

THE FAMILY RIGHT FROM THE BACKGROUND OF THE FICHTEAN NATURAL RIGHT

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Abstract: The Fichtean theory of self-consciousness and recognition, published in 1796 and 1797, must be understood in terms of the mutual formation of subjects insofar as they are rational and free beings. It is for this reason that this paper criticizes Stephen Darwall's interpretation from the second person's perspective. It also reconstructs the Fichtean theory of family, suggesting evidence of the relationships of recognition that structure it. In this way there are analogies between the original situation of summons and the formative relationships at the core of the family community.

Debates about the problem of recognition almost invariably refer to the well-known master-slave dialectic described by Georg Wilhelm Friedrich Hegel in *Phenomenology of Spirit*.¹ In this paper, I consider that the concept of recognition and its implications can be explored fruitfully by returning to the original moment of pertinent developments in Johann Gottlieb Fichte's *Foundations of Natural Right*, published in 1796–1797. There, Fichte struggles with the possibility of a relationship of mutual and symmetric recognition between subjects. Since Fichte considers that recognition enables the formation of each subject's subjectivity, others thus become mediations or reflections of such subjectivity, without whom the I cannot adequately establish a relationship with him or herself. This process acquires different dimensions as the theory is developed.

The recognition of the other implicitly confirms that the I has certain capabilities that allow him or her to be constituted as a rational, free being. However, this form of recognition requires the guarantee given only by the recognition of rights, so that the I can both act and, in this way, confirm the recognition of the other's capabilities. As such, both forms of recognition are not easily integrated into Fichtean theory, for they imply different types of intersubjective relationships. Fichte considers that the recognition of capabilities implies a formative interrelation in which each subject forms him or herself via contact with another. Yet the right, which actually should be in harmony with the recognition of the capabilities of the I, ultimately establishes a purely instrumental bond between the I and other, since the recognition of the other is a guarantee only of the property and freedom of the I.

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Fichte's concept of the family right, developed in the first appendix of *Foundations of the Natural Right*, is of a peculiar sort because it is structured around a type of intersubjective relationship different from that of the relationship of summons and recognition of rights of the state. Though the relationship of recognition developed in the summons attempts to achieve the constitution of self-consciousness, which is not given previously to this relationship itself, Fichte assumes in the family right a psychological structure innate in each sex that develops in virtue of building the matrimonial community.

At the same time, the system of rights guarantees the freedom of action and property, thereby assuming universal egoism. For this reason, citizens establish legal relationships only with the instrumental goal of guaranteeing their sphere of action in the external world. Nevertheless, within this state of thought for rational egoists, Fichte postulates the existence of a community based upon altruism that prompts family members to mutually help each other to develop their subjectivity as husbands, wives, fathers, mothers, sons, and daughters. There are differences between the family and the political community of the state, despite the intimate relationships between them, insofar as family can be thought to form the background of the state as an institution ruled by it and that makes marriage possible, thus entrusting to or denying families certain actions, for example, the education of their children. At the same time, family is indispensable for state functioning to the extent that the educative relationship between parents and children enables new citizens to access the political community and thereby promote the common good by developing their capabilities.

As I show, the original recognition of the relationship of summons reappears in the family right. As a consequence, the family right is similar to the original relationship of mutual recognition, which makes self-consciousness possible, as well as occasions the loss of some rights for women that are nevertheless protected by the Constitution of the Fichteian State.

I. The Formative and Pedagogical Character of the Fichteian Theory of Recognition

The Fichteian natural right gives a central role to the recognition of the other in order to constitute self-consciousness. Fichte bases the I's subjectivity upon an intersubjective relationship with an alter ego, who summons him or her to bring himself or herself to act. In virtue of the summons (*Aufforderung*) of the other, the I can know that he or she is a rational and therefore free being. Nevertheless, the I can complete the process of becoming self-conscious once he or she has given a response to this summons and has recognized the other as a rational and equal entity. This relationship of mutual respect is ruled by the principle of right, which prescribes the mutual delimitation of equal spheres of action for the I and for the other.

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Therefore, normativity is a central moment of the relationship of mutual recognition. This has led Stephen Darwall to interpret it as a relationship structured around the respect for the normative authority of the other. In this section I will show that the type of intersubjective relationship, which is at the base of the relationship of recognition, has no ultimate aim of fulfilling some type of moral normative, even though it contains important normative elements. The reason for that is that the relationship is a pedagogical one, according to which the subjectivity of each one can be formed thanks to the contribution that the other makes through his or her confirmation.

