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## Fichte and the Relationship between Right and Morality

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It is a commonly held view among scholars of classical German political philosophy that Fichte's theory of right underwent a radical transformation during the period from 1793 to 1796.<sup>1</sup> This shift is said to be expressed most fundamentally in Fichte's views concerning the relationship of political theory to moral philosophy. According to this thesis, Fichte moved from a position that regarded the principles of right as derivable from the moral law to a view that upheld a "complete separation" between the foundations of right and those of morality.<sup>2</sup> My aim in this essay is not to dispute this interpretive thesis—for it is essentially correct—but to articulate more precisely than most commentators have done the two positions Fichte is alleged to have held and to understand the philosophical significance of his move from the earlier to the later. In doing so I hope to show that Fichte's separation of right from morality was a response to his growing appreciation of the complexity of the various phenomena dealt with by practical philosophy and, more specifically, to his realization of the impossibility of reducing the rational significance of the sphere of right—including, prominently, the institution of private property—to its relation to the moral autonomy of individuals. Implicit in Fichte's later position is the view that the political realm has its own distinctive end, the fostering of citizens' *individuality*, whose value is not simply derivative of the value of moral autonomy. Paradoxically, this transformation was contemporaneous with another development in Fichte's thought that seems to work in opposition to his recognition of the heterogeneity of moral and political theory: his deepening commitment to the basic systematicity of philosophy and to the view that all of philosophy (and therefore both moral and political theory) must ultimately be grounded in a

single first principle. This means that we must ask not only in what sense right is separate from morality but also how such a separation is compatible with the essential unity of philosophy that Fichte maintained.

The positions to be considered here are laid out in two principal texts: Fichte's 1793 defense of the French Revolution (known hereafter as the *Beiträge*)<sup>3</sup> and his *Foundation of Natural Right* (*Grundlage des Naturrechts*) of 1796. My immediate task is to understand how the fundamental principle of the political theory of the *Beiträge* differs from that of the *Naturrechts*.

### THE POSITION OF 1793

The characterization of Fichte's earliest position as one for which there is no separation between right and morality, though not incorrect, is potentially misleading. It must not be taken to mean, for example, that the young Fichte failed to distinguish the tasks and subject matter of moral theory, on the one hand, from those of a theory of right, on the other. Fichte's treatment of right in 1793 makes it clear that he is aware that the concerns of moral and political theory are not simply identical. Whereas morality supplies us with the laws that ought to govern the individual will (both in its "internal" workings and its "external" deeds), right concerns itself with the principles of the rationally ordered society.<sup>4</sup> Yet if right and morality are separate in the sense that their domains are demarcated from one another, there is another sense in which it is correct to say that there is no separation between the two. The most common way of specifying what this absence of separation amounts to does so in terms of the *derivability* of right from morality. That is, the principles that govern the rational society follow (in some way to be specified) from those that govern the individual will. This characterization conveys the essential feature of Fichte's earliest position—that right is subordinate to and dependent on morality—but it also stands in need of further elaboration, if we are to grasp the precise nature of this relationship. Our first task, then, is to ask in what specific way right is to be derived from morality.

It would be mistaken to assume that Fichte's first political theory aimed to derive the *whole* of right from what he took to be the basic principle of morality, Kant's categorical imperative. Fichte explicitly rejects such a view in statements such as the following: "The legislation of [Kantian pure] practical reason is . . . insufficient for the foundation of a state. Civil legislation goes one step further. It concerns itself with things that the law of practical reason leaves to purely preferential choice [*Willkür*]."<sup>5</sup> Here Fichte clearly singles out portions of the sphere of right—"the foundation of a state" and "civil legislation"—that are not deducible from moral principles alone. Thus we should expect Fichte to attempt to derive only a part of political

theory from morality, and this is indeed what he sets out to do early in the *Beiträge*, when he provides us with his account of “natural” or “human” rights. Natural rights, Fichte claims, are *human* rights in the sense that they are rights one has in virtue of one’s status as a human being (*Mensch*) rather than as a consequence of one’s membership in a particular society. In addition, natural rights are identified with *inalienable* rights,<sup>6</sup> that is, they are rights that the individual may not give up or trade away within political society and that any legitimate state is obligated to preserve and defend.

In order to comprehend the sense in which Fichte intends to derive natural rights from moral theory, it is helpful to consider the way in which he draws the distinction between *alienable* and *inalienable* rights. This distinction is articulated by first identifying the domain of rights in general with that which we are morally permitted to do.<sup>7</sup> In this broad sense of the term, which includes both alienable and inalienable rights, we have a right to do whatever morality does not forbid. What the notion of a “right” adds here to “the morally permissible” is simply the idea that others have a *prima facie* obligation to refrain from hindering individuals in the exercise of these rights.<sup>8</sup> Within this broad class of rights it is possible to distinguish those that may be surrendered by individuals within civil society (alienable rights) from those that may not (inalienable rights). Once again, the “may” here refers to *moral* permissibility, and so the principle that distinguishes these two classes of rights is none other than the moral law itself. Thus, one’s inalienable rights are derived directly from one’s duty to fulfill the moral law. They can be understood as restrictions placed upon the actions of others that safeguard those freedoms necessary for living up to one’s nature as a morally autonomous being in the Kantian sense. If, for example, I have a moral duty to perfect my mental capacities and talents, then I have a natural, inalienable right to the freedoms required for such self-development. It is this feature of natural rights—that they are essential to the individual’s fulfilling the requirements of morality—that accounts for their inalienability. To give up those freedoms would be to forsake one’s vocation as a human (that is, moral) being. Moreover, the obligation we have to respect the natural rights of others is itself a moral one. It is not derived from the consent of freely choosing individuals but is grounded in our nature as rational beings capable of moral autonomy. Although a well-ordered state will provide other, nonmoral incentives for respecting the natural rights of others, the moral obligation to respect these rights remains in force even in the absence of such a state.

Alienable rights, in contrast, may be given up or traded away without affecting one’s ability to follow the dictates of morality. They are associated with a vast realm of practical possibilities with respect to which the moral law is silent and that are therefore “left to *Willkür*.” These rights delimit the

sphere of possible civil legislation, whose task is to specify which of one’s alienable rights are retained and which are given up in a particular society. Obligation in this domain has a different source from the obligation associated with natural rights. Laws that restrict the exercise of our alienable rights bind us only insofar as they are products of our own wills—that is, only insofar as we consent to be bound by them (or insofar as they are the products of an agreed-upon decision-making process, such as the mechanisms established by a social contract). It is in this sense that morality alone is insufficient to determine completely the content of civil legislation and the terms of the social contract. Yet political theory can still be understood as deriving from morality in the very significant sense that individual natural rights, deduced from our requirements as moral beings, function as fundamental principles of political theory in two distinct ways. Natural rights (1) place constraints on the constitution and possible legislation of a legitimate state and (2) impose upon the state the obligation to protect its citizens’ natural rights from being violated by the actions of other individuals.

