

## Introduction

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### I

During the 1790s, the literary world in Germany witnessed a veritable explosion of interest in the question of natural right and its foundations. In addition to the publication of Johann Gottlieb Fichte's *Foundations of Natural Right*, the first part of which appeared in 1796 and the second part in 1797, Schelling published his essay "New Deduction of Natural Right" in 1796, and in 1797 the *Doctrine of Right*, the first part of Kant's *The Metaphysics of Morals*, appeared. Prior to these important works, a number of works on natural right were published in the first half of the decade, including Gottlieb Hufeland's *Lehrsätze des Naturrechts* (1790), Theodor Schmalz's *Das Reine Naturrecht* (1792), Johann Benjamin Erhard's *Über das Recht des Volks zu einer Revolution* (1795) and "Apologie des Teufels" (1795), Maimon's "Ueber die ersten Gründe des Naturrecht" (1795), and Carl Christian Erhard Schmid's *Grundriss des Naturrechts* (1795). As Paul Johann Anselm Feuerbach would confirm in his *Kritik des natürlichen Rechte* (1796), "No science has found in our age so universal an interest or been met with so much zeal as the science of the right of man (*Rechte des Menschen*)."<sup>1</sup>

This flurry of activity was not accidental. The French and American Revolutions provoked a number of philosophers to seek out a philosophical grounding of right, and with the rise and growing influence of Kant's newly developed moral philosophy, many believed they could secure such a foundation by grounding right in the moral law. Fichte's own *Contribution to the Rectification of the Public's Judgment of the French Revolution* (1793) and his essay "Reclamation of the Freedom of Thought from the Princes of Europe" (1793) reflect such a pursuit. In the latter, Fichte provides a "short deduction of rights" that derives right from

<sup>1</sup> Feuerbach 1796: 3.

“conscience” (*Gewissen*), which commands “absolutely and unconditionally,” as well as “*freely and autonomously*” (*R*, 124). One has a right, Fichte argues, to whatever the moral law of conscience commands as one’s duty or does not prohibit.<sup>2</sup> In addition to Fichte, the Kantian jurists Hufeland and Schmalz ground natural right in similar Kantian moral considerations. Schmalz, for instance, who alludes to the French Revolution as the “great occurrences of our day” in his “Preface,” grounds the principle of natural right in a version of Kant’s categorical imperative.<sup>3</sup> He claims in §31 that “the supreme principle of natural right as the embodiment of external perfect right and duty is therefore: *Treat the humanity in others never as a mere means.*”<sup>4</sup>

Although Fichte’s initial reflections on right largely presuppose Kantian moral philosophy, by late 1795 Fichte had developed a healthy dose of skepticism about basing right squarely on moral principles.<sup>5</sup> Spurred on by “excellent hints” found in Erhard’s “Apologie des Teufels” and Maimon’s essay on natural right, Fichte, as a self-identifying Kantian, developed a non-moral foundation of right, even when it remained unclear to him, given Kant’s relative silence on the foundations of natural right at the time, whether or not “Kant derives the law of right from the moral law,” as was “the usual way of doing things” for the Kantian jurists (*FNR*, 13; *SW*, III: 13).<sup>6</sup>

The summer of 1795 proved to be important in Fichte’s move away from a morally based theory of right. In his August 29, 1795 letter to Reinhold, Fichte writes:

I have been investigating natural rights this summer and have found that no deduction of the *reality* of the concept of right exists anywhere. All explanations of it are merely formal, semantic explanations, which already presuppose both the existence within us of such a concept (as a fact) as well as the meaning of this concept. Such explanations do not even adequately deduce this concept from the fact of the moral law (which fact I am equally unwilling to accept, unless it too is deduced). In this connection, I reread Kant’s *Groundwork for the Metaphysics of Morals*, and found that *here* if anywhere the inadequacy of Kant’s principles can be concretely demonstrated. (*EPW*, 407; *GA*, III, 2: 385)

If we take Fichte at his word, even his own previous analyses of right in the *Contribution* and “Reclamation,” as well as the works of the Kantian

<sup>2</sup> James Clarke’s contribution to the present volume considers this essay and argument.

<sup>3</sup> Schmalz 1792: 3.

<sup>4</sup> Schmalz 1792: 32.

<sup>5</sup> For his reasons why see Neuhausser’s and Clarke’s essays in this volume. See also, Nomer 2013.