Besides, Darwall's interpretation is of interest for this paper because it constitutes a substantive objection against the reading developed below. Darwall states that Fichte structures his theory of recognition from the second-person perspective, the reasons of which are agent relative because their validity depends on normative relationships that agents establish between themselves and on the possibility that each can give his or her reasons to the other. This circumstance implies that second-person reasons do not refer to the goodness or evil of the state of affairs in the world that exist independently of intersubjective relationships. The examples posed by Darwall thus include orders, requests, requirements, and complaints.²

Reasons based on the second-person perspective differ from those alleged to ground certain beliefs. For example, if a man has his foot on my face and I try to persuade him to remove it, then I am not addressing his actions but instead his beliefs about what consists of a reason for doing so. In this sense, I am not addressing the other as a being capable of knowing practical reasons. Instead of commanding him to take his foot from my face, I am arguing that, for example, my pain is a good reason for him to remove his foot.³ If I require the other to do so, then at the same time I attribute to myself the authority of a free, rational being, as I also do with the other, which implies that I give him other reasons to freely determine his action.⁴

Darwall defends the idea by arguing that in the Fichtean theory, legal reasons are second-person reasons, insofar as they depend on the type of relationship established between both embodiments of the I, which prescribes respect for external liberty and empowers them to demand this right.⁵ From Darwall's viewpoint, Fichte has elaborated his summons theory in these terms: the agent of the summons treats the addressee as a rational, free being, insofar as he summons him or her to emphatically behave as such. At the same time, the subject of the summons attributes to him or herself authority based upon his or her being a similar entity.⁶

In virtue of the argument developed, Darwall considers that he can reject the voluntarist interpretation of the Fichtean theory of right. This reading implies that subjects can enter into the legal community and abandon it whenever they please, given that they are free to (not) respond to the summons of the other. In accord with the voluntarist interpretation, subjects do

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not have binding reasons to (not) adopt the principle of right, meaning that we should accept the coexistence of different legal communities including only individuals mutually obliged by principles of right only in respect to those who integrate their own community, but not toward those who belong to other communities. Such a situation would conflict with the idea of the right itself, insofar as it should be applied to all rational, free beings.⁷

There is another relevant reason leading Darwall to reject the voluntarist interpretation: the requirement that once the I has recognized the other, it still does so in the future, given that otherwise it would contradict the law of agreement with oneself. If one follows the voluntarist reading of the principle of right, then one should accept the legitimacy of inconsistent behavior—for example, when a person who once recognized an other as a rational being undervalues him or her in the future.⁸

The most profound problem with the voluntarist interpretation is that it cannot offer reasons to ground the thesis that the recognition of the other produces reciprocal obligations in the future. On the contrary, Darwall argues that reading Fichtean theory in terms of the second-person perspective enables us to ground these obligations in the previous normative background, thereby leading subjects to commit to the legal relationship. In this sense, each individual promises to respect the principle of right in recognizing the other's normative authority to order him or her to respect his or her freedom.⁹ As a result, each individual responds to the normative authority of the other but does not confer it, since it precedes his or her response.¹⁰

Against the voluntarist interpretation, Darwall proposes a presuppositional reading, for he considers that the recognition of the other implies at the same time an essential component: the promise of maintaining this recognition in the future. This requires that the condition of intelligibility of the summons itself consists of a normative standing, which generates obligations from then on.¹¹ Put differently, the subject is morally obliged insofar as he or she is a mere rational force of will among others.

Darwall's interpretation is not cohesive because Fichte does not ground his idea of the recognition of the other on a previous normative order, but on the I's need for the confirmation of the other in order to know that he or she is capable of self-consciousness. Fichte considers the relationship of mutual recognition as a cooperative relationship, in which subjects accomplish their aims insofar as they help others to achieve their own aims. Given that this relationship is grounded on each one's need for developing his or her capabilities, it is a rather pedagogical relationship. In order to understand this statement, I will reconstruct below the Fichtean argumentation.

The Fichtean theory of natural right is based upon a conception of self-consciousness holding that one attributes to him or herself the capability of acting in the world. The I establishes this relationship with him or herself,

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though such is possible only if the other recognizes the I as a free and rational agent.¹²

Fichte arrives at the necessity of the recognition of the other given evidence of the impossibility of explaining the origin of self-consciousness in virtue of the subject-object relationship of theory. He pursues research on this topic in an analysis of the structure of the action, given that self-consciousness consists of attributing agency to oneself. The action has the unavoidable antecedent of imposing the aim (*Zwecksetzung*), which consists of two elements: the subject, who sees him or herself as the author of the action that he or she will execute, and the world the action will affect. Both elements of the aim have different features. On the one hand, the subject thinks him or herself as pure spontaneity, insofar as he or she can act out of absolute freedom without the influence of external causes. On the other hand, the world appears to the subject in the form of an object, consisting of a group of laws and properties that cannot be created by the subject arbitrarily. Instead, he or she must subject his or her freedom to know the world and adjust his or her action to its requirements and structure.

