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Fichte's Passport - A Philosophy of the Police

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Abstract

Fichte's philosophy represented one of the first coherent attempts to provide a utopian philosophical foundation for preventative police power, one which anticipated in surprising ways the fundamental logical premises of modern dataveillance or "datapower". This article examines Fichte's proposals for a new system of police passports and the logic of control on which it rests, contextualizing it within the transformation of police practices during his lifetime. It concludes with a discussion of Hegel's criticism of the logical incoherence of securitarian policing, and its relevance for our situation today.

1. Passports

In 1797 the philosopher Fichte descended one time from the heights of speculative philosophy, setting aside the abstract dance of the ego and the non-ego, in order to propose concrete measures, police measures. He writes in the *Foundations of Natural Right* that, "The principal maxim of every well-constituted police power must be the following: every citizen must be readily identifiable, wherever necessary, as this or that particular person. Police officers must be able to establish the identity of every subject."¹

The immediate consequence of this principle of identification, or rather of police *identifiability*, was a new system of passports: "Everyone must always carry a passport with him, issued by the nearest authority and containing a precise description of his person; this applies to everyone, regardless of class or rank," with the further specification that, "Since merely verbal descriptions of a person always remain ambiguous, it might be good if important persons (who therefore can afford it as well) were to carry accurate portraits in their passports, rather than descriptions."²

In the eighteenth century there already existed passports that travelers were required to obtain from authorities not only when crossing State borders, but also when moving within a territory from one town to another. These internal passports, letters of safe-conduct and travel authorizations, were issued now and then on the occasion of a trip. As a means of controlling mobility, the apparatus was by default directed toward certain undesirable categories of the population: "the idle, beggars, vagrant Jews, Gypsies and other unknown or suspicious types."³ When circumstances appeared to demand it the apparatus would be tightened up, but there did not yet exist any unified system of identification documents such as we know it today. Hence we can immediately grasp the novelty of Fichte's proposal: to generalize the system of passports across the entire population, making it a universal, obligatory and permanent system.⁴

If the police could be reduced to a single principle or formula, it would end with a question mark. It would be a simple and implacable *question*: 'Who are you?' What defines the police, what gives it its ultimate essence is this interpellation, this perfectly concrete operation that for us has become so familiar, of checking our identity: 'Papers please!' The passport makes it possible to

respond to this injunction immediately and without ambiguity. This is its principal function as an identity on paper.

Yet when it comes from the mouth of the police, the question 'who are you?' always assumes other functions than a simple recognition. If the question of identity carries with it complex philosophical questions, on the other hand, as Philip Agre writes, "In an institutional setting, to 'know who somebody is' is roughly speaking the ability to get hold of them."⁵ When this body I was speaking to vanishes into the crowd, by knowing his name, I will be able to find him again. Inversely, if I learn his name, by consulting a central registry I will find a description [*signalement*] of the corresponding body. I will know his history, I will find his coordinates, I will find him again. Given a body, find its name. Given a name, find its body. Given a set of properties, find the name and locate the corresponding body. Questions of identification are unfolded within this triptyque, this triple relation of correspondence, translation and equivalence between the name, the body and its attributes: to individualize a description, to corporealize a name, to name a body. The goal above all, the will that animates the installation of these systems of correspondence, is to acquire a power, and fundamentally, a power of capture. To be able to recognize is to be able to find again: once I have recognized you, you will not escape me.

Consequently, from the police perspective the question of the ego and of identity receives a rather prosaic interpretation. In this sense there is a certain irony in seeing what is certainly one of the most speculative expressions of the philosophy of the self - that of Fichte - lead in an entirely practical way to the invention of a tool of police identification, the constitution of a police technology of the ego. As a result, after an interval of dozens of pages, we find in Fichte's text a revealing hiatus regarding the differential status of the face in matters of morality as well as those of the police. On the one hand, in a lyrical and anachronistically Levinasian passage, the face is presented as the very foundation of ethics or of the moral relation to the Other;⁶ on the other hand, the face later appears in a different register, this time ensnared in an exigency belonging purely to the police: that everyone's face be permanently seen, that no one be able to conceal their face, now appears as an imperative of securitarian identification. The great ethical discourses on the sacredness of the face often serve to conceal much more down-to-earth police projects of identifying subjects.⁷

The passport is not only an identification document, but also a portable archive of one's travels. The written traces of previous ID-checks allow one to know not only who you are, but where you've been. To the descriptive order is therefore added a narrative order (one's itinerary). The question 'who are you?' is extended into the question 'who goes there?' To these little personal books, these telegraphic novels, now correspond other works: these are the registers where, at each ID checkpoint - inns, sentry boxes, village gates - the traces of every passage are recorded in duplicate. To the portable archives formed by passports correspond the static archives of the registers kept at every checkpoint.

Yet this is not all: to the memory of every past voyage, to the archives of yesterday's trips, is added another type of trace, this time prescriptive - that of the future itinerary. For Fichte's passport functions like a travel warrant: at each checkpoint one must indicate the next stage of the journey. Consequently, movements can be strictly controlled, as we can continually track each and every one of them.⁸ Thus equipped, the police know where everyone has been, where they are, and where they are headed.

Thus defined, Fichte's passport functions as *an apparatus for the traceability of people*, today understood in the broad sense of the term as the "ability to find the history, the use or the location of an entity by means of registered identifications."⁹

2. Bills of Exchange

Every false bill [...] comes back to you in turn. Time is a strict bookkeeper, a true continuum of things that overlooks nothing and never lies (Herder).¹⁰

What purpose do these passports serve? After having presented his plan, Fichte proceeds to show their utility. He offers several concrete examples intended to display their merits. Among others, the generalization of the passport system would put an end to a very specific type of fraud related to what in the eighteenth century were called "bills of exchange."

What is at issue here? Bills of exchange are payments, proofs of debt, documents one accepts in lieu of future payment. The general principle is simple: the issuer commits in writing to pay a certain sum of money, at a certain date, either to a certain person or to the bearer of the bill of exchange, the latter being payable either directly from the issuer, or from a third party whose name is indicated on the bill. "The bill of exchange is a document by which the merchant either is due the payment of a determinate sum, or which requires a third commercial party, to which he is related, to pay said sum to the bearer of the bill by a certain date."¹¹

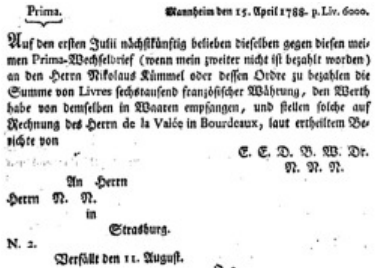
Here is an example of such a bill from Germany, dated 1736:



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Bill of Exchange, June 14, 1736

Here is yet another example, this time in letter-form, drawn from a finance manual in the eighteenth century:

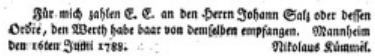


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Bill of Exchange¹²

Several types of bills of exchange exist in the eighteenth century with varying characteristics, based on more or less complex financial arrangements. Without going into detail, it will suffice to note that the holder of a bill of exchange could either redeem its value with the issuer or with a third party representing him, or else, with certain types of bills, pass it over to someone else as a form of payment. The acknowledgement of debt therefore becomes a means of market exchange, a currency equivalent, a form of paper-money. Hence its other definition: bills of exchange are "papers which, in certain circumstances, are substituted for liquid currency."¹³

As a result, these bills circulate. They can be used at a marketplace as a means of payment in place of money. They pass from hand to hand, and each time the document is "endorsed," which is to say the one who redeems it inscribes his name and his signature on the back of the document. Below is an example of a model endorsement, a fictive example in which Nikolaus Kümmel transferred through an endorsement a bill of exchange as payment to Johannes Salz or to his order:¹⁴



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At the end of the cycle of exchange, these bills, payable to their bearer will be brought back to he who must honor them, and converted into liquid currency. Hence the term bill of exchange: they can be exchanged *in fine* for money, converted into money.

What we must take note of is precisely the system of substitution at play here: the bill of exchange replaces money. It is its equivalent, which is to say the equivalent of something that is already itself an equivalent since money serves as the general equivalent. Yet, as we shall see below, this logic of equivalence and substitution, in which elements replace other elements in an indefinite chain, is at the heart of the problem that is about to take shape here.

Technically, as a means of payment, bills of exchange present several specific characteristics distinguishing them from the liquid currency for which they are substituted.

First of all, it is a question of a scriptural currency, which is to say a currency founded on a play of accounting entries, whose value is not without relation to the value of its material, made of ink and paper rather than of precious metal.

Second, it is a question of a fiduciary money, whose value is conditioned by the trust between the agents of exchange. If I accept the bill issued by such and such merchant, this is because I trust in his capacity to honor it, because I have faith in his promise of reimbursement. The condition of this system of market circulation of bills, which could be described as a vast market of promises, lies in the credibility of the issuers. As a result, as the author of a treatise on bills of exchange in the eighteenth century wrote, "Thus the credit, or the trust that one places in the other is the means by which such a bill of exchange receives its validity."¹⁵ A fundamental relation therefore ties credit in the financial sense to credit in the "moral" sense, debt-credit and trust-credit.

The third characteristic of this particular form of money concerns the practice of endorsement. As opposed to money, which as the expression goes, *has no smell*, in the sense that it preserves no trace of its origin, bills of exchange remain impregnated with an indelible scent. The hands between which they pass each leave their mark in the codified and verifiable form of a proper name and a signature. Whereas the bank note is a form of amnesiac money, circulating without preserving any memory of its itinerary, the bill of exchange is on the contrary a memory-laden money. It carries on its back the list of its successive bearers, the archive of its circulation, the narrative of its little commercial biography - a chain of names, a round dance of transactions. In short, it is a traceable money. To the anonymous and amnesiac material principle of money is opposed the principle of traceability and hypermnesia of the bill of exchange. As we can see, this apparatus is very similar to that of the passport: each movement, each transaction leaves a written trace. As we shall see, this is precisely what interests Fichte in this apparatus, one which he intends to perfect.

