

Between Thinking and Acting Fichte's Deduction of the Concept of Right*

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Abstract: Fichte's ambitious project in the *Foundations of Natural Right* is to provide an a priori deduction of the concept of right independently from morality. So far, interpretations of Fichte's deduction of the concept of right have persistently fallen into one of two rough categories: either they (re)interpret the normative necessity of right in terms of moral or quasi-moral normativity or they interpret right's normative necessity in terms of hypothetical imperatives. However, each of these interpretations faces significant exegetical difficulties. By contrast, I argue that we can

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understand the normative necessity of right in terms of conceptual necessity. On this view, right does not tell us what *ought to be done*, but instead tells us *what* we are doing and have done. Not only does this provide for a promising philosophical account of the non-moral normativity of right, but also provides a compelling reading of Fichte's text in both the deduction of the concept of right in the *Foundations of Natural Right* as well as his discussion of the application of the concept of right and coercion.

Introduction

Fichte's ambitious project in the *Foundations of Natural Right* is to provide an a priori deduction of the concept of right, to demonstrate its applicability to experience, and finally to establish the conditions for the concept's realization. Over the recent decades, the lion share of interpretive effort has focused on the first part of Fichte's project: the a priori deduction of the concept of right "from the pure form of reason, from the I," and in particular its normative import. For according to Fichte, the concept of right entails that "I must in all cases recognize the free being outside me as a free being, i.e. I must limit my freedom through the concept of the possibility of his freedom." (FNR, 49)¹ This normative aspect of the concept of right gives rise to a central puzzle: what is the nature of the normative necessity of right? On the one hand, if right is normatively binding, then how can Fichte derive practically normative conclusions from transcendental premises? But

¹ Citations of Fichte's text in German refer to the Gesamtausgabe of the Bayerische Akademie der Wissenschaften, 1962-. Citations of Fichte's work in English refer to the 2000 edition of the Cambridge Texts in the History of Philosophy, *Foundations of Natural Right according to the Principles of the Wissenschaftslehre*.

on the other hand, if right is not strictly binding, then what was Fichte's dizzyingly ambitious project of deducing the concept of right for?

Until now, the strategies for responding to the puzzle fall into two rough categories: either they (re)interpret the normative necessity of right in terms of moral or quasi-moral normativity,² or they interpret right's normative necessity in terms of hypothetical imperatives.³ However, both these ways of responding to the puzzle face significant exegetical difficulties. And understandably so, for Fichte argues that right is both a binding transcendental concept but also separate from morality; and it remains a serious philosophical challenge to explain how right can be normative in this strong way while also remaining separate from morality. In this paper, I suggest that the difficulties faced by previous interpretations result from a shared, underlying assumption: that the normativity of right must be practical rather than conceptual. By contrast to the standard interpretations, I argue that we can understand the normative necessity of right in terms of conceptual necessity. While practical necessity is the necessity of a possible action as to be done, conceptual necessity is the necessity of a possible action as counting as something; in other words, while practical necessity tells us what *ought to be done*, conceptual necessity tells us *what* we are doing and have done. This reading of norms of right as conceptual norms provides a new account of the non-moral necessity of right in Fichte's deduction, a promising starting point for a consistent reading of the *Foundations of Natural Right*, as well

² Darwall 2013 and 2014, Neuhauser 1994 and 2016, and Nance 2012 and 2016.

³ Clarke 2016, James 2016, Kosch 2017, Ware 2009 and Franks 2005.

as a philosophically appealing account of the normativity of right.

In the first part of this paper, I outline the puzzle about the normative necessity of right as it arises from Fichte's deduction of the concept of right in the *Foundations*. In parts two and three, I briefly present the received interpretive options and argue that they each face serious exegetical difficulties. In section four, I argue that we can resolve the puzzle about the normative necessity of right in Fichte's *Foundations* by moving away from practical necessity and thinking about the normative necessity of right as an instance of conceptual necessity. With this possible reading in view, section five provides an interpretation of Fichte's deduction of the concept of right that shows how the specific nature of the normative necessity of right is already established in the discussion of the first Main Division of the *Foundations*.

1. The puzzle about the normative necessity of right

Fichte's ambitious project in the first Main Division of the *Foundations* is to show that self-consciousness is only possible for beings standing with each other in a particular relation of mutual recognition, namely a relation of right. If successful, the first Main Division would establish that to deny possession of the concept of right would be tantamount to denying the possibility of one's self-consciousness. Fichte's argument proceeds by attempting to prove the following three consecutive theorems:

§1. "A finite rational being cannot posit itself without ascribing a free efficacy to itself." (FNR 18)

§2. "The finite rational being cannot ascribe to itself a free efficacy in the sensible world without also ascribing such efficacy to others, and thus without

also presupposing the existence of other finite rational beings outside of itself.” (FNR 29) (In the argument for this theorem, Fichte introduces the famous notion of the ‘summons’ of another rational being as a condition of the possibility of self-consciousness.)

§3. “The finite rational being cannot assume the existence of other finite rational beings outside it without positing itself as standing with those beings in a particular relation, called a relation of right.” (FNR 39)

To stand in a relation of right to another, according to Fichte, is to limit one’s freedom through the concept of the possibility of the other’s freedom. Thus, the alleged conclusion of the deduction of the concept of right is that insofar as I am self-conscious, “I must limit my freedom through the concept of the possibility of [the other’s] freedom.” (FNR, 49) And this raises the puzzle about the normative necessity of right: just in what sense is it the case that I *must* limit my freedom through the concept of the possibility of the other’s freedom in order to be self-conscious?

To start, it seems that the conclusion that I ‘must limit my own freedom’ cannot be metaphysical, such that it would make compliance with norms of right into a metaphysical condition of self-consciousness. For it is clear that acting in accordance with the norms of right is simply not a condition of self-consciousness. Thus, Fichte’s argument in the deduction of the concept of right appears to make a tacit transition from *transcendental* reflections on the conditions of self-consciousness to a *normative* thesis about how we ought to act. And on first sight, this seems to leave us with a dilemma: if right itself is normatively binding, how can one get to a normative conclusion in an argument from

transcendental premises?⁴ Alternatively, if right is not normative itself but merely necessary in the sense of a means to a special end, then why would Fichte go through such a laborious argument - adamant to *deduce* the concept of right as an ‘a priori’ principle from the pure form of reason, the I - in order to arrive at such a mundane conclusion?

Despite all the nuances and fault lines within the literature, responses to this puzzle about the normativity of right fall into roughly two categories, depending on which horn of the dilemma they opt for. On the one side, several authors have (re)interpreted the normative necessity of right in terms of second-personal or quasi-moral normativity in order to bridge the gap left by Fichte’s seemingly tacit transition between transcendental premises and normative conclusions. (I discuss this option below under the heading of the ‘moralistic reading.’) On the other side, several authors interpret the normative necessity of right in terms of hypothetical imperatives for the attainment of a special end. (I discuss this option in section three as the ‘hypothetical-imperative reading.’) In the following two sections, I discuss these two dominant responses to the dilemma about the normativity of right and argue that they each face significant exegetical difficulties.

⁴ Several commentators have concluded that there must be a significant equivocation in Fichte’s argument. For instance, on Neuhouser’s reading, Fichte equivocates between a descriptive and a normative sense of ‘rational individual’ (Neuhouser 2000 pp. xvi-xvii). Similarly, Paul Franks has complained that Fichte appears to equivocate between a descriptive and a normative sense of ‘recognizing someone as a person’ (Franks 2006 pp. 178-179). And according to Nance, Fichte equivocates between a hypothetical and a categorical ‘must’ of recognizing others as practical agents (Nance 2012 p. 616).