Finally, there is another, related sense in which Fichte’s early theory of right derives from moral theory. It is expressed in his view that morality places positive requirements on the state that go beyond its more limited role of safeguarding the natural rights of individuals. In addition to this latter function, the state is charged with the task of forming or cultivating its citizens toward the end of moral autonomy. This cultivation (*Bildung*) is understood to consist primarily in the taming and reforming of citizens’ natural sensibilities. The state fulfills its task of *Bildung* when it creates and sustains social institutions that transform the natural desires and inclinations of citizens in such a way that their reformed sensibilities are consistent with and serve the ends of morality rather than standing in opposition to those ends.<sup>9</sup>

We are now in a position to specify the precise sense in which Fichte’s first theory of right is derivative of moral theory. This relationship is articulated most clearly in Fichte’s statements about the ultimate purpose of political community. The question as to the state’s “highest end” (*der beste Endzweck*) is answered by considering the highest end of the individuals who compose the state: “The answer to this question is purely moral and must be grounded in the moral law, which alone . . . prescribes a final end [*Endzweck*] to the human being” (VI, p. 62).<sup>10</sup> Moreover, the moral autonomy of individuals is not only the state’s *highest* end, it is also asserted to be the state’s *only* end (VI, p. 101). Thus the sphere of right has no end independent of the ends of morality. The principles that govern the rational state are justified by establishing their connection to those moral ends (ultimately, the moral autonomy of individuals) that can be furthered within a political community. As we have seen, such a connection may be drawn in two

different ways: First, principles of right may take the form of natural, inalienable rights that define a sphere of individual freedoms that the state must strengthen and preserve. Second, principles of right may enjoin the state to create and support institutions that contribute positively to the achievement of individual moral autonomy through the process of *Bildung*. Thus Fichte's early position can be characterized as one in which both moral and political theory are grounded in the same conception of subjectivity—namely, moral autonomy. This must not be taken to imply, however, that the two fields simply collapse into one. For while morality supplies the principles according to which an autonomous will must determine itself, political theory provides the principles that specify how the social world must be organized in order to create the external conditions necessary for moral agency to be realized.

### THE POSITION OF 1796

Fichte begins his *Grundlage des Naturrechts* (1796) with an explicit rejection of his earlier conception of the relationship between right and morality: It is misguided, he claims, to attempt to derive a theory of right from the moral law; right is not to be understood as merely a “chapter” within moral theory but as “a separate and self-standing science.”<sup>11</sup> Although statements such as these leave no room to doubt that it was Fichte's intention to draw a sharper boundary between right and morality than he did in 1793, they do not furnish us with a clear enough picture of the nature and import of the intended distinction. While commentators have rightly perceived a fundamental shift in Fichte's political theory of 1796, they have been less successful in explicating the precise nature of that shift. I believe that the best way of understanding this transformation is to see it as following from a change in the conception of the subject that grounds the theory of right. In 1796 the principles of right are no longer derived from the notion of a morally autonomous subject; rather, they are derived from what Fichte calls the “person.” Hence, in order to understand Fichte's theory of 1796, we need first to inquire into his conception of the person and, after that, into how this conception of the person is supposed to ground a theory of right.

At the beginning of the *Grundlage des Naturrechts*, Fichte articulates the fundamental thought of his theory of right in the following way: “The rational being cannot posit itself as such with self-consciousness without positing itself as an *individual*, as one among several rational beings.”<sup>12</sup> Fichte's emphasis of the term “individual” should indicate to us that individuality will play a central role in his conception of the person and therefore in his new account of right as well. This point alone suggests a preliminary formulation of the principal difference between the *Grundlage des Naturrechts* and Fichte's earlier political thought: The principles and institutions of right

will no longer be justified in terms of their ability to foster moral autonomy; rather, the political realm will be understood as a sphere whose main purpose is to allow for the realization of its members' *individuality*. Since being an individual involves distinguishing oneself from other individuals, it is not difficult to see how a liberal political order—one committed to safeguarding a private sphere demarcated by a set of individual rights—might be understood as fostering the value of individuality. Although some form of this idea lies at the bottom of Fichte's theory of right, there is a good deal more to be said about the way in which he construes individuality as the main value of the political realm. In the first place, Fichte's notion of individuality involves more than the subject's distinguishing itself from others. To “posit” oneself as an individual, Fichte says, is to be aware of oneself as “one among several rational beings.” That is, it is to know oneself both as something unique and particular and as a being of a certain general type (a “rational being”). Second, a theory of right that is committed to upholding the value of individuality will need to specify which aspects of our natures as individuals are the appropriate concern of political theory. In other words, what kind of individuality does the rational political order strive to realize? Both of these issues are addressed in the conception of the person that, I am claiming, underlies Fichte's political thought in 1796. This conception of the person finds its expression in remarks scattered throughout the Introduction and §§1–7 of the *Grundlage des Naturrechts*. I turn now to the task of gathering together and making sense of the various elements of Fichte's conception.

We can begin to understand Fichte's view by noting that “person” is often used interchangeably with the expression “rational individual” (III, pp. 9, 56). The person's rationality will consist, in part, in its capacity for conscious, goal-directed activity—that is, in its ability to act in accord with a conception of an end (*Zweckbegriff*). Yet we would be seriously misled if we were to understand the person's rationality in only this minimal sense. For according to Fichte's usage, to characterize persons as rational is also to say that they are *subjects* (III, pp. 1, 2). Since the essential feature of subjectivity, for Fichte, consists in the activity of “self-positing,” we know that the person, as a kind of subject, must also be “self-positing” or, in less Fichtean language, self-conscious and (in a sense to be explicated) free. The person, then, in addition to being *rational* in the sense indicated above, is a *self-conscious, free individual*, and an account of personhood must say something about each of these elements.

Let us begin with the feature *freedom* and ask in what sense the person is free. The type of freedom relevant to being a person is what Fichte calls “formal” freedom,<sup>13</sup> which is to be contrasted with the “substantive” freedom (or “substantive self-determination”) that pertains to the autonomous, moral subject and constitutes the central concept of Fichte's *Sittenlehre*.

Formal freedom is characterized by Fichte as a capacity for “absolute spontaneity” in “the formation of the conception of an end [*Zweck*], or of an intended efficacy outside of us.”<sup>14</sup> To be formally free is to be “the absolute and ultimate ground” of one’s *Zweckbegriffe*, that is, to be the author of the conceptions of the ends according to which one acts (III, p. 113). A more straightforward way of putting Fichte’s point is to say that the freedom of the person consists in its capacity for free choice; the person chooses among a set of possible actions open to it and chooses freely because its choice is carried out in accord with a conception of an end that it espouses with spontaneity (III, pp. 41–43). The formal freedom of the person, then, is considerably broader than the substantive self-determination required for moral autonomy. This substantive self-determination is achieved only when the subject determines its ends (*Zwecke*) in accord with its conception of its own essential nature as a rational, self-sufficient being. Hence, being substantively free will depend, in part, on the *content* of the particular ends espoused, namely, on whether or not those ends are consistent with one’s essential nature. The person’s formal freedom, on the other hand, does not require that ends be espoused in accord with principles deriving from one’s essential nature; what is required is only that one’s ends be freely espoused, not given to oneself or determined from without. Although the autonomous moral subject always possesses the formal freedom of the person (it must be capable of choosing the wrong), to be substantively free, it must exercise that freedom in accord with the requirements of the moral law.

