

Institutions or Interaction? Hegel's Critique of Fichte Reconsidered

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1. Introduction

In the practical sphere, Hegel's critique of Fichte often falls under the rubric of "individualism" or "subjectivism." By establishing the voice of conscience as the unassailable criterion of the morality of an action, Fichte unjustly sets up one's subjectivity as the final arbitrator of morality. Or, by assuming "universal egoism" in his deduction of the commonwealth, Fichte atomizes the state's foundations. In this retelling, Hegel rectifies Fichtean subjectivism by grounding the claims of morality and right within an institutional framework of the state, civil society, and the family, supplanting morality and abstract right with an institutionalized theory of *Sittlichkeit*. But however accurate such a rubric may be in broad outline, it cannot do justice to what is, I believe, most challenging and interesting in Fichte's practical philosophy: that in it, Fichte equally incorporates a tendency towards communitarianism, conditioning the content of morality and right by the reciprocal interaction among members of a community. Fichte's practical philosophy, one might say, is constituted by its oscillation between these two antithetical principles or tendencies, not its adherence to one or the other.¹ This is my first contention in this chapter.

My second contention concerns Hegel's critique of Fichte. If I am right that Fichte's practical philosophy cannot be adequately grasped as subjectivist or individualist, then Hegel's critique of Fichte must also be revised on pain of misunderstanding its target. The best terrain for articulating this revision, I suggest, lies in their diverging theories of institutions, as this is the practical domain in which subjectivity and objectivity most thoroughly interpenetrate and, therefore, in which Fichte's oscillation can be most readily perceived. Fichte, I will claim, develops a theory of institutions as *congealed forms of consent* in his Jena period, in the sense that institutions merely aggregate or embody the express will of individuals. Refutations of Fichte's practical philosophy—Hegelians, take note—should, in the first instance, challenge the plausibility of its institutional

¹ I model this formulation on Durkheim's analysis of Rousseau. See Emile Durkheim, "Rousseau's *Social Contract*" in *Montesquieu and Rousseau: Forerunners of Sociology*, trans. Ralph Manheim (University of Michigan Press, 1960), 84–5, 108.

theory, not its purported subjectivism or individualism. But what would it mean to refute the plausibility of an institutional theory? Among other things, it would be to provide a superior alternative. But this lies outside the scope of this chapter. Instead, I will outline two social-theoretical shifts Hegel undertakes in his institutionalization of *Sittlichkeit* that are illuminated when seen as responses to Fichte.

2. Institutions and Reevaluating Hegel's Fichte-Critique

I have already suggested that the well-worn denunciations of “subjectivism,” “individualism,” and “atomism” fail to capture Hegel’s critique of Fichte’s practical philosophy, Hegel’s occasional remarks to this effect notwithstanding. But why? In short, these labels do justice neither to the dialectical complexity of Fichte’s writings on right and morality nor to the thoroughness of Hegel’s critique. To grasp Hegel’s critique of Fichte, we need to redefine the terms of the debate. In the practical sphere, I propose we turn the respective functions they ascribe to *institutions*, as these are the terrain on which their differences come out in sharpest relief. By taking up their divergent views on the institutionality required to realize the free will, it becomes evident that what differentiates Hegel and Fichte consists not in choosing between individuality and collectivity but *how* to comprehend the unity of both. Moreover, this shifting of the problem acknowledges that Fichte’s practical philosophy can just as well be criticized for its excesses of collectivism as for its individualism. The challenge facing Hegel—and us—lies in explaining Fichte’s apparent oscillation between these extremes. Insight into Hegel’s critique of Fichte is, therefore, foreclosed by any interpretation that begins by contrasting Hegel’s absolute idealism with Fichte’s “merely subjective” one. The old charge will not do the job.

2.1. Fichte—Subjectivist and Individualist?

Criticisms of Fichte’s purported subjectivism were commonplace in the early reception of his work. By 1795, Jens Baggesen and Karl Reinhold had already accused Fichte of “philosophical egoism.”² In 1801, Hegel criticizes Fichte for abandoning his insight into the speculative identity of subject

² See Daniel Breazeale, “Wie Der Blinde von Der Farbe’: Reinhold’s Misappropriation of the Wissenschaftslehre: A Narrative,” in *Reinhold and Fichte in Confrontation: A Tale of Mutual Appreciation and Criticism*, eds. Martin Bondeli and Silvan Imhof (De Gruyter, 2020), 7–10; Angelica Nuzzo, “Phenomenologies of Intersubjectivity: Fichte between Hegel and Husserl,” in *Fichte and the Phenomenological Tradition*, eds. Violetta L. Waibel, Daniel Breazeale, and Tom Rockmore (De Gruyter, 2010), 98.

and object, arguing that Fichte, against his intentions, proceeds on the basis of an identity that is merely a “subjective subject-object” (DS 81/GW 4:6–7).³ A year later, Hegel includes Fichte (alongside Kant and Jacobi) among the *Reflexionsphilosophen der Subjektivität*, attacking Fichte in particular for his “formal idealism” (GuW 186–87/GW 4:411–12). Hegel repeats this criticism of Fichte in his lectures on the *History of Philosophy*, wherein Fichte is charged with holding individuals to be absolute (VGP 3:503/W 20:412).⁴ Fichte, we are told, is merely a “subjective idealist.”⁵

In addition to the charge of subjectivism in his theoretical philosophy, Fichte was also accused of defending individualism in morality and politics. For his critics, Fichte’s individualism welds to his subjectivism and is typified by the system’s founding act of intellectual intuition, the I’s self-positing in the foundational part of the 1794–95 *Wissenschaftslehre*. Both subjectivism and individualism are suggested by the term *Egoismus*.

