

*Fichte's Organic Unification: Recognition and
the Self-overcoming of Social Contract Theory*

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The theory of *mutual recognition* inaugurated by Fichte in the *Foundations of Natural Right* seems to offer an alternative to the standard grounding of liberalism in the voluntary consent of the individual. Yet there is a prominent thread of voluntarism running throughout the text and in “Part II, or Applied Natural Right” Fichte presents his own version of the social contract. The account is thus marked by a tension between a conception of freedom as interdependence (mutual recognition) and the idea that freedom is grounded in the voluntary act of the bare individual (social contract). While many commentators have noticed the main tension, relatively little attention has been focused on the move by which Fichte resolves the tension, namely the move in §17 to a “unification contract” through which individuals as parts are absorbed into the community as an organic whole. This move to the organic is surprising, at least in part because Hegel took it upon himself to criticize Fichte’s political philosophy for an individualism that is supposed to contrast unfavorably with Hegel’s own organicism. But as in many aspects of his philosophy, this is a case of Hegel critically appropriating a Fichtean concept and in the severity of his critique obscuring the novelty and complexity of Fichte’s original view. Rather than treat Fichte’s organicism primarily as a precursor to Hegel, in this essay I foreground Fichte’s relationship to the social contract tradition. My thesis is that Fichte’s theory of intersubjectivity draws out tensions internal to social contract theory, and that in the end his move to the organic pushes beyond the bounds of contract theory, showing how contractualism overcomes itself.

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Two Types of Social Contract Theory

One of the main difficulties in assessing Fichte's relation to social contract theory is that so many different versions of the social contract have been proposed. There are clearly some affinities between Fichte's overall theory and the theories of Hobbes, Locke, and Rousseau, to name just the three most prominent exemplars.² But those three authors are quite different, both in their starting premises and in the conclusions that they draw from the idea that political authority is grounded in a social contract. In this section I will make a distinction between the *atomistic contractualism* of Hobbes and Locke, on the one hand, and the *holistic contractualism* of Rousseau (who would be followed by Kant and Rawls). My purpose with this rough distinction (which will ignore many important differences) is to fix these two strands of the tradition in order to show which elements of Fichte's position move him from one strand to the other and eventually push him beyond the ideas that gave contractualism its intuitive appeal.

To understand the importance and novelty of organic unification it is essential not to jump the gun on Fichte's divergence from the contractualist paradigm. In this section I therefore critically review accounts of how Fichte's intersubjectivity and transcendental method already serve to divide him from the contractualist tradition. While I do think there is something to these claims, I also think that Fichte held his contractualism to be consistent with his theory of mutual recognition, and it is that fact that we need to understand first before we can see how the logic of intersubjectivity drew him beyond contractualism.

The following elements are integral to the model of social contract theory that I am calling *atomistic contractualism*. The name derives from the basic claim that the individual person in the contractual situation is a self-enclosed entity, an original source of authority:

- The *state of nature* defines both the *equal status* of the individuals prior to entry into political community and the conditions of scarcity and competition that drive individuals to form a contract.
- Individuals are *motivated* by fear of injury and death, and by the self-interest of acquiring and securing property.
- The *source of obligation* is the individual's own *act of consent* to the terms of the social contract.

² See Siep 1992 for an excellent discussion of Fichte's relation to the tradition.

- The public authority's main purpose is the *protection of individual property* and the maintenance of public order.
- By the terms of the contract, the public authority is *limited* in how much it can encroach upon the rights of the individuals, especially upon their property rights.

This picture clearly has great intuitive appeal, deriving mainly from the following four points:

- The motivational sources (fear and self-interest) are clear and uncontroversial.
- The source of authority is familiar from ordinary contracts in which each holding up his end of the bargain is conditional on the other doing so as well.
- There are pre-contract claims that are fixed, non-negotiable points of reference to guarantee individual liberty.
- The social contract can be dissolved if its terms are not upheld, and this gives teeth to the conditional nature of the agreement.

While neither of these lists is exhaustive, I hope that they capture the basic ideas and appeal of the original contractualist framework.

With these elements now in place, we can see why one might think that Fichte's opening moves in the *Foundations of Natural Right* are in tension with atomistic contractualism. First of all, Fichte sets up his derivation as aiming to secure the conditions of *individuality*, which he thinks of as a *contrastive* concept that requires determinately distinct human beings. This alone implies that he is not taking individuals in a state of nature as self-contained units on the basis of which a contract could be reached. Atomistic contractualism assumes that the individuals are free agents, but Fichte's first major move in the *Natural Right* is to argue that one can only be free as the result of a summons to freedom by another individual. This summons is fraught with implications for political theory given that it precedes the category of right and that it is a relationship of education, or nurture, rather than a relationship based on self-interest and fear.

