



The Palgrave Fichte Handbook

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Palgrave Handbooks in German Idealism

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Preface

Recent decades have witnessed a remarkable resurgence of interest in the philosophy of J. G. Fichte (1762–1814). Long misportrayed as a merely transitional figure propounding a simplistic subjectivism, Fichte now is increasingly acknowledged as a major philosophical innovator and a highly sophisticated thinker, whose challenging work richly repays careful study. At the same time, however, by comparison with the work of the other major German Idealists (Kant, Schelling, Hegel, Schopenhauer), Fichte's own output remains relatively little-known and largely inaccessible to nonspecialists. This is unfortunate, because, even today, Kantian ideas and approaches continue to shape the philosophical landscape, and Fichte is the first, albeit the least famous, of the truly great post-Kantian philosophers. There therefore is a need for scholarly work on Fichte that, in addition to advancing various expert-level discussions, will simultaneously offer a solid (and not oversimplified) introduction and orientation to Fichte's philosophy as a whole.

The Palgrave Fichte Handbook is designed to help meet this need in a number of ways. First, the volume is principally organized according to the basic branches of philosophy (thus not according to specific works or periods in Fichte's career, or thematic niches within classical German philosophy—fairly standard approaches in the existing literature). Second, there is a strong comparative focus throughout the book, with particular emphasis on the complicated relationships between Fichte's philosophy and Kant's. Schelling and Hegel make repeat appearances also, as do various representatives of existentialism, phenomenology, political theory, analytic philosophy, and so forth, so that Fichte's philosophy is put forward with reference to its conceptual and historical context and impact. Finally, the book features a detailed introduction which offers a basic overview of Fichte's philosophy, integrated within

which are brief treatments of the various more-specialized topics and problems that the subsequent chapters explore in depth.

Each of the book's twenty-plus chapters combines helpful exposition, careful interpretation, and incisive argument. All are new essays by leading and emerging scholars of Fichte and German Idealism, including some of the most accomplished people currently working in the field. Thanks to each contributor's adept and illuminating work with highly challenging material, *The Palgrave Fichte Handbook* is both an outstanding introduction to Fichte's philosophy and a major contribution to Fichte scholarship.

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Series Editor's Preface

The era of German Idealism stands alongside ancient Greece and the French Enlightenment as one of the most fruitful and influential periods in the history of philosophy. Beginning with the publication of Kant's *Critique of Pure Reason* in 1781 and ending about ten years after Hegel's death in 1831, the period of "classical German philosophy" transformed whole fields of philosophical endeavour. The intellectual energy of this movement is still very much alive in contemporary philosophy; the philosophers of that period continue to inform our thinking and spark debates of interpretation. After a period of neglect as a result of the early analytic philosophers' rejection of idealism, interest in the field has grown exponentially in recent years. Indeed, the study of German Idealism has perhaps never been more active in the English-speaking world than it is today. Many books appear every year that offer historical/interpretive approaches to understanding the work of the German Idealists, and many others adopt and develop their insights and apply them to contemporary issues in epistemology, metaphysics, ethics, politics, and aesthetics, among other fields. In addition, a number of international journals are devoted to idealism as a whole and to specific idealist philosophers, and journals in both the history of philosophy and contemporary philosophies have regular contributions on the German Idealists. In numerous countries, there are regular conferences and study groups run by philosophical associations that focus on this period and its key figures, especially Kant, Fichte, Schelling, Hegel, and Schopenhauer. As part of this growing discussion, the volumes in the *Palgrave Handbooks in German Idealism* series are designed to provide overviews of the major figures and movements in German Idealism, with a breadth and depth of coverage that distinguishes them from other anthologies. Chapters have been specially commissioned for this series,

and they are written by established and emerging scholars from throughout the world. Contributors not only provide overviews of their subject matter but also explore the cutting edge of the field by advancing original theses. Some authors develop or revise positions that they have taken in their other publications, and some take novel approaches that challenge existing paradigms. The *Palgrave Handbooks in German Idealism* thus give students a natural starting point from which to begin their study of German Idealism, and they serve as a resource for advanced scholars to engage in meaningful discussions about the movement's philosophical and historical importance. In short, the *Palgrave Handbooks in German Idealism* have comprehensiveness, accessibility, depth, and philosophical rigor as their overriding goals. These are challenging aims, to be sure, especially when held simultaneously, but that is the task that the excellent scholars who are editing and contributing to these volumes have set for themselves.

Ellensburg, WA

Matthew C. Altman

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Fichte on Property Rights and Coercion

Nedim Nomer

Commentators on Fichte's social and political writings disagree on, among other things, certain elementary aspects of his theory of right. One such disagreement concerns the content of what Fichte takes to be the most basic of persons' rights: the right to property. For some scholars, Fichte defines this right in terms of exclusive individual ownership of bits of the material world, in line with his stipulation that the subjection of a part of the sensible world to one's own ends is necessary for free agency.¹ Other scholars, by contrast, argue that free agency, on Fichte's account, entails above all acting on self-given ends or norms rather than possession of material things; thus, a property right on Fichte's account is best understood as the right to labor under conditions that ensure one's subsistence as a free being.² Another disagreement involves Fichte's account of the possibility of a society in which persons can enjoy property rights. Some scholars argue that such a society emerges from a social contract that is freely negotiated and agreed upon by all the parties.³ Others claim that, in Fichte's view, persons would not freely choose to respect one another's rights; so the possibility of the rightful coexistence of persons in a society is contingent upon the existence of an omnipotent state that uses coercion to ensure compliance with the principles of right.⁴

In this chapter I argue that these disagreements stem from partial representations of Fichte's ideas, since a cohesive analysis of these ideas reveals that Fichte himself does not see any necessary conflict between different types of