Yet a problem arises here, mainly that of fraud:

In large trading centers, especially at fairs, a bill of exchange may very well change owners several times in a single day. The people through whose hands it has passed may not know each other. Now, it is true, a merchant is unlikely to accept a bill of exchange unless he knows the issuer and recognizes his signature on it. But signatures can be forged; and the simple fact is that counterfeit bills of exchange are actually produced and accepted, so it must be possible to defraud people with them. Now, sooner or later, when the bill makes its way back to the alleged issuer, the forgery will be discovered. But then how is it possible to identify and apprehend the forger, so that he can be held responsible for the loss he has caused? [...] The names of those through whose hands the bill has passed will always be marked on the back of it. But under the usual way of doing things, a person can give a false name. As soon as one begins to look for him, he is nowhere to be found.¹⁶

Here we have a problem of secure exchanges, a problem of the security of commerce or, as Fichte writes, a problem of "the security of property." Yet, if fraud is made possible, this is due to a historical phenomenon linked to the extension of the sphere of exchange. In a restricted market, in which everyone knows each other, it is difficult to put false bills into circulation. Mutual acquaintance [*l'interconnaissance*] on its own assures trust. Yet, in more widely extended markets, in which agents trade with people whom they don't know, whom they've never seen and whom they may never see again, such a spontaneous guarantee disappears. This becomes all the more true the more the speed of circulation accelerates and the number of mediators multiplies. The problem of fraud in bills of exchange is thus directly linked to the phenomenon of market extension and to the intensification of market exchanges beyond the sphere of local familiarity, which is to say beyond conditions in which the identification of the agents can no longer be assured by traditional, informal means founded on the regularity of habitual contact.

The fraud in question concerns falsehood and the use of the false. To be more precise, in the eighteenth century we may distinguish between two broad kinds of falsehood in writing, according to which bills are either *false* or *falsified*: "the false bills are those on which the signature of he from whom the sum is payable is false [...] Falsified bills are those on which the sum, the date of payment or

the endorsements have been counterfeited".¹⁷ The first case refers to a usurpation of identity or to the use of a fictive identity; the second is blue-penciling, the modification of an existing bill. In the two cases, the problem that needs to be resolved is that of authenticity: how can we assure that the people and the bills are authentic, which is to say, that they are really what or whom they purport to be? The problem of security arises here as a question of truth.

In the case of fraud, we can mount an investigation. The question here would be: how can we track down the forger? Two things are necessary: to discover his identity, and to find out where he is hiding.

However, although the practice of endorsement theoretically provides the possibility of tracing-back the name of the guilty party, the apparatus contains a weakness. If the forger has utilized a false identity, we will not be able to find him. The precautions will have been fruitless. It is at this precise point that the Fichtian innovation steps in. It is a question of guaranteeing by means of the passport the possibility of tracking down the guilty parties, in the double sense of finding both their identity and their location.

Fichte writes,

According to our suggestion, anyone who transfers a bill of exchange (assuming that the recipient does not already know exactly and personally who he is) would have to present his identity card in order to show that he is this particular person, where he can be found, etc. The recipient of the bill has a duty to look at the identity card and to recognize the transferor accordingly. On the back of the bill of exchange, next to the name of the transferor, he will simply add the words: with an identity card from such and such an authority. The recipient will have to write down only two more phrases, and it will take just a minute or two longer to look at the person and his identity card; but otherwise, the matter is just as simple as before. Now if the bill of exchange turns out to be a counterfeit, and if an investigation points to a particular person, then where is he to be found? Given the constitution of our police power, no one is allowed to leave one locality (he can be stopped at the city gate) without specifying the place he intends to travel to, which will be noted in the register of the place and on his identity card. And if he should leave that place, the very same rules would apply again, and so there would be a continuous record of his whereabouts.¹⁸

The new measures consist in a doubling of the endorsement of the bill through a controlling of identity. It is an operation of identification in which we compare the description found on the passport with the physical person in order to assure that the name he gives us is truly his own. The contribution here consists in the combination of techniques of recording and of identification. Every trace written on the bill is henceforth a record of an operation of identification (such and such individual, whose identity was certified by his passport carried out this or that transaction).

The passport intervenes in this apparatus as a proof of identity, a formal and institutional proof based on the use of an official document. The phenomenon is that of a technization and a statification of the operation of recognition. The piece of identity appears here for its part as a substitute, a Statist substitute for the spontaneous forms of interpersonal recognition, mediated by an instrument of certification issued by a central authority.

In this apparatus, it is each of us who verifies the identity of every other person by means of the passport, which he notes on the back of the bill of exchange. No police officer, no agent of the State intervenes directly in the process. The identification documents are not only a technical mediation between the State and individuals under the mode of control, but also an officially guaranteed mediation between individuals. In other words, the passport, as an Statist instrument for the certification of identity, is put into use within the relation between persons, and not simply in the relation between the State and its subjects, and this is so precisely in order to assure the security of market exchanges.

Another important point here: the operation of controlling identity is not only left to the agents of exchange, but also integrated within the transaction itself, as a necessary formality, as one of its everyday conditions of effectuation. No more exchange without identity control, and no more identity control without a written trace. What comes to light here in this highly particular case of bills of exchange is a principle destined to have a bright future: a principle of the automatic capture of transactional data, founded on a system of certification. Traces of a control therefore, but of a control integrated in the transaction itself, so that each exchange is coupled with the production of an authenticated archive.

Bills of exchange and passports function according to a very similar principle. To the names of the towns one has passed through correspond the names of those between whose hands the bill has passed. As paper instruments, they both carry with them the history of their circulation. But the two artifacts are not only connected by a homological relation. In Fichte's plan, the two

apparatuses are quite concretely articulated to one another. The signature on the back of the bill, beside which one finds the reference to the corresponding passport, materializes the intersection of two trajectories fixed on paper by this operation of recording. For a given name within the series of endorsements, one can choose either to move back through the vertical axis of transactions in order to retrace the history of exchanges, or else one can follow the horizontal axis of the individual's movements in order to reconstitute his path.

The entire plan consists in articulating the axis of the circulation of bills to the axis of the circulation of people, in associating in an inextricable way the traceability of means of payment with the traceability of agents of exchange, with the goal of creating a securitized market. A system of generalized traceability, in which the itineraries of people and of things form a crisscrossing network of paths that intersect and of which one can always, beginning from the archives of control, draw up the map. Creation of a territory with no way out and a time without any lacunae.

This double apparatus of traceability - of people and of things - appears as a powerful means of facilitating the investigation. Thanks to the chain of recorded identifications we henceforth have at our disposal, it will no longer be difficult to find the link responsible for the fraud. We will immediately know the true identity of the forger as well as where to apprehend him.

To describe such an apparatus, Fichte spoke of a "police organization," which indicates that the police should be understood here not merely as an institution (e.g., one charged with tracking down suspects) but also, and more fundamentally, as a way of organizing things. It is a problem of reorganizing the real so as to facilitate future investigations, of constructing a world suited to investigation.

My thesis is that the apparatuses of traceability are for this reason profoundly different from what Carlo Ginzburg called the "evidential paradigm"¹⁹ - or else they radicalize it to the point of surpassing it.

For Ginzburg, the evidential paradigm is essentially governed by problems of attribution: how can we know, in the absence of any obvious signature, who the author of a painting or a crime really is? Which hidden features and characteristics allow us to recognize him or her? How can we reach back, through the sign, towards the one who produced it, and whom the sign still secretly continues to indicate? This kind of interrogation involves the slow work of deciphering clues, the interpretive regression from the present toward the past, from the effect to the cause. In this evidential paradigm, we study the actually existing traces so as to read in them the vestiges of a past we seek to reconstitute. This is a retrospective movement requiring an entire art, all the know-how of the investigator and the sagacity of the detective.

The paradigm of traceability proceeds differently. In fact, it reverses the temporal logic. In place of these *a posteriori* material traces, we now organize in an *a priori* way the production of future traces. The spontaneous traces that served as the base of the evidential paradigm are replaced by prefabricated traces captured by means of automatic recording apparatuses integrated into activity itself, every material flow now being coupled with a production of a flow of data.

As a result, this new regime of trace production hopes to solve the whole problem of attribution in advance, before it even arises: to assure the trace is attributable even before its actual production. The problem is no longer that of beginning from a given trace and then subsequently determining its author. Rather, beginning with a given individual, the problem is to ensure that, in the future, he be made the absolute author to which his acts are to be attributed. Traceability thus appears as the engineering of trace-signatures. Every act must be signed. Every act must include an automatic signature. Rather than splotches of mud, we have a name, a place and a date - information fastened to each footprint. Whereas the evidential paradigm implies a *science* of the individual, traceability appears on the contrary as a *technics* of the individual, as a procedure of individuation destined to produce entities that are identifiable and easily found.²⁰

We make sure that activity leaves traces and that these traces have a code imposed upon them in which they are expressed. Such a preexisting code will render the work of interpretation superfluous: it suffices to read the traces, in black and white. There will no longer be any need for the slow and patient work of deciphering that calls for so many varieties of ingenuity, for the traces will be seized within a code and a grammar that immediately renders them legible - they will speak for themselves, for we will have taught them to speak, because we will have become discourse.

Whereas the evidential paradigm is founded on a *semiotics*, on an art of interpreting signs, traceability depends on a *signalitics*. The ideal of traceability is to render the interpretive work that was at the very heart of the evidential paradigm superfluous, and this by the recording and coding of traces that have become at once signals and signatures.

Such an apparatus therefore allows the police to dispense with the tedious work of investigation. We will now proceed by a simple retrospective reading of the history of the recorded traces. At the limit, the investigation itself will become superfluous. The old clues will have been replaced by a vast archive of written proof established by anticipation. If the conceptual persona of the evidential paradigm is the detective, in the paradigm of traceability it is the archivist.

In fact there are two classic police figures that the logic of apparatuses of traceability tend ideally to do away with: not only the detective, but also the spy. Fichte explicitly links his plan of a generalized traceability to the diminution of surveillance functions: with such a system there is no longer any need to have agents following individual suspects around, no more informants, no more tailing. The idea is that the multiplication of control points will render these old forms of surveillance superfluous. We no longer need to directly follow someone, we now follow at a distance, by traces, through the aggregation of a series of written notations rather than through the continuity of a look. The model is no longer that of a central eye, but rather one of a chain of hands, a vast network of writing.

My thesis is that what we have here is less an apparatus of *surveillance* than one of *control*. Etymologically, the "contre-rolle" referred to the copy of a document - of a list, an account book, a register of births, marriages and deaths - that is archived and used to verify other items. Control is defined first of all as an operation of verification by means of a system of written notation. As such it is *stricto sensu* distinct from surveillance, which as a process is originally much more optical than scriptural. At the limit, to survey it suffices that one have eyes, whereas control implies an ensemble of documents and archives.

I think that this type of technology of power is markedly different than the one described by Foucault under the name of Panopticism. Certainly, institutions of hierarchical surveillance control and record. They mobilize an entire apparatus of writing at the same time as they ceaselessly watch over their subjects. The surveyor takes notes. The practice of the examination gives rise to piles of forms, reports and files.²¹ But if the Panopticon is a graphomaniacal institution, its writing appears to be essentially subordinated to the look, as the record of an observation or an examination. What we find in the example of the bills of exchange are operations of notation that in a sense become automatic exudations of the transactions. No transactions without writing, yet not in the sense that a report is drawn up about activity, but rather in the sense of a recording, the written capture of traces finds itself incorporated within the activity itself as its condition of possibility. This is an apparatus in which every act produces in and of itself its own written trace, without the mediation of a third term.

