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Fichte on Personal Freedom and the Freedom of Others

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1. Right and Recognition

Fichte's deduction of the concept of right (*Recht*) in the first main division of the *Foundations of Natural Right* (§§1-4) helped make recognition into a central concept of social and political philosophy, albeit indirectly through its influence on Hegel's account of recognition.¹ This deduction consists of an attempt to explain the possibility of self-consciousness, which in this particular context means consciousness of oneself as a free, rational agent capable of realizing one's ends by effecting changes in the world. In the first main division of the *Foundations of Natural Right*, Fichte sets out an argument which aims to show that self-consciousness requires an object that *qua* object is independent of the subject but *qua* object of *self*-consciousness is not purely external to the subject and non-identical with it. Rather, the object reflects what the subject itself essentially is, that is to say, self-determining. What we have is, in effect, a practical form of the identity of subject and object which is presupposed by any conscious experience, but which, as the condition of any experience whatsoever, can itself never become a direct object of experience.

In the course of this deduction of the concept of right, Fichte comes to identify the object in question with a "summons" (or "request," "demand," "invitation" as the German word *Aufforderung* can also be translated) by means of which the subject is determined to be self-determining (*FNR*, 31; *SW*, III: 33). For this summons to reflect what the subject essentially is, it must demand only an act of free choice on the part of the person to whom it is addressed. The summons does not, therefore, exercise a purely causal influence on this person. Thus, on the one hand, the summons presupposes the capacity to act freely in accordance with ends on the part of the person to whom it is addressed, while, on the other

¹ See Siep 1979; Williams 1992; Wood 1990: 77ff.

hand, it presupposes an understanding of what it means to act in such a way on the part of the person who summons another person to engage in free activity. Consequently, not only the person to whom the summons is addressed, but also the person who summons another human being to act freely must be assumed to be free and rational.

Fichte then proceeds to determine the precise nature of the relation between finite rational beings that this recognition of the freedom and rationality of others entails. The relation is held to be one in which the freedom of each person is limited by the freedom of other persons in such a way that each person is left free to act within the limits granted to him or to her by others. This form of mutual limitation requires that each person is both a subject that summons others by means of an act of self-limitation and the object of a summons in the sense that others limit their activity in relation to him or her. This is because it is only by summoning others that each person demonstrates that he or she is a free and rational being to which a summons can be directed, while conversely it is only by being the object of such a summons that consciousness of oneself as a free and rational being becomes possible. Fichte accordingly defines the concept of right itself as “the concept of the necessary relation of free beings to one another” (*FNR*, 9; *SW*, III: 8).

Although Fichte’s attempt to deduce the concept of right as a necessary condition of self-consciousness may be regarded as wildly ambitious if it is taken to demonstrate that practical self-consciousness as such is not possible in the absence of the type of relation between human beings described above, the central role that this deduction accords to the recognition of others as free and rational beings allows it to be viewed in terms of “an ideal socialization process for individuals in a culture in which values such as individual freedom and autonomy hold an important place.”² Recognition and right as its legal guarantee are here regarded as necessary only in the weaker sense of constituting conditions of how individuals

² Wood 1990: 83.

can come to think of themselves in a certain way. The legal form of recognition associated with the concept of right is not then an absolutely necessary condition of self-consciousness, because this type of account of Fichte's deduction of the concept of right does not show that this recognition represents the *only* way in which such a self-conception is possible, nor that individuals ought to develop this self-conception as opposed to other possible ones. In this way, the claim to strict necessity made by Fichte himself when he attempts to deduce the concept of right as a condition of self-consciousness must be dispensed with.

Fichte's claims concerning the necessity of recognition have led some interpreters to view his position in decidedly moral terms, as when the summons is said to have "ethical significance" and it is asserted that its "telos is an acknowledgement of the claim of the other, a summons to responsible freedom."³ Typically, reference is made to Kant's notion of rational beings as the possessors of a moral status, or "normative standing as such," which demands that they treat each other in certain ways and not in other ways.⁴ Fichte's deduction of the concept of right is consequently said to "commit him to the idea that reciprocally recognizing agents presuppose the principle of right as a dignity-defining law that is normative for them as one free and rational person among others, that is, as a Kantian categorical imperative."⁵ Fichte's deduction of the concept of right is said to presuppose, moreover, the idea of moral autonomy, in that it involves a demand made in relation to others that presupposes "the will's capacity to be a law to itself independently of object-dependent desire,"⁶ and thus the capacity of rational agents "to conform to the principle of right just

³ Williams 1992: 59.

⁴ Darwall 2005: 101.

