ändern, um diesem ganz veränderten Volke noch anpassend zu seyn* (SW III.185). The only law or norm to which this does not apply is the principle that underlies all possible

legislation, tend toward inertia; they typically seek consistency in their practices and follow the existing laws in the face of pressures to the contrary.³⁰ So, for example, a rise in the number of the poor and unemployed in society would not necessarily lead to a change in the practices of existing political institutions. Thus, Fichte contends, economically or political disfranchised individuals or groups must not passively wait for the existing institutions to immediately detect and solve all of their problems; they must be prepared to act on their own (SW III.182–83). To that end they may try to raise awareness about the inequalities they endure, seek the support of others, and push for changes in laws that benefit some at the expense of others. Depending on the nature of the issues at stake, they may also ask for reform in the institutional makeup of the society.

Fichte also has in mind situations in which institutions lose their relevance for social relations as a result of radical shifts in human interests. Human beings sometimes develop interests in objects or activities, such as settling in previously unoccupied parts of the world that are not governed by pre-existing laws (SW III.131–32). Such developments create uncertainties in social relations as they lead to legally and morally uncharted areas of rivalry and call for new normative or institutional structures.

The conclusion that emerges from these points is not that social institutions do not play any role in social life, but that social interaction is not always necessarily pre-defined or pre-structured by them. That is, institutions cannot entirely eliminate the “indeterminacy” or “uncertainty” of the ways in which human beings relate to one another. This is not to say that social relations always take the form of a “war of all against all.” Such war for Fichte is possible but not intrinsic to every interaction, as Hobbes alleges. Indeed, Fichte takes it that the uncertainty in a social setting may well lead to stronger social ties: “This indeterminacy, this uncertainty as to which individual will first be attacked, which is an *oscillation* in the imagination, is the bond of social union. It is that through which all merge into one ... a whole that is to be protected” (SW III.203). Fichte hypothesizes here that the uncertainty in a social setting creates a sense of vulnerability for all. This sense amounts to the awareness of the constant possibility of being harmed by others. The harm can take the form of an attack by an individual or group against one’s life or property. Or it can be a general state of injustice that benefits some at the expense of others. For Fichte, the proper response to such eventualities is not to retreat from society, for this would be a merely temporary escape from danger. Long-term security cannot be guaranteed by oppressing the others either, for human beings individually or collectively can always find ways to resist or overcome oppression. For Fichte, true social peace can only be achieved by creating a “whole” to be maintained at all times. Fichte’s proposition here is not hard to grasp: the shared predicament of uncertainty is best addressed collectively rather

and actual positive law, which is, *Diese bestimmte Menschen-Menge soll rechtlich nebeneinander leben* (SW III.161). This principle remains intact so long as the society itself remains intact.

³⁰*Dass die Verwalter der öffentlichen Macht sich selbst widersprechen, oder eben, um sich nicht zu widersprechen, offenbare Ungerechtigkeiten begehen zu müssen* (SW III.169).

than individually. This may not fully eliminate the uncertainty in society, but it will contain its harmful effects.³¹

In the pages following the above passage, Fichte goes on to clarify what he means by a “social whole” (*das Ganze*). He states that the social whole is not an entity that tends to reproduce itself; rather it is the totality of myriad contractual relations among individuals.³² He also takes care to distinguish his idea of contract from that of natural rights theorists. For Fichte, a contract is not simply a pact of convenience that helps the parties to realize their already constituted interests, as Locke has it; rather it calls for a transformation in the interests of the parties involved.³³ Thus, the making of a Fichtean contract requires that the parties “back down” from their initial demands and modify them so as to render them compatible. For example, someone who wishes to establish a political party would not determine the goals of the party independently of those whose support he needs to create the party (SW III.182–83). And those who join the party must in turn realize that there is a limit to what one may expect from a political party. Similar mutual concessions would have to be made by those who wish to exchange material goods and services (SW III.215–37). Such interactions involve a process of mutual accommodation that is intended to yield an agreement or a balance of interests. Such agreements may then solidify into an institution if the parties involved regard it as a basis for further relations. This is not to say that every interaction yields an agreement or institution, nor that, once created, an institution can never be altered. We have seen that for Fichte social institutions can be abolished or reformed when social conditions call for it. What is anyway clear is that the institutional features of the social whole rest precariously on interactions among individual actors.