<sup>6</sup> See Schottky 1995 for a discussion of Erhard’s and Maimon’s influence on Fichte’s *Natural Right*. See also, Ferry 1987.

jurists, are “merely formal” and presuppose the “reality” and legitimacy of the concept of right.<sup>7</sup> Furthermore, by questioning the adequacy of Kant’s deduction of the moral law, Fichte doubts the very legitimacy of the Kantian jurists’ attempts to secure the foundations of right upon the categorical imperative. A transcendental deduction of the concept of right, then, is required, since such an argument would be capable of establishing its legitimacy, or, in other words, our social and political entitlement to this concept.<sup>8</sup> Fichte carries out such a deduction in *Natural Right* by arguing that the concept of right is a necessary condition of individual self-consciousness. Thereby, we are justified in asserting the reality of the concept independently of moral considerations.

Since his deduction does not proceed from Kantian principles of morality, Fichte must provide some other principles to ground the concept of right. The subtitle of his book and the deduction’s “First Theorem” acknowledge that the deduction proceeds in accordance with the principles he established in the *Wissenschaftslehre*, an account of which he published as the *Foundations of the Entire Wissenschaftslehre* in 1794 and 1795.<sup>9</sup> At the center of his *Wissenschaftslehre* is the activity of the self-positing I, which, as Fichte characterizes it, posits itself as self-positing or as “an activity that reverts into itself” (*FNR*, 18; *SW*, III: 17). Although Fichte’s deduction is not a moral deduction of right, it is nonetheless a practical deduction of right in that it proceeds from a premise about practical reason, since Fichte understands the I as requiring the practical activity of forming and willing the concept of an action’s end. He, in fact, refers to the I as a “practical I,” one he identifies with “the I of original self-consciousness” (*FNR*, 21; *SW*, III: 20).<sup>10</sup>

In the midst of this flurry of publications on right during the 1790s, Fichte’s *Foundations of Natural Right* stands out, both in its influence, and, most certainly, in its philosophical originality. His book is responsible for initiating an intersubjective tradition in philosophy and social theory, particularly due to the profound influence Fichte’s *Natural Right* exercised on Hegel’s philosophy and especially his *Phenomenology of Spirit* and

<sup>7</sup> At this point Fichte would not have read Kant’s *Perpetual Peace*, which did not appear until Fall 1795. Fichte eventually published in January of 1796 an important review of Kant’s essay (see *RPP*) and even intended to deliver a set of public lectures on Kant’s work. See, Breazeale’s “Appendix: Fichte’s Lectures and Writings, 1792–1799” in *EPW*, 48, n. 106.

<sup>8</sup> See Allen Wood’s contribution in this volume for an account of his deductive method in *Natural Right*.

<sup>9</sup> For helpful overviews of Fichte’s *Wissenschaftslehre*, see Breazeale 2013b, Neuhaus 1990, and Wood 1991.

<sup>10</sup> See Neuhaus 2001.

*Philosophy of Right*. In the process of deducing the concept of right from the subject's self-consciousness of itself as an efficacious being, Fichte deduces the sensible world, the summons, other rational beings, and mutual recognition. His theory of the summons as initiating the self-activity of individual self-consciousness and characterizing the interactions required for upbringing, as well as his account of the social contract, stand out as remarkable philosophical innovations. Additionally, in *Natural Right*, he offers a novel analysis of property that *transcendentally* deduces the right to property. Finally, Fichte's *Natural Right* offers an important meditation on the nature of social and political freedom, in contrast to the conception of moral freedom familiar from Kant's moral philosophy.

Fichte's influence on Hegel is of particular interest given both the extent of Fichte's influence and the important role Hegel's work has played in shaping the reception of Fichte's *Natural Right*. It is commonplace to consider Fichte's *Natural Right* as a significant work insofar as it sheds light on the transition from Kant to Hegel. As readings of Hegel's *Phenomenology of Spirit* emphasized the role of recognition in the achievement of self-consciousness, readings of Fichte's *Natural Right* have tended to focus on primarily his account of recognition.<sup>11</sup> There is good reason to closely examine Fichte's views on mutual recognition as they are central to his deduction of the concept of right from self-consciousness. However, from the standpoint of Hegel's philosophy, Fichte's theory of recognition appears to some as normatively limp and problematically "abstract." On this line of thought, Fichte's theory of recognition deserves Hegel's overcoming or *Aufhebung* of it in the *Phenomenology of Spirit* and the *Philosophy of Right*. Accounts of *Natural Right* that examine Fichte's philosophy, or more particularly his theory of recognition, with the purpose of understanding the genesis or nature of some aspect of Hegel's philosophy are essentially transitional readings focused on the *von Kant bis Hegel* story.

