

Economic Rights in Fichte's *The Closed Commercial State*

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Johann Gottlieb's Fichte's *The Closed Commercial State* (*Der geschlossene Handelsstaat*) published in 1800 rests on a theory of pure political right (*reine Staatsrecht*) which sets out how the rational state (*Vernunftstaat*) is to be generated in accordance with concepts of right (*Rechtsbegriffen*) (Fichte, 1962-, I,7: p. 51; Fichte, 2012: p. 87). Pure political right is concerned only with the principles that determine whether or not an actual existing constitution and state may count as a rightful one. Fichte had already provided a theory of this type in his *Foundations of Natural Right* (*Grundlage des Naturrechts*) from 1796/97, in which he claims to deduce the concept of right itself as a transcendental condition of the practical form of self-consciousness which consists in awareness of oneself as a rational agent capable of forming ends and acting with a view to their realization in the world. He then attempts to show that state authority is a necessary condition of the application of the concept of right. Moreover, on the basis of the social contract through which any rightfully constituted form of political authority must be generated, the state is invested both with the responsibility and with the right to distribute property in such a way that each and every citizen is put in the position of being able to live from his or her own labour.¹

The Closed Commercial State represents a further application of the concepts of right and property developed and partially applied in the *Foundations of Natural Right*. It also represents an attempt to show how an existing state can be transformed into a truly rational state with particular regard to the economic relations existing between its citizens, between its citizens and the citizens of other states, and between the state itself and other politically

¹ For a fuller account of how Fichte's theory of right generates this right to property, see James, 2011: pp. 21-55 and James, 2013, pp 102-119.

independent states. Given this intention, *The Closed Commercial State* is a project consisting of three main stages: an account of what constitutes right within the rational state in general and with respect to commerce and trade in particular; an account of what is customary with regard to commercial relations, both internal and external ones, within existing states that are products of history and have so far been the result of a spontaneous, uncontrolled process, as opposed to being products of a rational form of organization undertaken in accordance with the idea of what ought to be the case; and, finally, an account of how an existing state can actually be transformed into a truly just and rational one.

As regards the first stage of this project, although a fuller understanding of the principles that form the basis of this part of the project requires taking a closer look at the *Foundations of Natural Right*, Fichte offers a condensed argument for the principles that he wishes to apply in *The Closed Commercial State* in the first chapter of the first book of this work. This argument begins with the idea of natural freedom. In a condition of natural freedom, individuals acting in pursuit of nourishment and pleasure can claim equal entitlement to parts of a world which cannot be thought to be the rightful property of any one individual, and to which, therefore, everyone originally possesses a right to use as he or she sees fit. In the *Foundations of Natural Right* Fichte describes the right in question as the right of a person ‘to extend his freedom as far as he wills and can, and — if he so desires — the right to take possession of the entire sensible world’ (Fichte, 1962-, I,3: p. 412; Fichte, 2000: p. 111). These individuals do, however, have a non-moral, prudential reason for agreeing amongst themselves to limit their natural freedom in relation to each other. The reason in question concerns the fact that it is impossible to realize one’s ends effectively in the world in a condition of unlimited natural freedom, for in such a condition stable conditions of agency that allow one to predict with reliability the actions of others and the effects of one’s own actions are lacking. It makes sense, then, to agree partially to limit one’s freedom in relation

to others provided that they agree partially to limit their freedom in relation to oneself. This form of agreement amounts to the mutual renunciation of the natural right to everything that individuals originally enjoy, by granting others the right to some things but not to others provided that they grant you the right to some things if not to others. Yet such acts of freely limiting one's own original right to everything in the form of an agreement to recognize the rights of others to possess and to use determinate parts of the world and objects within it can be of only limited effectiveness, since anyone who is not party to the agreement will not be obliged to abide by terms to which he or she has not consented.

Fichte claims that this problem can only be solved by means of agreement to the establishment of a state invested with the authority to decide to whom certain parts of the world and certain objects within it should belong and equipped with the coercive power needed in order to enforce its decisions. In other words, only with the establishment of state authority can everyone be thought to have consented to subject themselves to the same conditions, with no individual being in the position to claim that he or she is not bound by the terms of an agreement into which others have entered so long as he or she wishes to remain a citizen of the state. For the conditions to which each individual subjects him- or herself to be genuinely the same for all, however, each and every individual must benefit from his or her membership of the state as well as bearing the burdens that citizenship imposes on him or her. Indeed, any individual who does not benefit by receiving something that is exclusively his or her own cannot be thought to have renounced his or her original right to everything and thereby 'retains the rightful claim that was originally his to do whatever he pleases wherever he wants' (Fichte, 1962-, I,7: p. 89; Fichte, 2012, p. 133). Thus it is not a matter of what individuals happen to agree to amongst themselves; rather, it is a matter of what it would be reasonable for them to agree to.