⁵ Darwall 2005: 93. In a similar vein, it is claimed that the concept of a summons and the concept of recognition "concretize Kant's moral philosophy – the consciousness of freedom, the categorical imperative, kingdom of ends – and transform it into a social philosophy" (Williams 1992: 50). The relation of right is therefore said to be "a morally necessary one, i.e., the idea of a rational-moral community, not unlike Kant's kingdom of ends. In his concept of community (*Gemeinschaft*), Fichte reflects the concept of a universal law made by freedom that places restrictions upon the freedom of all, a freely imposed self-restraint" (Williams 1992: 54-55).

⁶ Darwall 2005: 101.

because they recognize its validity.”⁷ In other words, the concept of right which Fichte attempts to deduce as a condition of self-consciousness together with the recognition which this principle demands are held to entail the existence of an unconditional obligation to respect the freedom of others purely in virtue of their moral status or “normative standing as such.” This moral status is associated with the “dignity” which an agent must recognize in others and respond to, but which an agent does not confer on others through an act of will,⁸ and this dignity is itself to be explained in terms of a rational agent’s capacity to act autonomously in accordance with principles of pure practical reason.

I shall argue, however, that Fichte’s separation of right from morality shows that for him there is an essential connection between the notion of right and a specifically non-moral form of respect for the freedom of others, but not necessarily respect for their moral dignity as well. Although this connection between the notion of right and a certain attitude towards others allows us to speak of a “standing” which each person enjoys in relation to others, it does not entail the adoption of a distinctively moral or ethical standpoint. The way in which the moral import that some interpreters of Fichte’s account of recognition and right find in the first main division of the *Foundations of Natural Right* conflicts with his own strict separation of right from morality is evident from the following passage:

In the domain of natural right, the good will has no role to play. Right must be enforceable, even if there is not a single human being with a good will; the very aim of the science of right is to sketch out just such an order of things. In this domain, physical force — and it alone — gives right its sanction. (*FNR*, 50; *SW*, III: 54)

This strict separation of right from morality leads Fichte to base his theory of right on the methodological assumption of a “universal egoism” (*FNR*, 134; *SW*, III: 152), that is to say, on the idea that human beings are motivated solely by self-interest, even if this is not in fact

⁷ Darwall 2005: 92.

⁸ See Darwall 2005: 111.

universally the case. Since Fichte's approach to the question of the essential nature of right is here announced to be a matter of method only, it does not commit him to the anthropological claim that human beings typically act from motives of self-interest alone, nor to the claim that right and morality are not only conceptually independent of each other but also practically independent of each other, in the sense that right does not ultimately need to be supplemented by morality in order to become truly effective.⁹ This method only requires proceeding on the assumption that human beings always do act from motives of self-interest and that they do not, therefore, *directly* concern themselves with the freedom or moral dignity of others.

Fichte's separation of right from morality may appear to be at odds with his description of the summons, for as well as implying recognition of the freedom and rationality of others, the act of summoning others is described by him as one whereby the other person "has, in *his* choice, in the sphere of his freedom, taken my free choice into consideration, has purposively and intentionally left a sphere open for me" (*FNR*, 44; *SW*, III: 46). This claim gives the impression that the person who summons another person acts with the *intention* of enabling another person to act freely and thereby demonstrates an interest in this other person's freedom. A distinction needs to be drawn, however, between (1) respecting the freedom of others and intentionally acting in a way that demonstrates such respect because doing so represents a condition of one's own freedom – essentially, if I do not respect the freedom of others they will have no reason to respect mine – and (2) respecting the freedom of others in the sense of concerning oneself directly with their freedom. In the second case, the freedom of others is conceived to be not only something that one has an obligation to respect in the sense of not violating it, but also something that ought to be adopted as one of one's own fundamental ends.

⁹ For an attempt to show how for Fichte right can be considered to be practically dependent on morality or ethics despite his separation of right from morality, see James 2011: 131ff.

I shall argue that what Fichte says in the *Foundations of Natural Right* implies only (1) given the methodological assumption of a universal egoism with which he operates. Right is only necessary given this assumption and legal recognition would not, therefore, be a constitutive feature of a genuine moral community.¹⁰ The fact that what Fichte has to say does not also imply (2) lends his account of the concept of right a critical dimension which is overlooked by interpreters who appeal to its alleged moral foundations. The “ideal socialization” interpretation of Fichte’s deduction of the concept of right admittedly suggests that individuals who had already achieved the relevant self-conception among themselves and seek to educate or socialize other individuals in such a way as to enable them to develop a conception of themselves as self-determining agents would be motivated by a direct concern with the freedom of others and would have made this freedom into one of their own fundamental ends. Yet even here one could cite, in accordance with Fichte’s methodological assumption of a universal egoism, such reasons as the wish to produce individuals who are not a constant threat to social order because they have not developed the capacities and dispositions that would enable them to coexist peaceably with others.