Matters are complicated by the fact that Fichte's next main move, to *mutual recognition*, is not a straightforward extension of the *Aufforderung* argument (a point I will emphasize in Section 2). But one can argue that the recognition argument, too, puts Fichte at odds with the contractualist tradition. Wayne Martin writes, "For the contractarian presupposes what Fichte holds must be established by deduction: namely that the very

category of political obligation (of *Recht*) has a legitimate employment.”³ This is just what the recognition argument aims to establish, and it does so through Fichte's method of deducing the conditions of self-consciousness. Martin argues that the category of right is not deduced in a contractualist manner and that we should therefore separate the contractualist argument of the second half of *Natural Right* from the arguments of the first half.

Yet Fichte does in fact share many elements with atomistic contractualism. Most conspicuous among these elements is Fichte's claim that the bindingness of right comes from the voluntary act of the individual. He repeats this claim several times, and even mentions it *within* his argument for mutual recognition (more on this below). Second, Fichte's much discussed separation of morality and right is consonant with atomistic contractualism. Fichte insists that right is a separate category that presupposes no moral motivation, and that in fact assumes a universal egoism, so right is based on a theory of self-interest. Closely connected with this point is Fichte's embrace of force as the only motivating element within right. His thesis that “faith and trust” cannot be assumed within right also puts him in a camp with Hobbes on the issue of the mutual antagonism that leads to political community.

What should we make of these conflicting strands in Fichte's account? One route is that taken by Robert Williams in his Hegelian criticism of Fichte. Williams takes a stand against Fichte's contractualism because he holds it to be a betrayal of the ethical potential of the summons and recognition arguments. Williams argues that Fichte's “ontological grounding” in recognition is betrayed by the subsequent contractualism because recognition is ontological not only in the sense of a requirement for *being* a subject but also in the sense that recognition underwrites a deep sense of community: “Community in this ontological sense reflects a union of individuals that is deeper than contracts which are conditional, contingent unions of wills.”⁴ Against Fichte's avowal of separating morality and right, Williams insists that the recognition relation is an ethical relation, and therefore that the subsequent phases of the argument, premised as they are on universal egoism, are a betrayal of the insight of recognition.

My alternative interpretive route is to see Fichte's seemingly contradictory tendencies as his way of supporting a version of contractualism that

³ Martin 2006: 7. See also Baur 2006 for an argument that Fichte's summons argument puts him at odds with social contract theory.

⁴ Williams 2006: 30.

alters the standard atomistic account. I read Fichte as the most daring representative of the tradition of holistic contractualism inaugurated by Rousseau. There are several ways in which this alternative strand of contractualism is holistic.

- The *first* dimension is methodological: we cannot think of the starting point, the state of nature or circumstances of justice, as a fixed base on which the subsequent normative claims can be built. In this sense, the holism is opposed to the *foundationalist* aspect of atomistic contractualism. Whereas the atomist takes the human condition as a foundational starting point, the holist typically posits the goals of the account and then develops an account of how our social condition must be transformed in order to fit the posited political norms.
- A *second*, related dimension of holism concerns the agents themselves. The *identities* of the agents in the social condition are bound up with the community – the whole is a condition of the identity of the individuals. The *punctual act of consent* can no longer be the model of the subjectivity that grounds the state. Once an individual joins society her subjectivity will be thicker, and can be the basis for thicker sorts of norms. This is also an issue of motivation, for while the pre-social individual is characterized only by fear and self-interest, the individual within society is a moral being with a developed sense of justice.
- *Third* and finally there is the question of how to conceive the specific claims, especially the property claims, prior to entry into the contract. Here of course Locke and Hobbes will be opposed, and it is the Lockean pre-social property claims that stand out as atomistic. In the holistic program, pre-social property rights will be provisional at best, for the claim is that only in the political state can property be rightful, lawful. The whole, the political community, is in the position to conclusively secure an individual's property rights, but also to say what the limits are of those rights are.

Taken together, these three dimensions of holism are a major shift from atomistic contractualism, for they complicate the conceptions of the voluntary individual and the way in which that individual authority is transmitted to social institutions. The pressing question for holistic contractualism is how far it can depart from the atomistic model without losing the intuitive elements that make contractualism attractive in the first place.

Free Choice and Hypothetical Reasoning in the Recognition Argument

In this section, I examine the main elements of Fichte's argument for the concept of right based on mutual recognition, the argument that Martin and Williams hold to be in tension with Fichte's contractualism. While there are in Fichte's recognition argument traces of the pressures that will eventually lead him to move to holistic contractualism, I will emphasize the ways in which recognition is consonant with atomistic contractualism. This should not be completely surprising, since the social contract is, after all, also a way of binding individuals to shared norms. Yet the direct I–thou intersubjectivity of the *Aufforderung* and recognition arguments seem to promise something different. I will argue later that there is indeed an intersubjective element that breaks open the contractualist paradigm when Fichte introduces the unification contract. To understand how Fichte's political philosophy is a *self-overcoming* of contractualism, though, we first have to understand how he aims to unite his intersubjective insights with the atomism and voluntarism of the tradition.

