

J. G. FICHTE

*Foundations of
Natural Right*

According to the Principles of the Wissenschaftslehre

EDITED BY
FREDERICK NEUHOUSER
Cornell University

TRANSLATED BY
MICHAEL BAUR
Fordham University

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[1] Introduction

I How a real [*reelle*] philosophical science is distinguished from a merely formulaic philosophy

(1) The character of rationality consists in the fact that that which acts and that which is acted upon are one and the same; and with this description, the sphere of reason as such is exhausted. – For those who are capable of grasping it (i.e. for those who are capable of abstracting from *their own I*), linguistic usage has come to denote this exalted concept by the word: *I*; thus reason in general has been characterized as “I-hood” [*Ichheit*]. What exists *for* a rational being exists *in* the rational being; but there is nothing in the rational being except the result of its acting upon itself: what the rational being intuits, it intuits within itself; but there is nothing in the rational being to be intuited except its own acting: and the I itself is nothing other than an acting upon itself.^{a1} – [2]

^a In order not to suggest the idea of a substratum that contains within itself this power of acting, I do not even want to call the I an *acting something* [*ein Handelndes*]. – Some have raised the objection (among others) that the *Wissenschaftslehre* grounds philosophy in an I, conceived of as a substratum that exists independently of the I’s activity (an I as a thing-in-itself).² But how could one argue in this way, since the derivation of any substratum from the I’s necessary mode of acting is distinctive of that mode of acting and especially suited to it? I can say perfectly well how certain people could and had to argue in this way. These people cannot begin anything at all without a substratum, because they are unable to raise themselves from the point of view of common experience to the point of view of philosophy. Accordingly, they supplied the *Wissenschaftslehre* with the idea of a substratum, which they themselves brought out of their own reserves, and then they chastised the *Wissenschaftslehre* for their own incompetence; moreover, they chastised it, not because they themselves had seen the error of conceiving of the I as a substratum, but because Kant rejects such a substratum of the I.³ Their substratum has its source elsewhere – in the old thing-in-itself, outside the I. They find a justification for this in the letter of Kant’s writing about a manifold for possible experience. They have never understood

It is not worth the trouble to involve oneself in further explications of this. This insight is the exclusive condition of all philosophizing, and until one has elevated oneself to it, one is not yet ripe for philosophy. Also, all true philosophers have always philosophized from this point of view, only without knowing it clearly.

(2) That inner acting of the rational being occurs either *necessarily* or *with freedom*.

(3) The rational being *is*, only insofar as it *posits* itself *as being*, i.e. insofar as it is conscious of itself. All *being*, that of the I as well as of the not-I, is a determinate modification of consciousness; and without some consciousness, there is no being. Whoever claims the opposite assumes a substratum of the I (something that is supposed to be an I without being one), and therefore contradicts himself. Thus necessary actions, those that follow from the concept of the rational being, are simply those that condition the possibility of self-consciousness; but all of these actions are necessary and certain to follow, just as certainly as there exists a rational being. – The rational being necessarily posits itself; thus the rational being necessarily does everything that belongs to the positing of itself, and everything that lies within the scope of the action expressed by this positing.

(4) In acting, the rational being does not become [3] conscious of its acting; for *it itself* is *its acting* and nothing else: but what the rational being is conscious of is supposed to lie outside what becomes conscious,

what this manifold is for Kant, and where it comes from. When will these people stop trying to have their say about things for which their own nature fails them?

¹ The characterization of the “I” (or subject) in this and following paragraphs derives from Fichte’s conception of the subject as essentially “self-positing,” which he first articulates in §1 of the 1794 *Wissenschaftslehre*. (See *The Science of Knowledge*, trans. Peter Heath and John Lachs (Cambridge: Cambridge University Press, 1982).) According to this view, the subject is not a thing, or substance, but rather something that constitutes itself through its own self-reflexive, conscious acts. Sometimes Fichte expresses this claim – that, in the case of the I, “that which acts and that which is acted upon are one and the same” – by calling the I a *Tathandlung* (see n. 1, p. 25).