Another reason for observing the distinction between respecting the freedom of others and intentionally acting in a way that demonstrates such respect because doing so represents a condition of one’s own freedom, on the one hand, and respecting the freedom of others on the grounds of a direct interest in their freedom, on the other, is as follows. By observing this distinction Fichte’s position can be shown to be an essentially consistent one, whereas he has been accused of inconsistency on account of the way in which he accords recognition a central role in his deduction of the concept of right but at the same time separates right from morality. It is said, for example, that despite making recognition into a transcendental condition of right, Fichte “does not develop his theory of rights concretely out of

¹⁰ The idea of the abolition of the state appears throughout Fichte’s writings. It is, in fact, more a matter of the state’s self-abolition in the sense that the state is what provides the means of bringing about its own disappearance as a coercive legal and political institution. See James 2015 .

intersubjective recognition. Moreover, individual acts of recognition do not play any role in securing right in Fichte's theory of the state, and Fichte allows that recognition may be bypassed altogether."¹¹

Fichte's theory of right as set out in the third main division of the *Foundations of Natural Right* has in fact been viewed as a reversion to the type of position concerning right and the basis of political authority typically associated with Hobbes.¹² In what follows, I shall show that although Fichte does indeed adopt a position that can in certain respects be compared to some things that Hobbes has to say, he is not being inconsistent despite the essential role played by recognition in his theory of right. Rather, even those aspects of Fichte's theory of right that have something in common with Hobbes's views on right and the basis of political authority presuppose recognition of the freedom and rationality of others. This does not mean, however, that Fichte is committed to viewing recognition at the level of right as being anything more than a matter of respecting the freedom of others because doing so represents a condition of one's own freedom, as would be the case if he took it also to involve a direct interest in the freedom of others. Nor is the form of autonomy that Fichte acknowledges to be a necessary condition of right – that is, the capacity to limit one's actions in relation to others by imposing general principles of action upon oneself – to be viewed as desire-independent in the sense of consisting in an act of subjecting oneself to unconditionally valid principles of pure practical reason. For Fichte, this form of autonomy obtains only when one makes the moral law into one's principle of action, and he clearly does not think that this is what happens in the case of right. Attempts to assimilate these distinct forms of autonomy ignore the critical aspect of Fichte's approach of basing his theory of right on the assumption of a universal egoism by uncritically investing the legal sphere of right with moral notions that imply a direct interest in the freedom of others which may, in fact, be

¹¹ Williams 1992: 64.

¹² Schottky 1995: 184ff. and 198ff.

completely absent, and whose absence is masked by the introduction of moral notions of recognition and obligation.

2. The Conditional Nature of Right

One of the main considerations motivating Fichte's separation of right from morality has to do with the conditional nature of right and the unconditional nature of morality. Fichte's treatment of right as something conditional must be held by moralized readings of the first main division of the *Foundations of Natural Right* to conflict with his attempt to demonstrate how the mutual recognition and respect entailed by the idea of a summons are necessary conditions of self-consciousness. This is because the necessity of these conditions implies that the obligations which right imposes upon individuals cannot be regarded as obligations that are voluntarily assumed by them; rather, these obligations are ones that are necessarily generated by the moral status enjoyed by others.¹³ In stressing the conditional nature of right, Fichte can be seen to adopt a position that is similar to the amoral one adopted by Hobbes in his account of right and the basis of political authority, in that the obligations that we have towards others are explained in terms of legal and political structures to which self-interested rational agents can be expected to have consented. Thus the conditional nature of right represents an issue which can be used to assess the validity of both moralized readings of the first main division of the *Foundations of Natural Right* and the claim that Fichte reverts to a recognizably Hobbesian account of right despite his earlier appeal to the notion of recognition.

According to Fichte, if an individual wants to coexist peaceably with others, and possess a sphere free from external interference in which to exercise his or her capacity for self-determination under reliable, stable conditions of agency, he or she must will the rule of

¹³ See Darwall 2005: 108ff.

right. This rule expresses the principle that must govern a condition of right and it reads as follows: “limit your freedom through the concept of the freedom of all other persons with whom you come in contact” (*FNR*, 10; *SW*, III: 10). The act of willing this rule amounts in effect to limiting one’s activity in such a way that others can also be free, though only because logical consistency requires willing the necessary means to any end that one sets oneself. The end in question here is that of securing for oneself a sphere of activity free from the actual or possible interference of others. This end concerns only the sphere in which the person “exclusively makes choices,” thereby determining him- or herself as an individual distinct from others in virtue of the different choices that he or she makes (*FNR*, 53; *SW*, III: 56).