On Fichte’s account, the cohesion and continuance of the social whole ultimately depends on the establishment of commonly held laws regulating, *inter alia*, political, social, and economic relations.³⁴ Fichte makes it clear, however, that the true foundation of the social whole is not a particular law or an institution, but the “willingness” on the part of each individual to respond to and accommodate others so long as others do the same.³⁵ Fichte calls such volition “reciprocal volition” (*Wechselwollen*) (SW III.88). Such is the volition that enables human beings to find a balance among their interests and define the terms of their coexistence. Such volition also keeps social relations in a stable state throughout institutional changes. Fichte seems to have in mind this flexible yet stable attitude toward others when, for example, he talks about the importance of redistribution of wealth in society. He argues that social peace can be maintained only if the property rights of some do not lead to the destitution of others. When this becomes the case, the well-off

³¹For more on “uncertainty” in Fichte’s political thought, see Jefferey Kinlaw, “Political Obligation and Imagination in Fichte’s *Naturrecht*” in Rockmore and Breazeale, *Rights, Bodies and Recognition*, 176–81.

³²*Durch Verträge der Einzelnen mit den Einzelnen ist das Ganze entstanden* (SW III.204).

³³*Jeder an seiner Seite über die streitigen Objecte in etwas nachzugeben* (SW III.193, 128, 207).

³⁴I take it that the collective process of making such laws is what Fichte calls a “social contract.” For Fichte social contact would have several aspects, including a “property contract” (*Eigentumvertrag*) and a “contract for the transfer of public power” (*Uebertragungsvertrag*). Section §16 of the *Naturrecht* is devoted to elucidating the various aspects of a social contract.

³⁵*Ich setze also notwendig unsere Gemeinschaft ... als Resultat eines Wechselwollens* (SW III.88).

must give up some of their rights to compensate the losses of the worse-off (SW III.210–13). Thus social peace calls for the maintenance of a “balance” in society rather than preservation of an unjust pre-existing law or institution.³⁶

For Fichte, reciprocal volition is not contingent on altruistic motives or on the assumption that humans are social by nature. It stems from the realization that reciprocity is a defining feature of social interaction: that in general one is treated by others as well as one treats others.³⁷ Seen as a fact of social life, reciprocity urges one to consider not just what one wants to be, do, or have, but also how one’s actions will be perceived by and responded to by others. Reciprocity thus enables human beings to realize the importance of a shared language, determine the boundaries of social behavior, and identify areas of cooperation. To be sure, reciprocity can take a variety of forms, including competition, conflict, and also mutual accommodation. Fichte’s point, nonetheless, is that mutual accommodation is a most effective and stable way of finding a “balance” among individual interests, and of creating a social whole (SW III.136).

These points make it clear that, for Fichte, citizenship entails a great deal more than merely abiding by collectively created laws and institutions of public life. It also involves taking a critical stance toward laws and institutions when they fail to serve the functions for which they are intended. So, on the one hand, Fichtean citizens can be identified with the social order in that they control the mechanisms that structure and stabilize it. But on the other hand, they are not so immersed in society that they cannot realize its flaws.³⁸ It is not just that they are capable of criticizing their own society, but also that they can organize themselves into an active political force to reform it.

Fichte does not use a specific term to refer to what we call “social criticism,” but he invokes the idea of it in his remarks on social change. The kind of criticism he seems to have in mind does not presuppose a utopian notion of perfect society; typically it is articulated in a response to an inconsistency or tension internal to a specific social setting. In this sense, Fichtean social criticism is “immanent.” Such is the criticism that underlies a young woman’s reluctance to marry someone chosen by her father, since her reluctance can be construed as a rejection of paternal authority over marital decision-making, as well as of the candidate husband (SW III.320–1). Such criticism can also be seen in the frustrations of the poor and unemployed with the economic system in place, especially when such frustrations lead to a reversal of their view of the society from a rightful order to an unfair and untrustworthy one that benefits some at the expense of others.³⁹

It is worth emphasizing here that Fichte does not consider social criticism as a threat to the social order; rather he takes it to be a possible way in which one can take part in the advancement and thus continued existence of it. The idea is that

³⁶For more on the importance of redistribution in Fichte’s theory of rights, see my “Fichte and the Idea of Liberal Socialism,” 62–69. Also see Allen W. Wood, “Kant and Fichte on Right, Welfare and Economic Redistribution,” *International Yearbook of German Idealism* 2 (2004): 77–101.

³⁷*Dass ich ihn ... so behandeln wolle wie er mich behandelt* (SW III.89; see also 41–53).

³⁸*Dass [der Einzelne] in einer gewissen Rücksicht noch frei und unabhängig bleibt* (SW III.204).