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property right, or between freedom and coercion. For Fichte, all property rights are “grounded in” the concept of a “sphere” of the sensible world known to a person, which is and remains “subject to” that person’s ends, and which may not be “disturbed” by any other person (FNR 183 [GA I/4:20]; GA II/13:221).⁵ Note that this concept of a personal sphere of freedom provides no information about the makeup of the sensible world in which such freedom can be enjoyed; nor does this concept specify what it means to subject such a sphere to one’s own ends. This is because, I suggest, Fichte realizes that these questions have different answers in different social contexts (CCS 130 [GA I/7:85–86]). That is, he recognizes that while having a sphere of freedom in one social context may mean being able to enjoy a material object exclusively, in another context it can amount to a license to pursue a specific occupation. In yet other contexts, having such a sphere may also include the right to privacy. This means that the concept of a sphere of freedom lends itself to several different kinds of property rights without being reducible to any one of them.⁶

Fichte also does not think that coercion rules out freedom. The assumption that Fichte believes in this dichotomy leads commentators to differ over the question of whether, in his view, compliance with the principles of right is voluntary or imposed by a coercive state.⁷ Contrary to this common assumption, I argue that coercion for Fichte is not only compatible with freedom, but also plays a key role in the formation of rightful relations among persons. Coercion, for Fichte, is not always a lawful sanction of a state; it may also be used by unauthorized individuals for any end they deem necessary. In the latter sense, coercion is simply the experience of having one’s external freedom (i.e., one’s bodily movements) resisted or restricted by another person, or a group of persons, without permission (FNR 63–64 [GA I/3:366–67]). In any event, Fichte does not believe that coercion makes it impossible for the person subjected to it to resist or repulse it; nor, therefore, does it render a person unable to exercise choice (FNR, 62–65 [GA I/3:368–71]). In fact, Fichte believes that the experience of extra-legal coercion, or the likelihood thereof, is what ultimately induces persons to will to live by the principles of right (FNR 127, 167 [GA I/3:427, I/4:6–7]). The idea here is that coercion among persons makes the parties realize that they are all free beings that can always think and act in different ways, and therefore that it is possible and best for all to live alongside one another without interfering with one another’s freedom (FNR 83–84, 128–29 [GA I/3:388, 428–29]).

The question that arises here is: Why does Fichte think that coercion, or its likelihood, is necessary for compliance with the norms of right, especially

those regarding the definition and distribution of property rights? Why doesn't he suppose, instead, that persons would embrace such norms for what they are or purport to be, namely, safeguards of the freedom of all? The answer to this question does not lie, as some scholars claim,⁸ in Fichte's assumption that persons are motivated only by self-interest, since according to Fichte there could be selfish reasons to be part of a regime of rights (FNR 134 [GA I/3:433]). The answer, I suggest, is provided by what Fichte takes to be the basic fact of social life, namely that the actions of different individuals in a social setting always have a tendency to clash, regardless of the intentions of the individuals involved. In the first pages of the *Foundations of Natural Right*, Fichte calls attention to this fact by stating that wherever persons come into contact with one another, their "effects" are "capable of influencing, mutually disturbing, and impeding one another" (FNR 9–10 [GA I/3:320]). He then makes it the main goal of his theory of right to address this fact by showing that it is possible for persons to coexist in peace as free beings. Thus, throughout the *Foundations* and in other writings, Fichte portrays the basic function of rights as the resolution of disputes among persons about who gets what (FNR 166 [GA I/4:6]; GA I/7:87; GA II/13:221). Unless an "equilibrium of right" is established by the parties, Fichte warns, such disputes lead to violent conflict, that is, a relentless cycle of mutual coercion (FNR 166 [GA I/4:6–7]). In order to reach such an equilibrium, the parties need to accommodate one another's expressed claims to property (FNR 117–23, 167 [GA I/3:419–25, I/4:7]). This means that the circumstances of disputes or conflicts about who is entitled to what are definitive of the property rights that enable the parties, hitherto in conflict, to coexist in peace. Hence, Fichte takes coercion, or the threat of it, to be crucial not just for the compliance with a regime of property rights but also for the establishment of such a regime.

In line with these points, in what follows I consider Fichtean property rights as context-sensitive norms for resolving disputes over who is entitled to what that arise among persons in particular social settings, rather than as general stipulations about the best way of coordinating the external freedoms of persons in any society. First I look at what Fichte has to say about the general nature of the right to property. Then I look at the varieties of property rights that persons can enjoy in an actual society. Finally I look at the role of coercion, or the likelihood thereof, in the determination of the contents of these rights. My analysis draws on the *Closed Commercial State* (1800), and the *Doctrine of Right* (1812) as well as on the *Foundations of Natural Right* (1796/1797).

Property Right in the “Broadest Sense”

In the introduction of the *Foundations*, Fichte describes property as a “range of free actions” that is accorded to a person in a society (FNR 15 [GA I/3:327]). He also submits, however, that in order to prevent conflicts among those actions, the members of a society must have or reach a common understanding on what is rightful property. Hence, Fichte characterizes the “social contract” on property rights as the foundation of “civil legislation” (FNR 183 [GA I/4:20]). It is no accident, then, that he devotes a substantial portion of his social and political writings to reflecting on the possible content of the social contract on property rights in a rational society. In the *Foundations*, he focuses on, and compares, the property rights mainly of farmers, artisans, wage laborers, and merchants (FNR 210–46 [GA I/4:20–48]). In the *Closed Commercial State* he expands on these rights, and suggests further that the official functions of civil servants, and the learned pursuits of scholars and fine artists, must also be included in the property arrangements of a society (CCS 113, 193 [GA I/7:74, 136–37]). In the latter book and in the *Doctrine of Right*, Fichte emphasizes the importance of leisure for both the physical well-being and the spiritual self-development of human beings, and argues that leisure can be treated as a matter of property rights (GA II/13:238–42). And in all three books, Fichte often refers to what he calls the “absolute property rights” of persons; these are rights that persons enjoy “outside state supervision,” such as the right to privacy in one’s home, and the right to enjoy as one sees fit material objects (such as clothing and valuables) that one purchases “with money for one’s private use” (FNR 209–12 [GA I/4:43–46]).