Willing this personal freedom—that is, the freedom to set any ends whatsoever independently of others and to distinguish oneself from others by acting in accordance with such ends—does not imply a direct interest in the freedom of others. Rather, one could conceivably respect their personal freedom simply because doing so represents a necessary condition of securing one’s own personal freedom. Yet an individual does not think or act inconsistently if he or she renounces the means to an end at the same time as he or she renounces the end itself, which in this case is the end of coexisting peaceably with others with the aim of securing personal freedom. Thus someone can consistently refuse to live harmoniously in community with others by refusing to subject him- or herself to the law of right, but only if he or she at the same time renounces the end of securing a sphere of action free from interference by others, that is to say, a sphere of action whose recognition by others is legally secured. Consequently, although Fichte claims in the corollary to his deduction of the concept of right that “we are both *bound* and *obligated* to each other by our very existence,” the consistency in question relates only to the rules of thinking in general that he describes in the same paragraph as “scientifically presented in general *logic*” (*FNR*, 45; *SW*,

III: 48). This consistency does not therefore imply such distinctively moral considerations as recognition of the dignity of others in the sense of holding their freedom to be something which ought to form one of our own ends, irrespective of what we happen to desire to do.

Although it may be doubted that in a modern society an agent could completely renounce the end of coexisting peaceably with others in the sense of willing not to be part of a legal community in which his or her personal freedom is secured on the condition that he or she recognizes the personal freedom of others, Fichte can be seen to be making a valid point about what legitimizes legal constraints in such a way that individuals are obliged to obey them even in the absence of any overriding desire to do so. This point is that they have freely subjected themselves to these constraints. The view that legal constraint is legitimate only in virtue of the fact that an individual has consented to it broadly corresponds to Hobbes's claim that "where no Covenant hath preceded, there hath no Right been transferred, and every man has right to every thing; and consequently, no action can be Unjust. But when a Covenant is made, then to break it is *Unjust*."¹⁴ Like Hobbes, Fichte argues that the consent which produces an obligation to act in accordance with the law of right consists in partly giving up a right that was originally one's own to others. This is the right of a person "to extend his freedom as far as he wills and can, and — if he so desires — the right to take possession of the entire sensible world" (*FNR*, 111; *SW*, III: 122). I shall have more to say about this particular right.

Given the conditional nature of right, Fichte argues that it would be inconsistent to rely on the good will of others when it comes to their adoption of principles of reason that instruct individuals to enter into agreements with others so to secure for themselves a sphere of freedom. In effect, he is concerned with the problem of the contingent nature of relations of mutual recognition in the absence of other necessary conditions. Ultimately, what is

¹⁴ Hobbes: 1996: 100.

required is the establishment of a coercive state. Consequently, individuals can be expected to consent to the establishment of such an institution in so far as they adopt the end of securing a sphere of personal freedom and also think and act consistently in relation to the realization of this end. Here Fichte is in broad agreement with Hobbes's statement that, "Covenants, without the Sword, are but Words, and of no strength to secure a man at all."¹⁵

Fichte's treatment of right as something conditional implies that the obligations which right imposes on individuals are voluntarily assumed ones. Although the idea of a summons as a necessary condition of self-consciousness suggests otherwise, this condition cannot be invoked with the aim of showing that right is not something voluntary and thereby conditional without raising a significant problem of its own. This is because to claim that right is not conditional in the relevant sense would be to assume that the act whereby one person summons another person in the appropriate way is not only a necessary condition but also a sufficient condition of mutual recognition. This particular problem arises equally if we view Fichte's deduction of the concept of right as a transcendental deduction, as he does, or if it is more modestly viewed as the description of some kind of socialization process.

In the first case, to maintain that the form of recognition implied by the idea of a summons is both a necessary and sufficient condition of the consciousness of oneself as a being with the capacity to engage in acts of rational self-determination would be to confuse two issues which Fichte himself treats separately in his deduction of the concept of right and his application of this concept respectively: the transcendental issue of the conditions of self-consciousness as such and the issue of how these conditions can be met in the case of individual human beings standing in spatio-temporal relations to each other. Even if recognition is assumed to be a necessary condition of the relevant form of self-consciousness, it is not also a sufficient one when other factors, such as self-interest, are taken into

¹⁵ Hobbes 1996: 117.

consideration and the issue of how relations of mutual recognition can be effectively maintained and guaranteed is introduced. Since the idea of mutual recognition as a condition of self-consciousness presupposes that human beings are capable of limiting their own activity in relation to each other and freely forming the end to do so, the transcendental account of the necessity of recognition will, moreover, need to be supplemented by a genetic one given that these capacities are not ones that human beings self-evidently possess in the absence of some kind of educational or socialization process. While the “ideal socialization” interpretation of Fichte’s deduction of the concept of right directly confronts this issue, there is no guarantee that a person who has attained the relevant form of self-consciousness by means of a process of education or socialization will continue to limit his or her activity in relation to others in the appropriate way. In short, we can conceive of such a person as attaining the relevant form of practical self-consciousness without there being anything to prevent him or her from subsequently violating the conditions of ongoing mutual recognition in relation to some, or even all, other persons with whom he or she comes (or is likely to come) into contact.