Fichte explores the possibility of explaining self-consciousness in light of the I's freedom, yet does not succeed since the I is finite and always determined by an object posited by him or herself and subjects his or her freedom. Fichte also cannot explain the I in light of the object insofar as the latter is the product of the freedom of the subject who posits it. Fichte consequently declares the impossibility of following these routes:

Therefore every possible moment of consciousness is conditioned by a prior moment of consciousness, and so the explanation of the possibility of consciousness already presupposes consciousness as real. Consciousness can be explained only circularly; thus it cannot be explained at all, and so it appears to be impossible.¹³

This failure leads Fichte to reconsider his whole argumentative strategy, abandoning the subject-object scheme. Fichte wonders whether the strategy can be sustained by an interpretive scheme consisting of an intersubjective relationship with another I,¹⁴ suggesting that self-consciousness is the product of a certain bond established by the I with an alter ego.¹⁵ This intersubjective relationship enables the formation of a synthetic unity between the subjects, insofar as the resultant totality exceeds each subject taken separately, though it includes both. Nevertheless, this solution is not without its difficulties.

The I needs to determine his or her freedom in order to posit an object, for the I is a finite object. However, the other as an alter ego does not have an objective character, given that in this case he or she would lose his or her subjectivity. Plus, if the other is called to provoke the realization of self-consciousness, he or she must limit the I's freedom in order to release his or her original freedom and creativity. Fichte succeeds at untying this knot by interpreting the intersubjective relationship as the other's action of

summoning the I to self-determine him or herself to act.¹⁶ This summons (*Aufforderung*) seeks the other's access to his or her self-consciousness through the conceptualization of him or herself that the other returns.¹⁷ In virtue of the summons, the other recognizes the I as an alter ego: a being as free and rational as him or herself.

Self-consciousness does not mean that the I realizes that he or she has existed previous to the moment of self-awareness, insofar that in this case one would decline into dogmatic substantialism. Such a result would be unacceptable for Fichte, who states that the I is not a substance that exists independently of mental state but instead is practical self-consciousness. Therefore, the I becomes conscious of him or herself at the moment when he or she determines to act.¹⁸ As Ludwig Siep remarks, the subject becomes self-conscious and becomes acquainted with his or her original freedom.¹⁹

Nevertheless, this deduction of self-consciousness from recognition needs proof of the other's existence in order to become free from the objection of solipsism. This argument against solipsism begins with the fact that the relationship of summons appears first as a certain configuration of natural forces that affects sensory organs. Such sensation (*Empfindung*) is perceived by the I first as a configuration either of colors and forms if it is a gesture, or of sounds if it is a phrase or statement. These natural forces appear in a certain way because they do not want to force the I to respond in a determinate way, but leave him or her free to act voluntarily. In this sense, the forces apparent in the sensation aim to offer the I the concept that the other has of him or her as a rational being to recognize him or her as such. The author of the action must thus be capable of elaborating the concept of a rational being upon deciding to act. However, such is possible only if the other is a rational being as well. In this way, Fichte considers that he succeeds in demonstrating self-consciousness: "The cause of the influence upon us has no end at all, if it does not have as its end that we should cognize it as such; thus it must be assumed that a rational being is this cause."²⁰

As a consequence of the argument, the relationship of summons is eminently pedagogical.²¹ The I thus learns that he or she is a rational, free being in virtue of the concept of him or herself conveyed by the other; that is to say, the I is taught by the other. For that reason, Fichte states that "the human being (like all finite beings in general) becomes a human being only among human beings."²²

At the same time, the other must leave a sphere of free action for him or herself; otherwise, he or she would not see him or herself as a rational being and not have the authority to recognize the I as such. This mutual delimitation of both spheres of action is the content self of the principle of right (*Rechtsatz*), which must be observed in order to preserve the relationship of mutual recognition.²³ In virtue of this homogenization of each other's spheres of action, the subjects can become individuals.