² To conceive of the I as a thing in itself is to think of it as existing like a thing – that is, as having an existence independent of its conscious apprehension of itself. Fichte first mentions and criticizes this view of the subject in his review (1794) of G. E. Schulze’s anonymously published book *Aenesidemus*. (See *Fichte: Early Philosophical Writings*, ed. Daniel Breazeale (Ithaca, NY: Cornell University Press, 1988), pp. 64–74.) Excerpts from Schulze’s book appear in English in *Between Kant and Hegel: Texts in the Development of Post-Kantian Idealism*, ed. George di Giovanni and H. S. Harris (Indianapolis: Hackett Publishing Co., 2000), pp. 104–35.

³ Kant criticizes the idea of the subject as a substance (an independently existing substratum of thought) in his “Paralogisms of Pure Reason.” See Immanuel Kant, *Critique of Pure Reason*, ed. Paul Guyer and Allen W. Wood (Cambridge, UK: Cambridge University Press, 1998), B 399–432.

and therefore outside the acting; it is supposed to be the *object*, i.e. the opposite of the acting. The I becomes conscious only of what emerges for it in this acting and through this acting (*simply and solely through this acting*); and this is the object of consciousness, or the thing. There is no other thing that exists for a rational being, and since one can talk of a being and of a thing only in relation to a rational being, it follows that there is no other thing at all. Whoever talks about some other thing does not understand himself.

(5) What emerges in the I's *necessary*^b acting (although, for the reason indicated, the I does not become conscious of its acting) itself appears as necessary, i.e. the I feels constrained in its presentation [*Darstellung*] of what emerges. Then one says that the object has *reality*. The criterion of all reality is the feeling of having to present something *just as* it is presented. We have seen the ground of this necessity; the rational being must act in this way if it is to exist as a rational being at all. Hence, we express our conviction concerning the reality of a thing as: "this or that exists, as sure as I live," or "as sure as I am."

(6) If the object has its ground solely in the I's acting, and is completely determined through this acting alone, then, if there is to be a diversity among objects, this diversity can [4] emerge solely through the I's diverse ways of acting. Every object has become determinate for the I in just the manner that it is for the I, because the I acted determinately in just the manner that it acted; but that the I acted in such a manner was necessary, for just such an action belonged among the conditions of self-consciousness. – When one reflects on the object and distinguishes it from the way of acting through which it emerges, then the acting itself becomes a mere *conceiving*, comprehending, and grasping of a given. It becomes this, since (for the reason offered above) the object appears to be present, not as a result of this acting, but rather without any contribution of the (free) I. Accordingly, one is right to call this way of acting, when it occurs with the abstraction described above, a *concept*.^c

^b The *Wissenschaftslehre*'s claim, "what exists, exists through the I's acting (through productive imagination, in particular)," has been interpreted as if it were a claim about a *free* acting; but once again, this is due to an inability to elevate oneself to the concept of activity in general, a concept that was adequately articulated in the *Wissenschaftslehre*. This inability made it easy for some to decry this system as the most outrageous fanaticism. But the charge of fanaticism would be much too weak. Confusing what exists through free acting with what exists through necessary acting, and *vice versa*, is really madness. But then who has proposed such a system?

^c A reader who, in the joy that he has now finally found a word that is familiar to him, rushes to transfer to this word everything that he has previously understood by the word *concept*, will soon

(7) Only through a certain determinate way of acting does there emerge a certain determinate object; but if the acting occurs with necessity in this determinate way, then this object also emerges with certainty. Thus the concept and its object are never separated, nor can they be. The object does not exist without the concept, for it exists through the concept; the concept does not exist without the object, for it is that through which the object necessarily emerges. Both are one and the same, viewed from different sides. If one looks to the I's action as such, with respect to its form, then it is a concept; if one looks to the content of the action, to its matter, to *what* happens in abstraction from the fact *that* it happens, then it is an object. – When one hears some Kantians talking about *a priori* concepts, one is led to believe that these concepts just stand there in the human mind prior to [5] experience, somewhat like empty compartments, and wait until experience puts something into them. What kind of thing could a concept be for these people, and how could they have come to accept the Kantian doctrine, understood *in this way*, as true?