While transitional readings of Fichte's work are important for Hegel scholarship, they may nonetheless do a disservice to Hegel scholarship, while at the same time doing a disservice to Fichte scholarship in general. Transitional readings tend to find Hegel's own interpretation of Fichte to be largely sound, and they tend to use Hegel's interpretation as a reliable guide to Fichte's text and arguments.<sup>12</sup> The difficulty with the transitional

<sup>11</sup> Siep 1979a, Williams 1992, and Redding 1996 illustrate such readings.

<sup>12</sup> See for instance, Williams 2002. See Nance's critical analysis of Williams 2002 in the present volume.

reading is that it assumes we already understand correctly Fichte's philosophical motivations and aims, as well as the philosophical implications and tensions found in his views. By approaching Fichte as a transitional figure, certain features of his philosophy inevitably become salient precisely because these features help one understand the development of Hegel's own philosophy. When this occurs other features of Fichte's thought that are less relevant to the transition are more easily ignored, thereby distorting and limiting our understanding of Fichte's philosophy. Finally, since Hegel himself certainly did not initially read Fichte as a transitional figure, approaching Fichte's work with such an end in view potentially blinds us to aspects of his philosophy that might, regardless of Hegel's own explicit analysis of Fichte, shed light on the genesis of Hegel's views.

A notable feature of the present volume is that the essays attempt to discover what is philosophically promising and relevant in Fichte's work independent of the historical question about how one should understand the transition from Kant's philosophy to Hegel's. Certainly, the essays in the present volume will shed light on transitional questions, as they offer close and thoughtful examinations of a text Hegel himself considered carefully and returned to continually throughout his life. While some of the essays briefly examine aspects of Hegel's work, they all largely develop interpretations of Fichte's *Foundations of Natural Right* – examining it on its own right and independently of the transition question – by focusing on the most important themes and issues in *Natural Right*.

## II

As part of Cambridge's series of *Critical Guides*, the purpose of the *Critical Guide to Fichte's Foundations of Natural Right* is not to offer a commentary on the entirety of the text or to serve as an introduction for first time readers, though, certainly, such readers will benefit from a careful reading of the *Guide*. Instead, the essays aim at developing new lines of interpretation, analyzing carefully Fichte's arguments and central concepts, and thoughtfully engaging the developing scholarship on *Natural Right*. There are, therefore, aspects of *Natural Right* that do not receive much attention in this volume (i.e. his remarks on the ephorate, cosmopolitan right or punishment).<sup>13</sup> The upshot of the volume's approach, however, is the

<sup>13</sup> For a discussion of these topics see Maus 2001, De Pascale 2001, and Merle 2009.

robust treatment of key concepts, themes, and issues in Fichte's work, a number of which are examined in multiple essays with each offering distinctive interpretations.

In the first essay, Angelica Nuzzo examines the relationship between Fichte's *Foundations of Natural Right* and Kant's idea of right and law as developed in the *Doctrine of Right* and his *Perpetual Peace*. Her concern is ultimately systematic: how, for the two philosophers, should we understand the place of right in their differing conceptions of the practical sphere? She argues that the different place each gives to right within the practical sphere results from their discrete methodological starting points. While Kant begins from a "metaphysical" starting point, one that is rational and a priori, and which does not take for granted a conception of human nature or a transcendental anthropology, Fichte begins his analysis of right from within the standpoint of a transcendental anthropology of individual self-consciousness. Nuzzo recognizes, as well, that Kant and Fichte develop varying views on the relationship between right and its derivability from the moral law.

The relationship between right and morality is the primary focus in the following two essays by Frederick Neuhouser and James Clarke. Both essays examine Fichte's separation of right and morality and compare his considered view in *Natural Right* with the view developed in the *Contribution*; however, the two essays take remarkably different approaches to the issue. Neuhouser argues that implicit in Fichte's view of the separation of right and morality in *Natural Right* is an appreciation of an end, the fostering of individual personhood, unique to the political realm and not reducible to or derivable from the value of moral autonomy. What drove Fichte to this separation, in Neuhouser's reading, is his eventual recognition that rights such as property rights cannot be fully justified rationally from within the moral sphere alone. In contrast, James Clarke employs deontic logic and a "Hohfeldian" analysis of rights to establish the significance of Fichte's claim that right and morality are independent, what Clarke calls the "independence thesis." Clarke first provides a deontic analysis of Fichte's views on right and morality in the *Contribution* and "Reclamation." By extending his deontic analysis of right to *Natural Right*, Clarke shows how Fichte's argument for the independence thesis exploits the nature of permissions. Finally, Clarke considers the position Fichte's *Natural Right* occupies with respect to natural law theory and legal positivism.