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Meanwhile, Fichte's research must deal with another problem, for the openness of the summons makes it possible that one of the subjects does not respond as expected to the summons but invades the other's sphere of free action. In other words, neither is guaranteed the right to self-determination. Fichte's argumentative strategy consists of analyzing the structure of the legal community, which implies that he assumes that the situation of summons is not a mere face-to-face encounter that can be renewed or cancelled at any moment. In this sense, once individuals become incorporated into the legal community, they commit themselves to observe the principle of right in the future in accordance with the law of "agreement with oneself" (*Einstimmigkeit mit sich selbst*).²⁴ This law requires consistency in behavior, meaning a kind of pragmatic logic, as Fichte states:

This whole unification of concepts described here was possible only in and through actions. Thus any ongoing consistency exists only in actions as well; this consistency can be required and is only required for actions. It is actions that matter here, rather than concepts; we are not concerned with concepts in themselves, apart from actions, because it is impossible to talk about them as such.²⁵

Fichte considers that, in this way, the subject's free sphere of action is shielded, which is indispensable to being recognized by the other as a free being and gaining access to his or her self-consciousness. Below, I will show that the formative character of the relationship of mutual recognition, which makes the legal relationship possible, reappears in the concept of family, which presupposes the deduction of the state and the coming into force of law.

II. The Relationships of Recognition between Family Members

The Fichtean conceptualization of the state has roots in the open character of the original situation of summons. Given that the other can respond (or not) to the invitation of the I and therefore (not) recognize him or her as a free, rational being, the I has not guaranteed his sphere of actions in the future. Though the "law of agreement with oneself" obliges those who are incorporated into the legal community, such is the case only if they wish to behave rationally, which is never certain.

For this reason, Fichte introduces a third element into the original relationship of mutual recognition that should be able to mediate disputes that could arise between the parties. This element is the state, which must guarantee subjects' spheres of actions.²⁶ Given the uncertainty of the original situation of mutual recognition, Fichte maintains the necessity of designing the state by assuming that all citizens will either be or become egoists.²⁷ In this way, Fichte operates with the motivational assumption of self-interest (*Eigenliebe*), which implies that each individual will subordinate his or her own interest only if in return he or she receives from the state the guarantee

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of personal property and freedom. Moreover, it will be necessary for the other to do so or else compromise his or her own capacity of agency.²⁸

Unlike the applied right, the intersubjective relationship established in the context of the family right developed in the first appendix of *Grundlage des Naturrechts* has similarities with the situation of summons interpreted as a form of relational freedom. Family right has a different status in respect to the rest of Fichtean juridical theory, for family is conceived as a community grounded in love and altruism within the framework of a state designed for egoist citizens.

Family right is a particular type of juridical relationship because marriage is not a legal community similar to the state, since it is not a community structured on consensual laws.²⁹ On the contrary, marriage is grounded on spouses' biological and psychological impulses that exist previous to their legal regulation. The family right is then articulated around this previous community and rules members' rights on behalf of the ultimate natural goal of marriage.³⁰

Fichte structures the identity of sexes around the type of impulse that characterizes them. Male sexual drive is the active principle of human procreation, while female sexual drive strives for the reception and passive care of an embryo implanted by a male.³¹ The active role of male sexual drive is also compatible with human reason, which has an active character. Yet, such is not the case with female sexual drive, which is passive. Therefore, women seem forced by nature to hide from themselves the very nature of their sexual drive and reform it as an active drive,³² meaning that they experience their sexual drive in a camouflaged way: as the desire to love men.³³ As a consequence, women show a deep-seated tendency to take care of the needs of men and children. Thus love has, in turn, moral content, for it implies the overcoming of human egoism and an orientation toward others' needs.³⁴

Whereas a woman is motivated by love toward a man, the latter is motivated by magnanimity, which drives him to take care of the woman's needs in order to win her heart and esteem.³⁵ The love of the woman toward the man and his magnanimity toward her are the basis of conjugal tenderness, in which both parties take care of the other's well-being.³⁶ The transition from nature to reason is thus possible only within the framework of the marital community, because spouses can develop their correspondent virtues and, indirectly, the virtue of the other through this intersubjective relationship.³⁷

That is to say that each sex can construct his or her own identity in virtue of the confirmation or recognition which he or she receives from the other. Therefore, the freedom of spouses to develop their own identity has a relational character, because it is possible thanks to the mediation of intersubjectivity. It is within this framework of relationships that each member of the matrimonial community acts cooperatively, aiming at enabling the other to realize his or her subjectivity. This relational style presupposes that both

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spouses are necessary to the other, so that each of them plays an indispensable role and has the same relevance.

The relationship of mutual recognition that occurs between spouses does not correlate with the way in which that community is included in the state's legal system. Fichte states that the woman, given her moral psychology, will not want to assert her own civil and property rights but do so as mediated by the man.³⁸ At the same time, her unconditional surrender to the man prevents her from working as a public servant, given that in this case she should be responsible for her own actions. Furthermore, she should theoretically promise to remain unmarried throughout her life.