(8) As has been said, *prior to what emerges from an instance of acting*, the *acting* itself and the determinate way of acting cannot be perceived. For ordinary people and from the point of view of common consciousness, there are only objects and no concepts: the concept disappears in the object and coincides with it. The discovery of the concept in [be] the object was a product of philosophical genius; that is, it required the talent of finding, in and during the acting itself, not only that which emerges in the acting, but also the acting as such, as well as the talent of uniting these completely opposed directions within one act of comprehension and thus grasping one's own mind in its action. In this way, the sphere of consciousness gained a new territory.

(9) Those men of philosophical spirit made their discoveries known. – Nothing is easier than to bring forth, *with freedom* and where no necessity of thought prevails, every possible determination in one's mind and to let one's mind act arbitrarily, in any manner that might be suggested by someone else; but nothing is more difficult than to observe

be utterly confused and will understand nothing further; and that would be through his own fault. This word should denote nothing more and nothing less than what has been described here, whether or not the reader might have previously thought the same thing by such a concept. I am not referring to a concept that is already present for the reader; rather, I intend first to develop and determine such a concept in the reader's mind.

one's mind as it acts in its *real* [*wirklichen*] – i.e. its necessary – acting as described above, or, if one is in a position to do so, to observe that the mind must act in this determinate way. The first way of proceeding yields concepts without an object, an empty thinking; only in the second does the philosopher become the observer of a real [*reellen*] thinking by his own mind.^d

[6] The former is an arbitrary mimicking of reason's original ways of acting as learned from someone else, after the necessity that alone gives meaning and reality to these ways of acting has disappeared; the latter alone is the true observation of reason in its way of proceeding. From the former there emerges *an empty, formulaic philosophy* that believes it has done enough if it has proved that one can think of something at all, without being concerned about the object (about the conditions of the necessity of this thinking). A real [*reelle*] philosophy presents concepts and the object at the same time, and never treats one without the other. The aim of Kant's writings was to introduce such a philosophy and to do away with all merely formal philosophizing. I cannot say whether this aim has been noticed by even one philosophical writer so far. But I can say that the misunderstanding of this system has shown itself in two ways: the first is exemplified by the so-called Kantians insofar as they took this system, too, to be a formulaic philosophy. They took it to be an inverted version of the previous formulaic philosophy, and thus they philosophized in as empty a manner as had ever been done, only from the opposite side. The second way of misunderstanding Kant's system is exemplified by the astute skeptics, who saw quite well what was actually missing in philosophy, but did not notice that the deficiency was remedied in the main by Kant. Merely formal thinking has done an

^d The philosopher who thinks in a merely formulaic way thinks of this or that, observes himself in this thinking, and then presents as truth the entire series of what he was able to think, simply *because* he was able to think it. *The object* of his observation is himself as he proceeds *freely*, either without all direction, trusting everything to luck, or according to a goal given to him from without. The true philosopher observes reason in its *original and necessary* way of proceeding, through which the philosopher's I and everything that is for it exists. But since the true philosopher no longer finds this originally acting I present in empirical consciousness, he presents the I at its starting point through the only act of choice that is allowed to him (the free resolve to want to philosophize), and he lets the I (under his observation) go on acting, beginning from this starting point and according to its own laws, which are well known to the philosopher. Thus, the object of the true philosopher's observation is reason in general as it proceeds necessarily, according to its inner laws, without any external goal. The philosopher who thinks in a formulaic way observes an individual (himself) in his lawless thinking; the true philosopher observes reason in general, in its necessary acting.

indescribable amount of damage in philosophy, in mathematics,^c in [7] the doctrine of nature, and in all pure sciences.

II What the doctrine of natural right, as a real philosophical science, has to achieve in particular

(1) According to what has been said above, that a certain determinate concept is originally contained in reason and given through it, can [8] mean nothing other than that the rational being, just as certainly as it is