Fichte's argument for an *Aufforderung* or summons to freedom in §3 is based on the idea of the efficacy of a finite being who can only posit ends in a determinate way if there is an object to resist the activity. Fichte sets up the summons with the idea that any object encountered in the world would negate the subject's efficacy unless that object were in fact the activity of another subject. Following the principles of the Jena *Wissenschaftslehre*, Fichte's deduction here is based on the conditions of the possibility of self-consciousness. His argument is that a doubling of finite consciousness must be thought in order for the activity of an individual subject to be thought. The summoning is an act in which one subject calls another to freedom, leaving the subject who is summoned free to act in a manner of her choosing. That subject is determined, but determined *to be self-determining*. Fichte thus proposes to ground a self-limitation not through fear or self-interest, but rather through the basic demand to secure the conditions of free individuality. Fichte's thesis is about *how one becomes a human being*, and he thus seems to build into the heart of his theory the priority of the community over the individual, or the whole over its parts.

In the mutual recognition argument for the concept of right Fichte continues to stress the uniquely second-personal conditions of individual freedom. Each individual needs a discrete sphere of efficacy, but my

sphere can only be determined by another, whose status can in turn only be secured through my recognition of his freedom. The fundamental premise is: “*I can expect a particular rational being to recognize me as a rational being, only if I myself treat him as one*” (FNR, 42; SW, III: 14). This recognition is not mediated by a third party, and is not a recognition in my conscience, but is a recognition between particular individuals in a “common consciousness.” He writes of the concept of individuality, “This concept can exist in a rational being only if it is posited as *completed* by another rational being. Thus this concept is never *mine*; rather, it is – in accordance with my own admission and the admission of the other – *mine and his, his and mine*; it is a shared concept within which two consciousnesses are unified into one” (FNR, 45; SW, III: 47–8). The result of mutual recognition appears to be a condition of full mutuality in which our obligation to each other constitutes our identity: “we are both *bound and obligated* to each other by our very existence” (FNR, 45; SW, III: 48).

Fichte’s claim of *constitutive intersubjectivity* is seriously complicated by his claim that one is bound to a rightful relation only through a *voluntary* act. This voluntarism comes out clearly when Fichte makes a point of distinguishing the *Aufforderung* argument from the *Anerkennung* argument, stressing the necessity of the former and the voluntary character of the latter. After writing of the need for mutual influence for the genesis of self-consciousness, he writes: “But that, even after self-consciousness has been posited, rational beings must continue to influence the subject of self-consciousness in a rational manner, is not thereby posited, and cannot be derived without using the very consistency that is to be proven as the ground of the proof” (FNR, 81; SW, III: 87). For the genesis of self-consciousness one needs other people, but there is no original obligation of right, and no demand of rationality (considered apart from the rationality of the moral law) that requires us to be in the relation of right with others.⁵ The consistency that Fichte refers to in this passage is the very same “law of thought” that plays a large part in the recognition argument. The voluntary character of the recognition relation stems from Fichte’s claim that I have to will to act *consistently* with regard to the other for the argument of right to go through. I must treat another as a rational being “only to the extent that I proceed rationally, i.e. with theoretical

⁵ Fichte writes: “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” (FNR, 15; SW, III: 14).

consistency" (*FNR*, 44; *SW*, III: 47). The other "is required by virtue of theoretical consistency – to recognize me *categorically*" once the other has voluntarily accepted the law of consistency by choosing to interact with me (*FNR*, 44; *SW*, III: 47).

A key element of Fichte's recognition argument is that the two agents must engage in "reciprocal interaction" while acting in the sensible world (*FNR*, 43; *SW*, III: 45). The point I wish to stress is that Fichte utilizes within the recognition argument an example of actual interaction that represents a typical move of the atomistic contractualist. The imagined scene is that of the other agent robbing me of my freedom and my judging the other by a law that we share. Fichte introduces this as a digression, but should be seen as a component of the recognition argument itself. Once we appreciate this point, we can see how close the recognition argument is to standard contractualist accounts. Imagining a kind of punishment I am entitled to exercise, Fichte writes:

I judge him by reference to a concept that he himself – according to my claim – must possess. (Hence the *positive element* in the concept of right, whereby we believe that we impose on the other an obligation not to resist our way of treating him, but even to approve of it. The source of this obligation is certainly not the moral law; rather, it is the law of thought; and what emerges here is the syllogism's practical validity.) (*FNR*, 47; *SW*, III: 50)

In so far as you are consistent you must concur in my judgment that you deserve punishment. The consistency of the laws of thought once again applies to actions – you have willed the violation of freedom and you therefore must also have willed the judgment that your own activity should be curtailed in equal measure according to the law. If you will the end of community, you will the freedom of each and the punishment of anyone who breaks the law. That you could be the lawbreaker and therefore be subject to punishment must be acknowledged by you in so far as you are bound by the law of thought.

Fichte's invocation of theoretical rationality in relation to the practical makes most sense if we think of the norm of consistency as a norm of *instrumental rationality*.⁶ Fichte's use of the instrumental principle becomes clear if we think of the relation of *condition to conditioned* as a relation of *means to end*. He has shown that activity and individuality is possible only *on the condition of* another leaving a space of freedom open for me, and in

⁶ Ware 2010 also takes this consistency to represent instrumental rationality.

that sense the other's recognition is a *means* to my end of free activity. It would be irrational of me not to recognize the other in turn, since in doing so I would be thwarting the means to my own end. Utilizing the *modus ponens* schema, we can think of Fichte's argument as follows:

1. If I will free action, I must will your recognition of my free agency.
2. I will free action.
3. Therefore, I must will that you recognize me as a free agent.