2. The moralistic reading

One tempting way of responding to the puzzle about the normativity of right would be to focus on the first horn of the dilemma and finding a way to bridge the gap between Fichte's transcendental premises and his normative conclusion by recourse to a quasi-moral⁵ or moral⁶ value. According to some authors, this bridge can potentially be found in Fichte's notion of the other's address in his argument for the second theorem of the deduction. If the other's summons itself already has some kind of normative (albeit not necessarily moral) force, then this normativity might carry over to the concept of right in the third theorem. One might, for instance, build on Allen Wood's reading of the summons as a *prima facie* reason to act,⁷ and interpret the concept of right as generating such reasons too. In a similar but slightly more moralistic vein, Stephen Darwall has interpreted Fichte's account of the summons as giving someone a 'second-personal reason' and "presuppos[ing] the normative standing" of the other.⁸

⁵ This includes Neuhouser's and, arguably, Wood's interpretations.

⁶ This includes Nance's and, arguably, Darwall's interpretations.

⁷ Wood 2016b p. 83. Although both Wood and Darwall interpret the summons in Fichte's deduction as already having normative force, only Darwall takes the further step of explicitly arguing that this alleged normative force of the summons is connected to the normativity of right. By contrast, Wood (2016b) distances himself from the accounts of Darwall, Neuhouser and Nance. However, despite this apparent distancing, it is not clear to me that Wood's account elsewhere (2016a) is significantly different from Darwall's in this regard. (See further note 28 below.)

⁸ Darwall 2013 pp. 237-238. See also Darwall 2014 pp. 13-16.

The exegetical downside of these interpretations is that they appear to presuppose – in Darwall’s own terms, explicitly so – what we would expect them to explain in order to make sense of the normative necessity of right: namely the normative standing of the other to provide reasons for action through an address.⁹ But if the deduction of the concept of right must presuppose the normative standing of others in order to arrive at the normative necessity of right, then presumably the deduction would fail to be a proper deduction of the normative necessity of right in the first place. Thus, by presupposing the normative standing of the other to give second-personal or *prima facie* reasons to act, such interpretations do not, by themselves, help us resolve the puzzle about the normative necessity of right.

Another attractive way to arrive at Fichte’s normative conclusion would be to derive the necessity of right from a ‘non-moral’ value that we presuppose as the basis of right. According to Neuhouser, for instance, the normative necessity of right is provided by a supreme value that is separate from the value of moral autonomy: the value of being a distinct individual.¹⁰ Unfortunately, Neuhouser

⁹ Importantly too, interpreting the summons as the second-personal giving of reasons faces the difficulty of having to establish that such second-personal giving of reasons is really a condition of self-consciousness. Whether or not one finds this idea plausible, it is not obviously supported by Fichte’s text.

¹⁰ Neuhouser 2016 p. 49 See also Neuhouser 1994. For a similar view, compare also Nomer 2010, linking respect for the rights of others to self-determination. While Nomer argues that right is “best understood as the conditions under which human beings can be and become aware of themselves as self-positing [i.e. self-determining] subjects” (2010 p. 490), Nomer also holds that “respect for the rights of others would follow from the realization

offers little discussion of what it is to non-ethically value something, and what kind of normative necessity this value provides. But regardless of whether we believe it possible to conceive of something as non-ethically valuable from a Fichtean perspective, there is a significant difficulty for Neuhausser's interpretation: Fichte never talks about a 'value of individuality.' In the *Foundations*, the concept of right was supposed to be deduced as a concept of pure reason from the possibility of self-consciousness – and at no point in his deduction does Fichte allude to any *value* of self-determination or individuality that would ground the normativity of right. Moreover, grounding the normative necessity of right in this way would mean that we have to give up on the claim that the deduction of right provided in the *Foundations* really grounds relations of right at all.¹¹

Given these exegetical downsides of basing the normative necessity of right in a quasi-moral value like other people's normative standing or the value of individuality, it is perhaps tempting to question whether we should keep a strict separation between right and morality at all, and instead reinterpret Fichte's deduction of the concept of right as deriving the normative necessity of right directly from morality. Michael Nance has recently defended such a view, which in substance comes close to Neuhausser's interpretation. And, as Nance argues, such an approach would still be close to Fichte's overall philosophical project:

[Fichte] acknowledges in FNR that ethical grounds can be given in support of obedience

that self-determination ultimately calls for participation in a collectively determined social order.” (2010 p. 271)

¹¹ See also Kosch 2017 p. 6 for a similar criticism of Neuhausser's position.

to the principle of right. So why, one might ask, does he not avail himself of these ethical grounds? [...] the proposal I am making does not involve deriving the content of the concept of right from the moral law, and thus would not involve the attempt to derive a permission (possible action) from an obligation (necessary action). [...] All that Fichte's Rechtslehre would need to borrow from ethics more generally is the claim that we have a duty to be fully self-positing beings. That duty supplies, not the content, but the normative bindingness that is lacking in FNR's deduction.¹²

On Nance's view, we should read Fichte's deduction of right as deducing merely the content of right, while lacking the 'normative bindingness' that only a moral value provides. However, this way of bridging Fichte's transcendental premises with his normative conclusion has its own exegetical downsides.¹³ While in his earlier political work, Fichte had argued that the concept of right must be deduced from the moral law,¹⁴ by the time he wrote the *Foundations*,

¹² Nance 2012 pp. 625-6.

¹³ These downsides do not merely apply to Nance's (re)interpretation, but to some extent apply to all moralistic interpretations of Fichte's deduction of the concept of right.

¹⁴ See *Contribution and Reclamation*. Note that in the *Reclamation* Fichte does not derive all aspects of the doctrine of right from morality. In particular, Fichte does not derive the foundations of the state and civil legislation from morality. For an overview of Fichte's early position see Clarke 2016 pp. 53-59 and Neuhauser 1994. For an overview of the changes in Fichte's position between 1793 and 1807 see Renaut 1992.

Fichte had changed his mind.¹⁵ In his introduction to the *Foundations*, Fichte claims that the concept of right establishes a ‘permissive’ law, i.e., a sphere within which we are permitted to act arbitrarily. And since morality is concerned with what one (categorically) ought to do, morality is not limited to the establishment of spheres but extends to the entirety of our use of practical reason. That is, on Fichte’s view, the moral law and the law of right are deontically different: “The moral law commands duty categorically: the law of right only permits, but never commands, that one exercise one’s right.” (FNR, 50, emphasis added) This deontic difference can even result in a kind of opposition between right and morality: “Indeed the moral law very often forbids a person to exercise his right, and yet [...] that right does not thereby cease to be a right. In such a case one judges that the person may well have a right to something but that he ought not to have exercised it in this situation.” (FNR, 50) Because of this difference in form, Fichte concluded that the concept of right and its merely permissive laws should not be deduced from morality.¹⁶ Quite to the contrary, “The deduced concept [of right] has nothing to do with the moral law; it is deduced without it [...] Both sciences [of morality and of right] are [...] separated [and] completely opposed to one another”

¹⁵ For the purpose of this essay, I leave aside the question whether Fichte came to think that a deduction of right from morality would be impossible (as Clarke 2016 pp. 63-67 and 2020 and Kosch 2017 p. 4 have suggested) or merely came to think that a deduction of right from morality would not be appropriate (as Neuhauser 2016 p. 48 and Nomer 2020 have suggested). For a brief overview of why a deduction of the concept of right independently from morality might be attractive, see Gottlieb 2018 pp. 173-4.

¹⁶ FNR 13-14.