^c In mathematics this shows itself especially in the misuse of algebra by merely formal minds. Thus – to give a striking example – some have not yet been able to see clearly that [7] squaring the circle is impossible and contradictory in its concept. In the *Hallischen Annalen*, the reviewer of my essay, *Concerning the Concept of the Wissenschaftslehre*⁴ (or rather the reviewer of a few notes in that essay) asks me whether squaring the circle is impossible because *straight* and *curved* have nothing in common.⁵ He thinks he has been very clever in asking this question; he has a look around, laughs, and leaves me standing there in my shame. I look at him and laugh at the question. In all seriousness, that is my opinion. *Ansam philosophiae non habes*,⁶ he says with pity; and I answer him: great wisdom has robbed you of healthy common sense. – With regard to this point, dear sir, I am not at all lacking in knowledge, but in understanding. When I was still in school, I saw perfectly well that a circle’s circumference should be equal to a polygon of infinitely many sides, and that one could get the area of the former if one knew the area of the latter: but I was never able to understand the possibility of this way of measuring, and I hope to God that He will not let me understand this possibility as long as I live. What then is the concept of something that is infinite? Is it the concept of a *task* of dividing the side of the polygon to infinity, and therefore the task of an *infinite determining*? But then what is the measurement for which you want to use the infinite here? Could it really be something *determinate*? If you keep dividing to infinity, as you should in accordance with the task, then you do not arrive at any measuring. But if you start to measure, then you must have previously stopped dividing; and thus your polygon is finite and not infinite, as you profess. But because you can comprehend the procedure for describing something that is infinite (i.e. because you can comprehend the empty concept of the infinite) and can label it, for example, with an A, you are no longer concerned about whether you have really acted and can act in this way, and you vigorously get down to work with your A. You do the same thing in several other cases as well. Healthy common sense marvels respectfully at your deeds, and modestly takes the blame for not understanding you; but when someone less modest gives even the smallest indication of his opinion, you cannot explain his inability to understand a matter that is so extraordinarily clear to you and by which you are not bedeviled in the least, except to suggest that the poor man must not have learned the foundations of the sciences.

⁴ This text was published just before the 1794 *Wissenschaftslehre* as a prospectus for Fichte’s first academic lectures on his system. It provides an introductory account of the *Wissenschaftslehre*’s basic structure and method. It is translated in English in Breazeale, *Fichte: Early Philosophical Writings*, pp. 94–135.

⁵ The review in question was written by Jakob Sigismund Beck and published in *Annalen der Philosophie und des philosophischen Geistes* in February 1795.

⁶ You have no handle on philosophy. This is Fichte’s response to Beck’s criticism of some remarks Fichte makes in *Concerning the Concept of the Wissenschaftslehre* (1794) about space and the foundations of geometry (Breazeale, *Fichte: Early Philosophical Writings*, pp. 120–11). After ridiculing Fichte’s discussion, Beck exclaims: “*Ansam philosophiae non habes!*” (You have no handles on philosophy!). Fichte omitted the ridiculed passage in the text’s second edition.

a rational being, acts necessarily in a certain determinate way. The philosopher's task is to show that this determinate action is a condition of self-consciousness, and showing this constitutes the deduction of that concept. The philosopher has to describe this determinate action itself with respect to its form, as well as to describe what emerges for reflection in this acting. By doing this, the philosopher simultaneously provides proof of the concept's necessity, determines the concept itself, and shows its application. None of these elements can be separated from the others, otherwise even the individually treated pieces will be treated incorrectly, and then one will be philosophizing in a merely formal manner. The concept of right should be an original concept of pure reason; therefore, this concept is to be treated in the manner indicated.

(2) This concept acquires necessity through the fact that the rational being cannot posit itself as a rational being with self-consciousness without positing itself as an *individual*, as one among several rational beings that it assumes to exist outside itself, just as it takes itself to exist.

It is even possible to present in a sensory manner what one's mode of acting in this positing of the concept of right is like. I posit myself as rational, i.e. as free. In doing so, the representation of freedom is in me. In the same undivided action, I simultaneously posit other free beings. Thus, through my imagination I describe a sphere for freedom that several beings share. I do not ascribe to myself all the freedom I have posited, because I posit other free beings as well, and must ascribe to them a part of this freedom. In appropriating freedom for myself, I limit myself by leaving some freedom for others as well. Thus the concept of right is the concept of the necessary relation of free beings to one another.