But this inference by itself is incomplete, and must be paired with a second in order to complete the argument.

1. If I will that you recognize me as a free agent, I must recognize you as a free agent.
2. I will that you recognize me as free agent.
3. Therefore, I must recognize you as a free agent.

In Fichte's terms, I would be *inconsistent* if I aimed at an action, acknowledged that another's recognition of me was a necessary means to that action, and yet did not do my part in recognizing the other, for my granting that other's freedom is a condition of his recognizing mine. Since I need the other to treat me as a free being, and he can do so only if I treat him as a free being, I *must* treat him as a free being. Thinking of the laws of thought in terms of instrumental rationality makes it easier to understand Fichte's claim that "consistency here depends on the freedom of the will" (*FNR*, 80; *SW*, III: 86) and it is impossible "to provide an absolute reason why the rational being should be consistent and why it, in consequence of this, should adopt the law that has been established. But perhaps it is possible to offer a hypothetical reason" (*FNR*, 80; *SW*, III: 86). Fichte's idea is that *if* you will community, *then* there is a reason for you to be bound by right. You must *make* consistency and community *into your end* through an act of choice. In this way the demands of community and consistency are mutually reinforcing, for consistency is a kind of means to the end of community, and community is the realization of the choice of consistency. His point is that if you do not choose to be consistent, you *cannot* choose to live with other people because you would not have committed yourself to treating them as free beings.

Fichte's recognition argument is surprisingly in line with atomistic contractualism, yet we can see within this means–end structure the root of the move towards holistic contractualism. Fichtean right is atomistic in so far as the end of community is posited from the perspective of an

independent, already formed individual. The individual may need others to become a fully formed agent, but his *choice* to enter into community is independent of that story about his origins. At the point I decide to enter into (or remain in) relations with others, I view the others as means to the end of my own preservation, security, property, and so on. The question, then, is in what way exactly I must will the freedom of the others in order to claim from others respect for my freedom. The basic contractualist answer is that I must will the same conditions for others that I will for myself: the same laws, the same protective powers treating us equally, the same judicial procedure for all, and so on. But Fichte's framework makes the issue of the *extent* of the individual's activity and ownership claims unavoidable. The definition of right, "*I must limit my freedom through the concept of the possibility of his freedom,*" includes nothing about how much I or the other must realize the capacities for activity and ownership (*FNR*, 49; *SW*, III: 52). But the formulation in terms of an indeterminate possibility is misleading. When I will the realization of an end, willing the *possibility* of the same end being *realized* by others amounts to willing that the conditions for the realization of that freedom by others obtain. The principle of reciprocity in recognition thus implies that any rightful exercise of my freedom entails that I will *the same freedom* for others. If I will the security of my job, I must will that security for all others as well. In this situation, it is not hard to imagine that I will for myself the political norms that would allow me to realize my capacities. If that is the case, then I am committed to willing the realization of the capacities of everyone else as well. It is not a very big step from here to *holistic contractualism*, and as we shall see, Fichte takes the holism even further in claiming a holistic character for the social agency instituted with the unification contract.

The Property and Protection Contracts

Before turning to Fichte's actual discussion of the three contracts, a brief look at one crucial dimension of his theory of property rights will help set the stage for the move from atomistic to holistic contractualism. Fichte says some puzzling things about the nature of an "original right" that make most sense if we read him as setting up a holistic contractualism. The issue is how it is possible to think about an individual's rights prior to thinking about the individual within a commonwealth. Fichte claims both that one can think of such rights prior to the social contract proper,

and that this concept of original rights possesses “no real meaning” (*FNR*, 101; *SW*, III: 112). He writes:

There is no condition in which original rights exist; and no original rights of human beings. The human being has actual rights only in community with others, just as – according to the higher principles noted above – the human being can be thought of only in community with others. An original right, therefore, is a mere *fiction*, but one that must necessarily be created for the sake of a science of right. (*FNR*, 102; *SW*, III: 112)

Fichte’s theory of original rights and its exact relation to property rights and coercion is too complex to go into here. The point I want to stress is that this use of a necessary fiction is a paradigmatic example of how holistic contractualism works.⁷ The theory relies on principles that define the rights of individuals provisionally, but with the attendant claim that those principles only receive their full meaning in the system of social practices instituted by the contract. Notice in the above passage that Fichte links his claim of “actual rights” to the idea of the *Aufforderung*, the intersubjectivity that *precedes* the argument for recognition. This gives a hint that Fichte’s theory of actual rights in society will have the more thoroughgoing intersubjective character that the recognition argument lacked.