These are some examples of the property rights that are considered in the texts indicated. Given the notable differences between these rights, it may seem tempting to conclude that Fichte does not have in mind a coherent general understanding of the right to property. Yet this conclusion is not warranted, because Fichte believes not only that all property rights have a common ground, but also that such rights have some shared qualities. So it is possible and meaningful for Fichte to speak of the right to property in its “broadest sense” (FNR 168 [GA I/4:8]).

As indicated earlier, all property rights for Fichte are grounded in the concept of a sphere of freedom. For Fichte, this concept provides, and rests on, the concept of original right as “a cause in the sensible world and never something caused” (FNR 103 [GA I/3:404]). The concept of original right is in turn “contained in” the concept of personhood, in that the concept of original right points to the external conditions for the “continued existence” (*sinnliche*

Selbsterhaltung) of persons (FNR 87, 104, 107–108 [GA I/3:390, 404, 408]). By the “continued existence” of a person, Fichte does not mean only the preservation of the physical body or the satisfaction of one’s primary needs, but also the continuation of the ability to set and pursue one’s own ends (FNR 20 [GA I/3:331]). As he puts it, “We do not regard continued existence as an absolute end, but as a means to an end. . . . All human beings desire life for the sake of something; the nobler in order to go on doing, the less noble in order to go on enjoying” (FNR 107 [GA I/3:408]). As the external condition of such agency, the concept of original right stipulates that each person must have a “continuing reciprocal interaction between his body and the sensible world” in ways that are “determined and determinable solely by his freely constructed concept of such a world” (FNR 107 [GA I/3:408]). For Fichte, this is a complex right made up of two rights: (1) the right of every person to the “inviolability” of his or her body, and (2) the right of every person to the “continued existence of his or her free influence within the entire sensible world” (FNR 108 [GA I/3:409]).

To understand the nature of the relation between the concept of original right and that of a sphere of freedom, we must consider two further points that Fichte makes about the former. The first is that although Fichte sees a conceptual difference between the two parts of the original right (namely, the right to the inviolability of the body and the right to have free influence in the sensible world), he also believes that these two rights are bound together in practice. This is simply because a person undertakes an action in the sensible world and so makes an impact upon that world either by moving his or her body from one physical location to another, or by transferring some material object(s) from one location to another, or by doing both simultaneously (FNR, 56–57; 103–106; [GA I/3:363–65, 405–408]). Thus, a person can be prevented from participating in the sensible world in ways he or she intends or plans by confining that person to a site without any means of escape. To be able to act freely in the sensible world, therefore, a person needs to have unfettered access to a physical space, and/or to various objects or tools in that space. This is not to say that having causality in the sensible world is reducible to having access to, and being confined to, a circumscribed geographic location. Recall that the concept of original right allows persons to have “influence within the entire sensible world.” Hence, a person must be free to pursue his or her ends wherever and however these ends are attainable. Fichte’s point, in any case, remains the same: freedom of action in the sensible world cannot be secured without also securing the spatial and material components of such freedom. For Fichte this is partly what it means to have a “sphere” of freedom in the sensible world (GA I/4:5–6).

Fichte's second point concerns the nature of the freedom involved in being a "cause in the sensible world." For Fichte, such freedom does not consist simply in pursuing or actualizing a particular end, or a set of ends; it also requires that, before taking any action, one must be in a position to choose the ends and means of one's actions from a plurality of alternatives (FNR 33, 105 [GA I/3:343, 406]). The idea here is that the freedom to "refrain from" actions that present themselves as options is part of what it means to be the cause of one's determinations in the sensible world. Fichte therefore submits that a person's sphere of freedom must be defined in terms of "all of the possible free actions" of that person, and not in terms of the actions that are carried out by that person (FNR 56 [GA I/3:363]). Fichte also takes care to note, however, that a person cannot be said to have free causality in the sensible world simply by virtue of having some alternatives for action, whatever those may be. If the alternatives are imposed or defined by another, then one cannot see oneself as the cause of one's deeds in the sensible world; so, one must have control over the nature of the action-alternatives that one has. In Fichte's words, the person must determine "the quality and quantity" of his or her activities (FNR 103 [GA I/3:405]). This is another way of saying that the person must be able to define the boundaries of the sphere of freedom within which he or she acts.

In short: the sphere of freedom is a set of action-possibilities defined by a person such that when this person engages in any of these actions, his or her related bodily movements in the sensible world are not impeded by others. On Fichte's account, one cannot be or recognize oneself as the cause of one's determinations in the sensible world without enjoying such a sphere of inviolability. By the same token, the enjoyment of such a sphere is a necessary condition for the continued existence of oneself as a person.

Be that as it may, Fichte declares that the original right to exercise causality in the sensible world has "no real meaning" and that no human being has original rights, for "there is no condition in which original rights exist" (FNR 101–102 [GA I/3:403]). Fichte qualifies this declaration by pointing out that the original right is only a concept, a theoretical construct, "created for the sake of a science of right," not a determinate legal right that one can claim against others in a society. In other words, this concept provides a philosophical grounding for the rights that persons are to enjoy in actual societies, but does not itself function as such a right. For Fichte, this is evidenced by the fact that the concept of original right indicates what "in general" belongs to the freedom of a person "without considering the necessary limitations imposed by the rights of others" (FNR 101 [GA I/3:403]). Also, while this concept requires *that* every person must enjoy a sphere of freedom in the sensible

world, it leaves open the question of *how far* a person's sphere is to extend. In theory, therefore, a person's sphere of freedom could encompass the "entire region of the world known" to that person (FNR 105, 110 [GA I/3:40 412]).