This shows that although mutual recognition and the relation of right which is its formal expression constitute the basis of all further determinations of right, their status as conditions of self-consciousness does not by itself guarantee the existence of relations of mutual recognition. Rather, right remains conditional in virtue of being dependent on the ends that individuals set themselves, including the end of coexisting peaceably with others in a condition in which a sphere of personal freedom is legally guaranteed to each of them. Fichte’s acknowledgement of this point and the necessity of further conditions of right can be detected in the following passage from the *Foundations of Natural Right*:

It has indeed been shown that, if a rational being is to come to self-consciousness — and hence if it is to become a rational being — then another rational being must

necessarily exercise an influence upon it as upon a being capable of reason. These are reciprocal propositions: no influence as upon a rational being, no rational being. But that, even after self-consciousness has been posited, rational beings must continue to influence the subject of self-consciousness in a rational manner, is not thereby posited, and cannot be derived without using the very consistency that is to be proven as the ground of the proof. (*FNR*, 81; *SW*, III: 87)

I take the missing proof mentioned in the last sentence to be a proof of the fact that it would be consistent to will to limit one's activity in relation to others independently of the desire to secure for oneself a sphere of personal freedom. This shows how assuming that in this passage acting rationally means limiting one's freedom in relation to others as a response to an absolute obligation that rational agents have in virtue of the moral dignity possessed by others begs the question. As we have seen, Fichte denies that from the standpoint of right there would be any inconsistency involved in not limiting one's activity in relation to others so long as one also renounced the end of securing for oneself a sphere of personal freedom. Indeed, the conditional nature of the obligation to limit one's activity in relation to others means that the failure of others to limit their activity in relation to oneself would be sufficient to remove one's own obligation to do so in the absence of an independent power with the authority and means to punish any transgressions of right.

This is not to say that in asserting the conditional nature of right Fichte rejects his earlier account of recognition. In connection with the question of the precise nature of this recognition, Fichte's views on the conditional nature of right again invite comparisons with certain things that Hobbes has to say. The necessity of recognition nevertheless reveals a fundamental difference between Fichte's views on the freedom and related capacities that we must attribute to others with whom we stand in relations of right and Hobbes's views on them. This difference shows, moreover, that although Fichte thinks that a form of recognition

which requires attributing to others the capacity for rational self-determination is necessary at the level of right, this demand in no way implies such moral notions as the dignity of others, let alone a direct interest in the freedom of others in the sense of making the freedom of others into one of one's own fundamental ends, as opposed to its being something that it is recognized for purely instrumental reasons. The demand in question does, however, imply the notion of some kind of "standing," in the sense of a status that must be accorded to others in virtue of our recognition of their freedom and rationality. Yet the limitations of this recognition of the standing of others will be shown to reveal the critical dimension of Fichte's theory of right that moralized readings of it fail to detect.

3. Right and Freedom

The way in which Fichte associates the concept of right with a mutual limitation of freedom echoes what Hobbes has to say concerning the right of nature and the partial renunciation of this right which marks the transition from the state of nature, in which individuals enjoy natural freedom without security, to a condition in which individuals enjoy security and a limited form of freedom. Hobbes describes the right of nature, or that "which Writers commonly call *Jus Naturale*," as follows: "the Liberty each man hath, to use his own power, as he will himselfe, for the preservation of his own Nature; that is to say, of his own Life; and consequently, of doing any thing, which in his own Judgement, and Reason, hee shall conceive to be the aptest means thereunto."¹⁶ This view of the right of nature brings to mind Fichte's previously mentioned "infinite" right of the person to extend his freedom as far as he wills and can do so, although he does not identify this right simply with a right to do whatever one judges to be necessary to preserve one's life as Hobbes does.

¹⁶ Hobbes 1996: 91.

Fichte's position differs from Hobbes's in that he treats freedom, rather than self-preservation, as primary, so that preserving one's own nature for him ultimately means preserving the conditions of free, rational agency. This is shown by his claim that it is not a matter of willing to continue to exist simply for the sake of existence as such; rather, it is a matter of willing to continue to exist for the sake of a determinate state of existence (*FNR*, 107; *SW*, III: 118). In other words, individuals will to continue to exist only for the sake of other ends. These ends may vary and right cannot prescribe what they are because doing so would represent a violation of the personal freedom which it is meant to guarantee. The realization of such ends, whether they have to do with mere enjoyment or some "higher" end, will require the exercise of some degree of rational agency, though the pursuit of some ends requires more in the way of such agency than others do. Nevertheless, Fichte's understanding of right as a relation consisting of the mutual limitation of the right to extend one's freedom as far as one desires and has the power to do so is compatible with what Hobbes has to say concerning the act of renouncing the right to everything that human beings enjoy in the state of nature, even if there is the major difference that for Fichte the end in accordance with which this act is undertaken is that of securing of a sphere of personal freedom in which the conditions of effective rational agency are secured, rather than that of mere self-preservation.