Fichte’s preliminary account of the nature of a contract confirms that it is an extension of, rather than a departure from, the recognition argument. He discusses the contract as a relation of right between two people, thus essentially recapitulating the recognition argument with the help of the additional claims about property and coercion that he has developed in the intervening sections. He does emphasize that property should be understood in a broad sense as “a person’s right to free action in the sensible world in general,” but for the most part the property contract proceeds along standard atomistic contractualist lines (*FNR*, 168; *SW*, III: 195). The contract is negative in the sense that it just guarantees that each of us will *refrain* from doing anything to the property of the other. Each of us is bound to limit ourselves in relation to the property of others, leaving the others free to use their property for their own purposes, as was the case in the original recognition argument.

The first important move beyond the property contract is the shift from the merely negative guarantee (I refrain from taking your property) to the positive guarantee that I will *protect* your property. This move to the *protection contract* changes the nature of the conditional argument.

⁷ See Breazeale 2002.

Instead of, "I won't touch your stuff if you don't touch mine," it is now "I promise to actually protect your stuff on the condition that you actually protect mine." Fichte writes, "each individual would promise to all the other individuals (who are still regarded as individuals) that he will use his own power to help them protect the property that is recognized as theirs, on the condition that they, for their part, will likewise help to defend his property against violation" (*FNR*, 171; *SW*, III: 197). In this contract, "the person's will, which had been merely negative in relation to the other's property, now becomes a positive will" (*FNR*, 171; *SW*, III: 198). Each protects the property of the other on the condition that the other protects him. If you protect my property I will protect yours. I have the end of protecting my own property, and I promise to protect your property as the means to protecting my own.

The protection contract seems to be a conditional contract with the same structure of conditional mutuality as recognition and the property contract. But Fichte holds that it is fundamentally different. In the protection contract, the condition – that you *actually* protect my property – cannot be continuously met, for it goes beyond the mere *promise* of protection to *actual acts* of protection. There is an insoluble problem with such a hypothetical contract based on a condition of *actual* performance. My promise to protect your property is conditioned on you protecting my property, but this condition has to be met at every moment for my duty to you to be in effect at every moment. Even your past protection of my property is not enough to satisfy the condition, since it would still leave me relying on your continued good will from that prior moment until now. Fichte writes:

In the sphere of right, there is no way to bind human beings together other than through the insight: whatever you do to the other, whether good or bad, you do not to him, but to yourself. In the case at hand, this means that I would have to be able to see that, in protecting the other, I protect only myself; I do so either actually in the present, or else – if in the future I should need protection – his protection of me follows with absolute necessity from my having protected him. The former is impossible; for insofar as I do the protecting, I neither need, nor receive, protection; the latter is equally impossible; for the decisions of the other's free will cannot be foreseen with absolute certainty. (*FNR*, 172–3; *SW*, III: 199)

Recall that the laws of thought that underwrite the rationality of right depend on conditionals, where only the implications of adopting certain ends can be demanded by reason (you must will the means if you will the end). With the protection contract Fichte is claiming that each individual

must *actually will* the protection of others' property, must adopt the protection *as his end*. But *that* one has adopted an end can only be established by an internal act of the good will, which would be inappropriate for the domain of right, or by the actual performance of the protective act at every moment. Yet the latter route could not even work in principle, for if I am always able to protect others then I am never in need of protection for myself and I therefore cannot receive my end of the bargain. As Fichte makes clear in the passage above, only if I can see my protection of you as simultaneously a protection of myself – only if my protection of you is a means to my own protection – would we be bound together through right.

The lesson of the protection contract is that atomistic contractualism gets in the way of its own fulfillment. The conditional, instrumental reasoning at the heart of contractualism entails that the purpose of security will always remain elusive because each person's adopting of the end of another's security depends on a condition – that very same adoption – that cannot be reliably met. The issue can also be formulated in terms of obligation. I am obligated to protect your property on the condition that you protect mine, but unless you are already protecting my property then I have no obligation, and you would not be protecting my property if you were yourself in need of protection. What is needed is an agreement that would not be conditional in this way. But a non-conditional agreement might not share enough characteristics with an ordinary contract to qualify as contractualist, and it may compromise the overall contractualism of a political theory if such a non-conditional agreement is one of the theory's essential elements.

The Unification Contract

The protection contract is not a feasible contract, yet it contains a demand that is enacted and is enforceable once the *unification contract* has been sealed. Fichte's unification contract is puzzling for several reasons. For one, while it does not *at first* depart very much from the standard atomistic contractualist line (that the social contract has as its main objective protecting property by means of an overwhelming common force), the result of the argument is an organicism that dramatically alters the atomist's premises. Another puzzle is just how the argument is supposed to function at the motivational level. To motivate the unification contract Fichte does not depart dramatically from the egoism that guides much of his account, yet in the organic whole Fichte thinks of individuals as

having duties to others and as being involved in a quasi-moral educational process. My claim is that this organic unification argument does indeed represent Fichte's shift from the atomist to the holistic contractualism, but also that the theory that emerges is unstable, and that its very instability highlights the tensions internal to social contract theory that result in its self-overcoming.