But how can Fichte believe that the concept of original right is suited to explaining or justifying the determination of the rights of persons in actual societies, while also maintaining that this concept allows each person to lay claim as his or her sphere of freedom to the "entire region of the world" known to him or her?⁹ Doesn't this concept in fact make it impossible for persons to coexist in peace within a society, by making collisions among personal spheres of freedom unavoidable? Fichte is well aware of this dilemma that his concept of original right creates, and formulates the problem here as follows: If the freedom of a person "were infinite as described above, then the freedom of all, except for that of a single individual, would be canceled. Then freedom itself, even its physical existence, would be annihilated" (FNR 109 [GA I/3:411]). According to Fichte, however, this dilemma is not insoluble, and the solution lies in realizing that the conflicts among persons about the boundaries of their spheres of freedom are (or can be) conducive to, or constitutive of, rightful relations among persons rather than destructive of such relations. He makes this point in the passage below:

In order for a contract to be possible, both parties must will to enter into a contract concerning either their already conflicting claims or their claims that might possibly conflict in the future; moreover, the two parties must will that each of them, for his part, will yield in his claims to the disputed objects until their two claims can coexist. If only one of the two, or if neither, wants to enter into a contract, then no contract is possible and war will inevitably result. According to the law of right, the rational being is required to will to enter into a contract, and so there is a right of coercion that can force each person to do so. (Admittedly, this right of coercion cannot actually be applied, since it is impossible to determine how far a person is to yield in his claims.) ... Thus the second requirement for a contract to take place is that the *wills of two parties be united for the purpose of peaceably resolving their dispute over rights*: since this unity of will determines the form of a contract, we shall call it *the formally common will*. A further requirement for the possibility of contract is that both parties limit the private wills they initially have to the point where these wills are no longer in conflict. ... We shall refer to this unity of wills as *the materially common will*. (FNR 166–67 [GA I/4:6])

This passage is situated in a section of the *Foundations* where Fichte explores the possibility of "relations of right" in a society. There, his general claim is that a social contract concerning property rights is indispensable for both the

formation and stability of such relations. In the passage above, Fichte proposes that social contracts are not made in a vacuum; they are needed and formed only where there exists, or may exist in the foreseeable future, a “dispute” (*Streit*) among persons regarding an “object” of common interest. Fichte does not specify here the nature of the objects that tend to generate disputes among persons. In the lines preceding the above passage, however, he makes clear that here he is referring to a dispute that arises among persons because each party wills to “possess this or that thing as his property” (FNR 166 [GA I/4:6]). That is, this is a dispute about property rights over “things” that can be allocated to persons one by one. For Fichte, the prime function of the social contract is to resolve such disputes. This means that the Fichtean social contract is not a hypothetical agreement among the inhabitants of an imaginary state of nature; rather, it is a mechanism for resolving disputes that arise among persons about particular objects in specific social settings. This is a point that Fichte makes and emphasizes in all of his writings on right (see also, for example, CCS 131 [GA I/7:85]; GA II/13:221).

Fichte suggests here that in order to form a social contract on property rights, the parties to a dispute need to attend to two sets of considerations. The first set of considerations pertains to the nature of a social order that is not organized around a social contract on property rights. In the absence of such a contract, nobody could reliably enjoy property rights, since it would be uncertain who is entitled to what (FNR 109, 113 [GA I/3:410–11, 414]). This being the case, each person would unilaterally lay claim to some part of the sensible world and be prepared to use force to protect it from the infringements of others. In Fichte’s words, each would be prepared to use his or her “right of coercion” against others to make them respect his or her “claim” of property. On Fichte’s account, the right of coercion is “grounded in” the original right to have free causality in the sensible world (FNR 88–89, 109 [GA I/3:392, 410]), which means that one is entitled to use coercion when one’s original right is either violated or under threat of violation. It is not hard to grasp why Fichte believes that in the absence of a social contract on property rights, individuals would take themselves to be entitled to use coercion against one another, for there would be no public institution to defend anyone’s original right to free efficacy. Hence, this would be a social setting that is marked either by violent conflicts among persons or by the constant possibility of such conflicts. Note that when Fichte here appeals to the original rights of persons, he is not referring to the abstract concept of such rights, but to the “claims” that persons actually make to “possess something” in an actual society. It is equally crucial to realize, however, that there is a parallel between the concept of original right and such claims. In Fichte’s view, the claims that

persons make to possess something are nothing but expressions of their “will” to be able to conduct themselves in the sensible world without being obstructed by others (FNR 184 [GA I/4:20–22]). That is, people demand property rights in order to engage in “free action in the sensible world,” which amounts to property “in the broadest sense of the word” (FNR 168 [GA I/4:8]). The parallel between the concept of original right and the claims that people actually make to some property is not hard to discern. We have seen that the concept of original right relates to the concept of the personal sphere of freedom as an end relates to its means: to exercise free causality in the sensible world, one needs to enjoy an inviolable sphere of freedom in that world, and this is what property rights ensure. It is now clear that the concept of original right is to be treated, as I believe Fichte does treat it, as a conceptual representation of the claims that persons in actual societies make to the recognition by others of their property rights.

For Fichte, a second set of considerations that facilitate the formation of a social contract on property rights in a social setting concerns the mentality that is involved in the making of such a contract. In the passage cited above, Fichte clearly takes the view that the property rights of persons in an actual society cannot be derived from the “private wills” of persons, since the private will of a person cannot move or bind others. That is why Fichte argues, in the passage cited earlier, that unilateral application of the “right of coercion” cannot settle disputes about property rights. So, a person acquires a right not by unilaterally claiming it, but only when others can be obligated to recognize that right (FNR 114 [GA I/3:415]). Yet this is possible only if the claimer of the right in turn recognizes the similar claims of others. In practice, this means that nobody can claim to own the entire sensible world without leaving some room for others; otherwise one would find oneself in conflict with every other person. So the possibility of establishing enduring relations of right in a social setting requires that each “yield in” his property claims to a point where the property claims of the parties no longer clash (cf. FNR 115 [GA I/3:416]). To achieve that, each must be willing to negotiate with, and make concessions to, others. Fichte calls the shared willingness to participate in such negotiations “the formally common will” (FNR 167 [GA I/4:6]), since what is required for such negotiations to get underway is *that* each is willing to participate in them whatever the outcome may be. Of course, a lasting peace among persons can be established only if the parties indeed reach a commonly acceptable definition and distribution of property rights, which would constitute what Fichte calls “the materially common will” (FNR 167 [GA I/4:6]).