Yet this story about Hegel and Fichte is misleading, if not outright false. For one thing, Fichte would spend much of his remaining time in Jena addressing these misunderstandings, primarily by reiterating his distinction between the merely empirical and the pure or absolute I. In speaking of “the I,” Fichte refers to the structure of subjectivity in general, what he sometimes calls the pure or absolute I. The absolute I refers not to any particular empirical I but instead to the activity of reason as such; it aims to characterize the general structure of self-conscious subjectivity capable of any knowing at all. Thus, when Fichte declares that “*the I originally posits its own being purely and simply*” and founds the *Wissenschaftslehre* on the basis of this *Tathandlung* (GWL 205/SW 2:261), he refers exclusively to the *absolute* I, not the I of any empirical person, but that capacity for reasoning held communally by all knowing agents. Empirical “I-hood” (*Ichheit*) thus depends upon the primordial absolute I, which amounts to the transcendental condition of subjective activity and upon which empirical self-consciousness remains parasitic. In Fichte’s eyes, his system can be taken as

³ “[T]he *I* is the necessary identity of subject and object, a subject-object, and it is this purely and simply, without any further mediation” (GWL 205/SW 1:99).

⁴ In his *Solgar Rezension* (1828), Hegel criticizes Fichte’s “exclusively subjective affirmation” of negativity in the $I = I$, but acknowledges that “Fichte himself in the end corrected the one-sidedness of his principle through in consequence and with that preserved morality and truth in their rights” (EG17 304–5/W 11:254–55).

⁵ See Bertrand Russell, *A History of Western Philosophy* (Simon and Schuster, 1945), 718; Frederick Beiser, “Hegel and the History of Idealism,” *British Journal for the History of Philosophy* (2020): 503–4. For a critique of the “subjectivist” reading of Fichte’s theoretical philosophy, see Paul Franks, “Fichte’s Position: Anti-Subjectivism, Self-Awareness and Self-Location in the Space of Reasons” in *The Cambridge Companion to Fichte*, eds. David James and Günter Zöller (Cambridge University Press, 2016); Eckart Förster, *The Twenty-Five Years of Philosophy* (Harvard University Press, 2012) trans. Brady Bowman, 282–83, 302–5.

egoistic or individualist only if the reader conflates her empirical consciousness with the “pure I” (IWL 89–90/SW 1:504–5).⁶

Hegel and Hölderlin were more perceptive critics of Fichte. They recognized that Fichte distinguishes between the empirical and the absolute I but challenged the effectiveness of this maneuver on two fronts. First, they argued that this “primordial separation” (*ursprüngliche Trennung*) between subject and object, the I and the not-I, and thought and being inherent in the *Grundsatz* “I am I” (GWL 200–6/SW 1:91–99) creates a “division” (*Teilung*) that the *Wissenschaftslehre* cannot overcome, despite its attempt to do so by positing a “reciprocal relationship” (*gegenseitigen Beziehung*) between the two.⁷ Or as Hegel writes in the *Science of Logic*, “the I from which the start was made [by Fichte] does not have pure knowledge that has truly overcome the opposition of consciousness [Gegensatz des Bewußtsein], but is rather still entangled in appearance” (SL 54/W 7:78).⁸ Fichte, they argued, is unable to bridge the gap between finitude and the infinite posited at the very foundation of the *Wissenschaftslehre*.⁹

⁶ In a letter to Reinhold (March 21, 1797), Fichte remarks that, on a true understanding of the *Wissenschaftslehre*, “you will find it unthinkable that anyone could be vain about discovering the viewpoint which this philosophy allows one to obtain—vain enough to ascribe it to his own, insignificant individual self as something special, whereas it plainly belongs to the entire world, and he was able to discover it merely by means of a fortunate observation.” The *Wissenschaftslehre* thus dethrones the value that one naturally ascribes to one’s “petty individual self” (EPW 416–17).

⁷ This is Hölderlin’s decisive formulation of the problem of identity in the fragment *Being Judgment Possibility* (EL 231–32/SWB 2:49–50). By 1799, Fichte articulates this “original duality of subject and object” in terms of a separation between “life” and “speculation” or philosophy. But the same basic problem persists. The division between life and speculation is indeed overcome in the consciousness of the transcendental philosopher in whom “these two different standpoints coexist,” but consciousness of the unity of these two opposites arises only on the basis of their more primordial separation. See Fichte’s letter to Reinhold, April 22, 1799 (EPW 428–35/GA III).

⁸ Similarly in the *Differenzschrift*: “Absolute identity, is, of course, the principle of speculation; but like its expression, I = I, this principle remains [for Fichte] only the rule whose infinite fulfillment is postulated but not constructed in the system. [...] [T]he absoluteness of opposition emerges from the incompleteness of the highest synthesis offered in [Fichte’s] system. *Opposition is still present in the highest synthesis*” (DS 126/GW 40, emphasis mine).

⁹ “What is left at the foundation,” Hegel writes of Fichte, “is the absolute finitude of subject and action, with a sense-world over against it that is devoid of reason and must be nullified; and finally a super-sensuous world absolutely opposed to the sense-world and dispersed into an infinity of intellectual singularities. Since all these finite entities are absolute, the genuine and fruitful *identity* is beyond cognition; it has not emerged in any part of what we have seen about ethical life” (GuW 187/W 2:429, emphasis mine). Hegel likely has in mind passages like this from Fichte’s *Vocation of Man*: “This will unites me with itself; it unites me with all finite beings like me and is the general mediator between all of us. That is the great secret of the invisible world and its fundamental law so far as it is a *world* or a *system of a number of individual wills: that union and direct reciprocal interaction of a number of autonomous and independent wills with each other*” (BM 107–8/SW 2:299).

Second, they disputed the intelligibility (Hölderlin) or prudence (Hegel) of distinguishing between the absolute I and empirical consciousness. For Hölderlin, the concept of consciousness requires that it be aware of an object and that every determinate object of consciousness be in some way limited. Since in the act of the I's self-positing ("I am I"), the I takes itself as its object (and therefore attains self-consciousness), this self-positing I in fact limits itself and therefore cannot be the absolute I. Fichte's absolute I, Hölderlin concludes, "is (for me) nothing."¹⁰ Hegel shared Hölderlin's skepticism towards Fichte's distinction. For Hegel, Fichte's talk of the I facilitates the erroneous understanding that we are speaking of something familiar and empirical, the ordinary consciousness studied by psychology and perceived in everyday experience (WL 54/W 5:77; cf. VGP 3:481–82/W 20:405).¹¹ "The I posits, so one always has the I in view," Hegel complains. While incorrect as a reading of the *Wissenschaftslehre*, Hegel nevertheless blames Fichte's "form of exposition" for producing this misunderstanding. Occasionally, Hegel suggests that this conflation between the empirical and absolute I in the reception of Fichte's work is the product not merely of a misreading but is instead an ambiguity inherent in Fichte's system as such: "[Fichte's] form of the I has the ambiguity [Zweideutigkeit] of being the absolute I, God and the I in my particularity" (VGP 3:513/W 20:421).