Given that state authority is a necessary condition of right, Fichte denies that there could be property rights outside of a state. Consequently, although he does not object in principle to the idea that the state does nothing more than preserve and protect each individual's personal rights and property, Fichte is at pains to point out that this is true only if it is not assumed that property can exist independently of the state. It is instead the state that first gives to each person that which is rightfully his or hers and subsequently protects it (Fichte, 1962-, I,7: p. 53; Fichte, 2013: p. 91). Fichte's theory of property rights turns out in this way to be compatible with the idea of a set of rights that may be subject to constant revision because they cannot be held to be valid independently of a pattern of distribution which accords with the principles of right. Yet what exactly are these principles that ought to determine the state's distribution of property rights?

In relation to this question it is to be noted that Fichte's theory of property is ultimately concerned with the conditions of effective rational agency. Thus property rights are viewed simply as conditions of a practical form of self-consciousness. In this respect, these rights must be thought to have only instrumental value in the sense of being the means to an end which is the source of their value and in the absence of which they would lack any real meaning and justification. The right to everything that individuals originally enjoy means, moreover, that any legitimate pattern of distribution must sufficiently compensate the loss of natural freedom which results from entering into a legal and political community in which individuals recognize the rights of others by limiting their own freedom in relation to them or, when necessary, are coerced into recognizing them. For Fichte, the only pattern of distribution which could truly satisfy this condition would be one that enables all individuals to achieve awareness of themselves as effective rational agents. It is not, therefore, simply a matter of being granted and guaranteed some property rights. Rather, these rights must be sufficient when it comes to fulfilling the end in question. This focus on activity can be seen as

justified because only a practical, as opposed to purely theoretical, relation to the world and to objects within it is liable to give rise to the conflict between human beings and thereby generate the need for a theory of right, as Fichte himself points out (Fichte, 1962-, I,7: p. 86-7; Fichte, 2012: p. 131). Moreover, this focus on activity leads Fichte to claim that in the first instance types of activity are to be divided among individuals. He accordingly describes the original and primary form of property as ‘*an exclusive right to a determinate free activity*’, and claims that the right to property is to be understood first and foremost as the exclusive right to actions instead of to things (Fichte, 1962-, I,7: p. 85-6; Fichte, 2012: p. 130).

After identifying the determinate activity by means of which one is able to live from one’s labour as the most basic of such property rights, because effective agency depends on being able to live, Fichte turns to explaining how a just distribution of this activity can take place. In the second chapter of the first book, he introduces a ‘chief division of free activity’ (Fichte, 1962-, I,7: p. 56; Fichte, 2012: p. 95). This division results in two main occupations: that of the producers (*Producenten*), whose activity is directed towards the materials that nature immediately provides, and that of the artists or artisans (*Künstler*), who work upon the raw materials obtained from nature by the producers. Presumably, the state will have to distribute not only the occupations which enable individuals to live from their labour, each of which constitutes a subset of these two general forms of activity, but also the means (e.g. lands, tools and other equipment) needed to undertake effectively the tasks connected with these occupations. In this way, what is distributed turns out to be a function of the determinate type of productive activity that an individual performs. Fichte then introduces another occupation or, as he calls it, estate (*Stand*). This is the estate of merchants, whose members are responsible for the exchange and distribution of the goods provided by the other

two estates.² The various estates enter into agreements with each other that the state must supervise and when necessary enforce. Beyond the determinate activity through which one is able to live from one's labour and the means of performing this activity effectively, Fichte implies that other goods such as leisure will also form the object of distributive justice when he claims that right itself demands that humanity

live on the earth as easily, as freely, with as much command over nature, in as truly *human* a way, as nature will permit. Man should labor, and yet not as a beast of burden who sinks into sleep under the weight of its load and, having just barely refreshed its exhausted forces, is roused to bear it anew. He should labor without fear, with pleasure and joy, and have time left over to raise his spirit and eye to the heavens, which he has been formed to behold. (Fichte, 1962-, I,7: p. 71; Fichte, 2012: p. 110)