Moreover, we recall that the disciplinary efficacy of the Panopticon hinges on the interiorization by its subjects of the look that surveys them. It matters little whether there is or is not a surveyor in the tower: it suffices that the inmates believe there to be for them to think they are being watched and to modify their conduct accordingly. Now, if the psychological efficacy of apparatuses of traceability also resides in a process of interiorization, the latter does not have the same object. What the subject of traceability interiorizes is not the idea that he or she is being observed here and now - even if in fact he is not - but that we can always catch up with him, that we will always know what he has done and where he can be found. If surveillance functions in the present - "I see you" - traceability functions in the future anterior: "I will know what you will have done". The processes are similar, but distinct. To distinguish this regime from the classic models of surveillance, the notion of "dataveillance"²² has been proposed: a watchfulness exercised by the recording of data preserved for a future use. Traceability consists in organizing within the present the future capability of rereading the past.

As a result, if disciplinary surveillance "presupposes a mechanism that coerces by means of observation,"²³ traceability implies an apparatus that coerces by means of memory. Whereas the first is basically founded on an *optical* art, the second mobilizes a *mnemotechnics* that induces effects of power. The former are observation machines, the latter memorization machines. The former function through the permanence of the look, the latter through a continuous memorization. The art of the visible versus the technology of the memorable. In this kind of apparatus we are not disciplined by the interiorization of a look, but by the interiorization of an external memory.

What psychological effect does this have? Above all it is an effect of dissuasion. For the potential perpetrator of fraud, this archival technology should produce the assurance of being discovered and captured. For Fichte this is precisely the condition of the efficacy of the legislation: that he no longer have even the slightest hope of impunity.

There is a whole philosophical tradition that considers punishment to be a dissuasive measure, a threat that is supposed to discourage individuals from committing the act, a whole chapter of penal philosophy that conceives of the sanction as an intimidation measure, which by punishing current offenders will avert future ones. However, according to such a rationale, penal dissuasion functions only if the chances of escaping punishment are little or none. Even if the punishments provisioned by the code

were severe, if the powers of investigation and tracking are weak the hope of escaping them will be large, and the dissuasion minimal. Briefly put, penal dissuasion is a function of the efficacy of the police, so that, as Fichte writes, "The requirement that the police, as servant of the law, apprehend every guilty party without exception is absolutely necessary."²⁴ Yet this necessity, which is unrealizable in normal States, will be fulfilled in the Fichtian State, in which the police know "where each one is at every hour of the day, and what he is doing."²⁵ Traceability makes the dream of impunity disappear.

The problem here has to do with the relation between the law and the real, with the efficacy of the law. What is required for the sentences set forward by the code to become effective deterrents? This problem of a gap, of a non-correspondence between the real and the law, is what defines the proper space of police action, understood as the mediation between the law and the real, as the instrument for the concretization of the law. Before examining in greater detail the way in which this concretization of the law through the police takes place, I would like to return to the Fichtian definition of police power.

3. Police

The passport plan that Fichte proposes here is a *police measure*. But what is the police? What is the status of the measures that it enacts? I will attempt to answer this question in two stages: first, by outlining Fichte's definition of police; second, by situating this definition in its historical and theoretical context at the end of the eighteenth century.

I will begin with a general remark: here, as the title of the work indicates, the concept of the police surfaces within the frame of a philosophy of right. The question of the police - what it is, what it can do - is first posed in relation to the law, and more specifically in relation to political right. In perfectly classical fashion, Fichte thinks the foundation of political sovereignty through a theory of the social contract, by mobilizing the fiction of an original contract between subjects and the sovereign from which the rights and mutual needs of each party are derived. Yet, at the center of this classic contractualist matrix is inserted something that I believe is completely novel: a new conception of the police conforming to what was in the process of being developed during this period in certain currents of *Polizeiwissenschaft*. Thus we have a coupling of the old theory of the social contract with the newly emerging police rationality.

Fichte presents the relation between the police and the law in a few different ways. His first line of questioning concerns its foundation: what founds the right of the police? At this point it is a matter of a deductive approach that seeks the content of this right, which is a Statist right insofar as it flows from the terms of the original contract. It is therefore a question of the normative foundation of police power. But Fichte also questions the specificity of police normativity: how are police laws and measures distinguished from the law more broadly? What is the specificity of the normative power of the police with respect to that of the law, whether this be civil or penal? It is question, therefore, of how to characterize police normativity as a specific order of constraint: what distinguishes the "you must" stated by the police from the "you must" stated by the law?

What founds police power according to this theory is the duty that the State has to *protect* its citizens, and which governs institutions of security. The power of protection, therefore, which is presented as a duty. But to this duty also corresponds a right, a right of *constraint* the State exerts over its citizens. In a schema of reciprocity between rights and duties typical of contractualist logic, police power finds itself legitimized at once by the duty to protect and the right of constraint, a right of constraint presented as being the strict counterpart - and at the same time the means - of the duty of protection. It is in a sense the idea of a *security pact*, in which natural liberty is swapped for State protection. Yet the police are not content simply with putting in place these "institutions of protection and security" (first branch of the police) intended to directly protect citizens (armed patrols, road signage, the fight against charlatanism, protection from disasters, fires or floods), but also promulgate their own specific laws, police laws. The obligation to carry a passport refers to the latter type of law.

In order to protect it is sometimes necessary to constrain. But what is constraint? Fichte specifies the type of procedure that in his view should be covered by this notion. The guiding question is the following: can one invent a type of procedure that absolutely obliges subjects to respect the law? This means of forced obedience would be a "law of constraint" - law being understood here not in the juridical sense but rather in the mechanical sense of a necessary principle.

The first image that comes to mind when one speaks of constraint is that of a physical impediment, a coercion: to force someone to do something, to exert pressure on his or her body. It would then be a question of organizing "an apparatus under which a mechanical force of nature would keep people from engaging in wrongful actions"²⁶ We find examples of this sort of apparatus in the police literature of the eighteenth century: for example, antitheft machines such that when a window is opened from outside by an

unauthorized person a charge of buckshot is unloaded. Examples, therefore, of apparatuses that are physical, that hinder or that automatically retaliate. But Fichte rejects this option as being at once impractical and illegitimate. A general apparatus of absolute physical constraint would not only be difficult to realize (one can always oppose force with force, one can *always* resist), but also contrary to the principles of right. To obtain a general obedience it is necessary to resort to something other than pure relations of force, something other than hindrances, than a ball and chain and a straightjacket.

What's left? "The apparatus we are looking for would have to be directed to the will itself; it would have to enable and require the will to determine itself and will only those things that can coexist with lawful freedom."²⁷ In other words, as opposed to the unrealistic hypothesis of a constant physical constraint, a kind of generalized police *corsetage*, Fichte prefers another solution, one that is at once more practical and more in conformity with the law: a constraint aimed less at the body than at the mind, less at the acts themselves than at the will to commit them. Whereas physical constraint places the body in chains, the "law of constraint" will be the instrument of a psychic hindrance that will give back to the body its freedom of movement, all the while controlling it through the intermediary of the will. Police constraint will take the form of a technology of the will.

The challenge consists in finding a device by which the will can be made to no longer want to be illegal. But at this stage the question still remains: how to force the will to will only that which the law authorizes, and nothing else? For this it is necessary to arrange things so that once it germinates in the mind, the illegal will annuls itself on its own. What is necessary is to find a means of trapping the will in a contradiction that diffuses it, a device for automatically turning the will against itself. This could be the case if one could manage to put into place "an apparatus [...] that would operate with mechanical necessity to guarantee that any action contrary to right would result in the opposite of its intended end, such an apparatus would necessitate the will to will only what is rightful."²⁸ Imagine a world in which every illegal thing willed, once the requisite action was effectuated, was turned into its opposite. A world organized in such a way that the will to commit an illegal action always turned against its agent as soon as he tried to undertake it, in which this happened automatically, according to a mechanical necessity. Here we have an attempt at the annulment of ill will by a reversal of its effects that turns it against itself.

Philosophy has long asked, at least since Plato, whether it is possible to will evil. This old theoretical question receives here a new techno-practical solution: it matters little whether you will evil, for when you undertake the realization of this will you will end up with the opposite of what you intended. You are free to will that, but know that the consequence will inevitably be the opposite of what you wanted. You want to get rich through theft? You will inevitably end up being fined. What was supposed to be the means to an end reveals itself in fact to be the realization of its opposite.

This procedure of volitional incapacitation consists in acting upon the motives of action through a play of mechanical counter-measures. It is a question of defusing the will by means of an anticipative calculus of its consequences: it being given that a determinate action will set in motion a necessary and foreseeable reaction, the agent must consequently integrate this into his calculation. In other words, the goal here is not to produce a good will, which is to say, one whose motives are in themselves in conformity, both internally and autonomously, with the requisites of the law - the classical post-Kantian definition of *morality* - but to produce the conditions of a controlled will, a will that, even if this does not arise internally from itself, is still determined by the moral law, and which *cannot* will anything other than the authorized juridical law. What we have here is a technology not of morality but of pure *legality*, defined as the simple conformity of external actions to the law. It matters little whether you act from out of a fear of sanction or from a true altruism, all that counts is that you act legally. It is not a matter of forming a moral subject, but rather a legal subject. It is in this type of securitarian rationality that one must look for the emergence of rules of action disconnected from every exigency of a normative autonomy of the subject, determined purely by a mechanical play of anticipation of the 'action/reaction' sort.

The annulment of the criminal will occurs in this schema through the threat of a repression one cannot escape, by the dissuasive shadow of the ineluctable chopping-block of the law. It is in this sense that the apparatus is said to be "mechanical", that a necessary relation of consecution is established between the illegal act and its sanction. You want to pass off a forged bill, but you know that as soon as you exchange it you will inevitably be seized and punished, and as a result of this very exchange itself, which was how we were able to find you.

Consequently, to turn the effects against the intention that drives them, it is necessary for the means employed to *concretely* end up being the opposite of what they were supposed to do. This supposes a whole technical work of reorganizing the world, the unfurling of an entire police engineering. That the sanction no longer be a simple threat but a mechanical consequence of the crime implies that we technically inscribe the necessity of the sanction within the very order of the functioning of the real, converting the penal law into a quasi-physical law.

To effectuate such an ordering of the world, the police will rely on a highly specific normative instrument that Fichte calls the "police law," and which it is important to distinguish in several respects from other forms of law.

Police laws differ from properly civil laws first of all "by the fact that the latter *prohibit* actual injuries, while the former aim at preventing the *possibility* of injury."²⁹ A difference of object: whereas civil laws are directed toward the real, police laws target the possible. To provide a simple example, whereas the law in general says "it is prohibited to steal", the police law says "it is forbidden to conceal your face" - this is because the gesture can for example facilitate armed robbery.

