

Fichte's Voluntarism

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Abstract: In recent work Stephen Darwall has attacked what he calls J. G. Fichte's 'voluntarist' thesis, the idea—on Darwall's reading—that I am bound by obligations of respect to another person by virtue of my choice to interact with him. Darwall argues that voluntary choice is incompatible with the normative force behind the concept of a person, which demands my respect non-voluntarily. He in turn defends a 'presuppositional' thesis which claims that I am bound by obligations of respect simply by recognizing the other as a person. In this paper I argue Darwall has misidentified the voluntary element in Fichte's account (sections 4–5). This requires me first to explain what Fichte's voluntarism really consists in (sections 1–3), and I suggest an apparent ambiguity in Fichte's position is responsible for Darwall's misreading. Clarifying this ambiguity, however, exposes some limitations to Darwall's thesis, and I end by discussing what those limitations are and what we can learn from them (sections 6–8).

1. Two Kinds of Recognition

Fichte's aim in the first Main Division of the *Foundations of Natural Right* is to show that the concept of right ('limit your freedom through the concept of the freedom of all other persons with whom you come in contact') is a basic condition of self-consciousness.¹ In this way Fichte's aim is not—or not merely—to outline the irreducibly social origins of the individual. More ambitiously, he wants to outline this origin in terms that reveal our ongoing dependence on law-governed relations, or relations of right, with other individuals. What makes his project unique is that he tries to derive relations of right, not from the spontaneous act of giving ourselves the law (what Kant calls 'autonomy'), but from a more general capacity to determine ourselves by an end (what Fichte calls 'free efficacy'). The key to this project turns on his provocative notion of the 'summons' (*Aufforderung*), the idea that, lacking a pre-existing capacity for self-determination, we require an external being to 'summon' or 'call' us to determine ourselves.²

However, it is not clear in Fichte's account how our recognition of the summons grounds enduring relations of right. This will be the central focus of my essay. For the most part Fichte speaks of recognition in its 'active' mode. He often says the summoner must act on me in such a way as to preserve my freedom, and that I must display my recognition of this treatment by

reciprocating it, i.e. by *acting* on the other in a way respectful of his or her freedom. He says, 'I can expect a particular rational being to recognize me as a rational being, only if I myself treat him as one', and a few lines later he states that the condition on which I recognize another is '*not* that I merely grasp the concept of another as a rational being, but *rather* that I actually *act* in the sensible world' (Fichte 2000: 42; SW 45; translation modified). To show the other I recognize his status as free and rational, I must make my rationality intelligible to him. I accomplish this by *treating* him as a free and rational being.

To complicate matters, Fichte introduces a second kind of recognition in theorem three of the first Main Division. Oddly, this type of recognition seems to have a wholly passive function. He tells us, for example:

The rational being's activity is by no means to be determined and necessitated by the summons in the way that—under the concept of causality—an effect is determined and necessitated by its cause; rather, the rational being is to determine itself in consequence of the summons. But if the rational being is to do this, it must first understand and comprehend the summons, and so it is dependent on some prior cognition [*Vorhergehende Erkenntnis*] of the summons. Thus the external being that is posited as the cause of the summons *must at the very least presuppose* the possibility that the subject is capable of understanding and comprehending; otherwise its summons to the subject would have no purpose at all. (Fichte 2000: 35; SW 36; my emphasis)

Two interesting points emerge here. First, I must have the minimal cognitive competence to understand the other's invitation ('exercise your rational efficacy'); otherwise, the invitation would be incomprehensible and so ineffective in shaping my self-consciousness. My *initial* recognition of the summons must be prior to my *active* recognition of the other. Second, the summoner must have a prior notion of me; he must presuppose I am capable of understanding him. If he didn't, his summons would lack purpose. This also implies that the other's initial recognition of me must be prior to his act of summoning. Understood along these lines, then, the notion of 'prior cognition' is a necessary outcome of working through the intelligibility conditions of the summons. The other must assume my proto-rationality in order to call on me as a second-person; and I must assume the other's proto-rationality in order to acknowledge this call.