Thus far our discussion of formal freedom has referred only to capacities and states internal to the subject—namely, those involved in the person’s spontaneous espousal of ends. If Fichte’s account of the person’s freedom were to end here, however, it would be unsuited to its task of grounding a political theory, since on this account the external world—and whatever hindrances to effective action it might pose—would be irrelevant to the person’s free espousal of ends. But participation in the external world—more specifically, the carrying out of one’s freely espoused ends through action—is relevant to Fichte’s conception of the person, as evidenced by passages such as the following:

What is contained most immediately in the concept of freedom is simply the capacity of constructing concepts of our possible efficacy through absolute spontaneity. . . . But in order for a rational individual, or person, to find itself as free, something else is required—namely, that the object thought through the concept of one’s efficacy be present in experience, or that something in the external world follow from the person’s thought of its activity. (III, pp. 8–9)

From this passage we see that it is not enough to characterize the person as simply a formally free chooser of ends. The person must also be causally

efficacious; it must be able to translate its intended purposes, or at least a significant portion of them, into real action in the external world. This element of real efficacy (*Wirksamkeit*) seems to be essential to Fichte’s conception of the person for two reasons. First, the person’s freedom itself is not exhausted by its spontaneous espousal of ends. To be fully free (in the formal sense) the person must also be able to execute those ends in real action: A subject that was able to will its own ends but lacked the capacity to carry them out would not have achieved the full measure of freedom appropriate to the person.<sup>15</sup> This aspect of formal freedom has important implications for the theory of right, since it is from this consideration that Fichte derives his claim that the person is necessarily an *embodied* subject. For if the person is to be causally efficacious, it must be more than a will; it must also be a body that is capable of interacting with other objects in the external world.<sup>16</sup>

The second, less straightforward reason that efficacy is essential to Fichte’s notion of the person is expressed in the passage cited above. There Fichte first characterizes the person’s freedom in terms of its spontaneous espousal of ends and then brings in the notion of causal efficacy as a condition of the person’s ability to “find itself as free.” The point here seems to be that real causal efficacy is essential to the person, not only because it constitutes one element of the person’s formal freedom, but also because it is required for the person to be *self-conscious* with respect to its freedom. The person “finds itself as free” only by encountering that freedom as an object of experience—that is, only by finding real expressions of its freedom in the external world. The kind of self-consciousness at issue here should not be understood as the simple and momentary self-awareness inherent in every instance of choosing and acting. Espousing an end and undertaking an action always involve—or so it might be argued—the bare awareness of oneself as doing such.<sup>17</sup> The self-consciousness that Fichte is singling out as essential to being a person is more akin to a self-conception, a stable and enduring understanding one has of oneself as a being of a particular sort. In this case, the person possesses a conception of itself as an agent—that is, as a possible source of causality within the objective world. Fichte’s claim here is that such a self-conception is achieved and solidified only by experiencing one’s freedom by encountering in the world the real effects of one’s agency—by having before oneself as objects of experience the house one has built, the cloth one has woven, the fields one has cleared and plowed.

Thus, the person’s consciousness of itself as free derives from the real exercise of its formal freedom. Recall, however, that the person is not only free; it is also an *individual*, and, as a self-conscious being, it must be aware of itself as such. According to Fichte, the person’s awareness of its individuality is also inextricably bound up with the real exercise of its formal freedom. Let us consider two passages in which Fichte sets out his conception of the person’s individuality and its connection to freedom:

Within its appointed sphere [of activity] the subject chooses, gives to itself absolutely the final determination of its action. The ground of the final determination of its efficacy lies *solely in the subject*. It is, for that reason alone, able to posit itself as an absolutely free being, as the sole ground of something, and able to distinguish itself completely from the free being outside of itself [that is, another rational being] and ascribe its efficacy only to itself. (III, pp. 41–42)

What exclusively chooses within [its] sphere . . . is the individual, a rational being that becomes determinate through its being set over against another rational being; and this individual is then characterized by a determinate expression of freedom that belongs exclusively to itself. (III, p. 42)

We have already seen that to be conscious of one's individuality is to be aware of oneself as "one among several rational [or free] beings." The individual shares with other individuals the fundamental capacity for formal freedom. Yet the individual is also "one"; it distinguishes itself from other free beings, and the passages cited above indicate two ways in which the individual, in exercising its formal freedom, distinguishes itself from others. One of these ways consists in the person's making itself into a determinate and, hence, distinguishable being by choosing particular courses of action among those that stand open to it. In espousing a particular end and then acting upon it, I acquire determinate qualities that distinguish me from other beings who may have faced similar alternatives. In Fichte's words, the formally free agent "becomes determinate"; it comes to be "characterized by a determinate expression of freedom that belongs exclusively to itself." The point here is simply that the individuation of beings of a single general kind ("free beings") requires *particularization*—that is, the acquisition of determinate, particular qualities that make like beings different from one another.

Yet the aspect of individuality that Fichte emphasizes most in the *Grundlage des Naturrechts* is not particularity as such but a second sense in which the person can be said to be an individual. This sense of individuality can be characterized as the awareness of oneself as a single, bounded unit of agency or, in the terminology I shall use here, as a discrete unit of formally free causal efficacy. The individual is aware that its free actions have their causal ground in it alone. They are not the fruits of a collective or alien will, nor are they the products of some more amorously defined agent. The individual is able to say with respect to its freely chosen actions, "I did this; ultimately it was I, not some other being, who initiated these deeds." Hence it is the exercise of one's formal freedom, the choosing of a particular course of action from among a set of possibilities, that both individuates the person and allows for its awareness of its individuality. The individual and exclusive nature of the choosing involved in formal freedom results in individualized persons with distinguishable, real characteristics.