Therefore, marriage excludes the mutual recognition of rights in terms of spheres of actions, insofar as the woman resigns her property and liberty to the man. Nevertheless, Fichte retains a certain degree of freedom for a woman, inasmuch as she can wed only upon freely consenting to the act and, in case she is not in love with her husband anymore, has the right to divorce. Even though this right is based upon the ideal of romantic love endorsed by Fichte, it has an intimate relationship with the structure of reciprocal recognition central to the matrimonial community. This type of intersubjective relationship is analogous to the original relationship of summons and, by contrast, not in regard to the principle of right. A basic feature that makes this correlation possible is the requisite that spouses enter voluntarily into the relationship, which corresponds to the I's freedom to (not) become incorporated into the community of reciprocal recognition that makes self-consciousness possible.

The dynamic of matrimony itself, which rests on the wife's search for an object of love in the person of her husband amid his quest to be worthy of her love, requires that marriage not be the result of any form of constraint or arrangement. The Fichtean state therefore must protect the freedom of future spouses in the act of marriage.³⁹ However, such prohibition extends not only to the moral and/or psychological constraints that could be exerted by parents upon their daughter to persuade her to accept a particular man, for whatever reasons. This prohibition is a type of moral violence, insofar as the parents want to suppress their daughter's autonomy to make her useful for their own ends. From Fichte's viewpoint, it is a type of violence that is more harmful than the physical type because it seeks the perversion of the young girl's moral character itself.⁴⁰ For this reason, Fichte defends the intervention of the state to take away the guardianship of the daughter in these cases, until she is in a position to wed voluntarily. However, given that the daughter is used to obeying her parents, she will hardly denounce them. Consequently, the state is entitled to intervene on its own initiative.⁴¹

Since marriage is based upon the free decision of spouses, the state cannot intervene in their private sphere and force them to be mutually loyal to their commitment, for such would undermine the very grounds of marriage. Neither can the state punish adultery. As a result, it must tolerate the

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reasons why a woman marries, whether those be financially motivated or of some other kind. A man is also free to marry a woman who neither respects nor loves him. Both can abandon the development of morality and reduce themselves to the level of animals, while the state remains unentitled to intervene in any way.⁴²

Yet Fichte does not conceive of the conjugal relationship as a mere bond of mutual formation out of the free decisions of the members. He does not conceive of the relationship between parents and children as such either. Hence, he rejects the interpretation making children the property of their parents, insofar as they are the products of their procreation.⁴³ Fichte conceives the roles of the father and mother in light of the previous characterization of the genders.

The mother forms an organic relationship with her child during gestation. However, this bond does not consist only of mere mechanical processes (e.g., nourishing the embryo via the umbilical cord); instead, the mother is conscious of this connecting link. For this reason, as the embryo grows, the mother can intentionally develop the drive to love her child. Over time, the mother's drive to take care of her son or daughter becomes compassion, namely for the experience of the other's need as if it were her own.⁴⁴ The child allows his or her mother to develop her feminine identity, which constitutes her as a subject capable of loving others. The mother needs this bond as well as the marital one in order to become a fully formed person. This formation nevertheless occurs out of her conscious, free decision.

Though the man has a natural drive to care for weaker, deprived individuals, the drive is undifferentiated; it is not addressed only to his son or daughter in particular, for the paternal role in this process is purely active. The father can develop an attitude of care toward his children in virtue of the bond previously established with the mother during gestation.⁴⁵ That means that the father succeeds at playing his role by means of the love he feels for his wife, which leads him to make her aims his own, among them the care for her child. This is in turn possible because the wife recognizes him as a being worthy of love. In this way, the relational structure that makes the subjectivity of each one possible, by means of the recognition of the other, reappears and brings reminiscences of the situation of summons.

Ultimately, the parents' role is thus to shape their children into rational beings and, in turn, free persons. After all, parents recognize their children as such insofar as they summon them to determine themselves to act, thereby treating a child as an alter ego. With this primordial purpose, parents give their children all of the necessary means to enable themselves to behave as free agents. These means span from nourishment to education in the widest range of skills, which will make their children's achieving diverse aims in the future possible. Perhaps the most important of these skills is the child's ability to avoid certain actions and situations that could endanger his or her

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life.⁴⁶ But above all, the parents give their son or daughter the concept of him or herself as a rational and free being. As a result, they summon him or her to determine his or herself to act, giving him or her the opportunity to become conscious of him or herself as a human being. Thus, the relationship between the parents and their child is shaped by the cooperative process of mutual recognition, which was already present in the original situation of summons.

To return to the relationship of mutual recognition that makes self-consciousness possible, it can be concluded that the relationship is structured so that each subject can constitute him or herself as such as long as an other conveys to him or her the idea that he or she is a rational, free being. Considering the intersubjective relationships that knit the structure of the family community, each member can develop his or her identity as long as the others return to each his or her confirmed image as husband, wife, mother, father, son, or daughter.