In this operation of interdiction the police carry out a regression of the prohibited act to its conditions of possibility. It is a norm that is applied to the real by considering it in light of the virtualities it presents. Put otherwise, and this point is absolutely crucial, the police is defined as a power over the possible, as a power that limits the possible, a power that is essentially preventative, which exerts itself in the name of that which has not yet been committed but which could be. It is because you could make an illegal use of such and such a freedom that I deprive you of it.

Yet there is a second important difference, which this time concerns the modalities of the interdiction: whereas the legal interdiction takes the form of a verbal prohibition - it is forbidden to commit such and such act under penalty of such and such sanction - the police measure takes the form of a concrete impediment. The police are not content to issue interdictions, they make use of material arrangements in order to prevent the thing from taking place. Thus for example the police prohibition "it is forbidden to conceal your face in public" is immediately coupled with a technical measure: public lighting, which makes the disappearance of the face into the obscurity of the night physically impossible. Where the law only talks, the police act on their words, translating its discursive interdictions into material apparatuses. Where the juridical norm is abstract and formal, the police measure is concrete and technical.

From one regime to the other we pass from a relation of formal subsumption to a relation of real subsumption of the phenomenon to the norm. In the police regime, ideally anyway, one can no longer break the prohibition since one is concretely submitted to its exigencies. The police presents itself as the power of the *real impossibilization of what is prohibited*. It functions as an apparatus of conversion, converting the legal prohibition into a material impossibility, like a technology that reconfigures the possible from the point of view of the necessary.³⁰

Finally, there is a third essential difference: whereas "*the civil law prohibits actions* that, in and of themselves, violate the rights of others [...]. Police law prohibits actions that, in and of themselves, do not harm anyone and appear entirely neutral,"³¹ but which make it easier for one to harm others and which make the protection of others as well as the apprehension of the guilty difficult for the State. As Fichte writes, "we don't hurt anyone simply by being on a dark street, but in this obscurity it would be easily possible to do so, and it is this precisely that must be excluded." Put otherwise, the police measure prohibits acts that are in themselves innocent in the name of a secondary - and uncertain - possibility of harm. So that the police law produces offenses *sui generis*, offences that are such only in virtue of a breach of police measures, without comprising any real damage - purely formal offences, offences without victims.

This introduces a fundamental decoupling of police rationality from principles of right: a disjunction of the criminal and the harmful that leads to an autonomization on arbitrary bases of what constitutes an offence and what authorizes constraint.

What begins to take shape with these three distinct characteristics is a sharp opposition between two very different normative regimes: juridico-legal normativity and police normativity. To summarize, if the juridical law formally prohibits real injury on the basis of the harm it causes, police law prevents or really prohibits facts that are not harmful in themselves, but which are virtually permitting illegalisms to occur. Police law is defined as the real ban of innocent facts in the name of a possible infraction.

It is important to register what is emerging in these lines: a *sui generis* rationality of the police norm, developed in rupture with the fundamental traditional principles of the juridical order, a right disconnected from every exigency of justice, a police right, entirely securitarian and preventive, as blind to the efficacy of the act as it is to the reality of harm. A power of absolute constraint exercised upon innocent facts in the name of a possible danger.

This conception of police power is not entirely Fichte's own invention. He inherits it in large part from a movement already underway during his time in certain currents of "Polizeiwissenschaft" that sought to redefine police rationality.

In the eighteenth century, the concept of the police is still unstable. There is no consensus on its definition, and we find nearly as many definitions of the police as there are treaties written upon it. Despite this lack of notional unity, a general tendency remains easy to see. In a very schematic fashion, we are in the process of passing from an extensive and positive notion to a restricted and negative notion of police.³²

The classic "Policey" covers a very large domain, and in this first acceptation amounts to an art of governing a people in every dimension of its life. This broad extension of the old concept of police, a notion quasisynonymous with political art, is far from that which we commonly understand today by the notion of "police," distilled in images of a siren, a baton and a ticket book.

The second characteristic of the old notion of police concerns its articulation to a certain theory of the *ends of the State*. What is the aim of the political community? The classic response, of Aristotelian origin, consists in saying that the goal of political association is not only to live but to *live well*, that politics therefore is not bound solely to the assurance of the primary biological functions of life but also to the realization of a good life. This thesis, taken up again by aspects of modern political philosophy, formed the basis of what is called a "eudaemonist" conception of political sovereignty according to which the end of the State was to assure the happiness, well-being, or (in German) the "Wohlfahrt" of its subjects. This was a positive definition of the State as happiness or as providence, well-being or public safety, directed at once toward the health of the body, the salvation of the soul, temporal happiness, morality, prosperity and security.

The means for the realization of this positive and totalizing finality was a certain body of knowledge intended to bring it about: the science of police, "Polizeiwissenschaft," understood as the science of happiness, a general rationality of the well-being of people.

It should be noted that this doctrine of the ends of the State offered at the same time a theory of the foundations of political authority. It was in the name of the happiness of the people that the sovereign exercised his authority. It was through this concept of "Wohlfahrt" that his right of constraint was founded. Once such an end was presented as the foundation of sovereign power, its authority could of course claim for itself an extension as total as its object.

This eudaemonist conception of sovereignty was strongly criticized throughout the eighteenth century. Can the State base itself on a positive and determinate definition of happiness in order to exercise a right of constraint? Enlightenment thinkers in Germany concentrated their attacks on this precise point, developing what one could call a politically liberal critique of the doctrine of the State of well-being. The pursuit of happiness being each and everyone's own affair, no authority can claim to assert its vision of happiness as the foundation of a power of constraint. This criticism implies a much more restricted finality be assigned to the State than that of Wohlfahrt. The aim of the State cannot be the positive realization of happiness but rather something more modest, related only to the conditions of the individual's pursuit of happiness. From this point on, the police can no longer be understood as the general science of the people's happiness: from a rationality of public happiness, we must pass to a more restricted definition.

It is in this context that the police tended to be redefined (*tended* only, however, since important elements of the old definitions still remained) around the cardinal notion of *security*. We therefore witness a movement restricting the concept of the police, a limitation that will bring the notion closer to our understanding of the term today, which is to say an institution charged with the task of internal security. A tendency to pass from happiness-police to security-police, from Policey to Polizei.

This movement of restriction implies a series of important displacements within the definition of police power, the echo of which we can hear in Fichte's text.

A first displacement concerns both the mission assigned to the police as well as its mode of action. It will no longer have as its task the positive realization of well-being, but rather, in a purely negative mode, the prevention of disorders, abuses or criminal offences - the avoidance of everything threatening security. On this topic the classical reference is the definition Pütter gives in his *Institutiones iuris germanici* (1770) which his commentators baptized as the birth of the modern police: "This part of supreme power which addresses itself to averting future evils which threaten the internal affairs of the State in general is called the police right [...] The task of the police is not to promote the public good, unless insofar as by doing so, it spares the State from the threat of an evil."³³ The passage from a totalizing and positive finality to a finite and negative one: to avert evils, prevent turmoil. The police presents itself in a certain respect as a power of negation of the real, one which subtracts and prevents more than it produces or creates. We pass from a positive conception of it to a negativity. At the same time, we witness the divorce of the notion of police from that of politics as well as the subordination of the former to the cardinal notion of security. For example, when Sonnenfels redefines the science of police as "the principles that found and enable the mastery over the internal security of the State."³⁴ He underlines the originality of this notion in relation to the old definitions of the police: "The old German authors [...] associated the police with an extremely vague notion: the science of arranging in good form and good order the internal constitution of the State in view of general happiness. Yet in these

terms, this is rather a definition of political science." M. von Justi gives it a more precise meaning, which nevertheless remains vast. He writes, "It is the science of organizing the internal constitution of the State so that the well-being of the individual families remains closely linked to the general good."³⁵ For Sonnenfels, to the contrary, the primary objective of the police consists in strengthening the internal security of the State.³⁶

This redefinition of the police not only makes it into an entirely negative activity, but also a *preventative* one. Even if the term "preventative police" doesn't appear until the beginning of the nineteenth century, it is indeed this idea that emerges at the end of the eighteenth century in a whole series of authors, such as Pütter, Häbelin, von Sonnenfels, von Berg and Benson, who define police action as "the use of any adequate and legitimate means to avoid the obstacles and dangers that comprise the security and the well-being of citizens, or to prevent, in the name of the supreme power, future evils that present a general nuisance within the State."³⁷ It is not enough to intervene after the fact in order to repress or correct, we need to act prior to this, before the crime is committed, or, even better, before it even could be. Hence the twofold dimension of the police, which is directly related to its preventative redefinition: it is a question at once of a power over the *future* and over the *possible*.

For its adherents, redefining the police as a power over the future chiefly serves to fix a clear line of demarcation between police and judiciary power, distinguishing the object of the police from that of justice: "Future evils", writes von Berg, "are in the last account only the object of police, for its principal goal is avoidance and prevention. Past evils, insofar as they are submitted to the judgment of law, belong to the justice system."³⁸ This redefinition may appear counter-intuitive since it doesn't correspond very well to the two traditional images of police, investigative and repressive - sifting through the past in order to establish the facts, and deploying itself in the here and now in order to put an end to a present offence. Nevertheless, from the point of view of these authors, in both cases police action still fundamentally tends toward future designs. In the case of the investigative police, we can always say that capturing the guilty serves above all to dissuade new criminal desires. As for repression, even if it is carried out in the present, it can be said that this is always with the hopes of stopping the future developments of action already underway.³⁹

This power over the future is thus immediately defined as a power over the possible, in the mode of an impossibilization of criminal offences. Hence for Sonnenfels, while the free submission of the particular will to the law is desirable, it is not always assured, and "consequently the police must attempt to ground obedience on the impossibility of the infraction."⁴⁰ In order to determine the will of agents, it is above all necessary to strip them, by police means, of every hope of "not being discovered and remaining impune."⁴¹ That the possible be limited to the permitted: this is the idea that police are charged with realizing, understood as a mediation between the law and the real. In this passage from the police as science of happiness to the police as a technology of control over possibility, it is a question of producing, through the material reconfiguration of the real, the strict conditions of a controlled freedom, which implies putting in place an entire arsenal of securitization technologies.

Yet it is necessary to specify the meaning of this preventative dimension. If we intend to intervene in the psychological and technical conditions of the commission of an act (the feeling of impunity, as well as the material instruments), we nevertheless leave aside any consideration of the deeper roots of the act in question. Crime is not conceived of as a social phenomenon but only as the encounter between an individual will and a series of conditions of effectuation. We want to prevent the commission of the act, but the genesis of the act remains outside of our field of vision. This mode of treatment, fixed to conditions rather than to the causes, is characteristic of securitarian rationality, which is fundamentally - and as a result of this precise historical separation of modern police from politics - *a-political*, in the sense that it overlooks the genesis of the social facts that it takes as its objects. Consequently, we must not mistake the meaning of police "prevention": this prevention is strictly securitarian, and not social.