³⁹Fichte refers to the reversal of the popular attitude toward government as *Erwachen des Volkes* (SW III.158).

by expressing one's discontent with a particular aspect of society, one in effect creates a chance for all others to rethink their attachment to it and reform it in a way that may make it more suitable to the emergent needs or interests of all.⁴⁰

On Fichte's account, social criticism often finds expression in extra-institutional settings, since it is directed at the established institutions. Yet Fichte believes that such criticism can be voiced and addressed within an institutional setting as well. Indeed, unlike Rousseau, he argues that any "accountable" (*verantwortlich*) political regime would have some institutionalized process (an *ephorate*) that subjects the regime itself to critical scrutiny and calls for reforms when necessary. Such a regime would be capable of self-reflection and self-correction (SW III.157, 160–1). Yet Fichte also makes it clear that accountability cannot be defined exclusively in terms of a socially and historically contingent political institution, since it can be ensured in "infinitely many ways."⁴¹ He believes so for two reasons.

The first is that different societies have different political "cultures" and so different political institutions.⁴² Some societies are governed by a monarch, while others by an unappealable yet replaceable committee. In yet other societies people play an active role in government through their delegates. In some cases the delegates are chosen by regular popular elections, but in others public offices are open only to the nobility so long as they qualify for the task. Fichte's point here is not just that different societies have different types of government, but also that different societies define their relation to government differently and uphold different criteria for what constitutes governmental accountability.

The second reason has to do with Fichte's skepticism about the autonomy of institutions. Thus all aspects of government, including those responsible for reforming it on behalf of the people, i.e. the *ephorate*, are corruptible. For Fichte, this means that it is possible for a society to lose its institutional resources to self-reform economically, politically, or legally (SW III.181–87). In such situations, the only way people can influence the government may be civil disobedience, i.e. extra-legal or extra-institutional social mobilization.⁴³ Such mobilization may take the form of "public tribunals" in town hall meetings, or it may develop under the direction of a vanguard party. In discussing such eventualities, Fichte's aim is not to concede the anarchist claim that all political regimes are defective. It is rather that political accountability is not necessarily a function of formal procedures; it is sometimes a matter of the ability of a government to respond to social movements that embody, under such conditions as sketched, the "constituent power" of the people.⁴⁴

If our analysis of Fichte's idea of citizenship is sound, then it is not hard to see why Fichte regards citizenship as compatible with being dependent "solely"

⁴⁰Fichte refers to such individuals as *Aufforderer des Volkes* (SW III.183).

⁴¹SW III.185. Hence Fichte talks about the "ephorate" in its "broadest possible sense" (SW III.160).

⁴²Fichte's expression is *Cultur des Volkes* (SW III.286–89). My exegesis here is based on Fichte's remarks throughout §16 of the *Naturrecht*.

⁴³Fichte portrays this condition as the "separation of the popular will from that of the government" (SW III.169).

⁴⁴*Das Volk ist in der That und nach dem Rechte die höchste Gewalt* (SW III.182).

on one's own will. The citizen, on his account, is a discrete unit of agency that is involved in the making of the social order. I have suggested two ways in which this idea can be understood. First, each citizen plays an irreducible role in the creation and/or maintenance of social institutions that organize and stabilize social relations. Second, each is capable of developing and voicing a critique of existing institutions and, in so doing, creating a chance for all others to reconsider and reform them to make them appeal to all. Thus "humanity constitutes itself through the union of the free choice of all. ... In this union there is no part that does not contain within itself the ground of its own determination" (SW III.208–9). Fichte leaves little room for doubt here that citizenship thus takes the form of self-determination. This does not mean that society is determined by a particular citizen. For Fichte, as indicated, society arises from the myriad interactions of all. That is why, *pace* Hobbes, he does not rule out the possibility of society's becoming a chaotic state of endless conflicts of attempts at self-determination. But we have also seen that for Fichte this is not the only form social order can take, because there is no reason why the parties cannot decide to accommodate one another and act according to rules that all can accept. Fichte's claim that citizenship instantiates self-determination boils down, then, to this: the parties to a social setting can organize it as a realm of the compatible self-determinations of all. All of this goes to show that the attainment or failure of self-determination for an individual in a social setting "depends on" the reactions of others.