In this sense, only if the husband is loved by his wife can he develop the virtue of magnanimity and thereby feel worthy of being loved. By contrast, the wife cannot develop the virtue of love—the core of feminine identity—unless she has a magnanimous man worthy of loving. In the same way, children cannot develop their identities as free, rational beings if their parents do not recognize them as such and do not invite them to determine themselves to act.

Therefore, the family right is at a particular crossroads. It makes the recognition of capabilities possible: the members of the family can develop their specific identities in virtue of the recognition that they receive from the other members. That is exactly the achievement of the original relationship of summons, which forms the basis of every human relationship. However, the family community prohibits the recognition of the rights to property and freedom, for they become privileges in the hands of the father as the head of the family.

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Notes

This paper went through editorial review under the previous editor.

1. Georg Wilhelm Friedrich Hegel, *Phänomenologie des Geistes* (Hamburg: Meiner, 1988), 120–36.

2. Stephen Darwall, “Fichte and the Second-Person Standpoint,” *Internationales Jahrbuch des Deutschen Idealismus* 3 (2005): 95.

3. *Ibid.*, 104–05.

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4. Ibid., 105; Stephen Darwall, *The Second-Person Standpoint: Morality, Respect, and Accountability* (Cambridge, Mass.: Harvard University Press, 2006), 248.

5. Darwall, "Fichte and the Second-Person Standpoint," 96.

6. Ibid., 105.

7. Ibid., 109.

8. Ibid.

9. Darwall, *The Second-Person Standpoint*, 252.

10. Darwall, "Fichte and the Second-Person Standpoint," 110–11.

11. Ibid., 110.

12. Johann Gottlieb Fichte, *Foundations of Natural Right*, ed. Frederick Neuhouser, trans. Michael Baur (Cambridge: Cambridge University Press, 2000), 31; Johann Gottlieb Fichte, *Grundlage des Naturrechts nach Prinzipien der Wissenschaftslehre* (Jena: Christian Ernst Gabler, 1796/1797). It is quoted according to *Johann Gottlieb Fichte: Gesamtausgabe der Bayerischen Akademie der Wissenschaften*, ed. Reinhard Lauth and Hans Jacob (Stuttgart-Bad Cannstatt: Frommann Verlag, Günther Holzboog, 1966), with the volume and page number. Here: GA, 1, 3, 342.

13. Fichte, *Foundations of Natural Right*, 29–30; "[I]st jeder mögliche Moment des Bewusstseins, durch einen vorhergehenden Moment desselben, bedingt, und das Bewusstseyn wird in der Erklärung seiner Möglichkeit schon als wirklich vorausgesetzt. Es lässt sich nur durch einen Zirkel erklären; es lässt sich sonach überhaupt nicht erklären, und erscheint als unmöglich" (Fichte, *Grundlage des Naturrechts nach Prinzipien der Wissenschaftslehre*, 1, 3, 340).

14. Juergen Stolzenberg, "Fichtes Begriff des Praktischen Selbstbewusstseins," in *Fichtes Wissenschaftslehre, 1794: Philosophische Resonanzen*, ed. Wolfram Hogrebe (Frankfurt: Suhrkamp, 1995), 80.

15. Fichte, *Foundations of Natural Right*, 31; Fichte, *Grundlage des Naturrechts nach Prinzipien der Wissenschaftslehre*, 1, 3, 342.

16. Fichte, *Foundations of Natural Right*, 32; Fichte, *Grundlage des Naturrechts nach Prinzipien der Wissenschaftslehre*, 1, 3, 342.

17. Fichte, *Foundations of Natural Right*, 33; Fichte, *Grundlage des Naturrechts nach Prinzipien der Wissenschaftslehre*, 1, 3, 343. Katja Crone describes the situation of summons as a dialogue; see Katja Crone, *Fichtes Theorie Konkreter Subjektivität: Untersuchungen zur "Wissenschaftslehre Nova Method"* (Göttingen: Vandenhoeck & Ruprecht, 2005), 142.

18. Fichte, *Foundations of Natural Right*, 31; Fichte, *Grundlage des Naturrechts nach Prinzipien der Wissenschaftslehre*, 1, 3, 343.

19. Ludwig Siep, *Anerkennung als Prinzip der Praktischen Philosophie: Untersuchungen zu Hegels Jeaner Philosophie des Geistes* (Munich: Alber, 1979), 29.