Here we have the right to labour only under certain conditions and the right to be free from having to labour for a sufficient period of time, with both of these rights being ones that individuals possess in virtue of their humanity alone. Fichte accordingly wants to measure the wealth of a nation not simply in terms of what it produces but also, and more fundamentally, in terms of the ease with which the means of satisfying those needs whose satisfaction is demanded by right can be attained (Fichte, 1962-, I,7: p. 71-2; Fichte, 2012: p. 110). This could mean measuring national wealth in terms of the amount of time that each individual must work in order to achieve this end. A state would then be richer or poorer according to the extent to which each individual had more or less time free from work. This idea implies

² Fichte identifies various other estates, namely, that of members of the government, that of teachers and that of guardians, and that of the defence forces, but nevertheless treats the first three estates as the fundamental ones (Fichte, 1962-, I,7: p. 58; Fichte, 2012: p. 97).

that the state must aim to create and to distribute equally as much time as possible free from work. The same idea also allows the right to equal access to the resources needed to gain an awareness of oneself as a rational agent to be extended to include that which is needed to spend one's state-guaranteed leisure time as agreeably and effectively as possible. As with the question of what it means to live as agreeably as possible in a given state, the amount of leisure time that can be created and distributed equally will depend on such factors as the efficiency with which the labour process is organized and the kind of technology which can be utilized in the production process.

Fichte's principles of distributive justice invite the following question which becomes central to debates about distributive justice once it is accepted that any principled distribution of goods must in some sense be an egalitarian one: how equal must the distribution of goods be? Fichte claims that what is available within a state must be divided equally among all (Fichte, 1962-, I,7: p. 56; Fichte, 2012: p. 94). Evidence of the literalness of this demand is provided by his claim that in the case of a hundred people living together working the land, the law of right entails the division of the land into one hundred equal parts, one part of which is given to each of person as his own (Fichte, 1962-, I,7: p. 88; Fichte, 2012: p. 132).³ This example creates a significant problem if this equal division of land is taken to concern

³ This claim echoes the pattern of distribution and the reasons for it later described by Proudhon as follows: 'Man needs to labour in order to live; consequently, he needs tools and materials to work upon. His need to produce constitutes his right, and this right is guaranteed him by his fellows, with whom he makes a similar agreement. If one hundred thousand men settle in a large country like France with no inhabitants, then each man has a right to 1/100,000 of the land. If the number of possessors increases, each one's portion diminishes through this increase, so that, if the number of inhabitants rises to thirty-four millions, each one will have a right only to 1/34,000,000. Now, organise the police system and the government, labour, exchange, inheritance, etc., so that the means of labour shall be shared by all equally, and that each individual shall be free, and then society will be perfect' (Proudhon, 1994: 54).

the size of the individual pieces of land that are distributed, for one piece of land could be far more fertile than another piece of land of equal size, so that in terms of quality the division would be an unequal one. Such a literal interpretation of the equal division of goods and resources demanded by distributive justice as Fichte understands this notion is not, however, entailed by his theory of property which, as we have seen, provides the basis of his account of a just distribution of goods, for all that must be distributed equally to all according to this theory is an activity by means of which each and every individual with the capacity to do so is able to live from his or her own labour.

When it comes to any actual distribution of goods on this basis, natural inequality will surely have a role to play, even if Fichte does not explicitly acknowledge this point, for one individual may be more naturally suited to performing one particular activity rather than another one in virtue of such factors as physical strength or intelligence. The successful performance of one particular activity may, moreover, require a certain amount of material inequality in that it demands the possession and use of more resources than those required by another activity. Fichte himself points out that the successful performance of certain activities may not require anything more in the way of property rights than the right to perform the determinate activity in question (Fichte, 1962-, I,7: p. 88; Fichte, 2012: p. 132). Thus the amount of property owned by any one individual will be determined by what it takes to engage in the activity by means of which he or she is able to live from his or her labour, giving rise to some inequality with respect to the amount of things that individuals own in the sense of having an exclusive right to use them. Fichte also views different occupations as reflecting and fostering different needs, so that once again the distribution of goods and resources may vary. He does not, however, provide a clear principle for determining what should be distributed to whom in such cases. Rather, he assumes that someone engaged in certain forms of art or science will generally require finer food, clothing and surroundings

than those required by someone engaged in manual labour (Fichte, 1962-, I,7: p. 67-8; Fichte, 2012: p. 106; see also, James, 2011: pp. 82-6).