So far we have considered how, on Fichte’s account, persons can come to enjoy property rights in an actual society. This account has two parts. The first

is a portrayal of the concept of original right and its relation to the concept of a personal sphere of freedom. I have suggested that the latter specifies the condition of the former; that is, the enjoyment of a sphere of freedom makes the exercise of free causality in the sensible world possible. I have also argued that, for Fichte, the property claims made by persons in actual societies can be understood in light of the concept of original right, and thus as demands to enjoy an inviolable sphere of freedom in the sensible world. The second part of Fichte's account demonstrates, however, that what ultimately defines the property rights of persons is not their private wills to possess such a sphere, but, rather, a commonly negotiated resolution of their disputes or conflicts about who is entitled to what.

But our analysis so far only addresses Fichte's general account of the determination of property rights, without identifying the concrete liberties, objects, or amenities which may fall under such rights in actual societies. We must now examine Fichte's remarks on different kinds of property rights, in order to assess the extent to which his general theory helps us to understand the determination of property rights in actual societies. After all, if Fichte believes that, in theory, the disputes among persons about the permissible range of freedom in a social setting are key to defining the property rights that can be upheld in that setting, he might still concede, as some commentators have argued, that in reality such disputes can never be resolved "peaceably" by the parties and therefore can be brought to an end only through the use of force by the state. Secondly, it is still possible that Fichte subscribes to a particular, universally applicable type of property right. That is, although his concept of a personal sphere of freedom can lend itself to different definitions of a property right, Fichte may still believe, as some commentators have contended, that there is only one particular basic way in which the right to property is to be defined in actual societies. In the remainder of this chapter, I try to fill in these gaps in our reconstruction of Fichte's account of property rights by considering what he has to say about property rights in actual societies, and about the circumstances of disputes or conflicts that are constitutive of these rights.

Fichteian Property Rights

Although the concept of an original right to have absolute causality in the sensible world is not a specific legal right to be, do, or have something, Fichte takes this concept to provide the basis for understanding and justifying the property rights of individuals. Textual support for this claim can be found in the section of the *Foundations* devoted to spelling out this concept, where

Fichte writes, “There is no separate right of self-preservation; for it is merely contingent that, in a particular instance, we happen to be using our body as a tool, or things as means, for the end of securing the existence of our body” (FNR 108 [GA I/3:409]). The basic message of this statement is that in order to secure one’s continued existence as a freely acting body in the sensible world, one needs to be free and safe to engage in either of two types of activities: either to move one’s body from one place to another, or to utilize a material thing in so doing. Notice that these two types of activity are accommodated by Fichte’s concept of the personal sphere of freedom. Relatedly, the distinction between these two types of activity provides a framework for defining the property rights of persons, since they call attention to two types of right that must be accorded to persons in a society insofar as they are regarded as embodied, self-determining beings; these two types of right are (1) the right to certain kinds of free activity, and (2) the right to use certain material objects. Fichte develops this bipartite division of rights into a general catalog in the *Closed Commercial State*:

Our theory posits the first and original property, the basis of all others, in *an exclusive right to a determinate free activity*. This free activity can be determinable, and determined, in one of three ways. Either solely through the *objects it acts upon*. This is the case, for example, with the right to undertake *whatever one may wish in and with a certain area* and keep the rest of the human race from modifying this area in any way ... This area could ... be called the *property* of the one who has been granted the right, though *strictly speaking* his property consists solely in his *exclusive right to every possible modification* of this area. In actual life I am not familiar with any example of such an unlimited right to property. Or, secondly, this free activity is determined only through itself, only through its own form (its kind and manner, its purpose, and so forth), without any regard to the object it acts upon: the right to conduct exclusively a certain art (to manufacture clothing, shoes and the like for others) and to keep everyone else from practicing the same art. Here we have property without possession of any *kind*. Or finally, this free activity is determined by *both*: through its own form and through the object that it acts upon: the right to undertake a specific act upon an object, and to exclude all other men from the same use of the same object. In this case too, an object can ... be called the property of the one who has been granted the title of right, although strictly speaking his property consists in only in the exclusive right to a certain free action toward this object. The exclusive right of the farmer to cultivate grain on his piece of land is of such a kind. (CCS 130 [GA I/7:85–86])

This passage contains the core of what Fichte has to say about property right in his principal writings. Remarkably, the general claim he advances in

this passage is fully consistent with more recent accounts of property rights. This is the claim that a property right does not consist in a “two-place relation” between a person and an object, which can be an activity, occupation, or material thing; rather, a property right in fact defines the nature of the relation between the right-holder and others.¹⁰ More specifically, the basic function of someone’s right to an object, whatever it may be, is to constrain the kinds of claims that others are allowed to make over that object. For instance, if someone has the right to use a particular material object, this right does not describe the isolated relation between this person and the object in question; rather, it “excludes” other persons from accessing the object at the same time or in the same way. Similarly, if someone has the right to conduct a certain art, such as dressmaking, it is not the case that this person may conduct this art regardless of what others do; rather, in a Fichtean society, there would be a society-wide division of labor whereby some would be entitled to work in a particular profession, while others are allowed to pursue other types of work so that the economically productive activities of different individuals can concur and complement one another. It is therefore misleading to suggest that “for Fichte, all rights refer to actions, never to things.”¹¹ As Fichte makes clear in the above passage, rights can refer to actions, to material things, or to both at the same time; what defines a right is not the particular nature of the object of that right, but the way in which the right defines the relation between the right-holder and others while the right-holder exercises that particular right.