The crucial move Fichte makes at this juncture is to say that the need to consider the reactions of others in a social setting does not amount to a restriction of self-determination as such, but only a feature of the realm that makes it possible for individual citizens to exercise their capacity of practical self-determination (SW III.9, 66). Also, the reactions of others in a social setting are not "hard" or "resistant" like material objects, but dependent on one's own actions and reactions. The precise nature of a social setting and the content of each party's self-determination in it are then ultimately up to each of those who make up the social setting at hand.

I take it that it is on the basis of these points that Fichte claims that membership in a well-ordered society is a *condition* of self-conception of subjectivity. For if this realm is organized as a realm of mutually compatible self-determinations of citizens, then each citizen relates to this realm in the same way as consciousness relates to its own determinations. That is, each plays a role in determining not only *whether* there exists a politically organized society, but also the *particular nature* of its institutions. Also, this realm is always open—at least in principle—to reform in light of the criticisms of each citizen, provided that they are widely shared. So involvement in the social realm would not prevent one from thinking that one is capable of alternative determinations, a quality Fichte associates with subjectivity. It is therefore no accident that at the outset of the *Naturrecht*, Fichte declares that in a well-ordered society, self-conscious subjectivity takes the form of a determinate, individual agent among others:⁴⁵ "the rational being cannot posit itself as such

⁴⁵For more on this point, see Günter Zöller, "The Individuality of the I in Fichte's Second Jena *Wissenschaftslehre*," in *New Essays on Fichte's Later Jena Wissenschaftslehre*, ed. D. Breazeale and T. Rockmore (Evanston, IL: Northwestern University Press, 2002), 120–39.

with self-consciousness without positing itself as *individual*, as one among many rational beings” (SW III.8). So explicated, Fichte’s approach to subjectivity may seem indistinguishable from Hegel’s, according to which subjectivity is actualized only within society. Despite the similarity, however, Fichte’s approach differs from Hegel’s in a crucial way. A central tenet of the latter is that such agency is possible only within already established social institutions, because only such institutions ensure the concreteness and determinacy that freedom, as Hegel defines it, requires.⁴⁶ Hegel believes that these criteria are best met by the institutions of the family, civil society, and the state of the nineteenth century Western European society. For Hegel, then, a most basic existential task facing human individuals is to identify with and reproduce those institutions, i.e. the duties that define them. While taking on particular social duties ultimately depends on the volitional assent of the individuals involved, Hegel argues that the formation or *Bildung* of individuals into agents who can realize their ends in modern society is not voluntary.⁴⁷ This is because the process of personal development and integration into society takes place largely outside the control of the individuals involved. This seems to be a corollary of Hegel’s idea of social order as a self-sustaining whole.⁴⁸

For Fichte, what constitutes the social order is not the social institutions, but the reciprocal relations among individual citizens through which institutions are created, maintained, or reformed. Therefore Fichte does not regard socialization as a process of “reconciling”⁴⁹ with existing social structures, but as involvement in the collective task of defining or redefining the basic norms of social and political life. That is why Fichtean citizens never fully identify with the institutions they create and uphold; they remain in this regard “free and independent.”⁵⁰ Such independence, I have argued, is what in part enables them to think of themselves as subjects.

Yet a common objection leveled against Fichte’s political theory is precisely that the relative independence of citizens from social institutions in this theory complicates its task of accounting for a stable social order.⁵¹ In this objection, first made by Hegel,⁵² it is unclear whether the uncertainty in society can be contained, if the parties do not fully identify with institutions that uphold law and order. Given the inevitable uncertainty of social life and the malleability of institutions, it is more likely that each would pursue his or her own self-preservation rather than be part of an unpredictable social life. If so, the critics have argued, the social order

⁴⁶Hegel, *Elements of the Philosophy of Right*, 9–23. See also Michael Hardimon, *Hegel’s Social Philosophy* (Cambridge: Cambridge University Press, 1994), chs. 5–6; Frederick Neuhouser, *Foundations of Hegel’s Social Theory* (Cambridge, MA: Harvard University Press, 2000), ch. 4.

⁴⁷Hegel, *Elements of the Philosophy of Right*, §§147–149, 187, 189. For more on this matter, see Michael Theunissen, “The Repressed Intersubjectivity in Hegel’s Philosophy of Right” in *Hegel and Legal Theory*, ed. D. Cornell, M. Rosenfeld and D.C. Carlson (New York: Routledge, 1991), 7–13.

⁴⁸Hegel, *Elements of the Philosophy of Right*, sections §142–45.

⁴⁹Hardimon, *Hegel’s Social Philosophy*, ch. 1.

⁵⁰*Noch frei und unabhängig bleibe* (SW III.204).