Fichte sets up the unification contract by asking with whom the individual negotiates in entering into the contract: is it one specific other person, as would seem to be required by the basic structure of recognition? Or can it somehow be a contract with all others for mutual protection? His surprising answer to this question is that the very indeterminacy of the concept of the counterpart in negotiation changes the nature of the contract. He writes:

The second party demands protection; – for which particular individual, then, does this party demand protection? For no particular individual at all, and yet for all of them; that is, for every individual whose rights are violated; now every one of them may or may not be such an individual. Therefore, the concept of who is to be protected is in *oscillation* [*im Schweben*]; it is an indeterminate concept: and this is precisely how we get the concept of a whole that is not merely *imagined*, i.e. not merely produced by our thought, as was the case above (I), but rather the concept of a *real* [*reellen*] whole, one that is unified by virtue of the subject matter itself; it is not the concept of a bare “all,” but of an “all-ness” or totality [*nicht bloss Aller, sondern einer Allheit*]. (FNR, 175; SW, III: 202)

The basic difference is between a whole that is composed by adding the independently existing parts and a whole that comes about in such a way as to make clear the dependence of the parts of the whole. The contrast in the passage is with the whole developed in the *property contract* (FNR, 169; SW, III: 195). In that contracting situation, the individual contracts with every other individual one by one, and the sum total of those individual contracts adds up to a contract with the whole. In the current case, the other party to the contract could be anyone, so (Fichte argues) a whole-part relation arises with the character of an organism, in which the parts (the individuals) depend on each other through the concept of the whole (the common power).

Since we do not know in advance who will need protection, we each have a stake in making sure that we all are protected. At the outset of the argument Fichte emphasizes the sense in which this contract does tap into the self-interest or egoism that he has stressed at many points in the *Natural Right*. He writes, “No one ever knows who will actually

be transgressed against; it can happen to anyone. Thus each individual can believe that this whole protective arrangement has been established solely for his benefit, and so will gladly make his own small contribution to it" (*FNR*, 175–6; *SW*, III: 202). The entry into the whole seems to be a straightforward instrumental willing of one's own self-preservation. Fichte stresses that each part "wills its own self-preservation" in willing the preservation of the whole (*FNR*, 176; *SW*, III: 203). It would seem that one could still maintain an instrumental relation to the state, seeing the whole simply as a means to the end of one's own self-preservation.

Yet there is a shift in the turn towards the organic, for the very idea of an organic whole is supposed to rule out the kind of atomistic self-interest that characterizes strategic entry into a contract. The argument from fear of transgression does not simply involve the *self-centered* fear of my own death. Rather, the argument also involves the *de-centering* move to a shared knowledge that we all equally bear this risk. This is why Fichte writes, "this uncertainty as to which individual will first be transgressed against ... is the real bond that unites the different individuals" (*FNR*, 176; *SW*, III: 203). The idea is that the uncertainty over who will need protection produces a kind of solidarity, the wholeness or commonality that had previously been lacking in the contract. If the fear was a fear of each other – which would be more in line with the idea that "faith and trust is lost" – then we could hardly expect a "real bond" to arise from this uncertainty.

Fichte writes that "the individual becomes a part of an organized whole, and thus melts into one with the whole" (*FNR*, 177; *SW*, III: 204). This melting into one with the whole is striking given that Fichte's account started from the conditions of individuality. Fichte emphasizes that individuals retain a real claim to the property that is not required by the state, so in that sense we do preserve our claims as discrete individuals. But the dependence on the whole does fundamentally alter the nature of individuality, bestowing on us both a particular place and a more stable set of desires. Fichte writes:

Similarly, it is only within the unity of the state that the human being attains a particular place in the scheme of things, a fixed position within nature; and each person maintains *this particular* place in relation to others and in relation to nature only by existing in *this particular* unity. Apart from the state, human beings would experience only passing gratification, but never the least concern for the future. (*FNR*, 181; *SW*, III: 208)

In a sense this just spells out the summons argument, for the particular–whole relation is quite like the individual–community relation laid out

at the beginning. The reference to "passing gratification" makes clear the educative or transformative dimension of the membership in the state.

One of the key issues in this transformation concerns the conditionality at the heart of contractualist views, and indeed of his own recognition argument. After unification I do not need to actually be protected before I am bound to protect others, for in the whole there is a power that will protect each individual. By entering the contract I can expect the common power to protect me, so I am now bound to hold up my end by contributing to this whole (through taxation and whatever else is required of me). Viewing the whole as a living system, the question of actual performance is no longer pressing since we now assume a proper functioning of the whole and a proper functioning of the parts. Fichte writes:

This contract is its own guarantee: it contains within itself the sufficient ground of its fulfillment, just as every organic being has within itself the complete ground of its existence. For any person, either this contract does not exist at all, or, if it does, then it binds him completely. Anyone who does not fulfill this contract is not a part of it, and anyone who is a part of it necessarily fulfills it entirely. If someone exists apart from this contract, then he stands outside every rightful relation whatsoever and is rightfully excluded altogether from any reciprocity with other beings of his kind in the sensible world. (*FNR*, 180; *SW*, III: 207)

This passage might seem to affirm the conditionality that we have been considering throughout: if you will to coexist with other beings, you must will to stand in rightful relations with them. But it actually takes the argument further, for it asks the contractor to negate his independence in a more radical way than any of the previous moves. The contract "binds him completely" and the agent "necessarily fulfills it entirely" because there is no perspective outside of the whole from which he would make claims that would release him from his obligations.