Fichte indicates his reasons for endorsing this particular view of property rights in the lines preceding the passage above. There he tries to motivate his own view by contrasting it with the ancient doctrine of feudal land tenure, according to which a tenure-holder not only is the “only proprietor” of a piece of land and everything in it, but also has the sole authority to set the conditions under which other individuals live and work on that land. Fichte rejects this doctrine for its “one-sidedness and incompleteness when applied to actual life” (CCS 130 [GA I/7:85]). The emphasis here is on “when applied to actual life.” That is, Fichte does not think that this doctrine is intrinsically flawed, but rather that it allows only a minority of human beings to own land. So, this doctrine can hold in “actual life” only on the assumption that the rest of humanity will not contest the land tenure rights of the few (CCS 131 [GA I/7:87]). In Fichte’s view, this is the assumption that makes this theory “one-sided” and “incomplete,” and therefore vulnerable to being rejected in actual life by those who are disadvantaged by it, as exemplified by the French Revolution.

For Fichte, what distinguishes his view of property rights from the doctrine he rejects is that his view does not assume away the constant contestability of

any regime of property rights; on the contrary, his view takes as its premise that all rights to property are susceptible to the “active expression of the force” of those who are disadvantaged by them, or of those who disagree with them in principle, and therefore that property rights are sustained only on the condition that conflicts about the “objects in dispute” are resolved in a mutually acceptable way (CCS 131 [GA I/7:87]). One result of this view of property rights, Fichte points out, is that “there is no property of land” (CCS 130 [GA I/7:86]; GA II/13:242). He explains this result in the *Foundations* as follows: “Land is humanity’s common support in the sensible world, the condition of humanity’s existence in space and thus of its entire sensible existence,” so it must be shared by all (FNR 189–90 [GA I/4:26]). This does not mean, however, that land can only be held jointly, like streets and parks, or that soil may never be the object of individualized property rights. According to Fichte, individual exclusive right over land is not impossible; a farmer’s right to cultivate a “particular piece of land” and to “exclude” all others in so doing is such a right (FNR 190 [GA I/4:26]). Fichte takes care to add, however, that a farmer may have this right only on the condition that his particular use of that piece of land does not make it impossible for others who also need it for their livelihood, such as animal breeders, to use the same piece of land. Notice that the rights of farmers and those of animal breeders are only to particular “uses” of a piece of land that are compatible with one another; they are not ownership rights as defined by the feudal land tenure regime, which authorizes property owners to prevent all others from accessing a piece of land in any way. A second, yet related, difference between Fichte’s view of property rights and the land tenure regime is that the former, before supporting any actual regime of property rights, constrains the “effects” that a person’s enjoyment of a particular property right has on others: Fichte’s view does not support possible or actual exercises of a right that would be detrimental to the freedom of others (CCS 131 [GA I/7:87]). For example, a tailor’s exclusive right to produce and sell clothing to others does not entitle him to withhold distribution of products to others so as to cause an “artificial rise” in the price of these goods and make a profit at the expense of others (CCS 102 [GA I/7:63]). Ultimately, then, Fichte’s view of property rights does not concern itself with the nature of the objects of such rights; nor is it important for this view precisely how a right-holder relates to the object of his or her right; what matters, rather, are the “effects” that the right-holder’s use of the object in question has on others. That is why in his catalog of property rights Fichte stresses that a property right defines the set of actions that a right-holder is allowed to undertake in a society, whatever the object(s) of that right may be.

To bring into sharper focus the real-society implications of Fichte's catalog of property rights, let me now consider in some detail some examples from each category of rights in that catalog, starting with the last. The last category comprises cases of the right to "free activity determined both through its own form and through the object that it acts upon." This is the character of the rights of "producers" and "artisans" who make up what Fichte takes to be the two pillars of a semi-industrialized commercial society (CCS 95–108 [GA I/7:56–70]; FNR 188–206 [GA I/4:24–41]; GA II/13:232–42). Fichte's elaboration of the rights of such individuals, and for that matter all members of a society, makes it clear that they are not only right-holders but also bearers of certain civic obligations (*Verbindlichkeiten*). And if they are not willing to take on such obligations, they may be coerced to do so (FNR 206 [GA I/4:24]; CCS 103 [GA I/7:64]; GA II/13:210–11). Producers, such as agriculturalists and animal breeders, have the "exclusive right to extract the products of nature" that are essential for the physical sustenance of the whole of society. Given the importance of such products, Fichte observes, the members of a society would seek the most efficient way of providing them. In a relatively large society, this would be the division of labor; thus, only some members of the society would be assigned the exclusive task as well as the right to provide them, while others would be given other tasks and corresponding rights (CCS 97 [GA I/7:56–58]). Accordingly, the farmers would have to refrain from processing their produce for the purpose of retail, since the latter tasks, namely the processing of raw materials and their sale in the relevant markets, will be carried out by "producers" and "merchants" respectively. Depending on the fertility of the farmed lands and the existing agricultural technologies, the farmers must produce enough not only to feed themselves but also all others in society (GA II/13:235). Yet when they have done so, they are not allowed to keep their surplus produce in storage so as to bring about an artificial increase in the price of such goods.

Similar considerations apply to artisans as well. Fichte divides artisans into two groups; "those who own the materials on which they work" and "those who merely expend their labor but do not own the materials on which they work" (FNR 203 [GA I/4:38]). While the members of both groups have the same exclusive right to conduct a certain craft, only those in the first group have the additional exclusive right to use the tools and raw materials fundamental to their trade. Yet artisans in both groups are obligated to remain within the bounds of their trade: they may not be involved in the provision of raw materials or in the sale of their products, which is the right of merchants. Also, they may not refuse to sell their products to merchants in order to artificially reduce the supply of these goods and so increase their price.