Fichte takes over this new negative, preventative, securitarian conception of police power. He systematizes it and integrates it within a social contract theory in which security is presented as the foundation of sovereignty. What is put in place here in this fusion of the old contractualist doctrine of protective sovereignty with this new minimal conception of police action is the definition of a *securitarian sovereignty*.

Yet, the irony in this procedure is that, as I will try to show, this limitation of the concept of the police paradoxically ends up fostering within it a tendency toward a limitless power. In order to isolate the conceptual roots of this paradox, I would like to make a detour through the criticisms and objections that were made of Fichte's passport system.

4. Forgers, continued.

I remember a great vizier who, in order to prevent counterfeit bills from being written, proposed banning the teaching of writing (Sintenis).⁴²

Let us return to the passport plan: its principle, as we saw, consisted in preventing the counterfeiting of bills of exchange by ensuring a traceability of the agents of the exchange. We can no longer pass false bills since the passport will always make it possible to track down the guilty party.

A first objection immediately comes to mind: in this new system, what prevents a forger from also forging the passports? The question makes sense, and Fichte answers it in advance:

But, someone might object, it is possible to make counterfeit passports, and this would completely undermine the success of these measures. Our response is: the possibility of such counterfeiting must itself be eliminated, and there are undoubtedly adequate means for doing so, e.g., the use of paper or parchment that is manufactured exclusively for identity cards (as was done in the case of the French *assignats*), kept under the exclusive control of the highest authorities, manufactured under their supervision, and distributed to lower authorities who must keep an account of the paper that is used up. But cannot one counterfeit this paper itself? Even the French *assignats*, mentioned above, were counterfeited in spite of such precautions. They were indeed, because counterfeiting satisfied substantial interests (monetary as well as political animosity) and because the same piece of counterfeit paper could be used a hundred times over. In the situation we are considering, a piece of counterfeit paper can be used to make only *one* passport; and who would go to such great lengths, and perfect so many skills, for that? The most one could achieve would be to circulate a valuable counterfeit bill of exchange. But would all the requisite cost and effort - let alone the risks - really be worth it?⁴³

Fichte thus envisages a technical solution, through the use of a special paper. But his answer is, *in fine*, hardly convincing. In spite of what he had previously said, in the last instance it is based not on the technical impossibilization of counterfeiting, but on a calculus of interests the explanation of which is confusing. The argument consists in saying that the costs of fabricating a false passport outweigh the gains one could expect from its possession. It would be extremely costly to produce a single passport. But it's hard to see what prevents someone from producing a whole series all at once, or from using a single passport several times.

Yet behind this apparently anecdotal question emerges a contradiction of structural proportions that reaches to the very heart of the conception of the police as a preventative power.

What is important here is the logic that appears in this text. The problem of falsification never in fact appears to be solved in a definitive way. The difficulty is ceaselessly displaced from one element to another. To prevent the falsification of the bill one has to sign one's name, but this name can in turn be false. In order to avoid the falsification of the name we introduce passports, but a passport can itself be imitated. To prevent the counterfeiting of passports, we need to introduce a special paper over which the authorities have a monopoly, but this paper itself can once again be imitated, and so on. Each guarantee of security turns out to need its own additional guarantee of security, and this continues in an endless chain. The result is that the impossibilization announced earlier is itself revealed to be unrealizable at the end of the day. The securitization measures continue to succeed one another, one after the other, in a headlong flight that never seems to find a stopping point.

The young Hegel read Fichte's text on the passports and immediately subjected it to a ravaging critique. In *The Difference Between Fichte's and Schelling's System of Philosophy* (1801),⁴⁴ he puts forward a scathingly ironic line-by-line commentary on it:

The whole variety of crimes possible in imperfect States is prevented by making the police more perfect. Thus with respect to counterfeit bills of exchange and money, we see how, on pp. 148 ff.: [...] 'In case the check still turns out to be bad, the person will soon be found when the investigation has established who it is. Nobody is permitted to leave a place; he can be stopped at the gate.' (The fact that our villages and many of our cities have no gates -not to speak of isolated dwellings- is no objection. On the contrary, the necessity of gates is herewith deduced.) [...] 'The pass is made out of specially manufactured paper [...] exclusively owned and supervised by the highest authority and the subordinate authorities which have to account for the paper consumed. This paper will not be imitated, for there is need of only one pass for a false check, and that one pass would require too many preparations and the cooperation of too many arts.' (Here it is postulated that in a well-ordered State the need for more than one single counterfeit passport could not arise. Factories for counterfeit passports, which are occasionally discovered in ordinary States, would find no customers.) Another State institution would also assist in preventing the counterfeiting of the privileged paper. This is the institution aimed at 'preventing the counterfeiting of coins; [...] since the State owns the monopoly of metals, etc., the State must not distribute the metals to the retailers without proof as to whom and for what use the received metals were issued.' In the Prussian army a foreigner is supervised by only one trustee. In Fichte's state every citizen will keep at least half a dozen people busy with supervision, accounts, etc., each of these supervisors will keep at least another half dozen busy, and so on *ad infinitum*. Equally, the simplest transaction will cause an infinite number of transactions."⁴⁵

What we find here first of all, in the mocking remark about the deduction of the doors, is a criticism of the Fichtian claim to be able to deduce, beginning from *a priori* principles, empirical reality all the way down to its slightest details. Schelling formulates a similar condemnation around the same time, and also in a mocking tone: "It's been a long time since experienced specialists applied themselves to discovering the best ways to structure a police organization in a city, to prevent the forgery of bills of exchange or of official documents (...) And here comes Mr. Fichte, with his claim to deduce *a priori* the whole police institution, splitting hairs to describe the duties of the guards at the gates of city."⁴⁶

Not only is Fichte's deductive claim ridiculous, but when he enters into such considerations he leaves the domain of philosophy plain and simple. Hegel formulates this criticism clearly in the preface to his *Philosophy of Right*: "Plato could well have refrained from recommending *nurses* never to stand still with children but to keep rocking them in their arms; and *Fichte* likewise need not have perfected his passport regulations to the point of 'constructing', as the expression ran, the requirement that the passports of suspects persons should carry not only their personal description but also their painted likeness. In deliberations of this kind, no trace of philosophy remains."⁴⁷ The Hegelian criticism here is based on a double reproach: first, it is not the business of philosophy to prescribe (its task is to conceptualize what is, not to say what should be); second, it is not preoccupied with contingent details, but with the actual and rational heart of the real.

However, in the 1801 text the Hegelian criticism more specifically concerns what he calls the "the making of endless determinations" that he sees manifested in the incessant movement of deferral of Fichte's control measures: to combat the forging of bills, we need passports, but to combat the forging of passports, we need special paper, but to combat the fraudulent use of this special paper we need agents to survey its use, but to avert the eventual corruption of these agents we need agents to survey them, and no doubt additional surveillance to survey the surveyors. The result is that in such a system we are never finished controlling the condition of the control, or of securitizing the condition of security. By always discovering a condition behind the condition, the will of determination is engulfed within a series that is never closed, where there is always another element left to determine, and whose indetermination in return conditions all the others.

For Hegel, this dynamism has its root in what he calls the *antinomy of unlimited limitation*. This concept is crucial, for I believe it allows us to seize one of the constitutive contradictions of securitarian power. What is the problem here? What does this phenomenon of "unlimited limitation" have to do with police measures?

For Fichte, as we have seen, police power is defined as a power of limitation, a power whose essential activity consists in installing limits. It is this above all that Hegel is referring to.

The first characteristic of police limitation is its exteriority. Limitation occurs through the exercise of an external constraint of the will, in a mechanical mode. The police proceed by putting pressure on subjects which, from without, is intended to force them to act in conformity with the law. By doing so, we abandon the objective of an internal determination of the will. Fichte's system, a "system of exteriority" as Hegel refers to it, appears as one of the most coherent attempts to construct a system of social life that completely does without a moral life conceived as foreign to it. How can we bring it about that subjects act legally if we can't rely on any of their

internal determinations to do so? In other words, how can we ensure that the universal will of the law will become real within subjects, that it will determine each singular will in the absence of any spontaneity on their part? As Hegel explains, if such a point of departure is taken for granted, "oneness with the general will consequently cannot be understood and posited as inner absolute majesty, but as something to be produced by an external relation, or by constraint."⁴⁸

This way of posing the problem prevents one from ever solving it. In this form of thought, we begin by presupposing "the opposition between the individual will and the general will"⁴⁹ - a primordial opposition that constraint is then charged with overcoming, but which it will never be able to do, precisely because the concept of constraint is based on this opposition between the two terms that are presented as external to one another. In this way we arrive at "a system [...] which aims to unite both the concept and the subject of ethical life, despite their separation (although because of the latter, their union is only formal and external); the resultant relation is called constraint."⁵⁰

Consequently, the declared plan of restoring trust and realizing the equivalent of an ethical life purely by means of the police cannot help but fail: "Since this externality of oneness is thereby totally fixed and posited as something absolute which has being in itself, the inner dimension, the reconstruction of the lost loyalty and faith, the oneness of universal and individual freedom, and ethical life in general are rendered impossible."⁵¹ When we act only negatively through constraint, we no longer have an authentically moral life. Action is no longer born in a spontaneous and concrete way from the living unity of morality but from a simple mechanical discipline.

Hegel reveals the root of this relation, which for him reaches all the way to the very conception of the philosophical subject. It is precisely because one begins with a scission at the heart of the subject between an empty law and an empirical consciousness that their unity can consequently only be conceived of in a contradictory mode. When presented in this way, the relation carries within it its own failure: being founded upon an originary scission, the unity sought here will never be realized as a true unity. Hegel directs the same critical motif in a fundamental way against the Kantian conception of the subject, of which Fichte is largely an inheritor: a subject cleaved by the unresolvable opposition between a pure determination of the law and an empirical matter that must be determined by this law. A disciplinary schema of subjectivity in which the imperative to determine the empirical subject through the pure form of the moral law is deployed on the basis of an originary scission between being and duty that cannot help but give rise to an indefinite deferral of the contradiction. This is the Hegelian criticism of the postulate of the immortality of the soul in Kant: a complete positive determination of motives of action by the form of the law being presented as an impossible task owing to the heterogeneity of the given terms, it becomes necessary to postulate a limitless time in which, in an asymptotical manner, the subject draws closer to - without ever actually attaining - perfect morality, sanctity⁵². In reality, this conception only ever translates into an indefinite deferral of the initial contraction. This is the image that Hegel denounces under the name of the "bad infinity."⁵³ As we shall see, Hegel finds an entirely similar logic operative in the Fichtean conception of the law of constraint which, in order to externally realize a unity presented from the outset as impossible, gives itself the horizon of an indefinite extension of measures of control, in a schema in which the police appears as an instrument of realization of the law, the indefinite application of the ideal form to the empirical real.