20. Fichte, *Foundations of Natural Right*, 37; "Die Ursache der Einwirkung auf uns hat gar keinen Zweck, wenn sie nicht zuvörderst den hat, dass wir sie als solche erkennen sollen; es muss daher ein vernünftiges Wesen als diese Ursache angenommen werden. Es

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ist jetzt erwiesen, was erwiesen werden sollte” (Fichte, *Grundlage des Naturrechts nach Prinzipien der Wissenschaftslehre*, 1, 3, 347).

21. See Edith Düsing, *Intersubjektivität und Selbstbewusstsein: Behavioristische, Phänomenologische und Idealistische Begründungstheorien bei Mead, Schütz, Fichte und Hegel* (Köln: Verlag für Philosophie Jürgen Dinter, 1986), 259.

22. Fichte, *Foundations of Natural Right*, 37; “Der Mensch (so also endliche Wesen überhaupt) wird nur unter Menschen ein Mensch” (Fichte, *Grundlage des Naturrechts nach Prinzipien der Wissenschaftslehre*, 1, 3, 347).

23. Fichte, *Foundations of Natural Right*, 48–49; Fichte, *Grundlage des Naturrechts nach Prinzipien der Wissenschaftslehre*, 1, 3, 358.

24. Fichte, *Foundations of Natural Right*, 45; Fichte, *Grundlage des Naturrechts nach Prinzipien der Wissenschaftslehre*, 1, 3, 354. Fichte speaks about this law too in terms of “Consequenz.” Cf. Wolfgang Bartuschat, “Zur Deduktion des Rechts aus der Vernunft bei Kant und Fichte,” in *Fichtes Lehre vom Rechtsverhältnis: Die Deduktion der §§1–4 der Grundlage des Naturrechts und ihre Stellung in der Rechtsphilosophie*, ed. Michael Kahlo, Ernst A. Wolff, and Rainer Zaczek (Frankfurt: Vittorio Klostermann), 187.

25. Fichte, *Foundations of Natural Right*, 45; “Die ganze beschriebene Vereinigung der Begriffe war nur möglich in und durch Handlungen. Die fortgesetzte Consequenz ist es daher auch nur in Handlungen: kann gefordert werden, und wird nur gefordert für Handlungen. Die Handlungen gelten hier statt der Begriffe: und von Begriffen an sich, ohne Handlungen, ist nicht die Rede, weil von ihnen nicht die Rede seyn kann” (Fichte, *Grundlage des Naturrechts nach Prinzipien der Wissenschaftslehre*, 1, 3, 355).

26. Fichte, *Foundations of Natural Right*, 136–37; Fichte, *Grundlage des Naturrechts nach Prinzipien der Wissenschaftslehre*, 1, 3, 436.

27. Fichte, *Foundations of Natural Right*, 273; Fichte, *Grundlage des Naturrechts nach Prinzipien der Wissenschaftslehre*, 1, 4, 69.

28. Fichte, *Foundations of Natural Right*, 126–27; Fichte, *Grundlage des Naturrechts nach Prinzipien der Wissenschaftslehre*, 1, 3, 426.

29. Fichte, *Foundations of Natural Right*, 264; Fichte, *Grundlage des Naturrechts nach Prinzipien der Wissenschaftslehre*, 1, 4, 95.

30. Isabel V. Hull, *Sexuality, State, and Civil Society in Germany, 1700–1815* (Ithaca, N.Y.: Cornell University Press, 1996), 319. Fichte synthesizes in his theory of marriage its legal moment, which has Kantian roots, and the moment of affective bonds constituted by mutual care, later developed by Hegel following the dichotomy mentioned by Axel Honneth, “Between Justice and Affection: The Family as a Field of Moral Disputes,” in *Privacies: Philosophical Evaluations*, ed. B. Rössler (Stanford, Calif.: Stanford University Press, 2004), 153–59.

31. Fichte, *Foundations of Natural Right*, 265–66; Fichte, *Grundlage des Naturrechts nach Prinzipien der Wissenschaftslehre*, 1, 4, 97. David Archard points out that these fragments invoke the patriarchal metaphor of men as the seed and women as the field; see David Archard, “Family Law (First Annex),” in *Johann Gottlieb Fichte, “Grundlage des Naturrechts,”* ed. Jean-Christophe Merle (Berlin: Akademie Verlag, 2001), 190. Regarding the political consequences of this metaphor, see Hannelore Schröder, *Die Rechtlosigkeit der Frau im Rechtsstaat: Dargestellt am Allgemeinen Preussischen Landrecht, am*

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Bürgerlichen Gesetzbuch und an J. G. Fichtes Grundlage des Naturrechts (Frankfurt: Campus Verlag, 1979), 96.