Given the crucial role that individuality plays in the *Grundlage des Naturrechts* and in distinguishing moral theory from a theory of right, it is worth emphasizing the close connection Fichte wants to assert between individuality and the formal freedom of the person. The freedom on which Fichte's (Kantian) moral theory is founded—the subject's autonomous, or substantive, self-determination—is not a freedom that serves to *individuate* the beings that exercise it. For moral self-determination requires the subject to determine its ends in accord with what it has in common with other subjects: its essence as a rational being bound by the moral law. This is not, of course, to say that morality is in some way inimical to the realization of individuality but merely that moral self-determination alone, bound as it is by universal laws applicable to all rational beings, does not serve to individuate the agents that exercise it.<sup>18</sup>

Let us now turn our attention to the way Fichte derives his theory of right from his conception of the person. We shall restrict our inquiry to that part of Fichte's theory that corresponds to his earlier doctrine of natural rights. These natural rights are now termed "*Urrechte*" ("original rights"), but they continue to play a similar role in Fichte's theory in that they designate a set of rights individuals have prior to the existence of political institutions that must be both safeguarded and respected by those institutions. Original rights are introduced as "the conditions of personhood" (III, pp. 94, 111, 112). They are defined as those rights that "are contained in the mere concept of the person" (III, p. 94) and as "rights that ought to belong absolutely to every person as such" (III, p. 113). Statements such as these show clearly that original rights are to be derived from the conception of the person, but two further points must be made in order to grasp the connection between personhood and rights. First, rights are necessarily intersubjective in nature. They govern relations *among persons* and only arise insofar as persons exist together. Second, original rights are concerned, not with the requirements of personhood in general, but only with those aspects of personhood that "appear in the sensible world," and those aspects are therefore subject to disruption by the actions of other persons (III, pp. 94, 112). The ability spontaneously to espouse ends is an essential condition of being a person, but insofar as this internal willing is unaffected by the actions of others, it does not enter into an account of the *rights* inherent in personhood (III, p. 113). Hence, the aspect of the person's "formal freedom" that figures most prominently in a theory of right is not the free espousal of ends but the person's ability to realize its freedom by translating its ends into effective action. This account of original rights can be formulated in the following way: The original rights of a person are defined by a set of principles that restrict the actions of others (including eventually the state) so as to constitute for the person "an exclusive, external sphere of freedom"<sup>19</sup> within which the fundamental elements of personhood can be realized. It is important to note

that original rights do not guarantee to individuals the *realization* of those characteristics Fichte ascribes to the person. What they guarantee, rather, is that the external social conditions necessary for individuals to be able to realize their personhood will obtain.<sup>20</sup> These rights are based on the principle “everyone ought . . . to be able to be a person” (III, p. 93, emphasis added) and stipulate therefore that the individual not be hindered by others in its exercise of those capacities essential to being a person. In other words, original rights translate into the demand that individuals be treated by others in a manner consistent with their status as persons.<sup>21</sup> They can be reduced to the formula: “No one has the right to an action that makes impossible the freedom and personhood of another” (III, pp. 93–94).

The rights that Fichte believes to be derivable from his conception of the person fall into two broad classes: those that concern the inviolability of the body and those that guarantee the individual a sphere of freedom of action, or “free influence in the . . . sensible world” (III, p. 119). Included in the latter group are rights to self-preservation (*Selbsterhaltung*) and private property.<sup>22</sup> For the present, however, we shall not pursue questions about the content of these particular rights or whether they in fact follow from Fichte’s conception of the person. Let us instead attempt to specify how the sphere of right more generally can be understood to satisfy the requirements of personhood.

It is not difficult to see how a political order based on the preservation of its members’ original rights allows for the realization of persons’ individuality. By creating and preserving an exclusive sphere of free action for each of its members, it allows them to exercise their formal freedom as individual agents who, in acting as such, constitute themselves as particular individuals. We encounter a more difficult issue, however, when we ask about the relationship that is supposed to obtain between the realm of right and the self-consciousness of persons. In one respect such a connection is easy to make out: The realization of freedom and individuality surely contributes to or reinforces one’s conception of oneself as a free individual. The thornier question is whether or not this exhausts the connection between right and personal self-consciousness: Is the realm of right limited to the role of providing persons with an arena within which they are able to satisfy and confirm their conceptions of themselves as free individuals? Or, does right play a deeper, formative role in the constitution of individuals’ awareness of themselves as persons?

These questions are significant for at least two reasons. First, an affirmative answer to the latter would imply that the political realm ought not to be understood primarily as an instrument that already-constituted persons use in order to satisfy their aspirations to individual freedom. Rather, the rational basis of the liberal political order would reside, most fundamentally, in

its ability to form the self-conceptions of its members as free individuals. Second, and more generally, such questions are of deep importance to a philosophy, such as Fichte’s, whose paramount concern is to comprehend the nature of subjectivity and the variety of relations to the world that make it possible. Specifically, it raises the question of how fundamental one’s political (*rechtlliche*) relations to other persons are to one’s becoming a fully self-conscious, “self-positing” subject. Although Fichte appears to give conflicting answers to these questions in the *Grundlage des Naturrechts*, I believe that he is best understood as taking the stronger of the two positions; that is, he ascribes to the political realm a formative role in the constitution of persons’ conceptions of themselves as individuals.<sup>23</sup>

This position is expressed most forcefully in Fichte’s repeated assertions that the concept of right (*der Rechtsbegriff*) is “an original concept of pure reason.” This is equivalent to the claim that right is “necessary” in the sense of being a condition of the possibility of the subject’s “self-consciousness” (III, pp. 2, 8, 53). This thought is developed at length in the *Grundlage des Naturrechts*, most fully in §4, the locus of Fichte’s celebrated deduction of intersubjectivity as a condition of individual self-consciousness. Roughly put, Fichte’s claim is that the subject can have an awareness of itself as an *individual* only by standing in “the relationship of right” to other persons. It is important to note that the aspect of individuality that is alleged to be conditioned by right is not the awareness of one’s particularity—the ways in which one differs qualitatively from other individuals—but the awareness of oneself as a discrete unit of free efficacy, a being that is capable of being the ultimate ground of its deeds.

Fichte’s various claims in this section are both individually obscure and difficult to weave into a single coherent line of argument. As I see it, Fichte makes two claims in §4 that are relevant to our concerns.<sup>24</sup> The first is a conceptual point about the inherently intersubjective nature of “individuality.” The claim here is that an awareness of myself as an individual must involve the thought of myself as “one *among* other rational beings.” That is, applying the concept “individual” to myself involves thinking of myself as standing in relation to other (possible or actual) free, rational beings. The argument for this claim follows from Fichte’s assertion that to regard myself as an individual is “to ascribe to myself an exclusive sphere for my free choice,” a sphere to which I am entitled to deny access to other free beings.<sup>25</sup> If individuality includes the notion of exclusive access to a sphere of action, then it necessarily refers to the idea of other free beings—that is, beings who could act within my sphere but who are precluded by right from doing so. Hence, thinking of myself as an individual in this sense requires having the thought of other (possible or actual) free beings who stand in some relation to my freedom.