If Fichte defines the police as a power of limitation, this is not only in this first sense of an external and negative relation proceeding by mechanical constraint, but moreover, as we have seen, in the sense of a power of limitation over the possible. However, the definition being presented in such a way, problems emerge, specifically, problems of delimitation. In such a regime of preventative interdiction, where does police power stop? This amounts to the question of what, in eyes of police, would not appear as the possible condition of a crime. This is the objection that Hegel opposes to the Fichtian conception of police law:

This Need State [...] must not only forbid the actual commission of offenses under threat of punishment, but it must obviate the possibility of offenses. And to this end it must prohibit "actions which, though they will hurt no one and seem entirely indifferent, will yet make the harming of others easier, and their protection or the discovery of the guilty more difficult. Now [...] there is simply no action at all from which the State could not with abstract consistency calculate some possible damage to others. And it is this endless possibility which the preventive intellect and its coercive authority, the police, have to deal with. So in this Ideal of a State there is no doing or stirring that is not bound to be subject to some law, subject to direct supervision."⁵⁴

In this logic of preventing crime by ramifying its possible conditions, indifferent in themselves, control can in principle extend itself to everything, for there is no use of freedom that is not also the condition of a possible infraction. Possibility being infinite, a power that takes it as its object tends at the same time to become infinite.

Moreover, every condition of possibility has its own conditions of possibility, which brings about a movement of indefinite regression in the series of conditions. This is the meaning of the joke about the vizier I selected as the epigraph for this section: in such a logic, in order to prohibit the possibility of counterfeit bills, it is eventually necessary to prohibit writing itself. The example is of course intended as a joke, but it illustrates by way of absurdity the tendency of preventative limitation to extend itself in a limitless way.⁵⁵ As I have already underlined, this is all the more true since each control measure itself depends for its part on the efficacy of other measures of control, and since, not content to regressively follow the series of possible offenses, securitarian power must also ceaselessly guarantee the effectivity of its own control measures by means of a series of clampdowns on the axis of conditions of securitization.

Moreover, in moving backward through the conditions of an offence, the problem is no longer that we directly prohibit certain facts that in themselves harm no one, but that one prohibits all the other acts for which these facts serve as conditions of possibility as well. The obvious problem here is that the conditions of crime are also the conditions of possibility for other things, other activities. To conceal your face in public can certainly be the condition for a theft, but it is also the condition for a carnival. The preventative logic is incapable of making the distinction. Its reach is too large and its interdiction, by impossibilizing the conditions of possibility of an offence, at the same time suppress the conditions of other freedoms. As the saying goes, the police throw the baby out with the bathwater. It is a problem of an englobing limitation related to the virtual character of the object: in an attempt to limit one possible use, we also limit all the others. Yet by doing so, what finds itself limited, concretely blocked, is the entire array of real freedoms.

The criticism is not that Fichte's system proceeds to an abstract limitation of freedom, the one prior to the social contract, negatively defined as an absence of determination. All is not permitted, and one can't do whatever one likes in society - Hegel understands this. What he criticizes Fichte's system for is that the limitation of freedom here extends - and, what is more, in an unlimited expansionistic mode - to "true freedom", which is to say, that which is defined by "the possibility of suspending itself and entering into other connections."⁵⁶ As opposed to the abstract and negative notion of freedom, true freedom implies the concrete capacity to extricate itself from itself and to reconfigure its conditions. Yet for reasons already indicated, this is precisely the freedom that finds itself compromised by the proliferating logic of security apparatuses, insofar as they proceed by the fixation of customs, by the police-like fossilization of possibilities. As a result of this generalized limitation, "true freedom, the possibility of suspending a determinate connection, is nullified."⁵⁷ For Hegel, this amounts to the installation of a supremely tyrannical regime.

For although the Fichtian philosophy presents individuals as primordial and absolute atoms, at the same time it makes them the objects of a negative force, of purely external relations. The moment their freedom is presented it finds itself in need being limited by a universal freedom which, in order to be realized (and individual freedom along with it), must restrict individual freedom to the point of absolutely constraining it. The paradox is therefore that, in order to realize freedom we must ceaselessly limit it. The result is that in such a schema, in which the principal determination of the State is that "the freedom of individuals must be limited by means of the freedom of the whole [...] the confinement becomes closer and the bonds more stringent as time goes."⁵⁸

Consequently, from the early texts of his youth through the late seminars of his mature thought, Hegel constantly and repeatedly uses the example of Fichte's passports as an illustration of a police State regime or a "Galley State." Hence, in 1818 Wannenmann, a student attending his course on natural right and the science of the State writes the following in his notebook: "*Fichte's state is centered on the police, to whom it seeks to accord particularly wide scope, but his state is a state based on need. According to Fichte, no persons can go out without having their identity papers with them, and he deems this very important so as to prevent crimes. But such a state becomes a world of galley slaves.*"⁵⁹

Schlegel expressed a similar idea, although in a different register, in his *History of Literature*: "in an absolutely perfect police regime (when [...] even travelers' passports would be provided with an exhaustive biography and a faithful picture) a novel would simply become impossible, for then nothing could ever happen in real life that would provide plausible material for it."⁶⁰ The argument is perhaps false - and in any event unverifiable - but it is beautiful. It consists in saying that, in its absolute form, police control would make fiction impossible. By completely ordering social life, without gaps or play, the policiazation of the world would desiccate the very materials of the novelistic imagination. But more fundamentally still, in such a regime, where deviance, disobedience and flight would have been literally made impossible, it is the very possibility of *living* a novelistic life that would disappear, and with it all that opposes itself to the ordinary and ordered reproduction of the real. It is freedom itself, defined precisely by a gesture of fictional deviation from its own conditions that would therefore find itself eradicated from the world. The police, understood in this way as the eradication of the novelesque, appears as mortiferous power - mortiferous, but also ridiculous, since such a task will prove to be impossible - and this is the meaning of the Hegelian laughter here, the ferocious irony that he opposes to the Fichtian passports and petty mechanisms of absolute constraint.

To summarize this point, if the police limitation tends to become unlimited this is essentially due to the nature of its object, namely, the possible itself. Whence also my central thesis: it is paradoxically the restrictive redefinition of the police as a preventative securitarian power - a redefinition that presents itself nevertheless as a demarcation of its prerogatives from the old, highly extensive concept of the police as guarantor of well-being - that ends up endowing securitarian power with a dynamism of limitless expansion. Certainly, in contrast with the welfare State, the security State does not claim to take under its protection every aspect of life, every particle of activity of the social totality; certainly its claims will henceforth appear to be much more modest, centering on the imperative of security. However, in reality, the negative and preventative redefinition of police action engages a dynamism of infinite expansion of securitarian power. To understand this paradox is crucial today, for it allows us to grasp the conceptual link between a certain political liberalism tending in the direction of a limitation of the aims of the State and the concomitant proliferation of securitarian politics.

At the root of this tendency toward unlimited limitation we find a precise contradiction, which stems from the very root of the concept of police norms. Marx explained this concept in an extremely clear way, and in direct continuity with the Hegelian criticism: "A preventive law, therefore, has within it no measure, no rational rule, for a rational rule can only result from the nature of a thing, in this instance of freedom. It is without measure, for if prevention of freedom is to be effective, it must be as all-embracing as its object, i.e., unlimited. A preventive law is therefore the contradiction of an unlimited limitation."⁶¹ It is a fundamental contradiction, for here it operates between the form of the law (the limitation) and its object (the unlimited). Even if the concept of preventative law is unsound, weighed down by a fundamental contraction, that doesn't prevent it from grounding (and even as a result of its contradictory character) the tendency toward an infinite extension of securitarian power. But, in his text, Marx immediately notes something else with regard to this dynamism: "and the boundary where it ceases is fixed not by necessity, but by the fortuitousness of arbitrariness, as the censorship daily demonstrates ad oculos."⁶²

As a result, the unlimited limitation - and this is the third moment of this dialectic - in fact finds its limits. Here we find the whole difference between a tendency and an effectivity. If police logic tends ideally toward an unlimited control, in reality it always encounters contingencies, unforeseen circumstances, which always trips up its will to control. The unlimited limit itself therefore finds a limit, not by reason of an internal principle, but due to an external chance - which itself ends up nevertheless appearing as necessary insofar as a finite power cannot limit an infinite object, and because in this task, its hold will always be punctuated by cracks. There will always be conditions that escape it and that it cannot foresee. If preventative police is animated by a tendency toward infinite expansion, this tendency is no less necessarily halted at a certain point by the contingency of what escapes it.

Securitarian power is therefore affected by a supplementary contradiction. It has promised an absolute securitization, the total mastery over the possible, but in fact it always stumbles over frictions that halt it mid-stride. The unlimited limit thus ends by finding its limits.

Yet in a certain way, this last limitation is also the secret of its success. When this failure announces itself, it can always turn it to its advantage: if I failed, it is because I still do not have enough power. If I failed, it is because there were still limits placed on my power of limitation. And as for these hindrances, which explain my past failures, you must now release me from them so that I can manifest my power in all its perfection. The structural failure of securitarian power is always the fuel for its liberticidal extension, in a logic of renewed escalation. That its claims to impossibilization ironically be themselves impossible is a contradiction that it turns to its benefit in order to increase in an unlimited way its will to control, validated and fed by its repeated failures, like the bath endlessly filled by the Danaïdes. The result is that the moment we allow the postulate of the principle of security to found State authority, the latter begins to function like the discursive matrix of a limitless power. This is the fundamental lesson of this dialectic of securitarian power that I wished to sketch out here in relation to Hegel.

By way of conclusion, one of the major interests of the Hegelian criticism of Fichte perhaps resides as a result above all in his *style*. How do we mount a critique of power? A first, classic and dominant form of critique proceeds by posing questions of foundation and legitimacy. This is the Kantian conception of critique *par excellence*: to fix the limits of a power by beginning from an examination of its legitimate foundation. But there also exists another, more minoritarian critical tradition, with a very different technique, which I think we can find traces of in Hegel's commentary on Fichte's system of passports. A critique that does not begin from an interrogation of the legitimate foundations of power, but from an analysis of its procedures, its techniques, in order to examine them in their detail, their method of functioning, seeking out their dysfunction, their contradictions or their breakdowns. This second approach mobilizes what one could call a *technical critique of power* [*critique technicienne de pouvoir*].