⁵¹Siep, “Methodische und Systematische Probleme in Fichtes Grundlage des Naturrechts,” 290–306; Williams, “Recognition, Right and Social Contract,” 26–44; Verweyen, *Recht und Sittlichkeit in J.G. Fichtes Gesellschaftslehre*, 106–7.

⁵²Hegel, *Differenz des Fichte’shen und Schelling’schen System der Philosophie*, 64–65.

cannot emerge from the spontaneous interactions among individuals as Fichte argues; rather it can be created only through force by an impartial yet unaccountable political power as Hobbes conceives of it. Part of the complaint here seems to be that citizenship is defined in terms of social situatedness and attachment to substantive political values, which would not be amenable to self-conception as an infinitely determinable free being.⁵³

This objection is fair insofar as it reveals a gap in our exposition of Fichte's ideas. We have shown that society *can* be a habitat for self-conscious subjectivity if it is organized as a realm of mutually compatible determinations of the parties. But we have not established that subjectivity is possible *only on the condition* of being part of such a society. Fichte makes this stronger claim when he asserts that "summoning" by another human is the "point of origin" of human consciousness. This implies that a human being's attachment to society is not reducible to contractual calculations of expected mutual benefit, including an external sphere of liberty; it lies in the conditions of the very possibility of self-conscious experience of the sensible world.⁵⁴ To fully grasp how Fichte's political thought relates to his account of subjectivity, then, we must look closer at this stronger claim.

4. SUMMONING, SELF-CONSCIOUSNESS AND RIGHTS

In the introduction to the *Naturrecht*, Fichte explicitly states that membership in a particular politically organized society is "arbitrary," since the emergence of such a society depends on contingent social and personal factors (SW III.14–15). Yet, Fichte explains, this is not to say that social association itself is a contingent matter: it is not up to human beings to decide whether they live in a social setting.⁵⁵ So while it is *necessary that they live in a society*, it is *contingent which particular society they inhabit*. Fichte is not talking here about a biological necessity that makes human beings associate for the sake of survival. He has in mind, rather, what we may call an existential necessity, namely, that human beings cannot discover or realize their uniquely human potentialities outside the human society: "summoning to free self-activity is called education. All individuals must be educated to be human beings; otherwise they would not be human beings" (SW III.39). Notice that Fichte identifies humanity in terms of "self-activity," i.e. the conscious capacity to activate and determine oneself, which is characteristic of I-hood or subjectivity. He also asserts, however, that human beings cannot *on their own* become aware of this capacity; they need to be educated or "summoned" to do so. Fichte is aware that there is something paradoxical about the need to be educated by others about one's own capacity for self-activity, and that this need requires an explanation. He offers two distinct yet related kinds of explanation. The first is a "deduction" or a series of transcendental arguments that purport to show the necessity of summoning for self-consciousness. The second is what we may call a phenomenology of what might

⁵³Frederick Neuhouser makes something like this point in his introduction to the Cambridge edition of the *Naturrecht*.

⁵⁴Martin Wayne also makes this point in his "Is Fichte a Social Contract Theorist?" in Rockmore and Breazeale, *Rights, Bodies and Recognition*, 1–10.

⁵⁵*Aller willkürlichen Wechselwirkung freier Wesen liegt eine unsprüngliche und notwendige Wechselwirkung derselben zum Grunde* (SW III.85).

have been the very first encounter of two human beings who thereby become self-conscious. The remainder of this paper is an elucidation of these points, because they directly bear on Fichte's thesis concerning the link between self-conception of subjectivity and rights, which is the central concern of this paper.

The transcendental deduction of summoning takes a central place in the *Wissenschaftslehre nova methodo*, and only a condensed version of it appears in the *Naturrecht*. In any case, it may be summarized as a four-step argument.⁵⁶ The first step reiterates the essential feature of subjectivity as self-positing activity. Such activity defines subjectivity, since it enables its bearer to determine its thoughts and actions without depending on anything external to itself. The second step accompanies the first: when one determines oneself in a particular way, one rules out other possible determinations. This step portrays the freedom of the subject in terms of having alternatives by introducing the idea of a realm of all possible determinations available to the subject. The third step of the deduction draws a general conclusion from the first two: the idea of self-determining subjectivity entails the idea of a realm of multiple possible subjectivities, each of which determines itself in a particular way and distinguishes itself from others determined differently. The fourth step is an indictment of the previous three steps, in that it concedes the impossibility of inferring the "actuality" of self-determining subjectivity from transcendental arguments alone, because one only "discovers" such actuality and this discovery is necessarily mediated by an encounter with a subject "outside" oneself, which amounts to "summoning" (*Aufforderung*). The idea is that one cannot ascertain the actuality of oneself in terms of suppositions and possibilities "internal" to one's own mind; one also needs to perceive in the "outer" world an instance of subjectivity other than oneself, with which one can nevertheless identify.