The contributions by Allen Wood, Paul Franks, and myself take as their focus Fichte's conception of the summons. Wood's contribution

considers Fichte's deduction of the summons and other rational beings. While Kant provides a metaphysical and transcendental deduction of the conditions required for cognition and experience, he does not deduce the existence of others or our ability to cognize their mental states. Yet, such a deduction is required if the conditions for objective validity and reason require intersubjective communication as Kant suggests. On Wood's view, Fichte's deduction of the summons and others extends, in a sense, Kant's own transcendental argument by deducing an essential condition Kant seems to ignore or one he, at least, takes for granted. After a helpful analysis of Fichte's synthetic method, Wood reconstructs Fichte's deduction of others and explains Fichte's reason for positing the summons, a unique kind of constraint that limits one's action while allowing for freedom at the same time. Wood concludes by addressing the role of the summons in both upbringing and grounding Fichte's anti-Cartesian conception of individuality.

Paul Franks takes a markedly different approach to the summons, although, like Wood, he is interested in understanding how the nature of the summons functions as a limiting, constraining, or finitizing activity. In his contribution, Franks argues that Fichte's summons requires a form of realism that accounts for the possibility of the second-personal address the summons is meant to specify. The realism of the summons, what Franks terms Kabbalistic Realism, embodies the logic of *zimzum*, a concept central to Jewish kabbalah. Franks understands Fichte to be responding to the threat of nihilism – the problem of “accommodating individuality” – in *Natural Right* by establishing how his view of the absolute I can, in fact, accommodate individuality. Franks's argument involves showing that Fichte accommodates individuality with his account of the summons. Of particular interest is Franks's claim that Fichte's appeal to the summons and his reason for introducing it employ a pattern of reasoning akin to the logic of the kabbalistic concept of *zimzum*. While the kabbalist tradition is likely unfamiliar to many contemporary readers of Fichte, Franks identifies its influence on Jacobi and Fichte's reception of the very concerns motivating Jacobi. At issue in the kabbalist tradition and the German tradition within which Jacobi and Fichte both reside is accounting for the infinite without annihilating the finite. Fichte, on Franks view, develops the concept of the summons in a way that exhibits aspects of *zimzum*, and thereby accounts for how the infinite and finite coincide.

In my own contribution, I argue that Fichte's concept of the summons as “upbringing” involves a distinctive form of recognition, elementary recognition, which must be distinguished from political recognition. Political



recognition is the recognition of an individual's standing as a right-bearing agent, and thereby takes as its end or purpose the respect of individual rights. In contrast, elementary recognition does not take as its end respect for the rights of individuals, but instead is oriented toward the development of the child's capacity to act in a reasons-responsive manner. In my analysis of these two forms of recognition, I examine Fichte's concept of individuality. My claim is that there are two conceptions of the individual in *Natural Right*: the individual human being and the political individual. The individual human being is reasons responsive and elementary recognition is aimed at developing such individual human beings. The political individual is constituted by virtue of relations of political recognition and requires that an individual human being wills itself into relations of reciprocal recognition and community with others. In the final section of the paper, I examine Fichte's naturalistic grounding of the summons in the child–parent relationship.

Readers of Fichte's *Natural Right* can be easily flummoxed by his difficult reflections on the body and by the very idea that the body is in need of a deduction. John Russon's essay takes Fichte's remarks about the body as its theme. Russon claims that, for Fichte, the body is the site at which our intersubjectivity and free agency is enacted. The body, on this view, is not a possession used to indicate there is some free agent residing within it and so it is not an alien piece of matter. Rather, as Russon, argues, the body is an actualization of a form of living. The summons, which is expressed bodily by a linguistic or bodily gesture, constitutes the medium of freedom, since it is by virtue of summoning one another and responding to the summons that one is a rational being. Being a free individual I is, then, an intersubjective accomplishment that is performatively realized.