(FNR, 50-51).¹⁷ But the fact that right and morality are deontically different does not entail that right is deontically empty; and in fact, Fichte's discussion of right makes clear that he did not believe right to be deontically empty at all: insofar as I am a self-conscious being, "I *must* limit my freedom through the concept of the possibility of [the other's] freedom." And I 'must' do so not because of any moral or quasi-moral value, but merely insofar as I am a self-conscious being. Indeed, this conclusion about the normative necessity of right seems to be one of the central points – if not *the* central point of having a deduction of right in the first place. Thus, Fichte also explicitly claims that "[t]he source of this obligation [through the concept of right] is certainly not the moral law: rather, it is the law of thought; and what emerges here is the syllogism's practical validity." (FNR 47) Consequently, we have good reason to be cautious about reinterpreting Fichte's deduction of the concept of right as deducing merely the content of right but not its normative necessity for self-conscious, rational beings.

3. The hypothetical-imperative reading

By contrast to the moralistic interpretation, several readers have recently argued that it is precisely Fichte's

¹⁷ However, at the same time it must remain possible for right to be a part of ethics. For in his *System of Ethics*, published after the *Foundations*, Fichte discusses at length the question what moral obligations we have to conform with the norms of positive law. Therefore, we should take Fichte's claim that the sciences of right and morality are 'completely opposed to one another' with a pinch of salt. For further discussion why Fichte's claim that morality and right are "completely opposed to one another" is an overstatement, see Clarke 2020b and Kosch 2017 p. 7.

separation of right from morality that allows us to understand the normativity of right. On their view, the normative necessity of Fichte's concept of right must be understood in terms of hypothetical imperatives (as opposed to moral, i.e., categorical ones).¹⁸ And to some extent, interpreting right as ultimately issuing conditional prescriptions is clearly on the right track. For Fichte says that the realization of a community of free beings is, in a certain sense, optional. "It is necessary that every free being assume the existence of others of its kind outside itself, but it is not necessary that they all continue to exist alongside one another as free beings; thus the thought of such a community and its realization is something arbitrary..." (FNR, 10) Even more, "each is bound only by the free, arbitrary decision to live in community with others, and if someone does not at all want to limit his free choice, then within the field of the doctrine of right, one can say nothing further against him, other than that he must then remove himself from all human community." (FNR, 11-12)

A hypothetical imperative is the representation of the necessity of an action for the attainment of a further end; thus, translated into the form of a hypothetical imperative, the law of right would say that 'if you want end Φ , then you must in turn restrict your freedom through the concept of the possibility of their freedom.' While interpreting the normative necessity of right in terms of hypothetical imperatives is a popular option in recent literature, authors have taken quite different views on what might constitute the end to be established by right. James Clarke, for instance, has argued that the law of right is specifying the necessary means

¹⁸ Versions of this interpretation have recently been proposed by Clarke (2016), James (2016), Kosch (2017), Ware (2009) and, en passant, by Franks (2005).

for the end of ‘living in community with other free beings,¹⁹ and being judged by an interaction partner as a free, rational being.²⁰ Similarly, Owen Ware has suggested that right is specifying the necessary means for the end of ‘communal’ or ‘reciprocal activity,’²¹ and Michelle Kosch has recently offered an interpretation of right as the means for solving collective action problems.²² In a similar vein, David James has interpreted the necessity of respecting others’ freedom as the “necessary condition of securing one’s own personal freedom” in a community with others.²³

However, authors on this side of the debate face the second horn of the dilemma mentioned above: if the hypothetical-imperative reading was correct, then why have a transcendental deduction in the first place? After all, establishing the concept of right as an a priori concept of pure reason is an oddly baroque way of saying that treating others in accordance with norms of right is a necessary means for a specific end. And unless adopting that end turns out to be a necessary condition of the possibility of self-consciousness, interpreting the normativity of right in terms of hypothetical imperatives would be in clear tension with Fichte’s claim that standing with others in relations of right is a condition of the possibility of self-consciousness as an individual.²⁴ One might reasonably expect that such an

¹⁹ Clarke 2016 p. 63.

²⁰ Clarke 2020a p. 438. See also Nance 2021 pp. 261-62.

²¹ Ware 2009 p. 266.

²² Kosch 2017 p. 20.

²³ James 2016 pp. 183-4.

²⁴ For similar worries see Franks 2005 pp. 321-325, Kosch 2017 pp. 15-18, Neuhauser 2000 pp. xviii-xix, and Ware 2009 pp. 264-5 and 268. Compare also Siep 1979 pp. 26-35 and Siep 1992a pp.

important end might make an explicit appearance in Fichte's deduction, but one would be disappointed.

Another exegetical oddity of this reading of Fichte's deduction of the concept of right is that Fichte does not use the terminology of 'hypothetical imperative' at any point in the *Foundations* when describing relations of right, although this terminology would not have been foreign to him.²⁵ And

81-88, who emphasizes the a priori nature of right as part of the conditions of the possibility of self-consciousness, but who seems to suggest nevertheless that the normative necessity of right is merely hypothetical at Siep 1992b 72-74. Franks (2005) offers a potential route out of this dilemma: according to Franks, Fichte's philosophical project in the *Foundations* includes an ascent to a transcendental first principle with metaphysical necessity, and a descent which shows how the transcendental structures are embodied within everyday consciousness. According to Franks, this results in an *isomorphism* between transcendental conditions and normative principles. The former, so Franks, *ground* the latter, and the latter show that the former are not merely occult qualities or aspects of potentially deluded, circular thinking. However, it might come as a surprise that there can be both isomorphism *and* grounding. Unfortunately, Franks does not tell us what this 'grounding' + isomorphism is. And in fact, it turns out that this 'grounding' does not come to much: for Franks then endorses an interpretation of relations of right along the lines of a hypothetical imperative, depending on whether or not one adopts the end of 'individuality.' (ibid., 324) Kosch (2017) rejects this objection, since she argues that standing with others in relations of right is merely to acknowledge that there is a collective coordination problem. In her recent work, Kosch (2021) argues that negotiated coordination on a joint end may plausibly be necessary for self-consciousness.

²⁵ Fichte at one point speaks of right as a 'law' with 'hypothetical validity,' (FNR 82) and calls right a 'technical-practical' concept, but it is not at all obvious that this should entail that norms of right themselves are best understood as hypothetical imperatives.

this is arguably for a reason: for not everything that can be described as ‘optional’ or ‘arbitrary (willkürlich) in some sense is also necessarily a hypothetical imperative. Fichte indeed says that living in community with others is optional, and only if one wills to live in community with others does one thereby accept the law of right – thus, according to Fichte, the law of right has ‘hypothetical validity.’ (FNR 82). In other words, if you live in community with others, you thereby accept the law of right. But this does not already entail that accepting the law of right is a necessary *means* for living in community with others. Fichte’s silence on what that special end would be that is achieved by conforming to the requirements of right, and which would be a condition for the possibility of self-consciousness, gives us all the more reason to be skeptical about interpreting the normative necessity of right as consisting in hypothetical imperatives.²⁶

Given the exegetical downsides of both moralistic as well as hypothetical-imperative interpretations, we have good reason to look for another way out. Specifically, we have good reason to look for a solution to the puzzle about the

²⁶ For additional criticisms of interpreting the normative necessity of right along the lines of hypothetical imperatives see Darwall 2013, pp. 242-244. Darwall focuses on the voluntarist aspect of this approach, and argues that (i) it is not clear why one has to avoid all community of human beings if one does not want to accept the law of right on a voluntarist interpretation; (ii) it is unclear how this enables Fichte to speak of a demand for *continuous* recognition ‘for all the future;’ (iii) on a voluntarist assumption it is difficult to see how one can mistreat a rational being *as such* rather than merely forbearing some voluntary commitment; and finally, (iv) Darwall rightly points out that on a voluntarist interpretation, “unless we assume a background norm that obligates agents to keep their voluntary made commitments, [the approach] is powerless to explain how reciprocal recognition can give rise to an *obligation* to respect spheres of freedom.” (ibid., 243)

normativity of right that does not force either horn of the dilemma upon us. In the next section, I argue that we can solve the puzzle and avoid the resulting dilemma by denying the (as of yet) unchallenged presumption shared by both moralistic and hypothetical-imperative approaches: that ‘to limit one’s freedom’ must mean acting in a particular way. By contrast, I suggest that we should reconsider what it can mean to ‘limit one’s freedom’ in conceptual terms. By making this shift, the next section argues that a more promising solution to the puzzle about the normative necessity of right is to interpret the limitation as conceptual, and the normative necessity of right as an instance of conceptual necessity. In particular, I argue that possessing the concept of right is to possess a crucial concept for the categorization of interaction.²⁷