Faced with securitarian power, the principal virtue of this register of critique lies in its non-paranoid attitude. For its fundamental operation consists in bringing the emphatic claims of power down to the fallible reality of its actual means - its approach is ironic. Because the critic is a technician [*technicienne*], she knows that every system is plagued by its frictions or its bugs. Because she has learned to observe the official documents with the eyes of a forger, she knows that one should never take at their word the great discourses that power promulgates about itself.

Yet of course, the fact that securitarian power can never entirely keep its promises of total mastery does not mean that its measures have no effects, or that we can content ourselves with opposing to them an ironic laughter. Fichte's plan belongs within a long cumulative history of technologies of police control, a long process that has quite concretely reconfigured the conditions of existing freedom. To point out the impossible character of a project of total mastery over the real or the inevitable limits that the logic of unlimited limitation encounters *in fine* does not imply that we should overlook the real liberticidal tendencies of this type of power.

This is in substance what the 86-year-old forger Adolfo Kaminsky recently said, at the end of a long life spent forging false papers, first in the 1940's when he helped Jews escape from Nazi persecution, then in the 1950's when he helped the independentist Algerians of the FLN against the colonial French State, and subsequently here and there, coming to the aid of those who opposed the dictatorships that plagued Spain, or Portugal or Greece:

Even if the techniques have progressively developed, forgeries will always exist. [...] *A priori*, everything is always possible. We must not forget that whatever one person has made, someone else can always remake it. [...] However, today, with all the digital technologies, electronic chips, biometrics, genetic fingerprints and card filing, I think there is no hope for people who need identity papers in order to survive. There are still little solutions left, such as copycats, taking over the identity of someone else, but it's all too fragile. Today, the Jews, Algerians, Greeks, South-Americans etc., that I helped would be doomed, because forged papers can no longer be made "from scratch", as I did during that time. [...] It's no longer the same world.⁶³

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Notes

1. Johann Gottlieb Fichte, *Grundlage des Naturrechts nach Principien der Wissenschaftslehre*, Jena und Leipzig, 1796 und 1797. In *Gesamtausgabe der Bayerischen Akademie der Wissenschaften, Band 4: Werke 1797-1798* Hrsg. von Reinhard Lauth und Hans Gliwitzky unter Mitwirkung von Richard Schottky. 1970, 87. English publication as *Foundations of Natural Right*, trans. M. Baur (New York: Cambridge University Press, 2000), p.257 [translation modified].

2. *Idem*.

3. „Müßiggänger, Bettler, unvergeleitete Juden, Zigeuner, und andre unbekannte oder verdächtige Personen, welche sich durch obrigkeitliche Passe- und glaubwürdige Zeugnisse nicht ausweisen können, muß er im Dorfe nicht dulden, sondern dieselben, als landstreicher sofort in Verhaft nehmen, und an die Behörde abliefern.“ *Allgemeines Landrecht für die Preussischen Staaten*, 3. Bd., Berlin, 1794, p.332.

4. Given the date the text was written, it is clear that Fichte was inspired by the measures taken in France by the Revolutionary Assembly which, after having abolished the Ancien Regime's system of passports, reintroduced and radicalized it in 1792, making it obligatory for all travelers. Cf. Vincent Denis, *Une histoire de l'identité: France, 1715-1815*, (Seysssel: Champ Vallon, 2008), 242.

5. Philip E. Agre, "The Architecture of Identity: Embedding Privacy in Market Institutions Information", *Communication and Society*, 2(1), 1999, 1-25, 4. Philip Agre, a professor of information studies at the University of California in Los Angeles and a specialist in questions of digital identity, mysteriously disappeared for several months in

2009:http://www.npr.org/blogs/alltechconsidered/2010/01/missing_internet_pioneer_phil.html Accessed January 27, 2013.

6. "The human shape is necessarily sacred to the human being." Fichte, *Gesamtausgabe*, III, 384; *Foundations*, 79.

7. As a contemporary confirmation, we may refer to this column recently published by the philosopher Michel Serres in *Libération*: "Why, in the majority of the cultures of the world, and whatever the styles of clothing, do the hands and face enjoy the privilege of remaining nude? Because they guarantee public security and the identity of private persons in public." A security that allows them to "live together". The philosopher concludes: "The face is the foundation of civil society". Michel Serres, "Sans visage, pas de contrat social", *Libération*, 19/03/2010. It wasn't long before such a philosophical principle found its empirical translation in French society, in the form of a decree by the minister of the interior prohibiting the wearing of masks, balaclavas or any other accoutrement intended to prevent the identification of people during protests. Beneath the mask of a Levinas we occasionally find the face of a Bertillon.

8. Cf. Fichte, *Gesamtausgabe*, IV, 84; *Foundations*, 258-259. On the passport as a "means of tracking", cf. Gérard Noiriel, « Surveiller les déplacements ou identifier les personnes ? Contribution à l'histoire du passeport en France de la I^e à la III^e République », *Genèses*, 30, 1998, p 77-100, 84 sq.

9. According to the International Organization for Standardization's definition in publication EN ISO 8402 (1994).

10. « jeder falsche Wechsel, [...] kommt dir zur Rechnung. Die Zeit ist ein strenger Buchhalter, ein wahres Continuum der Dinge, das nichts übersieht, das nie belüget" Johann Gottfried von Herder, *Das eigene Schicksal* (1795), in *Sammtliche Werke*, Bd. 7, (Tübingen: Cotta'schen Buchhandlung, 1807), 8.

11. „Der Wechselbrief ist eine Schrift wodurch sich der Handelsmann entweder zu Bezahlung einer darin bestimmten Summe verbindlich macht oder einem andern fremden Kaufmanne mit dem er in Verbindung steht, den Auftrag giebt, die Summe an den Vorzeiger derselben zu einer bestimmten Zeit, auszubezahlen", Jakob Christoph Peter, *Vollständige theoretische und praktische Anleitung zur Handelswissenschaft*, I, Heidelberg, 1789, 120.

12. Jakob Christoph Peter, 125.

13. „Wechselbriefe überhaupt sind Papiere, welche unter gewissen Umständen die Stelle des baaren Geldes vertreten", Johann C. Sinapius, *Ueber Wechselbriefe nach ihrer Verschiedenheit*, Matthiessen, Hamburg und Leipzig, 1781, 2.

14. Jakob Christoph Peter, Op cit., 130.

15. „Der Kredit also, oder das Vertrauen, welches einer in den andern setzt, ist das Mittel, wodurch einem solchen Wechselzettel eine Gültigkeit beygelegt wird", E. L. Tropponegro, *Versuch einer allgemeinen Einleitung in die Wechselwissenschaft*, (München: Strobel, 1779), 12.

16. Fichte, *Gesamtausgabe*, I, 4, 89; *Foundations*, 258-259.

17. „Falsche Wechsel sind solche, worauf die Unterschrift desjenigen, von dem man aus dem Wechsel Bezahlung fordert, falsch ist [...] Verfälschte Wechsel sind solche, worin die Summe oder die Verfallzeit, oder die Indossamente verfälscht worden", Johann Christian Schedel, *Handbuch der kaufmännischen Jurisprudenz oder Beyträge zur Kenntniss einheimischer, wie auch auswärtiger Handlungsrechte, Gesetze und Gebräuche, die den Kaufmann interessieren*, (Leipzig: Schladebach, 1793), 299.

18. Fichte, *Gesamtausgabe*, I, 4, 89; *Foundations of Natural Right*, 259.

19. Cf. Carlo Ginzburg, "Clues: Roots of an Evidential Paradigm." in *Clues, Myths, and the Historical Method*, (Baltimore: Johns Hopkins, 1989), 96-125.

20. On this point, where Ginzburg hypothesizes a "cynegetic origin of the evidential paradigm" (ibid.), I would instead suggest the hypothesis of a pastoral origin of traceability apparatuses: techniques of managing troops, of individually following the heads of livestock, which may henceforth be marked, registered, recorded. As opposed to the hunter, the problem for the pastor is not to imagine, beginning from fragmentary traces, the traits of an unknown animal body, but on the contrary to reduce the complex traits of a known animal to the schema of an easily locatable description [*signalement*].

21. "The examination also introduces individuality into the field of documentation. The examination leaves behind it a whole meticulous archive constituted in terms of bodies and days. The examination that places individuals in a field of surveillance also situates them in a network of writing; it engages them in a whole mass of documents that capture and fix them. The procedures of examination were accompanied at the same time by a system of intense registration and of documentary accumulation. A 'power of writing' was constituted as an essential part in the mechanisms of discipline." Michel Foucault, *Surveiller et punir*, (Paris: Gallimard, 1975), 191. English translation as *Discipline and Punish*, trans. A. Sheridan, (New York: Vintage Books, 1995), 189.

22. Cf. Richard Clarke, "Information Technology and Dataveillance", *Communications of the ACM*, Volume 31, Issue 5, May 1988, 498-512.

23. Foucault, *Surveiller et punir*, 173; *Discipline and Punish*, 170.

24. Fichte, *Gesamtausgabe*, I, 4, 91; *Foundations*, 261.

25. Fichte, *Gesamtausgabe*, I, 4, 92; *Foundations*, 262.

26. Fichte, *Gesamtausgabe*, I, 3, 426; *Foundations*, 125-126. (Translation modified)

27. Fichte, *Gesamtausgabe*, I, 3, 425; *Foundations*, 125. (Translation modified)

28. Fichte, *Gesamtausgabe*, I, 3, 427; *Foundations*, 127.

29. Fichte, *Gesamtausgabe*, I, 4, 86; *Foundations*, 256.

30. Fichte's "security apparatuses" must be rigorously distinguished from what Foucault understands by this term: instruments, elaborated within the framework of a social arithmetic and an economic rationality, which proceed through a probability estimate, through the definition of a mathematical risk or through the definition of thresholds of tolerable variations. These form an ensemble of techniques that Foucault, under the heading of security apparatuses, places at the root of a governmentality that has emancipated itself from the binary logic of the law. To the contrary, with Fichte we remain within a sovereign conception of security, one which seeks to absolutely "enforce" the law and legal prohibitions in the mode of a preventative anticipation. We remain in a binary thought of the prohibition, with the supplementary idea of folding the real to the law, through the total police mastery over possibility: a rationality of absolute impossibilization of potential dangers rather than the probabilistic management of risks.

31. Fichte, *Gesamtausgabe*, I, 4, 86; *Foundations*, 256.

32. For a detailed history of this process, Cf. Peter Preu, *Polizeibegriff und Staatszwecklehre. Die Entwicklung des Polizeibegriffs durch die Rechts- und Staatswissenschaften des 18. Jahrhunderts*, (Göttingen: Schwartz, 1983); Naoko Matsumoto, *Der Polizeibegriff im Umbruch. Staatszwecklehre und Gewaltenteilungspraxis in der Reichs- und Rheinbundpublizistik*, (Frankfurt am Main: Klostermann, 1999); Michael Stolleis, *Geschichte des öffentlichen Rechts in Deutschland*, Bd.I : 1600-1800, (München: Beck, 1988).