Wayne Martin's contribution examines Fichte's theory of property and shows how it overcomes the flaws associated with Locke's views on property. Similar to Fichte's suggestion that previous philosophers had taken for granted the reality of the concept of right, Martin sees that Locke's theory of property begs the question with respect to the justification of the institution of property. In response, Fichte offers a transcendental deduction of property, one that avoids the theological framework of Locke's theory of property. In his analysis of Fichte's argument, Martin pays close attention to both the concept of *wirken* ("to act efficaciously"), which he translates as simply "work," and Fichte's view of self-positing, which Martin accounts for as a kind of gambit or move in a game that one could potentially lose. Work is a necessary condition of self-positing



and self-consciousness. Martin's suggestion is that the self-posting of the I involves work and work requires that one has property in which one exercises his or her work. In that case, property is a necessary condition of self-consciousness; hence, property can be transcendently deduced independently of certain Lockean assumptions.

The contributions by David James and Michael Nance take up the concept of freedom in Fichte's *Natural Right*. James examines what appears to be an inconsistency or tension between 1) Fichte's commitment to a methodological assumption of universal egoism that involves indirectly respecting the freedom of others since doing so is a condition of one's own freedom, and 2) the view, following from his remarks about the summons, that one ought to have a direct concern for the freedom of others. James argues that the tension is merely apparent since, *pace* moralized readings of *Natural Right*, Fichte is not committed to the view that one has an obligation to be directly concerned with the freedom of others. James sees that abiding by this distinction allows for a more consistent reading of *Natural Right*. Throughout his analysis, James helpfully compares Fichte's views with those of Hobbes.

Another charge of inconsistency in *Natural Right* made, in this case, by Hegel and some contemporary Hegelians such as Robert Williams, receives careful scrutiny in Michael Nance's essay. This charge of inconsistency Nance calls the Hegelian objection: on the one hand, Fichte claims that free agents stand in free relations of reciprocal recognition and such reciprocal relations are a necessary condition of self-consciousness, yet, on the other hand, Fichte argues that the state requires legally state-sanctioned coercion which guarantees that individuals respect each other's freedom. How can relations of mutual recognition be free and "forced" by virtue of coercive threats? Nance works to dissolve the inconsistency by arguing that free reciprocal recognition operates in the Fichtean state because individuals freely enter the civil contract, the grounds of the state's authority. At the same time, however, the state does rely on coercion. Fichte can have it both ways, Nance suggests, if we understand rightful relations within the state not in terms of a non-interference theory of freedom, but in terms of a non-domination, or republican model of freedom.

Dean Moyar examines a related tension in Fichte's theory of freedom: the tension between a non-voluntary and interdependent conception of freedom as mutual recognition and the freedom involved in voluntarily willing entry into the social contract. The tension's resolution, Moyar argues, is found in Fichte's unification contract, an organic conception of the social contract that relies on a holistic conception of contractualism

rather than an atomistic contractualism. On Moyar's view, Fichte's contractualism shows how an atomistic contractualism, the familiar liberal model of the social contract, is overcome in the unification contract, a holistic contractualism in which the individual becomes one with the whole by appreciating that one's own interests are entangled or identical with the interests of the community.

The concept of human rights in Fichte's work is examined in Jean-Christophe Merle's essay. Merle traces Fichte's analysis of human rights in the *Contribution* and his development of natural right in the *Foundations of Natural Right*, and he concludes that Fichte's conception is more original and elaborate than Kant's own theory. Merle also considers the human rights that follow from Fichte's theory of right. One important right Fichte defends is the right to live based on one's own labor. Additionally, Merle suggests that Fichte's model of rights grounds subsistence rights. Merle concludes by comparing Fichte's approach to human rights with contemporary models, both of which Merle takes to assert that human rights are ultimately grounded in some unique foundation. Merle expresses skepticism about providing such a unique foundation that could ground all the relevant human rights.

### III

The immediate reception of Fichte's *Foundations Natural Right*, like with many philosophical works, was somewhat mixed. Although it was the work of Erhard, in part, that influenced Fichte's deduction of right, Erhard declared in a 1797 letter to Kant that while Fichte's *Foundations of Natural Right* "has much merit in half of it," the "beginning is total raving (*Radotage*)." Erhard continues, "it really is a pity that Fichte loses himself in nonsense so much, just to make himself look deeply profound."<sup>14</sup> The precise part of the book Erhard has in mind is not clear from his letter, although it is reasonable to conclude, since *Natural Right* was published in two parts, he has in mind the entire first part, including Fichte's claims that right and morality are independent, the concept of right is deducible from self-consciousness, mutual recognition is a necessary condition of self-consciousness, and the nature of human embodiment can be rationally derived from the conditions of reciprocal relations of recognition. Erhard may have been shortsighted as it is the first part of *Natural Right*

<sup>14</sup> Quoted from *C*, 545, n. 3.