²⁷ In *Fichte’s Ethical Thought*, Allan Wood argues that right is normative in a distinct sense, and this special sense of normativity supposedly constitutes the basis for coercive action (Wood 2016a p. 260). But what exactly those ‘normative expectations’ are which supposedly ground coercive action and are also non-ethical, Wood does not explain. Instead, he mentions ‘justified’ and ‘normative’ implications that come from the initial summons, and carry over a non-ethical normativity to the concept of right. This suggests that Wood’s discussion of Fichte’s account of right in *Fichte’s Ethical Thought* relies on his reading of the summons as presupposing prima facie reasons for action in Wood (2016b) and therefore does not provide a new way of responding to the puzzle about the normative necessity of right. For an interpretation that treats the right of coercion as key to understanding the bindingness of right, but stops short of bringing out the conceptual nature of the normativity of right, see De Pascale 2003 pp. 195-220.

4. Between Thinking and Acting: norms of right as conceptual norms

Although Fichte uses slightly different terms, he appears to raise the puzzle about the normative necessity of right himself in his discussion of the application of the concept of right in the second Main Division. Specifically, he asks how it is possible that norms of right can appear to be both necessary, or ‘commanding,’ while also *not* being normatively necessary, or commanding. The former refers to the normative necessity of right which persistently gives some plausibility to the moralistic interpretations; whereas the latter refers to the conditional nature of norms of right which persistently gives plausibility to the hypothetical-imperative interpretations.

The difficulty which, for the most part, has been left unresolved by previous treatments of the theory of right is this: how is it possible for a law to command by not commanding? how can a law have force by not being in force? how can a law encompass a sphere by not encompassing it? (FNR 83)

Fichte’s methodology in the *Foundations* is to proceed dialectically from apparent impasses or contradictions to their solution, which makes this passage particularly interesting for the purpose of resolving the puzzle about the normativity of right. Here is Fichte’s own cryptic response:

The answer is: all this necessarily follows if the law prescribes a determinate sphere for itself, if it directly carries within itself the quantity of its own validity. As soon as the law indicates the

sphere to which it applies, it thereby simultaneously determines the sphere to which it does not apply; it explicitly holds itself back from saying anything about this sphere and making prescriptions with respect to it. - In relation to a particular person, I am absolved from adhering to the law requiring me to treat him as a free being, and the question of how I will treat him depends solely upon my free choice, or I have a right of coercion against him. *These claims mean, and can mean, nothing other than: this person cannot, through the law of right alone, prevent my coercion of him (although he may well do so through other laws, by physical strength, or by appealing to the moral law). My coercion is not contrary to this law, and if the other person has nothing to appeal to but it, he must endure my coercion of him.* (FNR, 83, emphasis added)

As so often, Fichte's text here is far from 'crystal clear.' But Fichte's response becomes more intuitive when we shift away from the assumption that judgments of right must be a species of practical judgment, and instead consider the possibility that judgments of right are a species of theoretical judgments: theoretical judgments about reciprocal agency.

All interpretations surveyed above take it for granted that the necessity 'to limit one's freedom' in Fichte's formulation of the law of right means acting in a particular way. But it is worth taking a step back and asking if this common assumption is really necessary. What else, then, could it mean to 'limit one's freedom through the concept of the possibility of the other's freedom'? One immediately intuitive interpretation would be in terms of practical necessity: having to limit my freedom might be to act – or not to act – in certain ways. However, another possible interpretation

would be in terms of conceptual necessity: having to limit my freedom might be for my actions to count as occurring within reciprocal spheres of agency.

While practical necessity would be the necessity of a possible action as to be done, conceptual necessity is the necessity of something counting as something. For instance, given the kind of beings we are and knowledge I have, it is conceptually necessary that I judge *this* tree over there as belonging to the category of a tree, this walnut tree as a walnut and this magnolia as a magnolia. We can of course quibble about whether that tree over there is *really* a walnut tree; but it is simply not up to me whether or not a walnut tree counts as a walnut, unlike my actions are really up to me. Once I am in possession of the concept of a walnut tree, it is conceptually necessary for me to judge this walnut tree as belonging to the category of walnut trees. Thus, while practical necessity tells us what *ought to be done*, conceptual necessity tells us *what* we are doing and have done.

In terms of conceptual necessity, 'limiting my freedom' would mean limiting what I judge to be my sphere of agency: the sphere in which I can act without intruding on the efficacy of other practical agents. In other words, to limit my freedom is just to limit the sphere in which I can 'rightfully' act; and beyond which others can 'rightfully' hinder my agency and coerce me. What, then, would it mean to limit this sphere of 'rightful' action? (After all, we do not want to throw the puzzle about the normativity of right out the door only to let it back in through the window of the term 'rightful.')

It can neither mean that I *morally ought not* act in a way that transgresses this sphere, for that would be a practical, moral judgment; nor that I *cannot* act in a way that transgresses this sphere, for that would be false. Fichte's peculiar thought is that the concept of right is *basic*, and carves up the world so that "the world, as the sphere of their freedom, be, as it were, divided among them [rational

beings].” (FNR 10) Fichte’s deduction of the concept of right attempts to show that conceptually dividing the world up into spheres of agency (i.e., possession of this concept of right) is a condition of self-consciousness.

Before moving on to an outline of Fichte’s argument in this deduction, two examples might help to illustrate the idea of judgments of right as conceptual judgments about reciprocal agency. Imagine I am about to step on your toe. But just when I am about to step on your toe, you push me away. My stepping-on-your-toe was a transgression of my designated sphere of agency. Similarly, pushing someone is also usually a transgression of one’s designated sphere of agency. But when you pushed me away this time, your pushing-me-away was not a transgression of your sphere of agency. Since I intruded into your sphere by attempting to step on your toe, your pushing-me-away was within your designated sphere of agency. Thus, your hinderance of my wrongful action was not itself wrongful, it was rightful. Similarly, consider the paradigm of self-defense. You reasonably believe that someone is about to strike you, and you preempt their strike. If the expected violence is excessive enough, you might even end up killing them. Also in this case, your violent action is not itself a transgression of your designated sphere of agency, and it is not a limitation of your aggressor’s designated sphere of agency either. Since your aggressor overstepped their designated sphere of agency, your action in hindering them was within your sphere of agency. However, this does not already establish that you really ought to have pushed me away or killed your aggressor in self-defense – perhaps morally you should have turned the other cheek. But because your aggressor overstepped their designated sphere, your action of self-defense (whatever its motivation) occurred within your proper sphere of agency.