These considerations, however, led neither Hegel nor Hölderlin to abandon their charge of subjectivism and individualism against Fichte. Instead, they spurred Hegel (now parting ways with Hölderlin) to locate less superficial grounds for Fichte's subjectivism than in Fichte's mere proclamation that "everything begins with the I" (WLn 114/GA IV,3:346). In an important passage from the *Differenzschrift*, Hegel rules out any attempt to label Fichte's idealism merely subjective:

Some of the forms in which Fichte has presented his system might mislead one into believing that it is a system of dogmatic idealism denying the opposite principle. Indeed, Reinhold [...] regards Fichte's system as a system of absolute subjectivity, that is, a dogmatic idealism. But precisely what distinguishes Fichte's idealism is that the identity which it establishes is one that *does not deny the objective but puts the subjective and the objective in the same rank of reality and certainty*—and pure and empirical consciousness is [ist] one. For

¹⁰ Letter to Hegel (January 26, 1795) (EL 48/SWB 2:568–69).

¹¹ "Fichte's form of exposition has awkwardness; the I posits, so I always have the I in view. There my empirical I always appears to me; this is absurd" (VGP 3:481–82/W 20:405, translation modified).

the sake of the identity of subject and object I posit things outside myself just as surely as I posit myself. The things exist as certainly as I do.—But if the I posits things alone or itself alone—just one of the two terms *or even both at once but separately*—then the I will not, in the system, come to be Subject-Object to itself. True, the subjective is Subject-Object, but the objective is not. Hence subject is not equal to object. (DS 127–28/GW 4:41, emphasis mine)¹²

Hegel's critique of Fichte is quite complex here. But it is evident that whatever this critique amounts to, it cannot entail supplementing Fichte with a healthy dose of objectivity ("objective idealism") or identifying a speculative unity between object and subject somehow missing in Fichte's system ("absolute idealism"). In abstract terms, we may say that Hegel overcomes Fichte only by recognizing the *subjectivity* of what is objective (the developmental character of the shapes of nature and spirit) and the *objectivity* of what moves, or even coerces, the subject (the impersonality of "objective thinking" in *Logik* and the "objective will" in *Recht*), but that this unity of subjectivity and objectivity must nonetheless already be implicit in Fichte's manner of thinking. In the practical sphere, one may presume that such an overcoming of Fichte's one-sided idealism would consist, at least in part, in articulating a theory of objective institutions in which institutions are irreducible to the subjective attitudes that agents have about them, but which nonetheless exhibit a developmental and "subjective" structuration of social life. Such a theory would stand beyond the logic of simultaneous and mutual self-positing or intersubjectivity, the highest and most reflective determination of the understanding, according to Hegel, through which extremes are reciprocally determined "both at once but separately" (*beide zugleich, aber getrennt*). This latter approach to unifying objectivity and subjectivity only reproduces the Fichtean problematic in the practical sphere, attempting to found freedom on a primordial act of self-division. In place of Fichte's interactionist theory of institutions, Hegel must articulate an institutional theory attentive to the asymmetries,

¹² Similarly, Hegel writes in *Faith and Knowledge*, published the following year: "Kant's philosophy establishes the objective side of this whole sphere. [...] Jacobi's philosophy is the subjective side. [...] Fichte's philosophy is the synthesis of both. It demands the form of objectivity and of basic principle as in Kant, but it posits at the same time the conflict of this pure objectivity with the subjectivity as a longing and a subjective identity. In Kant the finite concept is posited in and for itself and as the only thing philosophy acknowledges. In Jacobi, the infinite appears as affected by subjectivity, that is, as instinct, impulse, individuality. In Fichte, the infinite as affected by subjectivity is itself again made objective, as obligation and striving" (GuW 62/GW 4:321). On Hegel's early critique of Fichte, see James Clarke, "Hegel's Critique of Fichte in the 1802/3 Essay on Natural Right," *Inquiry* 54, no. 3: 207–25.

imbalances, and non-identity constitutive of social life, foreclosed by intersubjective theories of institutions such as Fichte's.

This, at any rate, is the general shape of Hegel's critique of Fichte's practical philosophy as I understand it. If I am correct, then we would do well to abandon our attempts to understand Hegel's critique of Fichtean reciprocity in terms of its "subjectivism," "individualism," or "atomism"—labels that history has proven ineffective for conveying anything of philosophical significance—and instead reconstruct Hegel's critique of Fichte as an attempt to grasp the constitutive role of institutions in social life, one which, at the same time, also accounts for agents' relative independence and self-standing. We do not deny, then, that Fichte holds institutions to be important for social life; on the contrary, they pervade his practical philosophy. Rather, Fichte fails to recognize their *constitutive* status. For Fichte, faith (*Glaube*) and society (*Gesellschaft*) contain in themselves the demand for an institutionless state of affairs whose possibility depends on the *contingency* of institutions in social life. It is Fichte's instrumentalist attitude toward institutions that renders him not only unwilling but unable to unify objectivity and subjectivity in the right way for Hegel. This sort of genuinely dialectical mediation, essential for grasping the developmental and objective character of thought and world, can, Hegel argues, only be comprehended by institutionalizing *Sittlichkeit*.

2.2. Why Institutions?

Doubts may linger about cashing out Hegel's critique of Fichte's practical philosophy in the register of institutions. Two further reasons justify this shift of focus to institutions and away from the received charge of subjectivism.