32. If Fichte states in §5 of *Foundations of Natural Right* that the body is a condition of self-consciousness, since the appendix addressing family law shows that organic nature requires gender difference to enable the propagation of the species, then gender difference is a condition of self-consciousness, too; see Marion Heinz and Friederike Kuster, “‘Vollkommene Vereinigung’: Fichtes Eherecht in der Perspektive Feministischer Philosophie,” *Deutsche Zeitschrift für Philosophie* 46(5) (1998): 834.

33. Fichte, *Foundations of Natural Right*, 269; Fichte, *Grundlage des Naturrechts nach Prinzipien der Wissenschaftslehre*, 1, 4, 100. See Archard, “Family Law (First Annex),” 188. As Heinz and Kuster point out, in this way the woman becomes a means to the man’s aims; see Heinz and Kuster, “‘Vollkommene Vereinigung,’” 833–34.

34. Fichte, *Foundations of Natural Right*, 269–70; Fichte, *Grundlage des Naturrechts nach Prinzipien der Wissenschaftslehre*, 1, 4, 100.

35. Fichte finishes his letters to Johanna Rahn with elliptical allusions to his feelings, yet without ever expressing his love to her, while she is always very clear about the feelings she has for him. Rahn repeatedly refers to the love that she feels for Fichte, which thus serves as a substitute for the written expression of his love, meaning that he refers to his own flaws, which are compensated by his love. See Karen Kenkel, “The Personal and the Philosophical in Fichte’s Theory of Sexual Difference,” in *Impure Reason: Dialectic of Enlightenment in Germany*, ed. W. Daniel Wilson and Robert C. Holub (Detroit: Wayne State University Press, 1993), 285.

36. Fichte, *Foundations of Natural Right*, 272–73; Fichte, *Grundlage des Naturrechts nach Prinzipien der Wissenschaftslehre*, 1, 4, 103. Within a totally different conceptual and political framework, Mary Wollstonecraft also conceives of conjugal tenderness as a kind of friendship, according to which spouses form each other and mutually help one another to build their intimacy. From Wollstonecraft’s viewpoint, love is a mere transitory drive that aids preliminary searches for partners and the person’s perseverance in the search during uncertain times. Nevertheless, once marriage has settled, Wollstonecraft states that love must be replaced by an adult friendship between spouses; see Mary Wollstonecraft, *A Vindication of the Rights of Woman* (London: Penguin, 1992), 113.

37. Fichte, *Foundations of Natural Right*, 272–73; Fichte, *Grundlage des Naturrechts nach Prinzipien der Wissenschaftslehre*, 1, 4, 104–05. As Barbel Frischmann states, Fichte can understand sexual intercourse as a moral act because he assumes the possibility of either the response to sexual drive experienced by each member or its absence; see Barbel Frischmann, “Fichte’s Theory of Gender Relations in His Foundations of Natural Right,” in *Right, Bodies and Recognition: New Essays on Fichte’s Foundations of Natural Right*, ed. Daniel Breazale and Tom Rockmore (Hampshire: Ashgate, 2006), 154.

38. Fichte, *Foundations of Natural Right*, 297–98; Fichte, *Grundlage des Naturrechts nach Prinzipien der Wissenschaftslehre*, 1, 4, 129.

39. Fichte, *Foundations of Natural Right*, 275–76; Fichte, *Grundlage des Naturrechts nach Prinzipien der Wissenschaftslehre*, 1, 4, 107.

40. Fichte, *Foundations of Natural Right*, 277; Fichte, *Grundlage des Naturrechts nach Prinzipien der Wissenschaftslehre*, 1, 4, 108.

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41. Fichte, *Foundations of Natural Right*, 277–78; Fichte, *Grundlage des Naturrechts nach Prinzipien der Wissenschaftslehre*, 1, 4, 109.
42. Fichte, *Foundations of Natural Right*, 285–87; Fichte, *Grundlage des Naturrechts nach Prinzipien der Wissenschaftslehre*, 1, 4, 117–18.
43. Fichte, *Foundations of Natural Right*, 306; Fichte, *Grundlage des Naturrechts nach Prinzipien der Wissenschaftslehre*, 1, 4, 137.
44. Fichte, *Foundations of Natural Right*, 306–07; Fichte, *Grundlage des Naturrechts nach Prinzipien der Wissenschaftslehre*, 1, 4, 137.
45. Fichte, *Foundations of Natural Right*, 307–10; Fichte, *Grundlage des Naturrechts nach Prinzipien der Wissenschaftslehre*, 1, 4, 139–40.
46. Fichte, *Foundations of Natural Right*, 309–10; Fichte, *Grundlage des Naturrechts nach Prinzipien der Wissenschaftslehre*, 1, 4, 140–41.