Later in theorem three Fichte calls this assumption '*problematische*'. Here he argues that 'the individual cannot have acted upon me in the described manner without, at least problematically, having recognized me; and I cannot posit him as acting upon me in this way without positing that he recognizes me, at least problematically' (Fichte 2000: 44; SW 46; translation modified). To this he adds: 'Everything that is problematic becomes categorical when the condition is supplied' (Fichte 2000: 44; SW 46). As we find out, the condition is precisely what Fichte means by action-based recognition. 'The condition', he tells us, is 'that I recognize the other as a rational being (and do so in

a manner that is valid for both *him* and *me*), i.e. that I should *treat* him as a rational being—for *only in action does there exist a recognition valid for both* [*denn nur Handeln ist ein solches gemeingültiges Anerkennen*] (Fichte 2000: 44; SW 47; his italics).

Fichte then brackets the question of what justifies such an action. His first aim is to work through the implications of active recognition on the assumption that it has already occurred. This leads him to a more substantial formulation of the concept of right. By virtue of respecting my sphere of freedom, the other displays his capacity to regulate his own conduct by an end: in this case, the end of communal activity. And by responding to his conduct, i.e. by respecting *his* sphere of freedom, I likewise display my capacity to regulate myself by an end. In reciprocally willing the end of communal activity, we thereby bind ourselves to its means—namely, that of respecting each other's spheres of freedom. Action-based recognition is 'categorical' in this sense. The idea, I take it, is that by adopting mutual interaction as the end of our conduct, we each bind ourselves to a law of reason, the law of means-end consistency.³ Faced with this established law, we can both justify our expectation that in all future engagements we will recognize (and so respect) each other as rational beings. Moreover, we can now *demand* this consistency from each other by appealing to the norm established between us (Fichte 2000: 48; SW 52). We can each claim to have, with respect to this norm, a *right* to be recognized.

2. The Question of Justification

A dilemma now starts to surface. Fichte's attempt to work through the intelligibility conditions of the summons leads him to distinguish between two kinds of recognition, passive and active, but he can only derive substantive norms of second-personal respect from the latter. As I mentioned above, he temporarily brackets the question of *what justifies* the transition from my merely problematic (or passive) recognition of the other to my categorical (or active) recognition of him. By presupposing this transition has already occurred, he can work out the necessary conditions leading to the principle of right. If individuals have already acted on one another rationally, they are to that effect bound to the norm of consistency. So Fichte can establish the actual bindingness of right (our obligation to limit our freedom so as to respect each other's freedom) on the assumption that we have previously adopted the end of rational conduct. But this sidesteps a deeper question: the *question of justification*. Why should I elect to enter into community with others in the first place?

Fichte does not address this question until the second Main Division, where his aim is to offer a 'proof' that the principle of right can be applied through the concept of reciprocal recognition (Fichte 2000: 79; SW 85). The question arises in §7 of theorem five where Fichte asks how a community of free individuals is possible. Here he restates the claim that at the basis of 'voluntary chosen reciprocal interaction among free beings', there is a deeper 'original and

necessary reciprocal interaction among them' (Fichte 2000: 79; SW 85). This deeper reciprocity is what he called problematic recognition in theorem three. By now calling it 'necessary', Fichte wishes to underline that its force as a norm is independent of one's choice. As he goes on to argue, it is the rational being's 'mere presence' in the world which 'compels every other free being, without qualification, to recognize him as a person' (Fichte 2000: 79; SW 85). If I understand him correctly, the idea is that before I can actively engage with another I must first represent him as a potential bearer of rights. The other's body, his sensible appearance, is sufficient for this.⁴ For my part, I provide the sensible appearance of rational agency to the other, who then forms a concept of me as rational and so as free. By way of these appearances, we achieve what Fichte calls 'common cognition' (*gemeinschaftliche Erkenntnis*) (Fichte 2000: 79; SW 85). But the scope of our obligations is limited at this point. My problematic recognition of the other *forces* me to respond to him, though the content of this response is open. In the context of the original summons, I can respond to the other in one of two ways: (a) either by *acting* in general, or (b) by *not acting* at all. Even my resistance to act, Fichte tells us, displays my understanding of the summons (Fichte 2000: 33; SW 31). The summons demands a response from me, any response, but this demand does not inaugurate social relations grounded in the principle of right.