In these two examples, considerations of motivating reasons are deliberately left out. As mentioned above,

Fichte's concept of right is explicitly not concerned with anyone's motivation. Indeed, no one's practical judgments are necessary in order to tell the story of these two examples. Perhaps I stepped on your toe because I reasonably believed it was necessary to save you from a venomous insect; perhaps you pushed me away not because you mind me stepping on your toe but simply because you were only waiting for an excuse to kick me. Maybe your aggressor wrongly believed you were immanently threatening them, and maybe you had secretly already looked for an opportunity to kill your mistaken aggressor. Maybe everyone in these two examples was morally blameworthy, or maybe everyone was morally blameless – none of this matters for the theoretical judgments about interaction as occurring in reciprocal spheres of agency in the two examples above.²⁸

Most, if not all, finite rational being will take such conceptual rules about interaction as indirectly action-guiding. Although the rules just outlined neither *directly* tell me not to step on your toe, nor your aggressor to not attempt to harm you, they can play a crucial role in the practical reasoning of the members of the community. Unless I want your kicking me to be understood as occurring within your designated sphere of agency, I had better not step on your toe; and unless you want someone else to be free to kill you in self-defense, you better not harm them. In this sense, norms of right *give rise to* hypothetical imperatives, in that the norms of right provide the conceptual material that will trigger normative reasons for action based on the particular ends that people set themselves. But on the view just

²⁸ This, of course, does not entail that norms of right could not include conditions of motivation (as for instance the mens rea requirements in the criminal law jurisprudence of the common law tradition, inferred through established rules of evidence) for rightful interaction.

sketched, norms of right *themselves* are not the hypothetical imperatives (which would be imperatives of practical judgment, i.e., representations of an action as to-be-done). Rather, the norms of right are the theoretical norms categorizing human action, and thus give us some of the knowledge that we need for determining which means fit which ends.²⁹ In this way, right does not command *by commanding*; instead, right issues its commands *by conceptualizing* interaction between agents as occurring within equal, reciprocal spheres of agency.³⁰ And on such a view,

²⁹ Fichte shares this view about norms of right as giving rise to – but not consisting in – hypothetical imperatives with legal theorists in the tradition of the Pure Theory of law. As Alain Renaut has pointed out long ago, both Fichte and Hans Kelsen conceived norms of right not as hypothetical imperatives but hypothetical *judgments*. Renaut summarizes Kelsen’s parallel view in this regard, as outlined in Kelsen 1934: [L]es règles morales sont des impératifs catégoriques, donc des règles à la fois prescriptives et obligeant absolument ou inconditionnellement, là où les règles juridiques sont des *jugements hypothétiques*, c’est-à-dire des règles *descriptives* (elles décrivent une relation entre un acte et sa conséquence juridique : *si tu voles, tu seras puni*, ce qui n’est pas un impératif, mais un jugement porté sur un objet, ici le vol, du point de vue des conséquences qu’il entraîne) et conditionnelles (elles ne décrivent qu’un lien hypothétique entre un fait éventuel et sa signification juridique dans le système considéré). (Renaut 1986 p. 225, emphases mine.) Regarding Fichte, Renaut adds: “C’est par une argumentation parallèle que Fichte fait du concept de droit un concept « simplement technico-pratique » : à supposer qu’une communauté doive être instituée où les libertés coexistent, c’est selon le concept de droit qu’il faudrait l’instituer; « mais qu’une telle communauté doive être instituée, ce n’est nullement dit pour autant.” (Ibid., emphasis mine.)

³⁰ Historically, this view has affinities with Johann Benjamin Erhard’s account of right in his “Apologie des Teufels” and *Über das Recht des Volkes zu einer Revolution* 1795. For a discussion of the

the limitation of one's freedom would be conceptual – not practical – and the normative necessity of right would be conceptual necessity.³¹ On this view, we can say with Fichte

relation between Erhard and Fichte see Gottlieb 2018 pp. 178-81. Close contemporary relatives of the view sketched here can be found in the literature on Pure Theory of law, especially Kletzer 2013 and 2018. Among political theorists, Norberto Bobbio (1965) has defended a similar view, primarily inspired by Kelsen, according to which legal norms are theoretical norms about violence. Noting this proximity himself, Kletzer even lists Fichte (as well as Kant) as the intellectual forefathers of the tradition of the Pure Theory of law (Kletzer 2018 p. 2). For discussion of the relation between Fichte's philosophy of right and the tradition of the Pure Theory of law, see also Renaut 1986 pp. 222-252.

³¹ Nance at one point contemplates the possibility of interpreting the normative necessity of right as conceptual and quickly rejects it: "[...] there are indeed other notions of necessity in addition to normative and metaphysical necessity, such as epistemic and causal necessity. But it is hard to make sense of any of the steps of Fichte's argument in terms of causal laws; and epistemic necessity as it is used in Fichte's argument collapses into metaphysical necessity, since there is no gap between thought and being in Fichte's theory of the I. So I want to suggest that the only relevant possibilities are metaphysical necessity (broadly construed) and normative necessity." (Nance 2012 p. 616) Nance is right to say that epistemic and metaphysical necessity go hand in hand in the argument of Fichte's deduction of the concept of right. But interpreting the normative necessity of right in metaphysical-epistemic terms is only a problem as long as we focus on the 'must' rather than on what it means to 'limit my freedom.' If the limitation of freedom is the limitation implied by the categories through which we interpret action, then the 'must' of right can be one of conceptual necessity. A remark by Kersting (2001 pp. 25-26) about the hypothetical nature of right might potentially be read as suggesting an interpretation of the normative necessity of right in terms of

that “[t]he source of this obligation is certainly not the moral law: rather, it is the law of thought” (FNR 47).

Thus, norms of right stand between thinking and acting as exercises of theoretical judgment about the interactive exercise of practical reason. (This, I believe, is what Fichte describes by calling the concept of right ‘technical-practical:’ the concept of right “*if* thought as a practical concept, is merely technical-practical.” (FNR 10, emphasis mine)) And as a further consequence, the concept of right only concerns – indeed, *can* only concern – outer actions, for only outer actions can possibly be the object of judgments about the interactive exercise of practical reason. People’s private beliefs and motivations cannot be an subject of judgments of right in this sense. But by contrast to other theoretical judgments about practical agency – i.e., that some actions might turn out aesthetic, skillful, dangerous, etc. – judgments of right stand between thinking and acting in a special way: according to Fichte, the concept of right can be deduced from the conditions of the possibility of self-consciousness. In the next section, I will outline the major steps in Fichte’s deduction of the concept of right in order to show how Fichte develops the idea of norms of right as conceptual norms out of a consideration of the possibility of self-consciousness.

5. Fichte’s deduction of the concept of right

With the notion of right as a special concept categorizing interaction in view, we can now turn to an outline of Fichte’s deduction of the concept of right from the possibility of self-

conceptual necessity, but if so, his account does not explain this suggestion in any detail.

consciousness in the first Main Division of the *Foundations*. Tracing the steps of Fichte's deduction of the concept of right will show, first, how Fichte deduces the normative necessity of right from transcendental premises and, second, how Fichte's argument in the deduction already foreshadows his discussion of the application of right and the right of coercion. While some authors have claimed that Fichte must either contradict himself or change his mind, by allegedly first grounding right on mutual recognition in the first Main Division and on coercion in the later part of the *Foundations*,³² the notion of right as conceptual norms allows us to see Fichte's *Foundations* as consistent throughout: Fichte's insistence on the fundamental importance of the right of coercion in the second Main Division is not a contradiction or backtracking, but merely fleshing out the application of the more abstract idea of right as a concept for the categorization of interaction.

Fichte's deduction of the concept of right starts with the 'I think' of self-consciousness. I can be conscious of myself only if I have myself as an object of reflection and also be the subject of this reflection. Thus, in self-consciousness, the reflecting activity of the subject and the object of the subject's cognition must be one and the same. Fichte further contends that this activity cannot be the activity of my passively-becoming-conscious of intuiting the world. For in order to become conscious of intuiting a world I must already be conscious of myself as a subject that intuits. Thus, my act of consciously intuiting the world already presupposes that I am conscious of my own cognitive activity.

³² See for instance Williams 2002, compare also Siep 1992b pp. 41-61.

Alternatively, if the activity (in which subject and object are one) that we are looking for is *not* one of passively intuiting the world, then it would have to be one of actively self-determining. And if it is not to be passive, this self-determining activity would have to be one that is not limited by the world outside of me. Hence, according to Fichte, it would have to be the practical activity of setting an end.