This four-step deduction establishes both how self-determining subjectivity is to be conceived and how it can be "found" in actuality. While this deduction identifies summoning, i.e. a "fact" in the sensible world as the necessary external condition of self-consciousness, it is not suited for the task of illustrating how exactly such summoning would take place. Fichte offers such an illustration in the *Naturrecht*, where he speculates as to the first encounter of two human beings, i.e. how otherwise entirely solitary human beings would react upon meeting one another for the very first time.

Fichte believes that an isolated human being would consider the encounter with another human as a radical change in the environment, since this would be the first time that one would encounter a being in the sensible world that did not move in an identifiable pattern, unlike animals that "either immediately flee in fear or get ready to kill and devour" (SW III.37, 79, 81), or material objects and plants that are governed by easily identifiable mechanical causal laws (SW III.29, 115–6). Yet this encounter would complicate the life of the solitary human, because it would not be immediately obvious how one would relate to that similar looking but unpredictable other, while it is clear that some response is needed, which calls for a determination.

⁵⁶My remarks here are based on §19 of the *Nova Methodo* and on §3 of the *Naturrecht*.

For Fichte, the need to make a determination on how to treat the other in this scenario would be experienced by the hitherto solitary human being as a “summoning” to engage in “free action.”⁵⁷ It would be a summoning, since one faces here a decision occasioned by the “presence” of another. And it would be a summoning to “free” action, since this decision would not be bound by any internal or external constraint.⁵⁸ The solitary human being would not have any prior social experience or therefore a norm that may pertain to this decision; nor would the conduct of the other compel one to think or act in any particular way. Since the other would not immediately attack, one’s decision would not be determined by survival instinct. Moreover, there could be no predicting how the other would act in the future given the uncertainty of the volitional makeup of the other. Thus this decision would be made under complete uncertainty.

So far we have described the encounter from the first-person perspective. Fichte makes it clear, however, that the experience would be reciprocal, since the encounter could take place in the way sketched only if both parties experienced the uncertainty the same way (SW III.44–53). That is, each would have to regard the other as similar in appearance but not explainable by familiar causal laws, and none of them would have to feel compelled by the other to think or act in any particular way. Given the mutuality of the experience, Fichte speculates, each would adopt the same attitude toward the other: each would try to guess what the other would do, refrain from acting unilaterally, act in ways that would not be perceived by the other as hostile, and thus avoid pointless mutual violence. The parties would thus find themselves in a “reciprocal interaction.”

Fichte refers to this interaction as “original and necessary” not just because it underlies and makes possible all other social interactions, but also because it is necessary to discovering what is uniquely and essentially human, i.e. the conception of oneself as a self-determining unit of agency (SW III.53, 85). In the above scenario, the parties have no knowledge of one another before meeting, and only by interacting do they find out about each other. Fichte believes that each party, synthesizing the “manifold” data about the other, would form the “judgment” that the other is a self-standing center of activity, since the actions of the other would not seem to be determined by anything external to the other. This judgment about the other would be tentative because it can be falsified later. Still, it would yield the concept of a “self-determined” being, an instance of which a solitary human being had not seen before. But once formed, this concept becomes available for self-ascription as well. Indeed, Fichte argues that this is how the hitherto solitary human being would thereafter think of himself or herself.⁵⁹ This is, first, because the interaction would enable one to make a determination *for the first time* without feeling compelled to act in any way. One would not be responding here to constantly repeated natural phenomena over which one would have no control whatsoever; rather, one would make a determination regarding the determination of another human responding to one’s earlier determination and so on. And this

⁵⁷*Aufforderung des Subjects zu einer freien Wirksamkeit* (SW III.36).

⁵⁸*So gewiss es handelt, wählt es durch absolute Selbstbestimmung* (SW III.34).