The second point is best understood as a claim about the genetic conditions for the ascription of individuality to oneself: A subject can attain self-consciousness as an individual only by having its individuality recognized by other beings whom the recognized subject takes to be free.<sup>26</sup> This recognition consists in more than a merely theoretical posture on the part of the recognizer; it also requires that the recognized subject actually be treated as such or, in other words, that its individuality acquire a real and protected existence in the external world. But to be treated as a free individual is simply to have one's original rights respected by others. Fichte's idea here must be that I come to a conception of myself as having exclusive charge over my own sphere of freedom only as a consequence of my actually having been treated as such by other beings. Moreover, in order for this behavior of others to result in my acquisition of the appropriate self-conception, I must regard that behavior as more than accidental. I must understand their failure to violate my sphere of freedom as essentially connected to the kind of being I am. Hence, the behavior of others through which I acquire a consciousness of my individuality (their recognition of my personhood) must be understood by me to be the behavior of other free, rational beings. They must be *free* beings (who could have done otherwise) and they must also be *rational* beings (capable of restraining their actions on the basis of a concept—in this case, the concept of a free individual, applied to me). Hence, even though the consciousness of one's individuality involves the awareness of particularity and differentiation from others, it also includes a species of what the idealist tradition calls "universal" self-consciousness. For, insofar as the individual's self-consciousness requires the awareness of being treated as such by other free, rational beings, it involves the thought of oneself as standing in a relation to other beings who are taken to be beings of the same general type as oneself, beings who, like oneself, possess the basic qualities of freedom and rationality.

Although Fichte makes a plausible case for attributing to the realm of right a formative role in the constitution of persons' self-consciousness, it is important to note that his argument for this position rests upon a subtle but significant shift in the concept of individuality. The concept that plays a role in his argument goes beyond that of the individual as simply a discrete unit of free causal efficacy, the sole ground of its own actions. In addition, it attributes to the individual (and must do so if the argument is to succeed) an *exclusive sphere of freedom* that other free beings are proscribed by right from entering. This shift adds an element to the self-consciousness of individuals that was missing from the earlier account. That is, the individual is no longer aware of itself merely as a discrete volitional unit that is capable of being the ultimate ground of actions in the objective world; it is also a unit in the sense that it lays claim to a determinate part of the external world that it views as

rightfully subject to its ends alone. The violation of this sphere by another individual does not, strictly speaking, threaten one's status as a unit of causal efficacy. What it threatens, rather, is one's conception of oneself as an individual who *deserves* to have its own sphere of activity respected by others. It is plausible, I believe, to suggest that the realm of right serves to form our conceptions of ourselves as individuals, but the sense in which it does so much be carefully specified: Our legal status as persons with rights does not constitute us as beings aware of our individual free efficacy but, rather, as beings who *value* that individual freedom and consequently regard it as *worthy of respect* from others.

One implication of this shift in the concept of individuality is that there is an important discontinuity in Fichte's deduction of original rights, insofar as that deduction purports to be a series of transcendental arguments that articulate the conditions of the possibility of self-consciousness for a finite rational being. Being an individual (in the sense of being aware of oneself as a discrete unit of free efficacy) is first set out as a condition of a rational being's self-consciousness, and then original rights ("the conditions of personhood") are derived as conditions of the possibility of such individuality. But, as we have seen, original rights can plausibly be understood as conditions of individuality only if individuality is understood in a richer sense that includes the awareness of oneself as having exclusive charge over a specified sphere of activity. This defect in Fichte's argument is responsible for his ending up at the highly implausible conclusion that a liberal political order governed by individual rights is necessary for subjects to achieve an awareness of themselves as discrete units of causal efficacy. This is not to say that original rights are completely unrelated to the concept of individuality with which Fichte begins but only that they cannot be understood as transcendental conditions of that individuality. Original rights ought not to be understood as those conditions that make it possible for individuals to become aware of themselves as discrete units of free efficacy but ought rather to be understood as principles that guarantee that the external world will be hospitable to the formal freedom involved in that concept of individuality—in other words, as principles that structure the social world so as to allow for the realization and flourishing of individuals' free efficacy.

#### THE SIGNIFICANCE OF FICHTE'S INNOVATION

Now that we have grasped the basic nature of the transformation undergone by Fichte's early political thought, it is time to inquire into its philosophical significance. We can best approach this topic by asking what considerations led Fichte to abandon moral subjectivity as the basis of right and to replace it with his conception of the person. We shall begin by examining the

explanation Fichte himself gives for this change. It is at first glance a puzzling explanation, one that has been echoed by many commentators but not, I think, understood.<sup>27</sup> I shall argue that it is possible to make more sense of Fichte's explanation than is usually done and then go on to suggest a second reason for the change in his political theory.

Fichte purports to establish the underivability of political theory from morality by appealing to a fundamental conceptual distinction between rights and moral duties. Principles that ascribe rights, he claims, are of a distinct logical type from those that prescribe duties, and this difference is sufficient to show that a theory of right must be independent of a moral theory. The basic point is that while moral laws command categorically—they tell us what we *must* and *may not* do—rights merely *permit*; they provide us with prerogatives to act in particular ways but never command us to act on those prerogatives: "A right is something one can avail oneself of, or not. . . . The principle of right [*Rechtsgesetz*] only permits but never commands that one exercise one's right" (III, pp. 13, 54). Fichte's claim here is not that it is conceptually impossible to derive permissibility as such from a categorical ought. Such a claim would clearly be mistaken, since permissibility can be inferred in instances where the moral law is silent.<sup>28</sup> Fichte's point, rather, is that asserting a right to a particular action involves more than claiming that the deed is simply permissible; it includes the further claim that the possibility of such an action must be *guaranteed* to individuals by placing restrictions on the interfering actions of others: "The question 'Do I have a right?' does not mean 'May I?' but rather 'May someone prevent me?'"<sup>29</sup> Fichte's argument, then, seems to be that while a categorical moral law is able to say "You must" and "You may not" (and therefore also "You may"), it lacks the logical resources to pronounce the very different assertion "You have a right."

While Fichte is correct to distinguish rights from both duties and merely permissible actions, it remains unclear how this conceptual difference alone implies that rights cannot be derived from moral theory. To illustrate this objection we need only recall Fichte's earlier account of natural rights. There Fichte generated a set of constraints on the actions of others by considering what kinds of practical possibilities must be available to individuals if they are to be able to achieve moral autonomy. The spaces left open by these constraints on the actions of others constituted the natural rights of individuals. But Fichte's claim in 1796 is that this way of delineating a set of rights does not in fact yield rights at all. Our problem is to understand why he came to believe that his own earlier theory lacked the conceptual resources necessary for deriving natural rights.

I believe that Fichte's later position can be understood only if we attend to a specific point made in one of the passages in which he elaborates on the distinction between rights and duties: "The moral law very often forbids the

exercise of a right, which, however, . . . does not therefore cease to be a right. In such a case one makes the judgment: He surely had a right [to his action], but he ought not to have availed himself of it" (III, p. 54). What Fichte is pointing to here is the important fact that rights can permit actions that morality prohibits: Although I have the right to dispose of my property as I will, morality may require me to buy my jobless neighbor a meal in place of betting my money at the races.<sup>30</sup> The crucial point here is that if I have the right to dispose of my property in ways that conflict with what morality requires, then that right must be grounded in some principle other than the moral rectitude of the actions it permits. One's rights to those actions that morality condemns must be understood as serving some end other than that of moral autonomy, and it is an account of just this end that Fichte's conception of the person is supposed to provide. The rational justification of a political order founded on a system of original rights is based on the fact that such rights guarantee to citizens an exclusive sphere of free activity that is necessary in order for subjects to realize themselves as free individuals. The principles that govern the political realm, then, are to be understood as based upon a foundation distinct from that of morality, a foundation that might be formulated as the imperative "Foster the realization of free, self-conscious individuality!"