Let us now turn to the second category of rights in Fichte's catalog, namely rights to a "free activity [which] is determined only through itself without any regard to the object it acts upon" (CCS 130 [GA I/7:85–86]). Artisans who are licensed to conduct a certain craft exclusively without owning the materials they work with, or produce, have this kind of property right. State officials, teachers, and wage laborers are also among the holders of this kind of right. The property rights of these individuals refer only to the "actions" they are permitted to undertake, not to the material objects they may come into contact with. There is, however, a crucial difference between the groups of right-holders just listed. Wage laborers, depending on the nature of their employment, can directly contribute to the material sustenance or well-being of a society, whereas public officials and teachers are not in a position to do so. For an example of such wage laborers, Fichte talks about individuals hired by the state to work on mines (FNR 193 [GA I/4:29]). According to Fichte, mines are best viewed and treated as common property, since they are pivotal for the sustenance of the entire society. Hence, Fichte argues, instead of privatizing mines, the state should take upon itself the task of extracting from them by hiring free laborers who are willing to do so. In contrast, the activities of public officials or teachers have no relevance for the material subsistence of society; the former are responsible for state administration and law enforcement, and the latter contribute to the spiritual development of the members of society. There is, however, something in common to the property rights of all these individuals—that is, wage laborers, public officials, and teachers: they require a certain degree of affluence in society, so that there is enough money in circulation to compensate for their rightful activities. That is, to be able to pay the salaries of these individuals, the materially productive groups in society must be able to generate material resources or values that go well beyond what they themselves require to survive and well beyond what the society as a whole requires to meet its primary needs (CCS 98 [GA I/7:60]; GA II/13:240–42). Therefore, part of the "surplus" resources (*Überschuß*) they produce, or their monetary value, must be given to the state in the form of taxes so that it can pay the salaries of its employees.

This brings us to the first kind of rights in Fichte's catalog, namely, the kind that entitles a person "to undertake whatever one may wish in and with a certain area" (CCS 130 [GA I/7:85]). This also requires some degree of public as well as private affluence. Fichte quickly points out that he is not aware of any example of "such an unlimited right to property." Still, he sometimes thematizes a type of property right that comes close to being an example of such rights, namely the right to "absolute property." Fichte considers the right to own a house and the right to privacy in one's house as instances of the

absolute property right (FNR 209–11 [GA I/4:43–46]; GA II/13:264). The right to privacy denotes an absence of duties towards others, including the state: “The lock on my door is the boundary line between state and private authority,” so in one’s house one is “beyond the state’s supervisory authority” (FNR 211 [GA I/4:45]). Note that, so defined, privacy is not an exercise-concept; rather it indicates a state of immunity from the sight and demands of others. For Fichte, one may acquire the right to privacy only after having labored (for oneself and for society) and after having paid one’s taxes to the state. The reason why Fichte does not consider the absolute right to own a house, or to privacy, as examples of the right “to do whatever one may wish in and with a certain area” is because there are limits to what one may do even in one’s house; for example, one may not kill or assault anyone therein. Also, one is not allowed to store marketable goods there in order to artificially raise their price in the market.

To fully grasp the nature of a Fichtean regime of property rights, however, we need to consider two provisos that for Fichte must be met by any such regime. The first is that although most of the activities of right-holders will be devoted to providing for the material sustenance of their society and of themselves, nobody should be expected to work under duress like a pack animal; rather, each should be able to “labor without fear, with pleasure and joy, and have time left over to raise his spirit and eye to the heavens” (CCS 110 [GA I/7:71]). For Fichte, this is possible when the existing regime of property rights supports fair living and working conditions (CCS 99 [GA I/7:60–61]). Also, depending on the productivity level of the overall economy, each must be able to enjoy some leisure time (GA II/13:230; CCS 106, 114 [GA I/7:68, 74]). Fichte’s second proviso is that nobody should be unable to make a living from the activities that define his or her occupation under a regime of property rights (FNR 185 [GA I/4:22–23]). For this would mean that the conditions of this person’s “continued existence” as a free being are not ensured by that regime and therefore that this regime “is completely canceled with respect to him” (FNR 185 [GA I/4:22]). This person would then be entitled to a “repartitioning” of property rights in that society, and would have the “absolute right of coercion” to demand it, because as far as this person is concerned, the existing regime of rights would have failed to ensure the peaceful and rightful coexistence of persons.

Having considered these examples of Fichtean property rights, one may have the impression that the Fichtean regime of such rights is intended for, and is applicable only in, a relatively affluent, semi-industrialized, commercial society the likes of which were taking shape in Europe at the end of the eigh-

teenth century, that is, in Fichte's own time.¹² However, if my analysis of Fichte's remarks on property rights so far is accurate, then this impression underrates the range of applicability of his remarks. While it may be true that Fichte wished to propose an account of property rights that was applicable to the social and historical setting in which he lived, it does not follow that this is the only setting to which his account can be applied. I have argued that Fichte sees property rights as context-sensitive mechanisms for resolving the disputes about who is entitled to what that arise in particular social settings. That is why, while identifying the property rights that persons are to enjoy in a society, he takes care to emphasize the historical and economic contingencies that play a role in defining these rights, such as the fertility of arable lands, the existing agricultural technologies, the efficiency and productivity of the overall economic system, and so forth. Relatedly, he points out that some of the rights that merchants and artisans, for example, enjoy in a relatively affluent society would not exist in a relatively poor, economically unproductive society where a subsistence economy prevails; this would be a society where "each man sits alone in front of his hearth, and slowly carves, with great effort and unsatisfactory tools, a pair of miserable shoes" (CCS 111 [GA I/7:72]). Also, this would be a society where there can be neither wage laborers, nor much time for leisure. At the same time, however, Fichte wants his account of property rights to have a broader appeal and applicability. As we have seen, this account is based on an understanding of the general nature of the claims of freedom that persons make in any society. More precisely, this account does not simply consist of a portrayal of the determinate property rights of the members of a particular, historically conditioned society; rather, it is concerned with the conditions for the continued existence of personhood and free efficacy in the sensible world generally. It is also essential to keep in mind that for Fichte, no regime of right is immune to the possibility of injustice, and that it is always possible "for several persons to unite against one or against several weaker ones in order to oppress them with their common power" (FNR 137 [GA I/4:436]).¹³ It is no accident, then, that Fichte casts persons' "right of coercion" against others—that is, their right to defend their claim to a sphere of freedom—as an "absolute" right, that is, a right that is never entirely given up in any society.