First, the ordinary *social-theoretic dualisms* (e.g., action/structure, individualism/holism) we might invoke to capture this difference fail to grasp the nature of Fichte's thought. This failure concords with the emerging consensus in the literature that contests the applicability of these terms to Fichte's practical philosophy, at least as they are usually understood. Indeed, this literature has tended to argue that our received image of Fichte as a prototypical individualist can easily be turned into its opposite, the picture of Fichte as a radical communitarian.¹³ It thereby affirms Hansjürgen

¹³ *The Vocation of Man*. "Through this secret the individual finds himself and understands and loves himself only in another; and every spirit separates itself only from other spirits, and there is no human being but only one humanity, no individual thinking and loving and hating, but only one thinking and loving and hating in and through each other." (BM 121/SW 2:316–17). *Some Lectures on the Scholar's Vocation*. "If we only

Verweyen's assessment that Fichte's practical philosophy amounts to a "social ethic" (*Gesellschaftsethic*) insofar as it synthetically derives each individual's moral self-sufficiency on the more primordial basis of her free communication with all rational beings.¹⁴ I contend that this oscillation between individualism and communitarianism in the reception of Fichte indicates an inherent feature of his practical philosophy and is not the product of the idiosyncrasy or historical standpoint of his interpreters. The necessity of this ambiguity in Fichte's practical philosophy is best brought to light by considering Fichte's institutional theory and its contrast with Hegel's since institutions are precisely the social form that most consistently crisscross individual and collective forces, bearing the tension between them.¹⁵

Second, *institutionality* offers special insight into Hegel's doctrine of objective spirit because it is the most distinguishing feature of his novel theory of *Sittlichkeit*, the highest moment of finite spirit. As Dieter Henrich puts it, "Hegel's doctrine in *Rechtsphilosophie* can be characterized as institutionalism."¹⁶ By contrasting Hegel's institution theory with Fichte's, we rid ourselves of the illusion that Hegel developed his incisive institutionalization of *Sittlichkeit ex nihilo*. Instead, we come to understand it as responding to certain problems immanent within Fichte's institutional theory, gaining a more satisfactory explanation of its genesis and structure. Institutional theory, in other

contemplate the idea just presented, [...] we can at least catch a glimpse beyond ourselves of an association in which one cannot work for himself without working at the same time for everyone, nor work for others without working for himself; for the successful progress of any member is the successful progress of them all, and one person's misfortune is everyone's misfortune. Simply through the harmony which it reveals in the most diverse things, this spectacle pleases us sincerely and exalts our spirit mightily" (EPW 168/SW 6:321; cf. EPW 156/SW 6:306); *Philosophy of Freemasonry*: "the overall purpose of humanity: it should constitute a single, purely moral church, a completely *rechtliche* state, and subject irrational nature to the command of one will. (GA I,8:444); *System of Ethics* "The complete annihilation of the individual and the fusion of the latter into the absolutely pure form of reason or into God is indeed the ultimate goal of finite reason" (SE 143/SW 4:151).

¹⁴ Hansjürgen Verweyen, *Recht und Sittlichkeit in J. G. Fichtes Gesellschaftslehre* (Karl Alber, 1975), 146. Many recent commentaries underscore the importance of intersubjective communitarianism in Fichte's practical philosophy. See Allen Wood, *Fichte's Ethical Thought* (Oxford University Press, 2016); Frederick Neuhouser, "Introduction," in *Foundations of Natural Right* (Cambridge University Press, 2000); David James, *Fichte's Social and Political Philosophy* (Cambridge University Press, 2011); Michelle Kosch, *Fichte's Ethics* (Oxford University Press, 2020); Ware, *Fichte's Moral Philosophy* (Oxford University Press, 2020).

¹⁵ Maurice Hauriou, an early champion of institutional legal theory, argues in 1925 that institutions "live a life that is both subjective and objective" and are preferable to other social-theoretic analytical frames precisely because they avoid the false dichotomy found in social-theoretic "controversies [...] over the subjective and the objective." See "The Theory of the Institution and the Foundation: A Study in Social Vitalism," in *The French Institutionalists*, trans. Mary Welling (Harvard University Press, 2013), 100, 93. Or, as Kervégan puts it, "institutionalist theories aim to go beyond the choice between subjectivism and objectivism" (*The Actual and the Rational*, trans. Daniela Ginsburg and Martin Shuster [University of Chicago Press, 2018], 336).

¹⁶ Henrich, Dieter. "Vernunft in Verwirklichung." In *Philosophie des Rechts: Die Vorlesung von 1819/20 in einer Nachschrift*, 9–39. Frankfurt am Main: Suhrkamp, 1983, 30.

words, distinguishes Hegel's practical philosophy from Fichte's while also furnishing the essential point of contact between them.

These two reasons further justify taking institutions as our terrain for reevaluating Hegel's critique of Fichte's practical philosophy. It then appears that our remaining task would be to exposit each thinker's institutional theory and reconstruct Hegel's Fichte-critique on this basis. However, such a task far outstrips the scope of this chapter. What I hope to accomplish in the remaining sections is more modest: first, to sketch some characteristic features of Fichte's institutional theory in his most widely read texts and, second, to indicate some shifts in the social-theoretical attitude expressed in Hegel's critique. Given the paucity of Anglophone scholarship on this topic in Fichte, I hope to encourage more detailed studies on these issues. In doing so, I will focus on Fichte's "general" institutional theory, that is, his account of what institutions *are* as such, as opposed to what we may call a "specific" institutional theory, responsible for specifying *which* institutions are best and determining their particular nature.¹⁷

3. Towards A Fichtean Theory of Institutions

Turning now to institutions in Fichte, we may broadly designate them as *congealed forms of consent*, i.e., as abstract embodiments of the express will of individuals. As such, Fichtean institutions bear three distinguishing marks: first, they lack intrinsic constraints concerning the shape of their concrete existence; second, they are composed of dyadic relations among individuals; third, they serve a merely instrumental purpose and need not obtain in an ideal political community. I will discuss these three features in turn. However, my treatment of them requires some distance from Fichte's texts, since nowhere does Fichte explicitly develop a general theory of institutions. It must instead be reconstructed from Fichte's various examples, which I will draw from what Reinhold called the "two pillars" of Fichte's Jena period: the *Foundations of Natural Right* (1796–97) and *The System of Ethics* (1798).¹⁸ I focus on these texts because they were those that Hegel knew best. They form the basis of Hegel's judgment of Fichte's practical philosophy and Hegel maintained this evaluation throughout the rest of his life. These texts, together with the unpublished *Wissenschaftslehre nova*

¹⁷ See Klaus Roth, *Freiheit und Institutionen in der politischen Philosophie Hegels* (Schäuble, 1989), 5–13.