Finding a new foundation for the theory of right in the concept of personhood enabled Fichte to explain how rights can permit actions ruled out by the moral law. But there is reason to believe that a second, more specific consideration also motivated this development: Deriving original rights from the conception of the person gave Fichte the means to provide a firmer grounding of the right to private property than was available from his earlier perspective. It is difficult to see how a theory that derived natural rights from the requirements of a substantively self-determined will could establish on its own, without the concept of personhood, an inalienable right to private property.<sup>31</sup> Fichte himself admitted as much in his theory of 1793, where he arrived at the conclusion that the right to property could be alienated both in part and as a whole (VI, p. 177). By 1796, however, Fichte had come to view individually owned property as essential to the realization of human subjectivity and as a central concern of a theory of right. We find this view, along with Fichte's new conception of the basic tasks of political theory, expressed in a set of notes written in 1795: "Property, contract, and the synthesis of both, civil society, are the principal objects of the theory of right. . . . What belongs to a deduction of property?"<sup>32</sup> One year later Fichte answered this question by constructing a theory of original rights based upon the concept of personhood.

If we conceive of private property, as Fichte does, as part of the sensible world that is "subordinated to [one's] ends" and "appropriated exclusively as the sphere of [one's] interaction" with that world (III, pp. 116, 210), then

it is not difficult to see how his conception of the person opens up the way to understanding private property as a necessary, inalienable right: If formal freedom is fully realized only in real, causally efficacious action, then the subjection of a part of the external world to one's subjective ends is necessary for the realization of one's personhood. Moreover, if the person is to be an individual, the part of the world subject to its ends must be exclusively its own, a sphere in which other individuals are prohibited by right from carrying out their own purposes. Hence, to surrender one's right to private property, or to live in a social order where no provisions for individual property exist, is to preclude the complete realization of one's subjectivity. What such an arrangement threatens, however, is not one's status as a moral, autonomous subject but one's existence as a self-conscious, formally free individual.<sup>33</sup>

It should be clear by now how we are to understand Fichte's 1796 assertion that the theory of right is a "self-standing science" separate from moral philosophy: Right and morality are grounded in different first principles; or, in other words, the two realms aim at the realization of distinct conceptions of subjectivity—namely, the person (with its merely formal freedom) and the autonomous, or substantively self-determining, will. Attending exclusively to Fichte's *separation* of right from morality, however, leaves open the equally important question of what relationship, if any, exists between the two fields (and hence between the two conceptions of subjectivity that ground them). This issue is especially significant in light of Fichte's view that the various branches of philosophy must constitute a single, unified system. Given his fundamental commitment to the systematicity of philosophy, Fichte's characterization of right and morality as separate realms cannot be his final word on the topic. Right and morality must also stand in some systematic relation to each other; the question is not whether such a relation exists but how it is to be understood. Are right and morality separate spheres that are systematically related only in the sense that their respective starting points ultimately derive from a single principle that stands above both (the absolutely first principle of philosophy, the "self-positing" and self-sufficient nature of all subjectivity)? On this view, the capacities for personhood and moral autonomy would constitute two independent and complementary conditions of the fully self-sufficient subjectivity that is set up as the first principle of Fichte's entire system. Or is the starting point of right distinguishable from but, at the same time, subordinate to that of morality in the sense that personhood is deduced in Fichte's system as a condition of moral autonomy itself? Resolving this issue is important not only for clarifying the architectonic of Fichte's system but also because it is bound up with a fundamental question that arises as a consequence of separating right from morality: What is the status of the principal value realized in the

political realm (free individuality) with respect to the value of moral autonomy? Is the free individuality of persons valuable in itself, apart from its relationship to morality, or does it have value only because it in some way makes possible the capacity for moral self-determination?

Despite Fichte's obsession with the topic of philosophical systematicity in general, he devotes remarkably little attention to the specific issue of how right and morality fit together within his system.<sup>34</sup> His most explicit statement on the topic—that the first principle of morality is "higher" than that of right (IV, p. 218)—suggests the second of the two possibilities sketched above—namely, that the concept of personhood is deduced as a transcendental condition of moral autonomy. This view is also hinted at in Fichte's remark later in the *Sittenlehre* that formal freedom (a central element of personhood) is a necessary condition of moral action (IV, p. 276). It seems to me that the best way of spelling out how personhood might be seen as a condition of moral autonomy is to recall Fichte's emphasis on the notion of individuality when he discusses the systematic necessity of the concept of personhood: "The rational being cannot posit itself as such . . . without positing itself as an *individual*, as one among several rational beings" (III, p. 8). If we recall, too, that "individual" here simply refers to a discrete unit of formally free agency, then it is not difficult to see individuality as a condition of moral autonomy. In order to engage in the kind of reasoning involved in testing the universalizability of one's maxims, the subject must be able to see its maxims and actions as its own (the maxims and actions of an individual agent) and be aware of itself as inhabiting a world made up of other like individuals.

If we accept this account of the relationship between the individuality of persons and moral subjectivity, it is tempting to conclude that personhood is important to Fichte solely because of its status as a condition of moral autonomy and that formally free individuality has no value independent of its relation to the moral sphere. On this view, right would be separate from morality in that its principles could be grasped without recourse to the concept of a morally autonomous subject (the conception of the person would suffice), but the personhood realized by right would have *value* only because of the role it played in the achievement of moral autonomy. However, without denying that the subject's consciousness of itself as a formally free unit of agency is a condition of moral autonomy, I want to resist the conclusion that Fichte therefore must view the value of personhood (and the political realm) as simply derivative of moral value. Much of the apparent force behind this conclusion rests upon a misunderstanding of the relationship that exists between Fichte's principles of right and the kind of individuality presupposed by moral subjectivity (the awareness of oneself as a discrete unit of free efficacy). Even if the capacity for moral autonomy

presupposes that subjects be constituted as individuals in this sense, it does not follow from this that the political realm itself is a condition of moral autonomy. I argued earlier that although the political realm could plausibly be seen as playing a formative role in the constitution of subjects as individuals who value their own formal freedom and regard that freedom as worthy of respect from others, it could not be understood as a condition of the awareness of oneself simply as an individual unit of free efficacy. Right is related to the latter concept of individuality not in the sense that it makes this kind of individual self-consciousness possible but in the sense that it defines a social world that allows for the realization and flourishing of such individuality. But the flourishing of this individual freedom is not itself a condition of the subject's moral autonomy, and its value therefore is not necessarily (or even plausibly) derived solely from its relation to moral autonomy. It is difficult to see, for example, how one could understand the necessity of a system of individual property rights, one of the "principal objects" of right, as based solely on the role such a system might play in the realization of moral subjectivity.