At this juncture Fichte offers a curious line of argument. He says that if individuals consistently aligned all their beliefs and choices with the mere concept of each other's rational agency, they would necessarily treat one another according to laws of right. They would 'not be able to affect one another arbitrarily', i.e. they would not be able to treat one another as mere objects, on pain of inconsistency. Unfortunately, this reasoning does not get us very far. Fichte can only generate obligatory treatment of respect between individuals on a hypothetical condition. Only *if* individuals align their actions with the mere concept of one another are they bound to act consistently with that concept. What's missing here is the justification of *why* individuals should do this in the first place. Why should I enter into reciprocal interactions with another? On what grounds should I make this decision? The problematic concept I have of the other does not suffice, since it only gets me as far as common cognition. But to have a real *community* of free beings we need something more: the bindingness of rational consistency established through active recognition. Here we reach a justificatory gap. Even if we assume, for Fichte's sake, that consistency of action can ground the concept of respect, this foundation only acquires normative force once individuals have voluntarily willed to enter into community with each other.

3. An Apparent Ambiguity

What we have, then, is an ambiguity in theorem five. The ambiguity concerns Fichte's reduction of two distinct questions:

1. The Question of Entrance: Why should I *enter* into community with another?
2. The Question of Consistency: Why should I act consistently in *community* with another?

Notice that the need for justification applies differently to each.

On the one hand, the justification for the Question of Consistency is already established by rational action. Once individuals have willed reciprocal activity as an end, they are to that effect bound to the means of that end: mutual respect. The bindingness itself is one of rational consistency, which is to say: (i) if I adopt the end of community with another, and (ii) if I am rational, then (iii) I will adopt the necessary means to that end (i.e. I will respect the other's freedom). Assuming for the sake of discussion that 'consistency' is a coherent notion, we needn't look for a deeper justification to the question 'Why be consistent?' once active reciprocal recognition has occurred, since that consistency is built into the means-end relationship. On the other hand, we can't justify an individual's decision to *enter* into community by appealing to the norm of consistency, since that norm takes effect (if it does take effect) only *after* the decision has occurred. Nothing internal to the individual's problematic recognition of the other obligates him to adopt active relations with him. He is under no requirement to adopt communal activity as an end. So the need for justification only pertains to the Question of Entrance.

Strangely, Fichte at times suggests the need pertains to the Question of Consistency too. This creates some confusion in his account because he uses 'consistency' in senses that encompass both the Question of Entrance and the Question of Consistency proper. The first sense is what we might call *consistency of expectation*, i.e. the consistency of respect individuals can hope to receive from one another once they have engaged in communal activity. The second sense is *consistency of choice*, i.e. the consistency between one's problematic recognition of the other and one's voluntary choice to act in accordance with that recognition. Here the missing justification in consistency of choice is the very choice in question. In the case of communal consistency, we can refer the individual who asks, 'Why should I consistently respect another's freedom?' to the law of rationality to which his original decision bound him. But to where do we refer an individual who has yet to make this decision? Someone may be summoned by another, but without actively responding to this summons, he is under no obligation to adopt the end of community with his summoner. Of course, if he now responds back to the summoner in a manner displaying his rationality we can say he is acting 'consistently' with his concept of him. But we cannot uncover a legitimating condition *internal* to the decision itself. Put simply: we cannot say his choice was necessary.