Although each individual has the right to everything in a condition of natural freedom, he or she may partly renounce this right by agreeing not to hinder another individual in his or her exercise of this same right. One individual does not thereby grant another individual a right that he or she previously lacked. On the contrary, the individual who partially surrenders this right must be thought to have originally had, like everyone else, a right to all things, a right that is of a purely negative kind in the sense that it has to do only with the absence of any obligation to limit one's freedom in relation to others. This is enough to distinguish the right in question from those rights that generate legal obligations in relation to others, and

which for Fichte are possible only “within a commonwealth and under positive laws” (*FNR*, 132; *SW*, III: 148).¹⁷ Thus the individual who partially renounces his or her natural or original right to everything by limiting it for the benefit of another individual as Hobbes puts it, “onely standeth out of his way, that he may enjoy his own originall Right, without hindrance from him.”¹⁸ In short, one individual agrees no longer to impede another individual’s enjoyment of the right to everything by means of the act of partially limiting his or her enjoyment of this same right. This act of “standing aside” formally corresponds to the summons whereby for Fichte one person signals to another person that he or she is willing to limit his or her freedom and thereby grant the other person a sphere of freedom.

At the same time, Hobbes implies that the act of partially renouncing the right to everything that one originally enjoys must be of a reciprocal kind when he claims that all voluntary acts must be explained in terms of some good that an individual hopes to attain.¹⁹ Presumably, the individual who partially renounces his or her original right to everything expects to get something in return which provides him or her with a good enough reason for engaging in the act of partially renouncing the right in question, and the other individual’s act of partially renouncing this original right in his or her favour would provide such a reason. Thus the right to all things that each individual originally enjoys turns out to be subject to a process of mutual limitation, in which each individual partially gives up the right to everything without renouncing the right to certain other things. Indeed, it is only in order to secure these things that one consents to the partial renunciation of this right, so that this desire explains why one willingly performs the act of “standing aside.” In short, I agree to limit my natural freedom and corresponding right to everything if you agree to limit your natural freedom and corresponding right to everything. If this act of mutual limitation were to

¹⁷ For more on this point see James 2011: 24ff.

¹⁸ Hobbes 1996: 92.

¹⁹ See Hobbes 1996: 93.

take place between each individual and every other individual, we would end up with the kind of situation described by Fichte in the following passage:

If a million human beings exist alongside one another, each individual may very well will for himself as much freedom as possible. But if the will of all were to be united into one concept as in one will, this will would divide the sum of possible freedom into equal parts, with the aim that all would be free together, and that therefore the freedom of each would be limited by the freedom of all the others.

(*FNR*, 98; *SW*, III: 106)

Hobbes's claim that an individual "onely standeth out of his way" when partially renouncing the right of nature is of further significance in at least two other respects in relation to the first main division of Fichte's *Foundations of Natural Right*.

First of all, despite its figurative nature, the notion of standing aside not only gives us some idea of what an actual summons might involve but also makes clear that the human body will have a central role to play in the act of summoning another person as the means whereby one is able to signal to others through words produced by the organs of speech or through gestures that one is willing to limit one's freedom if they agree to do the same. Given that the concept of right concerns the thought of finite rational beings exercising an influence upon each other, Fichte attempts to deduce the conditions of the possibility of interpersonal relations in the second main division of the *Foundations of Natural Right* (§§5-7), so as to demonstrate that the concept of right can be applied, and among these conditions he includes the human body and human speech. Yet, as we shall see, Fichte's account of the role of embodied agency differs from Hobbes's account of what must be presupposed in order to explain the act of standing aside, because he accords human beings a capacity for self-limitation that Hobbes does not explicitly grant them and is arguably not in the position to do so. Secondly, the notion of standing aside can be related to the idea of status or standing that

informs moralized readings of Fichte's account of the role of recognition in the first main division of the *Foundations of Natural Right*. This notion can therefore serve to reveal certain assumptions underlying such readings.

Hobbes's views on freedom imply a particular conception of the act of standing aside which serves to differentiate this act from Fichte's account of the summons. In *Leviathan*, Hobbes states that, "LIBERTY, or FREEDOME, signifieth (properly) the absence of Opposition; (by Opposition, I mean externall Impediments of motion;) and may be applied no lesse to Irrationall, and Inanimate creatures, than to Rationall."²⁰ As this definition makes clear, the fact that freedom consists only in the absence of external impediments to motion implies that it is something that all material objects, and not only human bodies, can be said to enjoy under certain conditions. In this respect, human beings are, to use one of Hobbes's favourite images for illustrating his conception of freedom, like flowing water which is free to the extent that it may move freely within certain bounds.²¹ Hobbes also employs the example of someone who, like water in a channel, is free to move in one direction but not in another, in the form of a traveller who is prevented by hedges and walls from trampling on the vines and crops adjacent to the road he is walking along.²² To view freedom in terms of the unimpeded motion of bodies in space renders the act of standing aside rather mysterious, however, since this act requires more than freely following a natural course within certain bounds, namely, an act of self-limitation. We may assume, moreover, that unlike flowing water the traveller mentioned above can choose to move in one direction rather than another one within the bounds set to his movements by the hedges and walls. He could, for instance, stand aside for another person as when one moves aside to let someone pass if there is not sufficient room available. How, then, would Hobbes explain such acts of standing aside?