I believe that the most compelling reading of Fichte's position is one that attributes to him the recognition that personhood (and its realization in the world through the realm of right) is an end in itself that can be understood as valuable independently of its relation to the moral sphere.<sup>35</sup> For the reasons suggested above, this interpretation makes most sense of the importance Fichte's theory of 1796 ascribes to the institution of private property. It is also strongly suggested by his insistence that "the concept [of right] has nothing to do with the moral law and is deduced without it" (III, p. 54). This interpretation does not exclude the possibility that some of the principles of right might also be necessarily bound up with the realization of individuals' moral autonomy and hence be deducible not only within a theory of right but from the higher standpoint of moral theory as well.<sup>36</sup> What it asserts, rather, is that any such connection would be irrelevant from the perspective of a theory of right and unnecessary for a political justification of such principles (and unnecessary as well for an appreciation of their value in furthering the free individuality of persons). Such a reading is required, it seems to me, if we are to take seriously Fichte's claim, made throughout the *Grundlage des Naturrechts*, that the necessity of right can be grasped without the moral law and with reference solely to the conception of the person, the principle upon which the "self-standing science" of right is founded.

One question raised by this interpretation is whether Fichte's system can accommodate a species of value that is not simply derivative of moral autonomy.<sup>37</sup> I believe that it can and that this becomes apparent if we recall that the highest principle of Fichte's philosophy is not the substantively

self-determining will of the moral sphere but a more general characterization of subjectivity expressed in terms of the self-sufficient, self-positing nature of all subjectivity. Moral autonomy is one, indeed the highest, form of self-sufficient, self-positing subjectivity, and therefore moral value represents the highest value for Fichte. It does not follow from this, however, that there are no values independent of morality, or that other forms of subjectivity have value only insofar as they further moral autonomy. Theoretical subjectivity (knowing the world) and the exercise of personhood are also forms of self-positing subjectivity and, I am claiming, are therefore valuable in themselves, even if they do not represent the highest degree of the subject's self-sufficiency, which is attainable only in moral self-determination. In less Fichtean terms, personhood is valuable in itself because it involves a kind of self-determination (the formal freedom of individuals), which, though a less adequate form of self-determination than moral autonomy, remains nonetheless a species of *freedom*. It may be objected that this interpretation of the relationship between right and morality (and between personhood and moral autonomy) commits the error of reading Fichte through Hegelian lenses. I believe it would be more accurate, however, to say that on this issue Hegel was an especially sensitive reader of his predecessor, and that he realized, perhaps more clearly than Fichte himself sometimes did, the implications of Fichte's most important contribution to practical philosophy: the separation of right from morality.

## NOTES

I would like to express my thanks to the participants of the Duquesne Fichte Conference and to Stephen Engstrom, Raymond Geuss, Michael Hardimon, John Rawls, David Weberman, and Allen Wood for their helpful comments and criticism.

1. I shall use the term "right" to mean roughly the same thing as Fichte's term "*Recht*." There is no single English equivalent for *Recht*, which can refer to (1) law, (2) rights in a narrower sense (natural or legal), or (3) principles and institutions of the political sphere more generally, including the foundations of political community as articulated in social contract theory. I shall use "theory of right" interchangeably with "political theory."
2. This phrase (*völlige Trennung*) comes from Ludwig Siep, "Wandlungen in Fichtes Gesellschaftslehre," *Philosophische Rundschau* 26, nos. 1-2 (1979): p. 122.
3. The full title is *Beiträge zur Berichtigung der Urteile des Publikums über die französische Revolution* (*Contributions toward Correcting the Public's Judgment of the French Revolution*).
4. References are to *Fichtes Werke*, edited by I. H. Fichte (hereafter SW) (see page