⁵⁹*Die Person soll in dem gegenwärtig beschreibenden Momente sich finden als frei* (SW III.63).

back and forth of mutual determinations would not be a mechanical process; it would be driven by each party's repeated attempts to guess what the other had in mind, find signs or gestures that could be grasped by the other, and determine the "boundaries" that one must not cross so as not to upset the fragile peace. Moreover, there is no reason why this interaction would necessarily turn into an insoluble war for survival, since it naturally would tend to take form of mutual accommodation whereby each would jockey for a "sphere" of activity that did not conflict with the similar sphere of the other. In Thomas Schelling's words, it would take the form of a "game of coordination":⁶⁰ "I posit myself as a rational and free being in opposition to [C]⁶¹ only by ascribing reason and freedom to him as well and, with this, by assuming that he has likewise freely chosen within a sphere separate from mine" (SW III.46). Although Fichte introduces the idea of summoning and the kind of interaction it generates while speculating about the imagined first encounter of solitary humans, he does not consider such interaction as a mere object of imagination. He observes it being exemplified in a variety of ways in actual social settings. He argues, for example, that education is basically the summoning of children by their teachers to discover and exercise their faculties and capacities in ways that they cannot on their own (SW III.358–59, 365). Yet education can achieve this end only if the teachers allow their pupils the freedom to self-discover and flourish. For Fichte, summoning takes place among adults as well. Among adults it often takes the form of an exchange of ideas or experiences that inspire the parties to update their ideas and attitudes about the world or about themselves.⁶² For example, as discussed earlier, sometimes it is only by talking to another that one can realize that one was subjected to injustice by a third party, and that one must fight it. This is the sort of "awakening" political activists hope to achieve when approaching their potential comrades.⁶³

Summoning interactions are, then, integral to social life, in that they shape the beliefs and attitudes human beings have about the social order, as well as about themselves. But the central point here is that such interactions do not always necessarily presuppose a pre-existing rule or institution, but merely an openness to the possibility of being in some way stimulated or inspired by an unpredictable but non-hostile other: "I can treat a rational being as a rational being ... not if he recognizes me in his own conscience, which concerns morality, or in the company of others, which concerns the state, but if he recognizes me according to *his and my* consciousness synthetically united in one" (SW III.44–45). Fichte later refers to such interaction as a "relation of right" (*Rechtsverhältniss*) (SW III.52). Now this portrayal may seem confused, since Fichte goes out of his way to emphasize the morally and institutionally indeterminate nature of summoning interactions.

⁶⁰Thomas Schelling, *The Strategy of Conflict* (Cambridge, MA: Harvard University Press, 1980), 83–118.

⁶¹Fichte uses [C] without indicating a referent.

⁶²*Nur freie Wechselwirkung durch Begriffe und nach Begriffen, nur Geben und Empfangen von Erkenntnissen ist der eigentümliche Charakter der Menschheit, durch welchen allein jede Person sich als Menschen unwidersprechlich erhardt* (SW III.40).

⁶³Fichte describes such moments in the history of a society as an *Epoche des Erwachens des Volkes* (SW III.158).

Yet this is not confusion, but an indication that fixity is not a quality that Fichte necessarily associates with relations governed by the concept of right.⁶⁴ I take it that Fichte's refutation of natural rights theories rests precisely on this point: human beings can interact in peace and harmony without necessarily subscribing to predefined, "categorical" notions of entitlement.⁶⁵ That is, social interactions can be mutually respectful even if the parties "recognize" each other merely as "formable."⁶⁶ This means that each allows the other to act any way he or she chooses as long as these actions do not clash with one's own. And each would be open to accommodating the emergent needs or interests of the other so long as the other reciprocates. So understood, the "relation of right" is not a codified, patterned, or institutionalized relation; rather it takes the form of a negotiation to arrange the social space into non-conflicting spheres of activity.

Fichte makes it clear that such interaction is not incompatible with law or morality. He argues, on the contrary, that interactions that do not yield, or are not structured by, law or morality tend to be unpredictable, unstable, or "problematic" (SW III.46, 124). Moral and legal norms lend structure and consistency to such interactions by specifying the *content* or *boundary* of the mutual liberties or duties of the parties. Once stabilized by such norms, a "relation of right" becomes "juridical," in that it exemplifies thereafter clearly defined, and ethically or legally enforceable rights.⁶⁷ The parties then would no longer "recognize" one another as adaptable agents, but as "right-holders" (*Subject des Rechtes*) who are entitled to determinate, fixed "spheres" of external freedom. It is essential to emphasize, however, that such spheres are fixed only to the extent that they are viewed and treated as such by the parties, and nothing can prevent the parties from redrawing the permissible boundaries of those spheres.