Fichte's Holistic Contractualism

Let us return now to the three dimensions of holistic contractualism to see how Fichte's theory lines up. The first dimension is *methodological*, and hinges on the idea of not seeing the opening moves as fixed justificatory points that are supposed to provide a foundation for the rest. Fichte does sometimes encourage such a foundationalist reading of his idealism when arguing for the first principle of free activity, yet even at the basic level his idealism is holistic in that he holds that the first principle must prove itself in

the execution of the system based upon it. For our purposes, the issue is what happens to the initial claims of individuality, summons, and recognition. I suggested in section I that it is a mistake to take these ideas as abstract ideals against which the execution of the theory could be measured. This is the mistake Williams makes when he takes recognition as the basic form of ethical community and then criticizes the development of right (especially coercion) on the basis of its failure to meet that standard. Rather, Fichte's opening moves are best thought of as unsaturated formal structures that are only actual in their development in the dialectical process. Focusing our attention on the unification contract brings to light the way in which the integrative dimension of the opening moves, which had gone missing for much of the intervening text, remains in place and comes to fruition only after the more formal aspects of right have been worked out. Fichte's frequent claim that he is going beyond merely "formulaic philosophy" is born out in the way he raises oppositions to the formal criteria in order to better work out their application, their actuality, in a social system (*FNR*, 7; *SW*, III: 6).

The second sense of holism has to do with the subject's *identity* as a party to the contract. Fichte is willing to go pretty far with the idea of the individual who has "melted into the whole," as when he writes of "the place that has been determined for it [the citizen] by the whole" (*FNR*, 182; *SW*, III: 209). In the part-whole relationship the particularity is determined by the whole: the whole subordinates the individual parts for the sake of the overall end of mutual protection. This identity shift is also evident in a shift in Fichte's view on the split between morality and right. Whereas the domain of right was supposed to be independent of morality, there is a proto-moral dimension to the unification contract. He writes, "Humanity was divided into several independent members; the natural institution of the state already cancels this independence provisionally and molds individual groups into a whole, until morality re-creates the entire species as one" (*FNR*, 176; *SW*, III: 203). The reference to nature here is meant to highlight the sense in which the theory of right is part of a system of nature, relying only on the natural incentives rather than on moral motives. Striking in this respect is the reference to the duties that come with the unification contract. While he had earlier written of the permissive character of right in contrast to the commanding character of duty, that separation seems to recede in importance given that he now endorses a strong conception of civic duty.⁸

⁸ He writes: "For all individuals have promised to protect all other individuals. And a cry for help is an announcement that there is danger that cannot, at present, be remedied by the representative of the protective power (the state). Therefore, a person's cry for help transfers back upon every individual not

On the third dimension of holism, the unification contract clearly represents a move to holistic consideration of property rights. The shift to the organic in effect enables Fichte to provide a theory of social justice by subordinating individual property rights to the right of all individuals to be able to exercise their capacities.⁹ This comes out most clearly in his discussion of the right of each person to live off of his labor and the redistribution of property that must take place to help those unable to make a living. He writes:

As soon as someone suffers from need, that portion of others' property that would be required to spare him from such need no longer belongs to those others; rather, it rightfully belongs to the one in need. The civil contract must provide for such a repartitioning of property. This contribution of property to persons in need is just as much a condition of all civil justice as is a contribution to the protective body of the state, since such assistance to the needy is itself a part of providing the necessary protection. (*FNR*, 186; *SW*, III: 213)

One indication that Fichte is taking contractualism in a new direction is that he states that he is going further than Rousseau in eliminating the validity of *any* pre-social claims. Against Rousseau's claim that individuals "give up everything" in the civil contract, Fichte writes, "According to our theory, no individual can bring anything with him to the civil contract, for prior to this contract he *has* nothing. ... Therefore, this contract – far from starting with *giving* – ought to begin with *receiving*" (*FNR*, 177; *SW*, III: 204–5). In this statement, Fichte affirms once more that the earlier original rights were merely fictional. They were not meant to be real claims to property that are valid in the pre-social state of nature. Fichte here dramatically affirms the holistic character of the contractualism by stating that what is to be protected is actually only established once the social system is up and running. We should wonder, though, whether a contract that is all receiving and no giving retains enough of the sense of an ordinary contract to retain the intuitive appeal of the original model. Without a conception of a right, even a provisional right, prior to entry into the contract, we seem to lose one of the main intuitive bases of thinking of political authority as a contract.

only the right, but also the civic duty, to offer immediate protection. If a person can be shown to have heard but not heeded someone's cry for help, he is punishable, for he has acted contrary to the civil contract; and the laws must take this into account. Such assistance in an emergency is not just a *duty of conscience or a Christian duty*; it is an *absolute civic duty*" (*FNR*, 219–20; *SW*, III: 252).