(3) What is contained first and foremost in the concept of freedom is nothing but the capacity to construct [*entwerfen*], through absolute spontaneity, concepts of our [g] possible efficacy [*Wirksamkeit*]; and the only thing that rational beings ascribe to one another with necessity is this bare capacity. But if a rational individual, or a person, is to find himself as free, then something more is required, namely, that the object in experience that is thought of through the concept of the person's efficacy actually correspond to that concept; what is required, therefore, is that something in the world outside the rational individual follow from the thought of his activity. Now if, as is certainly the case, the effects of rational beings are to belong within the same world, and thus

be capable of influencing, mutually disturbing, and impeding one another, then freedom in this sense would be possible for persons who stand with one another in this state of mutual influence only on the condition that all their efficacy be contained within certain limits, and the world, as the sphere of their freedom, be, as it were, divided among them. But since these beings are posited as free, such a limit could not lie outside freedom, for freedom would thereby be nullified rather than limited *as freedom*; rather, all would have to posit this limit for themselves through freedom itself, i.e. all would have to have made it a law for themselves not to disturb the freedom of those with whom they stand in mutual interaction. –

(4) And so we would then have the *complete object* of the concept of right; namely, *a community among free beings as such*. It is necessary that every free being assume the existence of others of its kind outside itself; but it is not necessary that they all continue to exist alongside one another *as free beings*; thus the thought of such a community and its realization is something arbitrary or optional [*willkürliches*]. But *if* it is to be thought, how – through what concept, through what determinate mode of acting – is it thought? It turns out that, in thought, each member of the community lets his own external freedom be limited through inner freedom, so that all others beside him can also be externally free. This is the concept of right. Because the thought and task of such a community is arbitrary, this concept, [10] if thought as a practical concept, is merely technical–practical: i.e. if one asks, in accordance with what principles could a community among free beings as such be established if someone wanted to establish one, the answer would have to be: in accordance with the concept of right. But this answer by no means asserts *that* such a community ought to be established.

(5) This entire presentation of the concept of right has refrained from refuting in detail those who attempt to derive the doctrine of right from the moral law; this is because, as soon as the correct deduction is given, every unbiased mind will accept it of its own accord, even if the incorrectness of the other deductions has not been shown; but as for biased minds and those who have their own axes to grind, every word uttered for the purpose of refuting them is wasted.

The rule of right, “limit your freedom through the concept of the freedom of all other persons with whom you come in contact,” does

indeed receive a new sanction for conscience through the law of absolute agreement with oneself (the moral law); and then the philosophical treatment of conscience constitutes a chapter of morality; but this is not part of the philosophical doctrine of right, which ought to be a separate science standing on its own. One might say that several learned men who have put forth systems of natural right would have dealt with that chapter of morality without knowing it, had they not forgotten to state why compliance with the moral law (which they must always have had in mind regardless of the formula they used to express it) conditions the agreement of the rational being with itself. Similarly – I mention this in passing – the teachers of morality have generally not considered that the moral law is merely formal and therefore empty, and that a content cannot be obtained for it through sleight of hand, but must be rigorously deduced. It is possible to indicate briefly how the matter stands in our case. I must think of myself as necessarily in community with other human beings with whom [11] nature has united me, but I cannot do this without thinking of my freedom as limited through their freedom; now I must also act in accordance with this necessary thought, otherwise my acting stands in contradiction with my thinking,^f – and thus I stand in contradiction with myself; I am bound in conscience, by my knowledge of how things ought to be, to limit my freedom. Now in the doctrine of right there is no talk of moral obligation; each is bound only by the free, arbitrary [*willkürlichen*] decision to live in community with

^f I have read somewhere that the principle of moral theory is: “The manifold actions of the free will ought to agree with themselves.”⁷ This is a very unfortunate application of the postulate of the absolute agreement of the rational being with itself, a postulate that I proposed in the *Lectures concerning the Scholar’s Vocation*.⁸ In response, one only has to think of becoming a thoroughly consistent villain, as J. B. Erhard (Niethammer’s *Philosophisches Journal*, 1795) portrays the devil in his “Devil’s Apology”;⁹ then the actions of the free will agree perfectly with themselves, for they all contradict a conviction concerning what ought to be, and [the criterion of] such a moral doctrine has been satisfied.