Thus Fichte's concept of right lends itself to both juridical and non-juridical relations that are linked in the way just sketched.⁶⁸ Notice that this distinction correlates with the distinction Fichte makes between two kinds of freedom associated with subjectivity. The first is the uniquely human capacity to transcend the confines of the natural world and act on self-determined purposive concepts. We have seen that a human being can be free in this sense only by participating in the collective enterprise of creating and maintaining the social institutions that enable the parties to co-exist without infringing on one another's sphere of external freedom. The second kind of freedom can be called "infinite determinability." Such freedom

⁶⁴After all, the entire §3 of the *Naturrecht* is an account of the development of a "relation of right" in the absence of pre-existing legal or moral structures.

⁶⁵*Es ist sonach im Sinne wie man das Wort oft genommen hat, gar kein Naturrecht* (SW III.148).

⁶⁶Fichte's expressions are *Bildsamkeit* and *Bestimmbarkeit* (SW III.79, 133, 60–61). I am suggesting here that "summoning" implies the recognition of the other as a free but adaptable being. Honneth makes a similar point in his "Die Transzendente Notwendigkeit von Intersubjectivität," 77–78. For an alternative view, see Siep, *Praktische Philosophie im Deutschen Idealismus*, 47–48.

⁶⁷Fichte refers to what I call here "juridical" rights as *äusseres Recht* (SW III.127, 361–62).

⁶⁸I do not agree with Owen Ware that Fichte's distinction between "categorical" and "problematic" types of recognition is equivalent to a distinction between "action" and "cognition." I take it that both types of recognition are oriented toward action, and they are embodied, respectively, in the juridical and non-juridical relations associated with the concept of right. See his otherwise very helpful "Fichte's Voluntarism," *European Journal of Philosophy* 18 (2010): 262–82.

cannot be realized within a particular external sphere or institution; it is exercised only by participating in a social interaction through which one is “summoned” to think and act in ways that are otherwise unimaginable.⁶⁹ Such is the nature of relations that make social criticism and social change possible.

I have argued in this paper that these two parallel distinctions are brought together within the thesis that underlies Fichte’s political thought, namely, that rights (or relations identified by the concept of right) are best understood as the conditions under which human beings can be and become aware of themselves as self-positing subjects. If this construal of Fichte’s thesis is correct, then it is not difficult to grasp what fundamentally distinguishes Fichte’s political thought from those of Rousseau or Hegel, in relation to which Fichte’s is most fruitfully understood. Unlike Hegel, who ascribes agency to social institutions, Fichte considers individual citizens as the active agents in the social world, since they are the ultimate source of reform as well as stability in society. Yet Fichte does so without resorting to the kind of libertarianism that pertains to Rousseau’s social and political thought. Rousseau believes that the main reason to enter political society is to be free from the domination, competition, and judgments of others. He typically argues that such freedom is best achieved in a “withdrawal from society” whereby one minimizes social contact.⁷⁰ For Rousseau, more precisely, membership in a “political” society is compatible with intellectual, economic and volitional self-reliance. Fichte, in contrast, calls for participation in a whole array of social, cultural, economic as well as political relations with others, and thus for playing a role in the determination of the social world.⁷¹ This is because social membership, thus understood, is part of what it takes to be, and become aware of oneself as, a self-determining subject as Fichte conceives of it.

⁶⁹For more on the conceptual link between “determinability” and “intersubjectivity” in Fichte’s philosophy, see Allen Wood, “Fichte’s Intersubjective I,” *Inquiry* 49 (2006): 62–79.

⁷⁰Rousseau praises such life throughout *Emile* and *Reveries of a Solitary Walker*. For more on the theme of isolation in Rousseau, see Timothy O’Hagan, “Rousseau on Amour-Propre,” *Proceedings of the Aristotelian Society* 99 (1999): 91–107; Tzevan Todorov, *Frail Happiness*, trans. J. Scott and R. Zaratsky (University Park: Penn State University Press, 2001), ch. 3. See also N.J.H. Dent, *Rousseau: An Introduction to His Psychological, Social and Political Theory* (New York: Basic Blackwell, 1989), 104–8.

⁷¹Fichte does not think that it is volitionally impossible for a human individual, after being raised in a society, to choose to live outside society. But he considers such an individual as self-destructive if he or she is aware that, in choosing a solitary life one gives up not only on the possibility of taking part in recognitive social relations that establish social peace, but also on the chance to benefit from the experience and cooperation of others in one’s struggle for survival; that is, this choice leads to a life “under the direction of nature” (SW III.48, 209).