¹⁸ Karl Reinhold, *Sendschreiben an Fichte und Lavater* (1799), GA III/3: 306. In an earlier letter to Reinhold (July 4, 1797), Fichte confides that, as a presentation of the *Wissenschaftslehre*, "my *Natural Right* is undoubtedly better" (EPW 419/GA III,3:69).

methodo, form the extant parts of Fichte's second Jena system. This second system marked, in Fichte's eyes, a substantial improvement over the lectures of 1794–95. Moreover, the underlying social theory across these two texts remains relatively stable. So, although these texts have substantially different philosophical aims, they nonetheless present a reasonably consistent account of institutions and can thus, for our purposes, be treated together.¹⁹

3.1. Fichte on *Willkür* and Institutional Constraints

The first feature of Fichte's congealed-consent theory of institutions is that there are no intrinsic constraints on which sorts of institutions might satisfy the conditions of right and morality. Institutions are, for Fichte, radically indeterminate; the character of a community's institutions is ultimately determined by the arbitrary choice of the people who constitute it. This is because, for Fichte, the particular will is determined arbitrarily—"there is no *Wille* without *Willkür*" (SE 151/SW 4:159)—and so any aggregate of such wills preserves this arbitrariness, which, from the philosophical standpoint, is equivalent to indeterminacy.

Admittedly, this indeterminacy of Fichtean institutions appears to clash with his synthetic method in practical philosophy, which deduces the *necessary* determinations of the will. For example, Fichte writes in the *Foundations* that "the problem of political right and (according to our proof) of the entire philosophy of right is *to find a will that cannot possibly be other than the common will*" (GNR 134/SW 3:151). The will to which Fichte refers is one which would be *necessarily* identical to the common will. However, looking closer at Fichte's argument clarifies the issue.

Fichte's more precise argument in the *Foundations* is that, in relations of right (*Rechtsverhältnisse*), the will of each party is originally determined by the civil contract (*Staatsbürgervertrag*), Fichte's "solution" to the "problem" of right.²⁰ But this common will determined by the civil contract expresses mere *hypothetical necessity*: if an individual wants to enter the realm of *Recht*, then her will must be identical to the one so defined. Fichte therefore deduces in the *Foundations*

¹⁹ Fichte significantly changed his political-philosophical views in light of criticisms of his 1793 essays. For this reason, I consider only Fichte's works after 1793. Hegel ignores Fichte's *Closed Commercial State* (1800), so I omit it as well.

²⁰ Fichte follows Kant in holding right to be essentially relational. See Fichte, "Review of Immanuel Kant, Perpetual Peace" trans. Daniel Breazeale, *The Philosophical Forum* 32, no. 4 [2001]: 315–16/SW 8:430; Michael Nance, "Freedom, Coercion, and the Relation of Right," in *Fichte's Foundations of Natural Right* (2016), 201–5.

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). (GNR 16/SW 3:16, emphasis mine)

The necessity of which Fichte speaks is hypothetical, not categorical. Even when arguing for the “necessity” of the state, Fichte reminds us that individuals are always permitted to decline to enter into relations of right with others by refusing to join the political community. Individuals may, with equal right, remain in the state of nature but, in so doing, they also give up their entitlements to property and security because these belong exclusively to human society, i.e., to those who have entered into community with one another, having agreed to mutually limit their freedom (SE 65–6/SW 4:64). Fichte writes:

Now in the doctrine of right there is no talk of moral obligation; each is bound only by the free, *willkürlichen* decision to live in society with others, and if someone does not at all want to limit his *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 society (GNR 11–12/SW 3:11, cf. GNR 132/SW 3:148)

The hypothetical nature of Fichte’s civil contract, exemplary of his account of all institutions of right, explains, for example, why he holds that individuals can only be legitimately coerced within the state, i.e., after having agreed to live in a legally organized society among other rational beings (GNR §§13–15). Coercion (*Zwang*) coheres with right only when it has been the object of consent. But since individuals, in willing the civil contract, endorse the *end* of mutual security, Fichte argues, they have also consented to subject themselves to the *necessary means* for realizing this end, namely, to become members of a state that possesses a “right to coercion” (*Zwangsrecht*) in matters of public interest. In this way, the “law of coercion” (*Zwangsgesetz*) guarantees the requisite reciprocity for securing the sphere of *Recht*, i.e., mutual security, but only as a hypothetically necessary means for an end endorsed *willkürlich* (GNR 133/SW 3:150–51). But because agents are always free to disregard the ends for which these are means or to implement them only partially, etc., institutions, for Fichte, remain radically indeterminate.

We may also wonder about institutions of morality, such as the church, and whether these share the same indeterminacy as institutions of right. Indeed they do. Of the church Fichte writes:

“This reciprocal interaction of everyone with everyone for the purpose of producing communally shared practical convictions [...], in which everyone is obliged to engage, is called a *church* or an ethical commonwealth, and that upon which everyone agrees is its *symbol*” (SE 224/SW 236) So, unlike institutions of right, one’s duty to membership in the church is not hypothetical—“everyone is supposed to be a member of the church.” Yet, like institutions of right, Fichte places no constraints on the character of the church, as its symbol is quite indeterminate as far as philosophy is concerned, to be chosen *willkürlich* by the agents themselves. The other institutions of morality, such as the estates, share this indeterminacy.

This gap between actually existing institutions, composed arbitrarily and therefore contingently, and the necessary institutional demands of *Recht* and *Sittlichkeit* is not accidental to Fichte’s institutional theory but is one of its general features. For Fichte, this gap expresses the unending conflict between the world as it is against how it ought to be. This constitutive non-identity of ideal and actual institutions explains why, for example, Fichte distinguishes in his appendix on family right between institutions that arise “originally,” i.e., necessarily in accordance with right and corresponding to the norms to which we consent in the civil contract, from the conglomerate of opinions shaped by “our institutions” as they presently exist (GNR 308/SW 3:357). Fichte’s hypothetical account of rightful institutions sets out the shape institutions *ought* to take *if* we wish to abide by the laws of right *in every instance*; similarly, in morality, Fichte’s account establishes only the communality of our convictions, not their matter. Due to his basic commitment to ineliminable *Willkür* in practical life, Fichte cannot account for what institutions will look like in actual societies in which these conditions are, of course, not always met. This constitutive gap between institutional reality and institutions as they ought to be underlies Fichte’s abolitionism with respect to institutions in his ideal state, discussed below.