⁷ Fichte probably had in mind Carl Christian Erhard Schmid’s *Outline of Natural Right* (1795), §§94–7. Schmid attempts to characterize rational (moral) agency by invoking Kant’s idea of a unified manifold in the first *Critique*: rational actions are those that are “related by a unity;” moral agency consists in a manifold of actions that “thoroughly agrees with itself.”

⁸ *Some Lectures concerning the Scholar’s Vocation*, published in 1794, contains public lectures that Fichte delivered in the same year to the university community in Jena. Their aim was to communicate the most important ideas of Fichte’s new system to nonphilosophers, especially its moral implications. See Breazzeale, *Fichte: Early Philosophical Writings*, pp. 144–84, especially p. 149.

⁹ Johann Benjamin Erhard, a medical doctor and philosopher, was the author of “Devil’s Apology,” which appeared in 1795 in the second issue of volume 1 of *Philosophisches Journal einer Gesellschaft Teutscher Gelehrten*.

others, and if someone does not at all want to limit his free choice [*Willkür*], then within the field of the doctrine of right, one can say nothing further against him, other than that he must then remove himself from all human community.

(6) In the present text, the concept of right has been deduced as a condition of self-consciousness, along with the object of right; this concept has been derived and determined, and its application guaranteed, as is required of a real science. This has been done in the first and second sections of this investigation. The concept of right is further determined, and the way it must be realized in the sensible world is demonstrated, in the doctrine of civil rights [*Staatsbürgerrechte*]. The investigations into original right [*Urrecht*] and the right of coercion [*Zwangsrecht*] serve as preparation for the doctrine of civil right. The three chapters necessary for the complete determination of civil right (those listed in the book as covering the civil contract, civil legislation, and the constitution) have already been worked out [12] and presented in lectures to my listeners;⁸ they will appear at the next book fair, along with the doctrines of the right of nations, cosmopolitan right, and family right, under the title, *Applied Natural Right*.¹⁰

III Concerning the relation of the present theory of right to the Kantian theory

Apart from some excellent hints by Dr. *Erhard* in several of his most recent writings,¹¹ and by *Maimon* in an essay on natural right in Prof. Niethammer's *Philosophical Journal*,¹² the author of the present work

⁸ It was not possible to print these chapters along with the present text; therefore, they remained behind, and this gave me the opportunity to add to them the other parts of the general doctrine of right. – As a result, there arises just one difficulty for the present book. Based on previous experience I am justified in assuming that not all critics who read my principles will simultaneously acquire a competence to apply them. Thus I ask anyone who does not have a sure self-consciousness of this competence already confirmed by experience not to rush into applying them further, but to await my text.

¹⁰ These chapters were published in 1797 as Part II of the *Foundations of Natural Right*, “Applied Natural Right.” They are included in the present volume under the same name.

¹¹ See n. 9. In addition to “Devil’s Apology,” Erhard wrote *On the People’s Right to a Revolution* (1795) and a review (1795) of Fichte’s *Contributions toward Correcting the Public’s Judgment of the French Revolution*, published in *Philosophisches Journal einer Gesellschaft Teutscher Gelehrten*, 2, 47–84.

¹² The essay in question is “On the First Grounds of Natural Right” (1795) by Salamon Maimon (1753–1800), a self-taught Polish-Russian Jew whose criticisms of Kant heavily influenced Fichte’s attempt to reconstruct Kant’s philosophical system. This essay appeared in *Philosophisches Journal einer Gesellschaft Teutscher Gelehrten*, 1, 141–74.

had found no trace of any philosopher having questioned the usual way of dealing with natural right, until, after completing the foundations of his theory of right according to the principles of the *Wissenschaftslehre*, he was most pleasantly surprised by Kant's extremely important^h work, *Perpetual Peace*.¹⁴

A comparison of the Kantian principles concerning right (insofar as these principles emerge from the work just cited) [13] and the system presented here, may perhaps be useful to some readers.

On the basis of the work just cited, it is not possible to see clearly whether Kant derives the law of right from the moral law (in accordance with the usual way of doing things) or whether he adopts another deduction of the law of right. But Kant's remark concerning the concept of a permissive law [*Erlaubnisgesetz*]¹⁵ makes it at least highly probable that his deduction agrees with the deduction given here.