Fichte sometimes blurs these distinctions.⁵ At one point in theorem five he writes: 'It is not possible to provide an absolute reason why the rational being should be consistent and why it, in consequence of this, should adopt the law that has been established' (Fichte 2000: 80; SW 88). Now this is misleading, because if the law 'has been established', which can only mean that active

reciprocal recognition has occurred, there is no need to raise the question of justification. But the need does arise prior to this. Fichte is more on track when he refers to the individual's election to enter into community rather than his post-elective obligations. 'It is not possible', he writes, 'to point to an absolute reason why someone should make the formula of right—limit your freedom so that the other alongside you can also be free—into a law of his own will and actions' (Fichte 2000: 82; SW 89). Admittedly, these passages are in tension, and it is hard to locate Fichte's true position regarding them. At times it seems Fichte is attracted to the idea of a normative continuity from problematic to categorical recognition, for that continuity would allow him to ground substantive norms of common *willing* directly from the necessary conditions of common *cognition*. In §6 of the fifth theorem, for example, he says the 'original relation' between individuals 'is already a reciprocal interaction' (Fichte 2000: 69; SW 74), which suggests the bindingness of rational consistency only becomes explicit in the *actions* between individuals but is somehow operative in their initial *recognition* of each other.

Now this would be a good strategy of argument—if it could be pulled off. The fact that Fichte restricts obligations of respect to individuals engaged in mutual activity renders the notion of an implicit normative law empty. After establishing reciprocal activity with another, I can say we have achieved a common will to respect one another's freedom that is 'consistent' with our common cognition of each other. And for the sake of discussion, I can now justify my expectation that this person will respect me in all our future engagements, since by jointly manifesting our rationality in a particular expression of respect we've bound ourselves to the general character of reason. Granting all this, I still cannot appeal to the norm of ends-mean consistency in trying to explain what *originally* moved me to enter into community with the other, because that norm only acquires its force in light of our common willing. The most the idea of deeper continuity can offer Fichte is a type of *explanatory continuity* between transcendental conditions and normative principles. It cannot yield *justificatory* or *normative continuity*.⁶

Part way through theorem five Fichte seems to abandon his desire for the latter. He admits we cannot posit a necessary connection between problematic and categorical recognition, which is to say: we cannot declare, on the basis of common *Erkenntnis*, why individuals ought to engage in common *Wollen*. This is the push behind his claim that the justification of a rational community is '*hypothetischer*'.

This much is clear: a community of free beings as such cannot exist if each is not subject to this law [of right]; and therefore, whoever wills such a community must also necessarily will the law; and thus the law has hypothetical validity. *If* a community of free beings as such is to be possible, then the law of right must hold. (Fichte 2000: 82; SW 89)

Fichte makes a related claim in the Introduction: '[I]t is necessary that every free being assume [problematically] the existence of others of its kind outside

itself, but it is not necessary that they all continue to exist alongside another as *free beings*, which means: 'the thought of such a community and its realization is something arbitrary or optional [*willkürliches*]' (Fichte 2000: 10; SW 9). One might point out that if the only notion of community we can derive from the conditions of self-consciousness is hypothetical, then those conditions do not ground my active recognition of the other. The notion of a hypothetical community only requires my passive recognition, which is non-voluntarily. It requires that I adopt the principle of right if, and only if, I elect the end of community. It doesn't say I *ought* to elect that end.