But wouldn't the constant presence of the right of coercion of persons make impossible the formation of stable, peaceful regimes of property rights, without the coercive intervention of an omnipotent state, as some commentators have claimed? I think not. Fichte's answer to this question can be found in the passage where he describes this right as absolute, to which I now turn.

The Absolute Right of Coercion

Fichte refers to the absolute right of coercion of persons in the context of describing the nature of the complaint that a person would have about a regime of property rights which did not ensure his or her continued existence. Let us now look at this passage more closely:

All property rights are grounded in the contract of all with all, which states: “We are all entitled to keep this, on the condition that we let you have what is yours.” Therefore, if someone is unable to make a living from his labor, he has not been given what is absolutely his, and therefore the contract is completely canceled with respect to him, and from that moment on he is no longer obligated by right to recognize anyone else’s property. Now in order to prevent property rights from being destabilized in this way, all the others must (as a matter of right and as a result of the civil contract) relinquish a portion of their own property, until he is able to live. . . . The executive power is as responsible for such repartitioning as it is for all the other branches of government, and the poor (those of course who have entered the civil contract) have an absolute right of coercion to such assistance. (FNR 186 [GA I/4:22–23])

Fichte is not talking here about an ordinary legal procedure that is undertaken to compensate for the violation of an already specified and recognized property right of a person; rather, he is addressing the possibility of redesigning an entire regime of rights. This possibility is raised and demanded by individuals or groups who cannot make a living under the existing regime, that is, by the poor, since the regime in place has failed to grant them the liberties that they require in order to provide for their own continued existence. So this regime has failed to properly implement the basic principle of all sustainable social contracts concerning property rights, namely: “We are all entitled to keep this, on the condition that we let you have what is yours.” Fichte thus implies that this situation can be construed as a failure on the part of the state: not only has the state failed to meet the needs of some of its members to provide for their continued existence; it has also failed to bring the condition of these individuals to the attention of the rest of the society. So it is the poor who, by invoking their “absolute right of coercion,” request a “repartitioning” of property rights in society.

Note also that by recognizing the absolute right of coercion of the poor, Fichte also concedes that these individuals have a right to use force against the beneficiaries of the existing regime of property rights—for example, to take their property and positions by force, which of course would destabilize the entire regime. Yet the poor’s application of the right of coercion in this way

could be conducive to the formation of a stable, commonly acceptable regime of rights only if they take what is rightfully and “absolutely” theirs. Once a society is destabilized, however, there can be no guarantee that they will indeed be able to secure what is their due. So they stand to gain more by merely invoking their defensive right of coercion to assistance. The beneficiaries of the current regime of property rights also have more to lose than to gain from social instability. Fichte thus argues that instead of responding by force to the call of the poor for the repartitioning of property rights, the beneficiaries of the current regime should “yield in their claim” to their current privileges. Fichte thus supposes that once the parties realize the potential dangers of civil conflict, they will see that the safest and most sustainable way of solving the problem of injustice in society is the collective and peaceful redefinition of the terms of their social contract on private property. And I take this supposition to be the key to understanding why Fichte believes that coercion, or the possibility thereof, can be conducive to the formation of a commonly acceptable regime of property rights that can obligate all.

Notes

1. See Alan Patten, “Hegel’s Justification of Private Property,” *History of Political Thought* 16, no.4 (1995): 576–600 (esp. 590); Bruce Merrill, “Fichte’s Materialism,” in *Rights, Bodies and Recognition*, ed. Tom Rockmore and Daniel Breazeale (Hampshire: Ashgate, 2006), 107–16 (esp. 109).
2. See Allen W. Wood, *Fichte’s Ethical Thought* (Oxford: Oxford University Press, 2016), 281; David James, *Fichte’s Social and Political Philosophy* (Cambridge: Cambridge University Press, 2011), 33.
3. See Michael Nance, “Freedom, Coercion, and the Relation of Right,” in *Fichte’s Foundations of Natural Right. A Critical Guide*, ed. Gabriel Gottlieb (Cambridge: Cambridge University Press, 2017), 196–217 (esp. 197).
4. See Robert R. Williams, “Recognition, Right, and Social Contract,” in Rockmore and Breazeale, *Rights, Bodies and Recognition*, 34.
5. See also pp. 162–64 in Wayne Martin, “Fichte’s Transcendental Deduction of Private Property,” in *Fichte’s Foundations of Natural Right. A Critical Guide*, ed. Gabriel Gottlieb (Cambridge: Cambridge University Press, 2017), 157–76.
6. See also Nedim Nomer, “Fichte and the Idea of Liberal Socialism,” *The Journal of Political Philosophy* 13, no.1 (2005): 53–73. For a plausible argument that Fichte is committed to a particular well-defined, socially and historically situated, and legally enforceable notion of property right, see Michael Nance, “Property and Economic Planning in Fichte’s Contractualism,” *European Journal of Philosophy* (forthcoming; early view: <https://doi.org/10.1111/ejop.12446>).

7. See Nance, "Freedom, Coercion, and the Relation of Right," 211.
8. James Alexander Clarke, "Fichte and Hegel on Recognition," *British Journal for the History of Philosophy* 17, no.2 (2009): 365–85 (esp. 367); James, *Fichte's Social and Political Philosophy*, 119.
9. Rolf-Peter Horstmann, "Theorie des Urrechts," in *Johann Gottlieb Fichte. Grundlage des Naturrechts*, ed. Jean-Christophe Merle (Berlin: Akademie Verlag, 2001), 115.
10. Jeremy Waldron, *Right to Private Property* (New York: Oxford University Press, 1988), 27.
11. Wood, *Fichte's Ethical Thought*, 281.
12. Cf. Isaac Nakhimovsky, *The Closed Commercial State: Perpetual Peace and Commercial Society from Rousseau to Fichte* (Princeton: Princeton University Press, 2011), 132.
13. See also Nedim Nomer, "Fichte and the Relationship between Self-Positing and Rights," *Journal of the History of Philosophy* 48, no.4 (2010): 469–90 (esp. 478–79).