A right is clearly something that one can avail oneself of or not. Thus a right follows from a merely permissive law, and it is a permissive law because it is limited only to a certain sphere, from which it can be

^h What is one to think of the acumen of part of the public, when one hears this work placed in the same class with the ideas of the Abbé St.-Pierre, or with Rousseau's ideas on the same topic?¹³ These two said only that the realization of this idea [of perpetual peace] would be desirable, to which every sensible person no doubt responds that the idea would not be impossible, if human beings were different from how they still presently are. *Kant* shows that this idea is a *necessary* task of reason and that the presentation of this idea is an end of nature that nature will achieve sooner or later, since she works endlessly towards it and has actually already reached so much that lies on the way to the goal: thus Kant's position is undoubtedly a very different view of the same topic.

¹³ Charles Irénée Castel de Saint-Pierre (1658–1743), commonly known as the Abbé de Saint-Pierre, was an eighteenth-century publicist and reformer who wrote extensively on politics, morality, and social issues. In his “*Traité pour rendre la Paix perpétuelle en Europe*” (1713) he advocated a confederated Europe ruled by a central assembly as a means to world peace and stability. In response, Jean-Jacques Rousseau (1712–1778) wrote his “*Extrait du projet de paix perpétuelle de Monsieur l'Abbé de Saint-Pierre*” (1761), in which he criticized the Abbé for being overly optimistic and neglecting the important role that glory and prestige inevitably play in human affairs. Translated excerpts from Rousseau's treatise can be found in *The Indispensable Rousseau*, ed. John Hope Mason (London, Quartet Books, 1979).

¹⁴ Immanuel Kant's *Perpetual Peace* was published in 1795, just one year before the publication of Part I of Fichte's *Foundations of Natural Right*. It provided the philosophical public, including Fichte, with a glimpse of some of the elements of the more complete political theory that Kant would go on to develop in *The Metaphysics of Morals* (1797), trans. Mary Gregor (Cambridge: Cambridge University Press, 1996). In addition to establishing basic principles of international law and arguing that a federation of republics is the surest means to world peace, Kant invokes the idea of a social contract to explain political authority, defends the division of powers, and denies that a people has the right to revolt against an established authority. See “*Perpetual Peace: A Philosophical Sketch*,” in *Kant: Political Writings*, ed. Hans Reiss (Cambridge: Cambridge University Press, 1970), pp. 93–130.

¹⁵ See “*Perpetual Peace*,” pp. 97–8n.

inferred that outside the sphere of the law one is free from it, and if there is no other law concerning this object, one is generally left solely to one's own arbitrary choice [*Willkür*]. This permission is not explicitly contained in the law; it is merely inferred from an interpretation of the law, from its limited character. The limited character of a law manifests itself in the fact that it is conditioned. It is absolutely impossible to see how a permissive law should be derivable from the moral law, which commands unconditionally and thereby extends its reach to everything.

Our theory fully agrees with Kant's claims that the state of peace or lawfulness among human beings is not a natural state, but must be instituted; that one has the right to coerce even someone who has not yet attacked us, so that, by submitting to the authority of the government, the coerced person might afford us the requisite security; and in our theory these propositions have been proved in the same way in which they are proved by Kant.

Our theory is just as much in agreement with the Kantian argument for the propositions that the association of the state can be constructed only on the basis of a contract that is original, but necessarily entered into; [14] further, that the people itself does not exercise executive power, but rather must transfer it, and that therefore democracy, in the proper sense of the word, is a constitution fully contrary to right.¹⁶

But I have been led to different thoughts regarding the claim that, for the purpose of maintaining the security of right in the state, it is sufficient to separate the legislative and executive powers, as Kant seems to assume (merely *seems*, for in this work it was evidently not Kant's intention to give an exhaustive treatment of the subject). Here I shall briefly summarize the main points of the present treatise.