- 235). This passage refers to SW, VI, pp. 111–13. See especially p. 112, where Fichte warns us not to “step out of the boundaries of natural right into those of morality.”
5. SW, VI, p. 83. *Willkür* might also be translated as “arbitrary will.” All translations from the German are my own.
  6. In this important respect Fichte’s earliest conception of natural rights diverges from more well-known accounts, such as Locke’s, in which certain natural rights (e.g., the right to enforce the law of nature) may—indeed must—be alienated upon entering civil society.
  7. SW, VI, p. 60. This way of proceeding already indicates one important sense in which morality is prior to right: The moral law delimits the sphere of all rights (alienable and inalienable) by means of the notion of the morally permissible, “das durch die Vernunft Freigelassene” (p. 83).
  8. “To say that I have a right to be free and to do my duty means only that . . . no one has a right to hinder me from doing such” (SW, VI, p. 61).
  9. I ignore here the question of which specific social institutions would carry out this task of *Bildung*.
  10. Parenthetical references in the text cite volume and page numbers of *Fichtes Werke* (SW) (see page 235).
  11. “Eine eigene, für sich bestehende Wissenschaft” (SW, III, p. 10).
  12. SW, III, p. 8. To say that the subject “posits” itself as X is to say that it is conscious of itself as X and that this self-consciousness is (at least in part) constitutive of its being X; being aware of oneself as an individual is a necessary part of being an individual. For a more complete account of the notion of self-positing, see ch. 3 of my book *Fichte’s Theory of Subjectivity* (Cambridge: Cambridge University Press, 1990).
  13. SW, III, pp. 43, 112. I claim that “formal freedom” is equivalent to the “formal self-determination” that Fichte discusses in the *Sittenlehre* (*Doctrine of Morals*). For an extended discussion of Fichte’s distinction between formal and substantive self-determination, see my *Fichte’s Theory of Subjectivity*, ch. 4.
  14. “Das Bilden des Begriffes von einer vorgesetzten *Wirksamkeit* außer uns, oder von einem *Zwecke*” (SW, III, p. 19). He alludes to the spontaneous nature of this capacity on p. 8.
  15. This facet of Fichte’s view of the person’s freedom is not always apparent, but it is clearly expressed in passages such as the one at SW, III, p. 51: “Being free constitutes my essential character. But what does it mean to *be free*? Obviously, being able to carry out the concept of one’s actions.”
  16. See §§5, 11 of the *Grundlage des Naturrechts*.
  17. On my interpretation this follows from Fichte’s view of the “self-positing” character of subjectivity in general. See my *Fichte’s Theory of Subjectivity*, ch. 3.
  18. This point is hinted at in the *Sittenlehre* (SW, IV, p. 254).
  19. Variations of this phrase occur throughout the *Grundlage des Naturrechts*: SW, III, pp. 46, 51, 56.
  20. For example, original rights do not guarantee that individuals will in fact be efficacious agents; they guarantee that the external social conditions that make such efficacy possible will obtain.
  21. Notice that on this view being *treated* as a person does not imply that one is a (fully realized) person. This view is expressed in Fichte’s statements that original rights constitute the *conditions* of personality.
  22. That the second class is intended to ground the rights of personal property is made clearer in Fichte’s discussion of the requirements of personhood in the *Sittenlehre* (SW, IV, pp. 282ff.).
  23. Two doctrines of the *Grundlage des Naturrechts* seem to work against my interpretation: (1) Fichte often claims (e.g., SW, III, p. 9) that a theory of right can only establish what a community of free, rational individuals must look like if such a community were to exist; it cannot show *that* such a community ought to be. This claim is associated with his view that the decision to become a member of political society (not just a particular society, but political society in general) is wholly a matter of *Willkür*. But if living in a political community governed by the rules of right is required, as my interpretation claims, for the self-consciousness of individuality, and if such self-consciousness is an essential part of being a person, then, contrary to some of Fichte’s assertions, it no longer seems to be a matter of arbitrary choice whether or not we enter such a political order. (2) It is possible to conclude from the *Grundlage des Naturrechts* (§3) that the form of intersubjectivity required for the person’s self-consciousness is not right but *Erziehung* (up-bringing or education) and that the concept of right simply specifies how such educated individuals must arrange their relations to one another if they are to exist together.
- The second objection can be met by pointing out that *Erziehung* is invoked to account only for the possibility of ascribing *free efficacy* to oneself. Although this crucial point is obscured in the text, the role of right and the recognition involved therein are brought in to explain the possibility of the awareness of one’s *individuality* in the sense of having a defined, exclusive sphere of freedom that is recognized as such by other like beings. The free efficacy associated with *Erziehung* is merely one component of this individuality, and therefore it does not exhaust the set of conditions of the person’s self-consciousness. (I am less sure how to reconcile my interpretation with the first objection, beyond saying that I find the view on which the objection is based to be [1] one of the least plausible features of Fichte’s theory of right, and [2] inconsistent with another of Fichte’s central assertions treated below—namely, that the concept of right is “an original concept of pure reason” that specifies a necessary condition of a rational subject’s self-consciousness.)
24. Fichte’s treatment of recognition and intersubjectivity is considerably more complex than my discussion here. I have limited myself to those aspects of his view that are both directly relevant to themes of this essay and supportable by plausible arguments.
  25. SW, III, p. 46. This point is said to follow from “the concept of individuality.”
  26. My argument here ignores the inherently reciprocal nature of recognition. My statement claims that a recognized individual (A) must regard its recognizer (B) as *free*; it ignores that further Fichtean point that A must also recognize (i.e., treat) B as an *individual*.
  27. E.g., Luc Ferry, “The Distinction between Law and Ethics in the Early Philosophy of Fichte,” trans. William James Earle, *Philosophical Forum* 19 (Winter-Spring 1987–1988): p. 183. Hansjürgen Verweyen is one commentator who expresses doubt about the soundness of Fichte’s reasoning, but he does not explore this issue in detail. See his *Recht und Sittlichkeit in J. G. Fichtes Gesellschaftslehre* (Freiburg: Alber, 1975), pp. 94–95.
  28. In his earliest writings Fichte explicitly acknowledges this point, insofar as he recognizes a class of actions that are morally permissible but not morally required (e.g., SW, VI, pp. 58, 60, 318–19). By 1795 Fichte had come to hold the

highly implausible view that, morally speaking, there are no merely permissible actions. (See *J. G. Fichte: Gesamtausgabe der Bayerischen Akademie der Wissenschaften* [hereafter GA] [see page 235], II, 3, p. 405; also SW, IV, p. 264.) This change in his position, however, does not affect the conceptual point made here—namely, that it is logically possible to derive mere permissibility from a categorical ought.

29. GA, II, 3, p. 396; see also p. 399.
30. Although particular ways of exercising my rights may conflict with moral demands, it would be incorrect to say that the requirements of *personhood* come into conflict with those of morality. Personhood requires only that I be free (have the option) to bet my money on the horses, not that I actually do so.
31. Although the *Sittenlehre* establishes a positive moral duty to acquire property, it does so only via the concept of personhood and the moral duty to realize one's formal freedom (SW, IV, p. 276 and §23, throughout).
32. GA, II, 3, p. 406.
33. It is important to note that this defense of private property is not necessarily a defense of capitalist property relations. This part of Fichte's doctrine does not address what kinds of things may be owned by individuals, and hence it leaves open the possibility that the means of production may not be among them.
34. See, for example, Fichte's division (*Einteilung*) of philosophy into its various subfields (GA, I, 2, p. 151), where he divides practical philosophy into right and morality but fails to articulate the relationship between them.
35. Thus, my interpretation diverges from that of Alain Renaut, who argues that right is independent of morality with respect to its functioning—civil laws do not require goodwill or moral sensibility—but is "subordinated to the categorical imperative" with respect to "its value." See *Le système du droit: Philosophie et droit dans la pensée de Fichte* (Paris: PUF, 1986), p. 250.
36. See, for example, Fichte's arguments in the *Sittenlehre* that belonging to a state and acquiring property are also moral duties (SW, IV, pp. 292, 300).
37. Verwey raises this question (p. 90) and answers it in the negative. In regarding this as a problem for Fichte's 1796 position, Verwey implicitly agrees with my interpretation of the *Grundlage des Naturrechts* as implying a species of value that is not simply derivative of moral autonomy.

## 10

## Leibniz and Fichte

JEAN GRONDIN

*So war vielleicht Leibnitz überzeugt, und  
der einige Überzeugte in der Geschichte der  
Philosophie.*

—J. G. Fichte

The notion of the I is certainly the first that comes to mind when one thinks of Fichte. The I functions for Fichte as the ultimate reference point of reality or action and thus as the starting point of philosophy. However, this concept of the I remains intriguing, and it has been problematic in more recent philosophical discussions, primarily on two counts. The analytic tradition soberly claimed that the I, after all, is nothing more than the first-person singular in the grammar of some languages, and that some other linguistic cultures do not even have such a grammatical form. Ernst Tugendhat thus distinguishes "*ich*," which is a mere grammatical subject, from capitalized "*Ich*," which he believes is a mere fiction that one never actually encounters.<sup>1</sup> On the Continental side, the recent trend of deconstructivism claimed that the I or the human subject was a mere invention,<sup>2</sup> a fiction typical of the Enlightenment and its stress on the autonomy of the human self, a manifestation that would have faded in the wake of discoveries by, say, authors like Marx or Freud of what lies beyond the human mind, to say nothing of its fate in the face of behaviorism, whose perhaps unintended result is to cast doubt on the notions of human dignity and freedom.

My aim here is not to discuss those criticisms of the hypostasis of the I that stem from either the analytic or the Continental current of philosophy. Fichte was admittedly the first philosopher to speak so enthusiastically and