⁹ My account here supports the reading of property by James 2011, who argues that we should not read Fichte as exclusively concerned with property rights in the liberal sense, but should see him as offering a broader defense of property as realization of one's capacities.

The Self-overcoming of Social Contract Theory

While atomistic contractualism is based on the idea of *withholding* – in particular withholding my consent if the community encroaches on my goods – holistic contractualism is centered on the idea of *identifying* my interests with the interests of the community and its members. Instead of thinking of what I can exclude from the use of others, I think of how my pursuit of my own good is compatible with and helps to secure the good of all. The atomistic contractualist, and indeed the reader of some individualistic passages of the *Natural Right*, will find quite jarring the post-unification contract claims for the civic duty to aid others and the forfeit of property when someone is in need. It was not clear at the beginning that such measures could be implied by the basic recognition of right, that is, in the voluntary decision to live in community with others. The atomistic contractualist might object that there is a bait and switch here. You supposedly enter the contract as a means to the end of your own well-being, but the final result of the contract is that you become a means to the well-being of the whole (in the service of the well-being of others). You wanted to secure your own good, but you end up committed to securing the good of the whole. The holist can respond that if you have really taken the unification contract seriously you will have “melted into the whole” in the sense that you will now have the proper motivations, both civic and moral, so you will no longer view the sacrifice for others as an imposition. But the atomist will say that he entered the contract as a self-interested person, plain and simple, and it is not okay to change the terms of the contract on the condition that those new terms will make you into someone who accepts them.

These remarks are intended to highlight the distance between atomistic and holistic contractualism. We can now see that the turn towards holism undermines all four points of contractualism’s intuitive appeal that I laid out in section 1. The complex motivational shift in Fichte’s account shows how holistic contractualism moves away from self-interest and towards morality, compromising the clarity of the original motivational picture. We have seen that the unification contract is designed to overcome the conditionality of an ordinary contract, replacing the conditional dependence on the will of another with a (nearly) unconditional dependence on the whole. I have already addressed the third point in noting that Fichte holds the pre-contract property claims to be non-existent and original right to be fictional. Whatever one makes of this structure, it clearly does not have the intuitive basis of an ordinary contract. On the fourth and

final point, of exiting the contract, Fichte's theory offers different complications. He has an elaborate system involving an "ephorate" to dissolve the government if it has violated the trust of the people. But as we have just seen, he really offers the individual no exit from the unification contract short of abandoning all human contact.

None of this is to say that the move to holism is wrong. The intuitive appeal of contractualism might simply be the result of *confusing* the political relationship with an ordinary contractual relationship. What Fichte's theory brings out is that it is very hard to be a holist and remain a contractualist, for the two pull against each other, especially in the all-important domain of property claims. Fichte holds that the property rights should be thought of in general as a subject's capacity for the free exercise of her faculties in the sensible world. To guarantee those rights in social institutions means guaranteeing the realization of those capacities, and no contract that would fail to guarantee that realization can be deemed reasonable. But for that contract to work, each of us would need to take responsibility for the realization of the capacities of all. Once the unification has taken place that sense of responsibility would seem to follow. The trouble is: how do we motivate the move to unification without presupposing the motivations that we will have once we are already in that organic condition? Fichte's argument depends on the indeterminacy of who will need protection, but the binding force of that indeterminacy seems to require more than the egoistic concern for our own safety. The indeterminacy can help make sense of the civic duty to assist others in need (we may need such assistance ourselves), but it is not clear that it can ground the sense of citizenship and the willingness to sacrifice for others that the unification contract entails. In a well-ordered state with virtuous citizens such a sacrifice is perfectly intelligible, but it is unlikely that such a citizen would think to invoke a contract situation to explain her motivations. The social contract is much more often invoked when we feel oppressed, when we say we did *not* consent to something, than when we explain why we are committed to each other and to the state. The kind of contract that "contains within itself the sufficient ground of its fulfillment" would seem to require a non-contractual devotion to the state, an ethical disposition that involves a shared conception of the good.

The development of the contractualist model in a holistic direction tends to erase the context of the contract's original application. To think of the conditions under which we can all exercise our capacities for free activity, we have to think of the social world in which those capacities are developed and realized. If the content of the social

order is determined as rational, part of that rationality will consist in producing the individuals who live within it and are motivated by the demands of justice. But then they cannot be the same agents who consent to the contract from a position outside of the social order. Social contract theory is supposed to generate reasons that are operative in a cooperative setting, but once we think through that cooperative setting the reasons take on a status independent of the contractualist framework. At that point the idea of an individual who wills to opt out of the community is no longer a useful fiction, but rather a harmful fantasy that undermines the very political obligation it was originally designed to create. On an organic model, individuals can still fail to identify with the social order, but that failure is interpreted as a sign of the deficiency, or even pathology, of that order itself. It is a kind of alienation not best conceived as a broken contract, but rather as a symptom of a society's failure to provide the context for the realization of the free capacities of each, and of all.