Although Fichte is not, with one important exception, committed to a notion of absolute equality which rules out any unequal distribution of goods or resources whatsoever, he introduces such a high level of state control and regulation of economic life when explaining how the principles of distributive justice that he sets up can be applied that the question arises as to whether he ends up, after all, doing something that strong forms of egalitarianism are often claimed to do, namely, to sacrifice freedom for the sake of equality. This state control and regulation extends beyond supervising and enforcing the agreements made between the members of the various estates to include such forms of oversight as ensuring that there are a sufficient number of people belonging to each estate at any given time. Another measure is that of arranging matters in such a way that the value of the sum of money in circulation at any given point in time simply represents the value of the sum of goods in circulation at the same point in time, with the money supply being increased or decreased to ensure that the relation between the latter and the former remains consistent.

The sacrifice of freedom for the sake of equality would represent a problem for Fichte given that he sets out a theory of distributive justice which seeks to explain how each and every individual, as opposed to only those people who happen to benefit from existing economic conditions, can be thought to have a compelling reason for renouncing their natural freedom and the right to everything which accompanies it. This is because this aim demands that freedom be in some sense preserved in the state if the benefits gained from citizenship are to outweigh the loss of natural freedom and the original right to everything. A good example of this problem concerns the extent to which Fichte's talk of a division of 'free' activity is compatible with the state's function of determining the number of people belonging to each estate in accordance with the number of producers needed, since it is they

who provide the raw materials upon which the so-called artists work, while the merchants distribute and exchange either these end products or the raw materials themselves. Even if it is logically possible that each and every person would be able to choose the occupation which enables him or her to live from his or her labour in accordance with this requirement, in which case all the state would effectively need to do is to endorse decisions that individuals have already freely made, the more likely scenario is one in which at least some people, and perhaps many of them, will be compelled to enter an occupation not of their own choosing so as to be able to live from their labour. In this scenario, the occupations into which some individuals enter will be determined far more, and perhaps exclusively, by natural necessity (that is to say, the need to secure the means to live) than by free choice.

Although this subjection to natural necessity can be recognized as a feature of a free market economy which is said to preserve natural freedom in the form of the freedom to sell and to buy goods including one's own labour, while putting many people in the position of being forced to work in order to survive, this subjection to natural necessity poses a particular problem for Fichte. This is because he wants to ensure that the freedom that is partially preserved in the state is not the freedom of a minority or even the majority of people, but is instead the freedom of all citizens. Thus the measures that Fichte introduces to guarantee this outcome threaten to suppress freedom not only through the introduction of a high level of state control and regulation, but also through his failure to explain how the activity that each individual performs so as to be able to live from his or her labour will always be freely chosen rather than being forced upon individuals by material need.

Such difficulties can be related to the argument on which Fichte's theory of distributive justice is based. As we have seen, this argument appeals to the idea of a natural freedom which consists in everyone having the equal right, if not the power, to take possession of as much of the world as they desire for themselves. This natural right can be

limited only by means of mutual agreement to limit one's natural freedom in such a way that everyone is left with a sphere of freedom in which it becomes possible to achieve full awareness of oneself as a free, rational agent capable of effecting changes in the world in accordance with ends that one has formed. Freedom and equality are therefore both essential aspects of the original right which must be partially preserved in the transition from a condition of natural freedom to membership of a legal and political community. It is not clear, therefore, why the demands of freedom should be subordinated to the demands of equality.

Fichte could respond by claiming that although the type of freedom associated with freely choosing an occupation may be lacking in some cases, the loss of this freedom together with the loss of freedom that comes from a high degree of state control is compensated for by an increase in freedom in other senses, such as the freedom associated with increased amount of leisure time that can be equally distributed among the citizens of a state. Freedom from work might therefore compensate lack of freedom with respect to one's choice of occupation. Another response would be to try to detach Fichte's commitment to the principles of distributive justice that he identifies from his proposals concerning how these principles might be applied, for it is possible that these principles could be effectively applied independently of the particular measures that Fichte himself identifies. They could, for example, conceivably be realized in a condition of full employment that is, if need be, created by means of state initiatives and in which there exist economic rights that the state dutifully enforces, without, however, the same level of state control as that envisaged by Fichte being necessary.