²⁰ Hobbes 1996: 145.

²¹ See Hobbes 1996: 146 and Hobbes 1997: 111.

²² See Hobbes 1997: 111.

The answer to this question relates to Hobbes's view that all human action is determined by the passions natural to humankind, which include fear, greed and the desire for glory. These passions drive human beings, causing them to act (or not to act) in certain ways provided that there is no opposing passion. The passions are nevertheless susceptible to the influence of deliberation, because the latter can have a role to play in determining the strength of one passion relative to another one. What ultimately distinguishes human behaviour from that of flowing water is, then, deliberation, which Hobbes defines as "simply weighing up the advantages and disadvantages of the action we are addressing (as on a pair of scales), where the weightier consideration necessarily goes into effect by its own natural inclination."²³ Consequently, identifying both the passion that determines an action and the grounds of this passion, that is to say, its external cause and the series of deliberations that explain its greater strength relative to other passions, will be sufficient when it comes to explaining the act of standing aside whereby an individual agrees to limit his or her right of nature in relation to others. Hobbes's explanation of the act of standing aside in terms of which passion happens to be the strongest one in a given situation means that it would surely not be rational simply to rely on the good will of others. In doing so, one would put oneself at the mercy of

²³ Hobbes 1997: 152. This definition is offered in connection with the idea that a legislator who assigns a penalty which fails to outweigh the greed that motivates a crime would be proceeding in a way that is contrary to the purpose of punishment, and it assumes, therefore, that human beings can deliberate concerning whether or not acting on a passion would be prudent in a given situation. Thus a human being is presupposed to be capable of foresight and able to engage in the following type of prudential reasoning based on past experience: "he that foresees what will become of a Criminal, re-cons what he has seen follow on the like Crime before; having this order of thoughts, The Crime, the Officer, the Prison, the Judge, and the Gallows" (Hobbes 1996: 22). It is the passions, nevertheless, that ultimately determine a human being's actions, for although the force of the passions may be moderated by prudential considerations, these considerations will themselves be determined by certain passions, such as fear. In this way, Hobbes's voluntarism turns out to be reducible to the following conception of the will: "In *Deliberation*, the last Appetite, or Aversion, immediately adhaering to the action, or to the omission thereof, is that we call the WILL; the Act, (not the faculty,) of *Willing*" (Hobbes 1996: 44). One acts voluntarily for Hobbes, then, even when one acts from practical necessity, as when one throws one's goods overboard to prevent a boat that one is on from sinking (Hobbes 1996: 146). Here we must assume that a person neither wants to throw his or her goods overboard nor to drown. However, the desire for self-preservation proves stronger in the end and when throwing his or her goods overboard he or she acts voluntarily in the sense of acting on the basis of a desire that he or she has, namely, the desire to preserve his or her own life, and also because he or she could have acted on the basis of the other desire, namely, to retain possession of his or her goods. When providing this example Hobbes does not mention, however, that he or she could have acted on the basis of this other desire only *if* it had turned out to be strongest one in this particular situation.

whatever happened to be the strongest passion driving a person at a given point in time, even if insight into human nature might provide some means of reliably predicting what will turn out to be the strongest passion in particular circumstances.

The type of explanation of the possibility of an act of standing aside which may signal to others a willingness to limit one's right of nature in relation to them available to Hobbes must be thought to be inadequate when it comes to explaining Fichte's claim that right, which has its basis in mutual recognition, involves an act of *self*-limitation. This is because this act implies the existence of a capacity to exercise self-constraint even in the face of desires that would otherwise determine one's actions according to the degree of power that they happened to possess relative to other desires. In this respect, it would be less irrational to rely on the good will of others, even if Fichte maintains that some kind of independent guarantee of recognition is still needed, given the assumption of a universal egoism and the conditional nature of right. For reasons that I have already provided, this act of self-limitation nevertheless does not imply an act that is completely desire-independent; rather, it can be explained in terms of the fundamental desire to secure a sphere of personal freedom in which to exercise the capacity for rational self-determination under conditions of stable agency. Achieving this end requires recognizing that others also have the capacity to limit their own activity in accordance with the same end, even though they may have a strong desire not to do so. For only on the basis of this understanding of others as not being driven to act by whatever happens to be the strongest desire at any given point in time would it be rational to renounce voluntarily the infinite right to everything which one originally enjoys, that is to say, before the establishment of a condition in which one enjoys certain legally guaranteed rights which at the same time impose on us obligations with respect to how we treat others and how far we seek to extend the sphere of our personal freedom.