3.2. Fichte on Dyads and Social Relations

The second remarkable feature of Fichtean institutions is that they are composed of dyadic social relations. This is a social-ontological claim about institutions, capturing the idea that the wills that constitute institutions refer never to the sum of individual wills conceived in isolation from one another but always instead to the collection of pairs of wills, dyads in which each side relates bilaterally to the other. In other words, institutions are constituted not by the aggregated content congealed by a set of individual wills but only by the sum of the two-place pair-wise relations

holding between each of them. It is this essentially dyadic conception of willing that explains why inherently reciprocal notions like contract and recognition play such a fundamental role in Fichte's thought since, like the I and the not-I of the 1794–95 *Wissenschaftslehre*, neither side can be fully determined without also determining the other (GWL 244/SW 1:150).

This dyadic character of Fichte's interactionism derives from Kant's use of the category of reciprocity. For example, consider Kant's discussion of reciprocity in the *Critique of Pure Reason*. While the disjunctive judgment (from which Kant derives the category of reciprocity) can, in Kant's view, accommodate an indefinite number of disjuncts, Kant restricts the use of *Wechselwirkung* strictly to two-place relations and instead reserves *Gemeinschaft* for relations containing three or more relata. Likewise, in the *Metaphysical Foundations of Natural Science*, Kant deploys an exclusively two-place conception of reciprocity while defending his theory of matter as oppositionally constituted by the reciprocal interaction of attractive and repulsive forces. Reciprocity also characterizes, for Kant, the relation between whole and part in an organized being in the third *Critique*, a point to which we will have to return shortly. While restricting reciprocity in this way to two-place relations might appear as barring any interesting use of the concept, Fichte avoids this potentially disastrous limitation by following Kant in conceiving all complex relations as *reducible* in principle to larger sets of dyadic relations. Complex wholes are therefore understood by Kant and Fichte as *compositions* of dyadic relations. Thus, what appears at first to be a quite limited model of relationality can also capture a robust conception of community in which each member directly relates to *all* other members. This reducibility accounts for the inner unity of *Wechselwirkung* and *Gemeinschaft* in Kant's table of categories, wherein we find them conjoined only by a parenthesis (CPR A80/B106). This dyadic reducibility helps explain Kant's and Fichte's loose equivocation of *Wechselwirkung* and *Gemeinschaft* throughout their writings.

Three important upshots for Fichte's interactionist institutional theory arise from his adoption of a Kantian, and thus dyadic, understanding of reciprocity. The first is Fichte's endorsement of an *organic model* of society connecting each member to all others. This organic model resembles what graph theorists call a "complete" or "fully connected" graph: that is, a network of relations wherein each member has a direct link with each of the other members. What Fichte means, for example, when he defines a whole as the "reciprocity of the complete sum of all parts" (SE 109/SW 4:113) is, first, that an organic whole encompasses (and so accounts for) *all* pair-wise relations between membership parts and, second, that these pair-wise relations incorporate *all* states

of activity (each *relatum* is both cause and effect). A whole is “complete” only in this sense. To be sure, Kant had already paved the way for an organic model of society constructed based on dyadic reciprocity, building upon the rich tradition of envisioning the political sphere as analogous to the biological. Fichte acknowledges his debt to Kant when he writes that the organic model “has frequently been used in recent times” (GNR 180/SW 3:208) and when he articulates his organic model in distinctly Kantian terms (*organisirten Naturproducte*, etc.). By taking a cue from Kant, Fichte instills a robust relationality in the constitution of the social body.

Second, the dyadic model of reciprocity combined with the organic model of society helps explain Fichte’s insistence that we must arrive at “absolute unanimity” in matters of right and morality. In the *Foundations*, Fichte writes that “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” (GNR 16/SW 3:16, cf. GNR 162–63/SW 3:184–85). He later generalizes this point: “unanimity is necessary where the civil contract is concerned” (GNR 157/SW 3:178). In the *System of Ethics*, Fichte writes in his discussion of the duties of moral teachers that “the overall end of the moral community as a whole is to produce unanimity concerning matters of morality. This is the ultimate end of all reciprocal interaction between moral beings” (SE 329/SW 4:348). These remarks on unanimity share a common origin in Fichte’s dyadic conception of social relations. Since each member of society bears a dependency relation on everyone else, even a single dissenter suffices to delegitimize an institution: “If even only one of them were to be oppressed, this one person would certainly not give his consent, in which case they would no longer all be united” (GNR 98/SW 3:107). To uphold the dyadically composed whole, whatever fulfills the Fichtean “ought” must therefore be unanimous.

Finally, the dyadic composition of Fichte’s institutions also explains his general *distrust* of them. Since institutions mediate consent by congealing it, they can also function to obscure the express will of individuals and make it difficult to discern whether everyone has in fact consented to the institution in question. Institutions can in this way quickly become instruments of social domination. Furthermore, since it takes only one dissenter to invalidate an institution, it is doubtful that any institution bears full legitimacy in Fichte’s eyes. This does not mean, however, that one’s private judgment about the rightful standing of a particular state or institution justifies attempts to overthrow it. Instead, a just rebellion against the state can only be mounted by the communal will,

never a merely individual one. Any proponent of revolution, then, must properly ascertain the communal will before endeavoring any public actions against the state.²¹ This task of properly ascertaining the communal will Fichte ascribes to the tribunal of the ephorate. Indeed, within Fichte’s controversial theory of the ephorate—what he calls “the most essential component of every constitution” (GNR 16/SW 3:16)—we can also notice Fichte’s distrust of institutions. According to Fichte, the ephorate’s principal function is to hold the public executive power accountable for its actions (GNR 141/SW 3:160). The need for such an accountability-enforcing extra-political body is exacerbated by Fichte’s rejection of any governmental separation of powers. The structure of the institution of the ephorate thus reflects Fichte’s general institutional theory: it provides a direct, non-representative body for holding the executive power accountable because it establishes a form of social power in which the dyadic composition of institutions—the *Rechtsverhältnisse* normatively undergirding society—are made immediately visible to all.²² It is unsurprising, then, that Fichte’s ‘face-to-face’ ephorate also provides him with a model of a post-political society.