33. « Ea supremae potestatis pars, qua exercetur cura avertendi mala futura in statu reipublicae interno in commune metuenda, dicitur IVS POLITIAE (...) Promouendae salutis cura proprie non est politiae, nisi quatenus ea mente agitur, ut tanto lautior sit status isti malo, quod metuebatur, direde oppositus. », Ioannis Stephani Pütteri, *Institutiones iuris publici Germanici*, Vandenhoeck, Goettingae, 1782, 353.

34. „Die Polizeywissenschaft enthält die Grundsätze die innere Sicherheit des Staates zu gründen, und handzuhaben“, Joseph von Sonnenfels, *Grundsätze der Polizei: Handlung- und Finanzwissenschaft*, (Wien: Kurzböck, I, 1777), (3rd edition), 29.

35. „Die ältern deutschen Schriftsteller, (...) haben mit der Polizey einen sehr schwankenden Begriff verbunden. Die Wissenschaft, wie das innere, und äussere Wesen des Staates zu allgemeiner Glückseligkeit in guter Verfassung und Ordnung zu erhalten. Dies wäre, nach der Lage der Worte, vielmehr eine Erklärung der Staatswissenschaft. Herr von Justi (Grundfeste zur Glückseligkeit der Staaten § 4) giebt ihr einen bestimmteren, aber noch sehr ausgebreiteten Verstand; er schreibt : sie sey die Wissenschaft, die innere Verfassung des Staates dergestalt einzurichten, daß die Wohlfahrt der einzelnen Familien mit dem allgemeinem Besten in einer genauen Verbindung und Zusammenhang stehe.“, Ibid., 29.

36. „den Grad der Sicherheit zu erhöhen“, Ibid., 30.

37. „in die Anwendung jedes zweckmäßigen und erlaubten Mittels die Hindernisse und Gefahren der Sicherheit und Wohlfahrt der Staatsbürger abzuwenden, oder, in der Sorgfalt der höchsten Gewalt künftige gemeinschädliche Uebel im Innern des Staates zu verhüten und abzuwenden“, Johann Friedrich Eusebius Lotz, *Ueber den Begriff der Polizei und den Umfang der Staatspolizeigewalt*, (Hildburghausen: Hanisch, 1807), 20.

38. „Künftige Uebel endlich sind nur Gegenstand der Policey, weil ihr Hauptzweck Abwendung, Verhütung ist. Vergangene Uebel, insofern sie einer rechtlichen Beurtheilung unterworfen sind, gehören vor die Justiz“, Günther Heinrich von Berg, *Handbuch des Teutschen Policyrechts*, I, (Hannover: Hahn, 1802) (2nd edition.) 13.

39. Berg continues: "What about present evils? When police seek to repress an evil that has already begun manifesting itself, that is to say, a present evil, this is so that it does not continue to persist. What is this, if not avoiding an evil to come? The police can no longer prevent present evils, but it can work to prevent their progress and their consequences, and by doing so it cares about the future." - „Aber wo bleiben die gegen wartigen Uebel" ? Ein Uebel, das schon angefangen hat, sich zu äussern , also ein gegenwärtiges Uebel, sucht die Policey zu unterdrücken, damit es nicht weiter um sich greife. Und was ist dieß weiter, als Abwendung eines künftigen Uebels? Gegenwärtige Uebel kann die Policey nicht mehr verhüten; , aber sie kann ihrem Fortgange und ihren Folgen entgegen arbeiten; und eben dadurch sorgt sie für die Zukunft.“, Ibid., 14.

40. « muss die Daher muß die Polizey besorgt seyn, die Folgsamkeit auf die Unmöglichkeit der Widersetzung zu gründen. », Sonnenfels, Op cit., 31.

41. „unentdeckt und unbestraft zu bleiben“, Ibid., 35.

42. « Ich erinnere mich eines Grosveziers, der, um das Schreiben falscher Wechsel zu verhüten, ein Verbot schreiben zu lernen in Vorschlag brachte“, Christian Friedrich Sintenis, *Hallo der Zweite*, (Leipzig: Fleischer, 1797), 90.

43. *Gesamtausgabe*, I, 4, 90, *Foundations*, 259-260 [translation modified]

44. Georg Wilhelm Friedrich Hegel, *Differenz des Fichte'schen und Schelling'schen Systems der Philosophie* in Hegel's Philosophische Abhandlungen, I, (Berlin: Duncker und Humblot, 1832); G. W. F. Hegel, *The Difference Between Fichte's and Schelling's System of Philosophy*, trans. H. S. Harris and Walter Cerf, (Albany: SUNY Press, 1977).

45. Hegel, *Differenz*, Op cit, 240; *Difference.*, Op cit., 147-148.

- 46.** « Da haben z. B. schon längst geübte und erfahrungsreiche Männer sich Mühe gegeben, zu erfinden, wie die Polizei in einer Stadt am besten organisirt, die Verfälschung von Wechsellern oder Staatspapieren gehindert (...). Nun kommt Hr. Fichte, und deducirt ihnen a priori die ganze Einrichtung der Polizei, haarklein, bis aus die Pflichten der Thorschreiber herunter", Friedrich Wilhelm Joseph von Schelling, *Darstellung des wahren Verhältnisses der Naturphilosophie zu der verbesserten Fichteschen Lehre* (1806), in *Sämmtliche Werke*, VII, (Stuttgart und Augsburg: Cotta, 1860), 105.
- 47.** Georg Wilhelm Friedrich Hegel, *Grundlinien der Philosophie des Rechts*, (Hamburg: Meiner, 1955), 15; *Elements of the philosophy of right*, trans. A. Wood and H. Nisbet, (Cambridge: Cambridge University Press, 1991), 21. We should note that the reference to Plato here is ambiguous. The example of the nurses comes from the *Laws*. The problem is one of determining what degree of detail one ought to regulate: should one prescribe in detail the way in which nurses ought to rock newborn babies in their arms? For Plato the answer is no, and the principal reason for this is tactical: when one seeks to regulate such objects, one exposes oneself to the risk of the failure of the law: "The great laughter we'd incur, in addition to the unwillingness to obey on the part of the nurses' womanly as well as slavish dispositions", Plato, *The Laws*, VII, 790a trans. T. Pangle, (Chicago: University of Chicago Press, 1988), 177. The solution consists in leaving this kind of prescription to the masters, who will attempt to integrate it within the existing customs by means of oral recommendations rather than mandatory obligations. Hegel transposes the argument: just as the law should not make pronouncements about details, philosophy should not issue contingent prescriptions. It is true that, by doing so, philosophers would encounter the same dangers as the Platonic lawmakers: impotence and ridicule. And this is precisely the content of his criticism of Fichte. In Hegel's irony in the face of the predictable failures of police measures there is an echo of the nurses' laughter.
- 48.** Georg Wilhelm Friedrich Hegel, *Über die wissenschaftlichen Behandlungsarten des Naturrechts* (1802), in *Jenaer kritische Schriften*, (Hamburg: Meiner, 1983), 124; Georg Wilhelm Friedrich Hegel, *On the Scientific Ways of Treating Natural Law*, in: *Political writings*, trans. L. Dickey and H. Nisbet, (Cambridge: Cambridge University Press, 1999), 132 (translation modified)
- 49.** Hegel, *Über die wissenschaftlichen*, Op Cit. 125; *On the Scientific Ways*, Op cit., 132.
- 50.** Hegel, *Über die wissenschaftlichen*, Op Cit. 124; *On the Scientific Ways*, Op cit., 132 (translation modified)
- 51.** Idem.
- 52.** On this idea see Kant, *Kritik der praktischen Vernunft*, AK V, 122.
- 53.** Cf. *Enzyklopädie der philosophischen Wissenschaften im Grundrisse* (1827), § 60, Meiner, Hamburg, 1968, 73.
- 54.** Hegel, *Differenz*, Op Cit, 239 ; *Difference.*, Op Cit., 146-147.
- 55.** Cf. Voltaire : « parce que les hommes peuvent abuser de l'écriture, faut-il leur en interdire l'usage? J'aimerais autant qu'on vous rendît muet pour vous empêcher de faire de mauvais arguments. On vole dans les rues, faut-il pour cela défendre d'y marcher ? » Voltaire, *LA, B, C* (1768), in *Dialogues et anecdotes philosophiques*, (Paris: Garnier, 1955), 302.
- 56.** Hegel, *Differenz*, Op Cit, 238 ; *Difference.*, Op Cit., 145.
- 57.** Idem.
- 58.** Georg Wilhelm Friedrich Hegel, *Vorlesungen über die Geschichte der Philosophie*, (Berlin: Dritter Teil, Duncker und Humblot, 1844), 577; Georg Wilhelm Friedrich Hegel, *Lectures on the history of philosophy, Volume 3, Lectures on the History of Philosophy*, (Humanities Press, 1955), 504.
- 59.** Georg Wilhelm Friedrich Hegel, *Vorlesungen über Naturrecht und Staatswissenschaft (Heidelberg 1817-18)*, Meiner, Hamburg, 1983, 163. Georg Wilhelm Friedrich Hegel, *Lectures on Natural Right and Political Science: the First Philosophy of Right : Heidelberg, 1817-1818*, (Berkeley: University of California Press, 1995), 212.
- 60.** „daß bei einer durchaus vollkommenen Polizei, (wenn (...) selbst der Paß der Reisenden mit einer ausführlichen Biographie und einem treuen Portraitgemälde versehen sein wird) ein Roman schlechtweg unmöglich sein würde, weil alsdann gar nichts im wirklichen Leben vorkommen könnte, was dazu irgend Veranlassung, oder einen wahrscheinlichen Stoff darbieten würde." Friedrich von Schlegel, *Geschichte der alten und neuen Literatur* (1812) in *Sämmtliche Werke*, I, Klang, Wien, 1846, 77.
- 61.** Karl Marx, « Debatten über Preßfreiheit und Publikation der Landständischen Verhandlungen », in Karl Marx, Friedrich Engels, *Werke*, I, Dietz Verlag, Berlin, 1988, 59. - Karl Marx, Frederick Engels, "On Freedom of the Press, Proceedings of the Sixth Rhine Province Assembly" (1842), in *Collected Works*, Volume 1, (London: Lawrence & Wishart, 1975), 163.
- 62.** Idem.
- 63.** Gilles Lucas, « Entretien avec Sarah et Adlfo Kaminsky, La vraie vie d'un faussaire », *CQFD*, n°72, décembre 2009.

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