The law of right includes the idea that, when human beings are to live alongside one another, each must limit his freedom, so that the freedom of others can also exist alongside that freedom. But the law of right says nothing to the effect that a particular person should limit his freedom

¹⁶ By "democracy" both Fichte and Kant usually mean a state in which supreme executive authority (as opposed to the authority to make law) resides in the people as a whole. For Kant, democracy in this sense is necessarily despotic, because in such a state laws would be both made and executed by the same body (see "Perpetual Peace," pp. 100–1). This is what Fichte calls democracy "in the proper sense of the word," although he also uses "democracy" in a narrower sense to refer to a state in which those who hold executive power are directly elected by the people (§16, VI).

specifically through the freedom of a particular second, third, or fourth person. That I must restrict myself specifically in relation to these particular human beings derives from the fact that I live in community specifically with them; but I live in community specifically with them as a result of my free decision, not through any obligation. Applied to the civil contract, this means it is originally up to the free and arbitrary choice of every individual to determine whether he wants to live in this particular state or not, although if he wants to live among other human beings at all, then it is not up to his arbitrary choice to determine whether he enters into a state, or whether he wants to remain his own judge; but, just as he expresses his will to enter into a particular state and just as he is accepted into such a state, so he is, by virtue of this simple, reciprocal declaration, subjected without further ado to all the limitations that the law of right requires for this group of human beings; by virtue of the words, "I want to live in this state," he has accepted all the laws of that state. The law of the state, with regard to its *form*, becomes his law by virtue of his consent, but the law of the state, with regard to its *content*, is determined without any consent by him by the law of right and the circumstances of this state.

[15] Furthermore, the law, "limit your freedom through the freedom of all others," is merely formal and, as set forth thus far, is not capable of being applied; for just how far should the sphere of each individual extend within which no one may disturb him and beyond which he, for his part, may not go without being regarded as someone who disturbs the freedom of others? On this, the parties must reach some agreement in good faith. Applied to the state, this means: on entering the state, each must come to an understanding with it concerning a certain range for his free actions (property, civil rights, etc.). What then limits him to precisely this sphere? Evidently, his own free decision; for without this decision, he would have just as much right as others to everything that remains left over and available to them. But then what determines how much can be granted to each individual for himself? Evidently the common will, in accordance with the rule: this particular number of human beings should be free alongside one another in this particular sphere for [the sake of] freedom in general; thus, so much belongs to each individual.

Now the citizens must be kept within these limits by coercion, and a certain, impending harm (in case they overstep them) must deter their

will from deciding to overstep them. It is clear that this punishment, which is determined by criminal law, must be known to them if it is to have an effect on their will; furthermore, it is clear that, by entering into the state, they have made themselves subject to this harm, in case they overstep the law.

But then who is to *proclaim* the common will (which is, of course, completely *determined by the nature of the matter*) concerning both the rights of individuals and the punishment of those who overstep their rights? Who, then, is to *clarify and interpret* that necessary decree of nature and of the law of right? No one would be more ill-suited than the masses, and by aggregating individual votes one is likely to obtain a very impure version of the true common [16] will. This task can belong to no one other than he who constantly oversees the whole and all of its needs, and who is responsible for the uninterrupted rule of the strictest right; in other words, it can belong to no one other than the administrator of the executive power. He provides the content of the law, which is given to him by reason and by the circumstances of the state; but the law gets its form, its binding power for the individual, only through the individual's consent, not specifically to this determinate law, but to be united with this state. For these reasons and in this sense, our theory claims that the legislative power in civil legislation and the executive power are not to be separated, but must remain necessarily united. Civil legislation is itself a branch of the executive power, insofar as it is only right in general that is being executed. The administrator of the executive power is the natural interpreter of the common will concerning the relationship of individuals to one another within the state; he is the interpreter, not exactly of the will that the individuals actually have, but rather of the will that they must have if they are to exist alongside one another; and this is so, even if not a single person should, in fact, have such a will (as one might well assume to be the case from time to time).

The law concerning how the law is to be executed, or the *constitution*, is of a completely different kind. Every citizen of the state must vote in favor of the constitution, which can be established only through absolute unanimity; for the constitution is the guarantee that each receives from all the others, for the sake of securing all his rights within the society. The most essential component of every constitution is the ephorate as it is established in the present theory. I leave it to the judgment of

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unbiased experts to determine whether the ephorate is sufficient to secure the rights of all without the separation of the legislative and executive powers, a suggestion that has been made by others but seems impracticable to me. (*The extent to which Kant approves of this separation, which is quite correct in part, is not apparent from his essay.*)