But this thought leads to another difficulty: for the notion of practical activity presupposes that I ascribe to myself an efficacy, which in turn appears to presupposes something onto which that efficacy can be exercised, namely a world. We have thus come full circle: consciousness of myself as a practical agent presupposes consciousness of a world outside me onto which I can act; and consciousness of my intuiting the world presupposes consciousness of myself as active.³³ In other words, according to Fichte there appears to be an infinite regress: an exercise of the cognitive capacity to know seems to presuppose an exercise of agency, and the exercise of agency presupposes an exercise of the cognitive capacity to know.

Consequently, we also cannot assume that both the thought of my efficacy and the thought of a world outside me are equiprimordial.³⁴ Rather, there must be a moment that escapes this circle and thereby marks the transcendental condition for the possibility of self-consciousness.³⁵ This would be a moment in which the subject's own efficacy can

³³ Although contemporary philosophers might call this problem a regress rather than a circle, Fichte himself describes the alleged difficulty here as a circle.

³⁴ For doubts about the validity of Fichte's claim that there is an infinite regress, see Wood 1990 p. 79. Cf. McNulty 2016 p. 10.

³⁵ Although it might not be a *temporary* moment of human development.

be itself the object out there in the world that can be comprehended. Hence, Fichte asks us to consider if there could be an object in the world that would ‘synthetically unify’ (or more colloquially: represent) both the subject’s own efficacy as a free agent as well as constitute an object in the world.

Fichte’s famous answer is that “[b]oth are completely unified if we think of the subject’s being-determined as its being-determined to be self-determining, i.e. as a summons [eine Aufforderung] to the subject, calling upon it to resolve to exercise its efficacy.” (FNR, 31) In order to be self-conscious, I have to cognize my free efficacy in a summons or address for exercising that efficacy.³⁶ And what is this strange object that can exercise such a summons? This strange object would itself have to presuppose the possibility of my understanding its summons; therefore, it must itself be a self-conscious, intelligent being.

In comprehending such a summons, I thus comprehend both my own and the other’s efficacy and thereby ascribe to each of us a sphere of influence: the potential to act in the world. For instance, I can will to move towards the other and extend my hand to her; but I cannot ‘will’ the action of the other in the same way – only she can will to move toward me.³⁷ As a finite being, I am only efficacious as a practical agent within a limited sphere, and so is the other.

³⁶ For the purpose of this paper, I focus on the most important steps of Fichte’s deduction in establishing the normative necessity of right and leave a more detailed specification of the summons aside. For a recent discussion, see especially Kosch 2021 pp. 222-235.

³⁷ Of course, this would not apply to an infinite, divine intellect. Fichte’s examination of self-consciousness throughout presumes our finitude.

This limited efficacy of practical agents also means that the other can potentially step into my sphere and limit it: she could exercise her free agency in such a way as to deprive me of the ability to exercise my free agency. But in her summons of me, she both limits her efficacy in such a way as to leave room for my exercise of my efficacy and asks/demands me to exercise it. This limitation of efficacy to leave room for the efficacy of the other in the summons is the kernel of the idea of right: for it entails the theoretical recognition that human interaction can be interpreted, or categorized, in terms of reciprocal hinderances of agency. That is, each finite, rational agent has a sphere of efficacy, such that these spheres can come into conflict and hinder each other;³⁸ but where the possibility for the hinderance is mutual, there is also the possibility of categorizing this hinderance as *reciprocal* and thus occurring within (or transgressing) equal, designated spheres of efficacy.

In perhaps the most prominent move of Fichte's deduction, he then argues that this summons must be both enacted and reciprocal: self-consciousness is only possible through visible, mutual recognition. My own recognition of the summons is only possible if the other treated me as a rational being, by acting in a way that remains within her sphere of agency; and the other's recognition of my rationality is only possible if I act in a way that remains within my sphere of agency. Since no one can know what goes on in another's head, only beings who can act in particular ways can also be recognized mutually; only beings that have (inter)acted in this way are able to recognize each other.

[...] one individual's knowledge of the other is conditioned by the fact that the other treats the

³⁸ Compare Fichte's reference to his *Wissenschaftslehre* at FNR 40.

first as a free being (i.e. limits its freedom through the concept of the freedom of the first). But this manner of treatment is conditioned by the first's treatment of the other; and the first's treatment of the other is conditioned by the other's treatment and knowledge of the first, and so on ad infinitum. Thus the relation of free beings to one another is a relation of reciprocal interaction through intelligence and freedom. One cannot recognize the other if both do not mutually recognize each other; and one cannot treat the other as a free being, if both do not mutually treat each other as free. (FNR, 44)

Clearly, this section of Fichte's deduction makes it especially tempting – and so reasonable – to assume that the necessity of 'limiting' one's freedom in Fichte's final principle of right must mean *acting*, i.e., treating others, in a special way. For Fichte repeatedly tells us that recognition is only possible as a result of specific actions: "The condition [for mutual recognition] was that I recognize the other as a rational being [...] i.e. that I should *treat* him as a rational being — *for only in action does there exist such a recognition valid for both.*"³⁹ In other words, as long as we cannot look into each other's heads, only beings that can *act* in specific ways can thereby demonstrate their mutual recognition of another.

However, it would be premature to conclude from the necessity of action for the possibility of mutual recognition that the normative necessity in the final principle of right (i.e., the normative necessity to act in accordance with right) is that of either a categorical or hypothetical practical

³⁹ FNR 44 (original emphasis).

judgment. A rational being must act in order to recognize and be recognized; but the requirement to act in accordance with right among rational beings is not a hypothetical practical judgment for the end of continuing to be recognized as a rational being – those of us who act contrary to right do not thereby suddenly become irrational, unfree beings. Rather, the requirement to act in accordance with right among rational beings is the requirement of theoretical consistency between one's actions and one's judgments about reciprocal spheres of agency. Thus, Fichte describes the necessity of continuing mutual recognition as a matter of theoretical consistency (FNR, 44). But whether such theoretical consistency between our judgments about spheres of agency and our actions is practically necessary either categorically (i.e., morally) or hypothetically (i.e., prudentially) is another (albeit important) question.⁴⁰

This concludes Fichte's deduction of the concept of right:

The conclusion to all of this has already emerged. - *I must in all cases recognize the free being outside me as a free being, i.e. I must limit my freedom through the concept of the possibility of his freedom.* The relation between free beings that we have deduced [...] is called the relation of right; and the formula that has now been established is the principle of right. This relation is deduced from the concept of the individual. Thus what was to be proved has now been proved. Furthermore, the concept of the individual was previously proved to be a condition of self-

⁴⁰ Thus, for the sole purpose of the deduction of the concept of right, we can remain agnostic about what motivations people may have for acting in accordance with right, and also about whether moral considerations may demand that we comply with right.

consciousness; thus the concept of right is itself a condition of self-consciousness. Therefore, the concept of right has been properly deduced a priori, i.e. from the pure form of reason, from the I. (FNR 49, original emphasis)

The kernel of the idea of right is the theoretical recognition that human interaction can be conceptualized in terms of reciprocal hinderances. Because each agent has a sphere of efficacy, these spheres can come into mutual conflict and hinder each other; and consequently, human interaction – and specifically, mutual hinderance – can be reciprocal. This potential reciprocity of hindering one another’s spheres of efficacy is the essence of the concept of right. By interpreting my own and other people’s actions as occurring within designated spheres of free efficacy, I continually ‘limit my freedom’ through the concept of the possibility of the other’s freedom – not by already acting in a special way, but by recognizing our agency as occurring within equal spheres of agency. When my actions are rightful, I keep a ‘theoretical consistency’ between my actions and my judgments about people’s designated spheres of agency. To act in my own sphere is *right* (Recht); to limit another’s sphere is contrary to right (Unrecht); and another’s limitation of my efficacy when I intrude into theirs is right again. In this way, the concept of right is a conceptual scheme for the categorizing of interaction as occurring in equal, reciprocal spheres of agency, and a condition for one’s self-consciousness as a practical agent among many.