3.3. Fichte on the Ideal State of Affairs

This brings us to the third feature of Fichtean institutions, to which I have already alluded: Fichte omits institutions from his *ideal* moral and juridical state of affairs. In such a state, Fichte envisions an institutionless society in which the throughlines of individual wills no longer congeal around prescribed—institutionalized—patterns of behavior. Instead, in this ideal society, individual wills immediately reflect the express communal will constituted by every dyad.²³ This institutionless ideal of a society without state, legal, or moral institutions is affirmed by Fichte in many of his political writings; it is the reverse side of his skepticism about institutional legitimacy. If institutions are liable to become unjust, it is unsurprising that an ideal form of sociality rids itself of them, including the state.

This feature of Fichtean institutions comes into sharpest relief in *Some Lectures on the Scholar’s Vocation*:

²¹ In the *Foundations*, Fichte rejects his earlier view in the *Contribution* that one’s private judgment in conscience against the state sufficiently justifies resisting it (GNR 149/SW 3:169; SS 227/SW 4:238–39).

²² In morality, conscience functions in parallel to the ephorate in right, providing a moral check on institutions (SS 168/SW 4:176–77).

²³ Cf. the passages quoted in note 13.

You can see how important it is not to confuse society as such with that particular, empirically conditioned kind of society which we call “the state.” [...] Life in the state is not one of the absolute ends of human beings. The state is, instead, only a *means for establishing a perfect society*, a means which exists only under specific circumstances. Like all those human institutions which are mere means, the state aims at abolishing itself. *The goal of all government is to make government superfluous.* (EPW 156/SW 6:306)

In this passage, Fichte clearly ascribes merely *instrumental* value to institutions. As the generic ways by which extra-individual norms mediate social interactions, institutions, for Fichte, only ever take on a merely regulative role in the functioning of society; they never attain the status of being a constitutive element. In other words, institutions remain necessary by dint of the empirical limitations of human beings and their capacity to choose against right and morality, but the possibility and desirability of a society that could forgo institutions in its coordination of free individual wills always remain on the horizon for Fichte. Insofar as the state and its institutions inhibit the communing of rational dyads, morality demands their withering away. Thus, Fichte’s theory of institutions as congealed consent buttresses his defense of political anarchism since it entails that institutions bear merely circumstantial utility and are in no way logically necessary for the constitution of society.²⁴

These three features of Fichtean institutions—their nature as unconstrained, dyadic, and instrumental—evinced an attempt by Fichte to reconcile his communitarian and individualist tendencies in his practical philosophy. Thus neither label proves to be entirely appropriate for Fichte’s institutional theory. Because it is constituted by these antithetical tendencies, this theory, I believe, provides a more faithful—and more interesting—target for Hegel’s critique of the former’s practical philosophy than “subjectivism” or “individualism.” This task might initially appear facile, as Fichte’s theory of institutions certainly exhibits some eccentricity and could be the target of rather obvious criticisms. Yet, as Hegel reminds his listeners, “it is easy to find fault, but difficult to recognize the good and its inner necessity” (PR §268Z). A philosophically compelling refutation, by contrast, would have to provide a superior account of institutions and their role in right and

²⁴ I therefore disagree with Peter Oesterreich and Hartmut Traub who argue that Fichte seeks to rid society only of “external state institutions” while maintaining non-state institutions. See *Der ganze Fichte* (Kohlhammer, 2008), 28.

morality. Hegel precisely attempts this with his institutionalization of *Sittlichkeit* in the *Philosophy of Right*.

4. From *Anerkennung* to *Erkennung*

Unlike Fichte's, Hegel's commentators have often regarded his turn towards an institutional analysis of modern society as central to his practical philosophy. Nonetheless, disagreement persists about how to understand this institutional turn in Hegel's thought and its success as a normative paradigm.²⁵ I do not aim to resolve these disagreements here. In the space remaining, I will merely indicate two shifts in social-theoretical attitude demanded by Hegel's institutional turn, exhibiting them as responses to Fichte. Broadly speaking, these shifts reorient practical philosophy away from the individual will of contractualism towards the objective will of institutionalism. Hegel articulates these shifts in his long remark to §258 of the *Philosophy of Right*, a section that ranks among the book's most infamous. In its corresponding *Zusatz*, for example, we learn that "the state consists in the march of God in the world" (PR §258Z/W 7:403). While the official text of §258 forgoes enshrining the state's divinity, it remains no less ominous: "the state is the actuality of the substantial will; [...] it is the *rational* in and for itself" (PR §257/W 7:399), or, in short, that "the state is objective spirit" (PR §258A/W 7:399). To take the exposition of objective spirit as one's social-theoretic starting-point is, then, to adopt at least two positions within this theoretical field.

First, it requires one to reject the Fichtean standpoint that reduces institutional reality to the complex interrelations of individual wills. The Fichtean standpoint is not to be rejected because it is "atomism," denying the communality of the will, nor because it is "individualist," adopting the will as the principle of objective spirit. Fichte, like Hegel, endorses both. Fichtean institutions, as we have seen, suppose an institutional ontology that is dyadic, relational, and modeled on the internal unity of organisms, which is hardly "individualist." Fichte falters, however, by mistaking the merely *communal will*, the will constituted by the agreements among singular wills, to be the *universal will*. Such

²⁵ Recently, commentators' responses have been largely critical. Henrich attacks Hegel's "strong institutionalism." See Henrich, "Vernunft in Verwirklichung," 31. Similarly, Axel Honneth criticizes Hegel for "overinstitutionalizing" ethical life *The Pathologies of Individual Freedom: Hegel's Social Theory*, trans. Ladislaus Löb Princeton University Press, 2010, 63–80. For defenses of Hegel's institutionalism, see Jean-François Kervégan, *The Actual and the Rational*, 280–82, 330–49; Benno Zabel, "The Institutional Turn in Hegel's Philosophy of Right: Towards a Conception of Freedom beyond Individualism and Collectivism," trans. Aaron Shoichet, *Hegel Bulletin* 36, no. 1 (2015): 80–104; Kevin Thompson "Hegel's Institutionalism: Social Ontology, Objective Spirit, and Institutional Agency," *Hegel-Jahrbuch*, no. 1 (2014): 321–26.

a communal will can form only a “composition” (*Zusammensetzung*), according to Hegel (PR §156Z/W 7:305). Such a composition proves inadequate as a categorial comprehension of objective spirit not because the communal will lacks structure altogether but because its structure is relational and composable. Fichte pictures the rational will as excluding all that stands outside the web of the conscious awareness of individuals, which cannot incorporate anything that maintains independence or self-sufficiency (*Selbständigkeit*) in relation to individuals, such as the rational thinking embedded in institutions (PR §146). Hegelian institutions, by contrast, “start from the substantiality” (PR §156Z) in their being explicated as objective spirit as right or as the existence the free will (PR §29).