But wasn't this what Fichte initially set out to establish? Has he simply changed his mind? Remember in the first Main Division he said that standing in a particular relation of right to another is a necessary condition for self-consciousness. Now in the second Main Division he says forming relations with another is entirely up to one's arbitrary choice. What are we to make of this? Here the philosophical literature is in tension. Fredrick Neuhausser, for example, takes up a 'modificationist' reading, arguing that these two claims are in conflict and that Fichte, upon realizing this, subsequently modified his account. On this reading, Fichte's initial attempt to deduce the necessity of the principle of right from the transcendental conditions of self-consciousness was too ambitious. Realizing the deduction does not yield a strong normative principle with which to ground the concept of right, Fichte changed his view in §7 of the fifth theorem, arguing instead for the hypothetical validity of the rational community. 'Fichte modifies his earlier position', Neuhausser writes, 'maintaining only that an original summons from another rational being is necessary for self-consciousness, not enduring relations of right' (Neuhausser 2000: xix). However, the modification seems to compromise the entire project of the *Foundations*, since, as Neuhausser points out, it raises the question of how 'the concept of right can be claimed to be an a priori concept of reason rather than an arbitrary human invention' (Neuhausser 2000: xix).

More recently, Paul Franks has offered a 'reconciliationist' reading, arguing for an *isomorphism* between the transcendental and the normative' in Fichte's account (Franks 2005: 323). Franks explains that for Fichte it is not the case that transcendental conditions of self-consciousness 'contain' the normative principles of right—and so the former cannot be used to justify the reality of the latter. Rather, once individuals adopt common willing as an end, they instantiate the necessary means for such an end (the principle to respect each other's freedom) in such a way that is isomorphic with their original recognition of each other. The normative principle of right, therefore, exhibits the *same structure* as its a priori conditions of possibility—and so the latter 'justifies' the former. On the reconciliationist reading, Fichte does not modify his initial attempt to deduce the concept of right from the conditions of self-consciousness. Rather, his deduction proceeds in two phases. First, he establishes the necessary (and normatively weak) conditions of self-consciousness in relation to the subject's passive recognition of the summons. And second, he establishes the voluntary (and normatively strong) conditions of right in relation to active reciprocal

recognition. By showing that active recognition is isomorphic with passive recognition, Fichte can justify the former through the latter and thereby establish a normative (though non-linear) continuity between the two.

4. Fichte's Voluntarism

And yet, non-linear continuity still leaves us with a normative gap, which is why Fichte cannot posit an unconditional reason for the transition from problematic to categorical recognition. The idea of a rational community rests on a hypothetical condition which may, or may not, be met by the free choice of individuals. And this brings us to the heart of Fichte's voluntarism. Only when individuals *elect* to enter into community with each other do they establish enduring relations of right. Prior to their common willing, they are not constrained by normative principles. In this sense it is correct to say those principles *depend* on common willing. But what, we might ask, is the nature of this dependence? Unfortunately, the ambiguity in Fichte's account supports two readings here. To take one example, consider Fichte's claim from theorem five that 'the validity of the law depends solely on whether someone is consistent or not' (Fichte 2000: 80; SW 86). On one reading, if we insert 'consistency in action' in this passage then relations of respect depend on the mutual activity of individuals in community: that activity contains the normativity of means-end consistency. Call this the *weak voluntarist reading*. On another reading, call it the *strong voluntarist reading*, if we insert 'consistency in choice' here we reach a different conclusion. For this entails that, outside means-end consistency, one's voluntary choice to enter into community with others constitutes the principle of right. On this reading, inter-personal obligations spring directly from the common willing of individuals.

Stephen Darwall takes Fichte to be defending the second position.⁷ He summarizes Fichte's position as follows: '[T]he conditions for the possibility of practical self-consciousness make one subject to the principle of right only through a voluntary, "arbitrary" positing of the other and simultaneous making of a law not to violate his external freedom' (Darwall 2005: 108). Darwall further argues that the characteristic difference between the moral law and the principle of right is that obligations imposed by the latter are 'voluntarily assumed' by us (Darwall 2005: 108). But this seems wrong. Fichte is clear that individuals only choose to enter into a domain where the laws of right apply (i.e. a community), but that once *inside* this domain they are necessarily, and so non-voluntarily, committed to those laws. As he writes in a related context: 'by virtue of the words, "I want to live in this state", [an individual] has accepted all the laws of that state. The law of the state, with regard to its *form* [Form], becomes his law by virtue of his consent, but the law of the state, with regard to its *content* [Materie], is determined without any consent by him by the law of right and the circumstances of this state' (Fichte 2000: 15; SW 14). In this way individuals do not arbitrarily assume the obligations imposed by the principle of right. Rather, in