Thus, Fichte’s deduction of the concept of right from the conditions of self-consciousness already foreshadows the idea of a right of coercion. In his analysis of the application of the concept of right in the later part of the *Foundations*, Fichte asks: “how are things to be arranged so that the person will come to have a will when he ought to have one,

or [...] so that he takes as much care to ensure the other's security against himself as he does to ensure his own security against the other?" (FNR, 128-9) Fichte's answer is the 'right of coercion.' According to Fichte, relations of right can only exist in the real world through the right of coercion: "The law of coercion is supposed to function so that any violation of rights will result inevitably and with mechanical necessity (so that the violator can foresee it with complete certainty) in the same violation of the violator's own rights." (FNR, 130) Understanding norms of right as conceptual norms about reciprocal action helps us see how right can do exactly that – not just contingently, as a political desideratum, but *necessarily*. To violate norms of right is not just to risk some possible sanction by having transgressed a particular norm. Instead, to violate norms of right is to thereby make violence against oneself rightful – even if that violence never occurs. By stepping beyond my designated sphere of agency and intruding into yours, I thereby also will the conceptual limitation of my own sphere of freedom. I do not merely risk that my freedom be limited, I *ipso facto* reduce my sphere of freedom by limiting yours.

Can this understanding of the normative necessity of right as conceptual necessity overcome the exegetical difficulties that the moralistic interpretations run into? First, the reading proposed here does not presuppose the normative standing of the other, nor does it presuppose a non-moral or quasi-moral value that would ground the normative necessity of right. In this way, it makes sense of Fichte's claim that he is *deducing* the concept of right, namely through the notion of practical efficacy which can only be understood if another's efficacy can potentially limit it. Second, the proposed reading does not conflate the deontic nature of right and morality. Indeed, Fichte's claim about the deontic difference between right and morality makes more sense if we think of right as conceptually arranging our

corresponding spheres of agency, but not *directly* telling us how to act as the imperatives (hypothetical and moral) of practical reason do. And can this understanding of the normative necessity of right as conceptual necessity also overcome the difficulties that the hypothetical-imperative readings run into? Again, I believe it can. On the proposed reading, possession of the concept of right is plausibly a condition of the possibility of self-consciousness as an individual, for the concept of right means to conceive of one's agency as occurring within reciprocal (and potentially mutually hindering) spheres of practical agency, which in turn is said to be a condition for conceiving of one's own efficacy. And finally, the proposed reading also avoids the difficulty of finding some end for which acting in accordance with right really is a necessary means.

Concluding remarks

As I have argued above, Fichte's deduction of the concept of right must appear puzzling at first sight: what, exactly, is the normative necessity of right supposed to be? If right is really normative, then how can it be derived from transcendental premises? And if the imperatives of right are merely hypothetical, then what is the deduction 'from the pure form of reason' for? Both the moralistic and hypothetical-imperative reading assume that norms of right must guide conduct directly – or, in Fichte's terms, that norms of right must command *by* commanding. However, Fichte himself denies that right must command directly by commanding; and once we entertain the thought that the norms of right command by categorizing, the initial puzzle begins to disappear: the normative necessity of right is conceptual, and thus can be deduced from reflections about the possibility of self-consciousness. In this way, right is not

a set of norms that are then potentially backed by coercion – rather, right provides a conceptual scheme for the categorization of interaction between free, finite agents. Fichte foreshadows this notion of right in his introduction to the *Foundations*:

Now if, as is certainly the case, the effects of rational beings are to belong within the same world, and thus be capable of influencing, mutually disturbing, and impeding one another, then freedom in this sense would be possible for persons who stand with one another in this state of mutual influence only on the *condition that all their efficacy be contained within certain limits, and the world, as the sphere of their freedom, be, as it were, divided among them.* (FGR 9-10, emphasis mine)

Here, Fichte already tells us that the possibility of mutual hinderance among persons gives rise to the idea of a world divided into spheres of efficacy. This idea receives its first proper discussion in Fichte’s argument for the third theorem. Recognizing that human interaction can be conceptualized in terms of reciprocal hinderances and leaving room for another’s free exercise of efficacy is the kernel of the concept of right. This abstract insight is then fully developed through the right of coercion in the latter part of Fichte’s *Foundations*, as a solution to an apparent puzzle of how right can ‘command without commanding.’ Norms of right provide a conceptual scheme for interpreting interaction in terms of reciprocal hinderances, and they do so by ascribing to each individual an equal sphere of agency.

Consequently, there is no puzzle about the normative necessity of right, and no resulting dilemma. To ‘limit my freedom’ through the concept of the other’s freedom is conceptually necessary in a community of free, finite agents.

Moreover, there is no need to posit an equivocation in Fichte's deduction between categorical and hypothetical necessity or between conceptions of the person, as some authors have complained. And finally, Fichte's account of right appears consistent throughout the entire *Foundations*: we do not need to accuse Fichte of contradicting himself or changing his mind for allegedly grounding the normative necessity of right in coercion in the second Main Division. Quite to the contrary, Fichte's discussion of the application of right only elaborates on what was already contained more abstractly in the deduction of the concept of right.

In a letter to Reinhold from August 1795, Fichte complained about the state of practical philosophy of their time. Because in the entire literature on the subject, according to Fichte, "no deduction of the *reality* of the concept of right exists anywhere." Specifically, Fichte complained that: "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."⁴¹ Is the interpretation proposed here such a 'formal, semantic explanation'? In his letter, Fichte objected to accounts of right that merely attempted to analyze the meaning of our notion of right, rather than deduce this concept and its applicability from a secure basis (such as the possibility of self-consciousness); but Fichte did not object to the idea that the normative necessity of right would be conceptual necessity.⁴² In this way, the interpretation proposed here does not turn Fichte's deduction of the concept of right into a 'formal, semantic explanation.' Quite to the contrary, on the interpretation I

⁴¹ Fichte 1988 p. 407, original emphasis.

⁴² For a detailed discussion of what Fichte objected to in his letter to Reinhold, see especially Gottlieb 2018 pp. 182-84.

offered above, Fichte provided a genuine deduction of the concept of right and its applicability. Rather than merely explaining what it meant, or how it was used, Fichte proposed an argument that showed how possession of the concept of right is required for the kind of self-consciousness we finite, social and rational beings have.

References

- Bobbio, Norberto, 1965, 'Law and Force,' *The Monist* 49(3), pp. 321-341
- Clarke, James, 2016, 'Fichte's Independence Thesis,' in *Fichte's Foundations of Natural Right. A Critical Guide*, edited by Gabriel Gottlieb, Cambridge University Press, pp. 52-71
- . 2020a, 'Deduction of Right,' in in *The Bloomsbury Handbook of Fichte*, edited by Marina Bykova, Bloomsbury, pp. 433-440
- . 2020b, 'Separation of Right from Morality,' in *The Bloomsbury Handbook of Fichte*, edited by Marina Bykova, Bloomsbury, pp. 441-448
- Darwall, Stephen, 2013, 'Fichte and the Second-Person Standpoint,' in *Honor, History, and Relationship: Essays in Second-Personal Ethics II*, Oxford University Press, pp. 222-246
- Darwall, Stephen, 2014, 'Why Fichte's Second-Personal Foundations can provide a More Adequate Account of the Relation of Right than Kant's,' *Grazer Philosophische Studien* 90, pp. 5-20
- De Pascale, Carla, 2003, „*Die Vernunft ist praktisch.*“ *Fichte's Ethik und Rechtslehre im System*, translated by Stefan