For Hegel, rejecting the Fichtean principle of the *singular* will is to simultaneously reject the modern natural law tradition. This tradition, according to Hegel, correctly ascertained the will in general to be the principle of the state, being the first to acknowledge that thought must be this principle’s form and content. However, in conceiving of the universal will only as a composition of singular wills, the contractarian fails to grasp the universal will as constituting an independent moment in the free will’s existence; the universal will is, for the contractarian, only the *communal* outcome of conscious and arbitrary volition, i.e., takes the form of *contract*:

As far as the search for this concept [of the state] is concerned, it was the achievement of *Rousseau* to put forward the *will* as the principle of the state, a principle which has *thought* not only as its form [...] but also as its content, and which is in fact *thinking* itself. But *Rousseau* considered the will only in the determinate form of the *singular* will (as *Fichte* subsequently also did) and regarded the universal will not as the will’s rationality in and for itself, but only as the *communal* [*Gemeinschaftliche*] arising out of this singular will *as a conscious will*. The union of singulars within the state thus becomes a *contract*, which is accordingly based on their *Willkür* and opinions, and on their express consent given at their own discretion, and which relate merely to the understanding. (PR §258A/W 7:400)

To take the “substantial” as one’s “starting-point and result” (PR §258A/W 7:399) therefore requires regarding the universal will not as the outcome of conscious agreement but as embodying “the will’s rationality in and for itself” (*ibid.*).

This leads to our second social-theoretical shift: regardless of how we understand the universal will’s rationality, it must exist independently of individuals’ conscious awareness, i.e., their mental states. Hegel calls this independence of the universal will a “*Grundbegriff*” because it follows

from the general philosophical method he outlines in §§1–3: the science of right simply exposit what is present in the *Natur der Sache*.²⁶ As such, the validity of this science’s results, viz., the rational determinations of the objective will, does not depend on our prescientific representations (*Vorstellungen*). Hegel writes:

In opposition to the principle of the individual will, we should remember that *Grundbegriff* according to which the objective will is rational in itself, i.e., in its *concept*, whether or not it is cognized [erkannt] by individuals and willed by them at their discretion - and that its opposite, the subjectivity of freedom, knowledge and volition, which is held in that principle *alone*, contains only the *one*, and therefore one-sided moment of the *idea of the rational will*, which is this only because it is just as *in itself* as it is *for itself* (PR §258A/W 7:401).

Because the objective will is rational in its concept, “whether or not it is cognized by individuals,” it must embody this concept in a manner indifferent to individuals’ mental states. It therefore cannot be constituted by relations of reciprocal recognition across distinct spheres of practical activity, as processes of recognition involve, if anything, certain conscious mental states. In other words, if practical philosophy hopes to do justice to the objectivity of institutions, it cannot understand them as composing distinct spheres of intersubjective action but instead as forming impersonal *forces* with which in accordance individuals must act and around which they must navigate. Institutions would then not be sites where one bilaterally recognizes or is recognized (*anerkennen*); rather, they are social forces with which one unilaterally *reckons* (*erkennen*). Indeed, if there is any *Anerkennung* to be found in Hegel’s *Sittlichkeit*, it is on the side of individuals who recognize the institutions orchestrating their practical activity, enabling them to “lead a universal life” (PR §258A/W 7:399).²⁷ This recognition cannot be mutual because institutions are not the right kind of things—namely, consciousnesses—capable of reciprocating in an interaction. Nor can institutions be spheres of mutual recognition that provide concrete patterns by which individuals recognize one another, as this would render institutions dependent upon the arbitrary volition of singular wills—precisely the position Hegel

²⁶ In a marginal note to PR §1, Hegel puts this method succinctly: “*Natur der Sache*. Not: we have such and such concepts and content of right, freedom, property, state, etc. and must now also think this concept clearly. [...] But: just consider the *Nature der Sache selbst*, this is the concept of the *Sache*.” (W: 7:29)

²⁷ See Karin de Boer, “Beyond Recognition? Critical Reflections on Honneth’s Reading of Hegel’s Philosophy of Right,” *International Journal of Philosophical Studies* 21, no. 4 (2013): 534–58.

rejects. This kind of activity constituting our shared sociality should be described as reckoning, not recognition.

To conclude, I have argued in this chapter that Hegel's critique of Fichte's practical philosophy is better comprehended if we abandon the charges of "subjectivism" and "individualism" and instead examine their divergent institutional theories. Fichte, I submitted, views institutions as congealed forms of consent, marked by their being determined by *Willkür*, being composed of dyadic relations, and serving a merely instrumental and non-constitutive purpose in right and morality. It would be better to say that such a theory arises from Fichte's oscillation between individualist and communitarian tendencies than a one-sided endorsement of either. What is at stake between Hegel and Fichte, then, is not a choice between objectivity and subjectivity, as Hegel was clearly aware, but a question of how to properly mediate these extremes, and it is Hegel's perceived faults of this mediation in Fichte that, in the practical sphere, leads him to institutionalize *Sittlichkeit*. This institutionalization, I suggested, requires two social-theoretical shifts, one shift moving from the universal will being conceived as the "communal will," the aggregate of agreements between individuals, to its being conceived as the objective or rational will embodied in institutions, existing independently of individuals' representations about them, and the other shift moving from modeling institutions as processes of reciprocal recognition between individuals to one in which institutions are *sui generis* impersonal forces with which individuals reckon. There is, of course, much more to be said about the role played by institutions in Hegel and Fichte; I have only tried in this chapter to show that it is worth saying.

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