The capacity to stand aside in the sense of limiting one's right to everything in relation to others does not, however, entail a direct interest in the freedom of others, even if it does require having certain beliefs about them, especially about their capacity for self-directed action. Rather, although the realization of the end of securing for oneself a sphere of personal freedom requires assuming that others share the same capacities and fundamental ends as oneself – and in this sense recognition and respect must be demonstrated in relation to them – this form of recognition does not by itself explain why one must regard *their* freedom as an unconditional good which imposes an absolute obligation upon oneself and generates a completely desire-independent reason for respecting their freedom. Fichte's account of recognition in the first main division of the *Foundations of the Natural Right* and the subsequent parts of this work are therefore consistent both with each other and with the method adopted in this work which assumes the existence of a universal egoism.

This is not to say that Fichte thinks of the standpoint demanded by the method that he employs in the *Foundations of Natural Right* as the only one from which we can conceive forms of human association. Indeed, the fact that he bases his theory of right on the methodological assumption of a universal egoism implies the very opposite given the negative account of egoism found in his ethical theory developed in *The System of Ethics* from 1798, in which we do find references to the notion of human dignity (*Würde*) explained in terms of rationality and autonomy,²⁴ along with statements that imply a direct interest in the freedom of others and an unconditional obligation to promote it, such as the following one: “Everyone ... with whom we are in any way acquainted becomes assigned to our care simply by virtue of this acquaintance; he becomes our neighbor and a part of our rational world [*Vernunftwelt*], just as the objects of our experience belong to our sensible world [*Sinnenwelt*]. We cannot abandon him unless we lack conscience” (*SE*, 223; *SW*, IV: 235).

²⁴ See *SE*, 135; *SW*, IV: 142; *SE*, 245; *SW*, IV: 256; *SE*, 316; *SW*, IV: 334; *SE*, 333; *SW*, IV: 352; *SE*, 341; *SW*, IV: 362.

Fichte's theory of right can in this respect be thought to possess a critical dimension in the sense that it enables us to view right as something essentially limited when seen from another, higher standpoint. This in turn suggests that any notion of moral standing viewed in purely legal terms must be thought to be subject to certain inherent limitations. In order to pursue this point, I shall introduce the counterpart to the notion of standing aside which I have shown links Fichte's views on recognition with Hobbes's account of what it means to renounce, if not fully so, one's natural or original right to all things. This counterpart to the notion of standing aside is provided by the notion of standing one's ground in cases when sufficient respect is not shown to one by others, which can here be taken mean a failure on the part of others to recognize one's capacity for rational self-determination by not limiting their activity so as to grant one a sphere of personal freedom. Thus right implies not only acts of self-limitation but also acts of self-assertion. Historical struggles to achieve recognition in this respect testify both to the conditional nature of right and to the necessity of standing one's ground rather than standing aside in certain circumstances.

Yet even if such acts of self-assertion are justified under such conditions, with the need to engage in them reflecting the contingent nature of recognition, these acts of self-assertion may primarily or even exclusively be a matter of *my* freedom or that of a particular oppressed group to which I belong. Such acts do not, therefore, entail an interest in the freedom of others as such. Within a purely legal framework of rights self-assertion is, moreover, compatible not only with the absence of any direct interest in the freedom of others but also with the closing down of the possibility of a richer relation to others which consists in a condition of mutual concern and social recognition. This is because others may be viewed simply as limits to one's own acts of self-assertion, limits that one may seek to push back as far as is legally permissible so as to give up as little as possible of one's original

“infinite” right to everything, while at the same time enjoying the benefits of social order and peace.

In this connection, Fichte’s theory of right itself becomes problematic in so far as he wants to accord right an instrumental function in relation to morality, as shown by his claim that although humanity “separates itself from citizenship in order to elevate itself with absolute freedom to the level of morality...it can do so only if human beings have first existed within the state” (*FNR*, 178-179; *SW*, III: 206.). This attempt to locate the state within some kind of moral teleology sits uncomfortably with the way in which Fichte bases right, and thus the state, on the methodological assumption of a universal egoism. This is because the type of disposition which he associates with right may turn out to be self-perpetuating in the sense of reinforcing and even creating in individuals a desire only to assert themselves, rather than also developing in them a direct interest in the freedom of others and thus an openness to the more social conception of freedom that Fichte wants to associate with the standpoint of ethics or morality. After all, Fichte’s methodological assumption of a universal egoism only makes sense if experience teaches us that there is at least some evidence of a tendency, if not a universal one, for human beings to concern themselves directly only with their own freedom.

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