- Monhardt, Berlin: Duncker & Humblot (originally published 1995 as *Etica e diritto. La filosofia pratica di Fichte e le sue ascendenze kantiane*, Bologna: il Mulino)
- Erhard, Johann Benjamin, 1795, 'Apologie des Teufels,' *Philosophisches Journal einer Gesellschaft Teutscher Gelehrten*, Neu-Strelitz: Hof, pp. 105–40
- _____. 1795, *Über das Recht des Volkes zu einer Revolution*, Jena and Leipzig: Gabler
- Fichte, Johann Gottlieb, Hans Gliwitzky, Hans Jacob, Reinhard Lauth, Bayerische Akademie der Wissenschaften, 1962-, J.G. Fichte-Gesamtausgabe der Bayerischen Akademie der Wissenschaften, Stuttgart-Bad Cannstatt: Friedrich Frommann Verlag
- _____. 1988, *Fichte: Early Philosophical Writings*, translated and edited by Daniel Breazeale, Ithaca: Cornell University Press
- _____. 1992, *Foundations of Transcendental Philosophy: Wissenschaftslehre (nova methodo) (first published 1796/99)*, edited and translated by Daniel Breazeale, Ithaca, NY: Cornell University Press
- _____. 1996, 'Reclamation of the Freedom of Thought from the Princes of Europe, Who Have Oppressed It Until Now (1793),' translated by Thomas E. Wartenberg, in *What Is Enlightenment? Eighteenth-Century Answers and Twentieth-Century Questions*, edited by James Schmidt, University of California Press, pp. 119-141
- _____. 2000, *Foundations of Natural Right according to the Principles of the Wissenschaftslehre*, edited by Frederick Neuhouser, translated by Michael Baur, Cambridge University Press [FNR]

- _____. 2005, *The System of Ethics according to the Principles of the Wissenschaftslehre*, translated and edited by Daniel Breazeale and Günter Zöller, Cambridge University Press [SE]
- _____. 2021, *Contribution to the Correction of the Public's Judgments on the French Revolution*, translated and edited by Jeffrey Church and Anna Marisa Schön, Albany: SUNY Press
- Franks, Paul, 2005, *All or Nothing: Systematicity, Transcendental Arguments, and Skepticism in German Idealism*, Harvard University Press
- _____. 2006, 'The Discovery of the Other: Cavell, Fichte, and skepticism,' in *Reading Cavell*, edited by Alice Crary and Sanford Shieh, London: Routledge, pp. 166-203
- Gottlieb, Gabriel, 2018, 'A Family Quarrel: Fichte's Deduction of Right and Recognition,' in *Kant and his German Contemporaries Volume II: Aesthetics, History, Politics, and Religion*, edited by Daniel Dahlstrom, Cambridge University Press, pp. 170-192
- James, David, 2016, 'Fichte on Personal Freedom and the Freedom of Others,' in *Fichte's Foundations of Natural Right. A Critical Guide*, edited by Gabriel Gottlieb, Cambridge University Press, pp. 177-195
- Kelsen, Hans, 1934, 'La Méthode et la Notion Fondamentale de la Théorie Pure du Droit' *Revue de Métaphysique et de Morale* 41(2), pp. 183-204
- Kletzer, Christoph, 2013, 'Primitive Law,' *Jurisprudence* 4(2), pp. 263-272
- _____. 2018, *The Idea of a Pure Theory of Law*, Oxford: Hart Publishing

- Kersting, Wolfgang, 2001, “Die Unabhängigkeit des Rechts von der Moral (Einleitung),” in *Johann Gottlieb Fichte, Grundlage des Naturrechts*, edited by Jean-Christophe Merle, Berlin: Akademie Verlag, pp. 21-37
- Kosch, Michelle, 2017, ‘Individuality and Rights in Fichte’s Ethics,’ *Philosopher’s Imprint* 17(12), pp. 1-23
- _____. 2021, ‘Fichte on Summons and Self-Consciousness,’ *Mind* 130(517), pp. 215-249
- McNulty, Jacob, 2016, ‘Transcendental Philosophy and Intersubjectivity: Mutual Recognition as a Condition for the Possibility of Self-Consciousness in Sections 1–3 of Fichte’s Foundations of Natural Right,’ *European Journal of Philosophy* 24(4), pp. 788-810
- Nance, Michael, 2012, ‘Recognition, Freedom, and the Self in Fichte’s Foundations of Natural Right,’ *European Journal of Philosophy* 23(3), pp. 608-632
- _____. 2016, ‘Freedom, Coercion, and the Relation of Right,’ in *Fichte’s Foundations of Natural Right. A Critical Guide*, edited by Gabriel Gottlieb, Cambridge University Press, pp. 196-217
- _____. 2021, ‘Fichte’s First Principle of Right,’ *Fichte-Studien* 49, pp. 248-266
- Neuhouser, Frederick, 1994, ‘Fichte and the Relation between Right and Morality,’ in *Fichte: Historical Context/Contemporary Controversies*, edited by Daniel Breazeale and Tom Rockmore, Humanities Press, pp. 158-80
- _____. 2000, ‘Introduction,’ in Fichte, *Foundations of Natural Right according to the Principles of the Wissenschaftslehre*, edited by Frederick Neuhouser, translated by Michael Baur, Cambridge University Press, pp. vii-xxviii

- _____. 2016, 'Fichte's Separation of Right from Morality,' in *Fichte's Foundations of Natural Right. A Critical Guide*, edited by Gabriel Gottlieb, Cambridge University Press, pp. 32-51
- Nomer, Nedim, 2010, 'Fichte and the Relationship between Self-Positing and Rights,' *Journal of the History of Philosophy*, 48(3), pp. 469-490
- _____. 2020, 'Are There Any Moral Rights for Fichte?' in *The Bloomsbury Handbook of Fichte*, edited by Marina Bykova, Bloomsbury, pp. 449-455
- Renaut, Alain, 1986, *Le système du Droit: Philosophie et Droit dans la Pensée de Fichte*, Paris: Presses Universitaires de France
- _____. 1992, 'Fichte: Le Droit Sans Morale?' *Archives de Philosophie* 55(2), pp. 221-242
- Siep, Ludwig, 1979, *Anerkennung als Prinzip der praktischen Philosophie: Untersuchungen zu Hegels Jenaer Philosophie des Geistes*, Freiburg: Karl Alber
- _____. 1992a, 'Naturrecht und Wissenschaftslehre,' in *Fichte's Lehre vom Rechtsverhältnis: Die Deduktion der §§1-4 der Grundlage des Naturrechts und ihre Stellung in der Rechtsphilosophie*, edited by Michael Kahlo, Ernst A. Wolff und Rainer Zaczyk, Frankfurt am Main: Vittorio Klostermann, pp. 71-91
- _____. 1992b, *Praktische Philosophie im Deutschen Idealismus*, Frankfurt am Main: Suhrkamp
- Ware, Owen, 2009, 'Fichte's Voluntarism,' *European Journal of Philosophy* 18(2), pp. 262-282
- Williams, Robert, 2002, 'The Displacement of Recognition by Coercion in Fichte's *Grundlage des Naturrechts*,' in

New Essays on Fichte's Later Jena Wissenschaftslehre, edited by Daniel Breazeale and Tom Rockmore, Evanston, IL: Northwestern University Press, pp. 47-64

Wood, Allen, 1990, *Hegel's Ethical Thought*, Cambridge University Press

_____. 2016a, *Fichte's Ethical Thought*, Oxford University Press

_____. 2016b, 'Deduction of the Summons and the Existence of Other Rational Beings,' in *Fichte's Foundations of Natural Right: A Critical Guide*, edited by Gabriel Gottlieb, Cambridge University Press, pp. 72-91