deciding to enter into communal interaction with one another, they voluntarily assume the formal condition of that principle. On the weak voluntarist reading, the choice of individuals to enter into community initiates an *independent norm* based on their reciprocal activity, and that activity places them in a domain where the law of means-end consistency has categorical application. So the *activation* of right depends on the mutual choice of individuals, but the *bindingness* of right, its actual force as a norm, arises from the general character of reason.

As we will see below, Darwall's argument is that obligations between individuals must depend on a 'background norm' that we do not choose or voluntarily adopt: the norm of the other's dignity. It is your standing as a free and rational being that makes you a source of non-relational value. And it is not up to me to recognize this: your dignity calls on my recognition, it exacts my respect. This is why Darwall is at pains to distinguish his conception of the second-person standpoint from what he takes to be Fichte's. He does not want relations of respect to reduce to the arbitrary willing of individuals, for that would prevent us from putting obligations on one another or holding one another accountable. But Fichte's point is that relations of respect cannot reduce to any epistemic fact, including the fact of the other's dignity. Your standing as a rational being exacts my attention, but only on a problematic level. This is why Fichte speaks of two kinds of recognition. My obligation to respect you depends on your standing, and Darwall is right to stress this, but this standing only acquires its force as a norm when I engage in active and reciprocal relations with you. Fichte's argument, then, is that second-person obligations *cannot be reducible to the fact of the other's rational status*, and so problematically recognizing this status will not suffice to ground the principle of right. Something more is required. Relations of respect acquire their force, not in any fact, but in a *deed*. I am bound to respect you when I actively recognize you—when I will to be in community with you and thereby treat you as a rational being. That is Fichte's point.⁸

5. Darwall's Criticisms

Darwall has thus misidentified the 'voluntary' element in Fichte's voluntarism. But his specific criticisms of Fichte may still hold for other reasons, and it would be premature to reject them at this point. In this section I want to look at those criticisms more closely.⁹

Darwall takes issue with Fichte's claim in the Introduction that 'each [individual] is bound only by the free, arbitrary [*willkürlichen*] decision to live in community with others, and if someone does not at all want to limit his free choice [*Willkür*], 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' (Fichte 2000: 11–12; SW 11). Darwall draws out three *reductio* arguments from this passage. The first *reductio* goes like this: 'This suggests, first, that Fichte believes the only way an individual can avoid the obligations of the principle of right is to avoid other people altogether' (Darwall 2005: 109). I

believe Fichte is willing to live with this consequence, under certain qualifications. On the basis of problematic recognition, an individual is only required to respond to the other—either by acting or not acting. Nothing obligates him to live alongside the other. And if he does not wish to restrain his freedom, as is required to enter into community, we can't charge him with irrationality. Fichte is making a structural point here: that the end of communal activity binds an individual to the norm of means-end consistency, and that the obligations of the principle of right originate in that norm. A respectful refusal of society might still be an option here. But what's not an option (and I take it this is what troubles Darwall) is that 'avoiding obligations' could become something like 'violating obligations'. For Fichte, avoiding second-personal relations still proceeds along a norm of rational consistency, in a way that breaching another's sphere of freedom does not.¹⁰

Concerning Darwall's second *reductio*, he says: 'But, second, it is not clear why this should be so on voluntarist assumptions. Why wouldn't there simply arise various *communities* of right, that is, associations within which individuals are obligated by the principle of right, with no obligations of right to outsiders?' (Darwall 2005: 109). First, it's not clear what Darwall means by 'community'. Fichte does not use the term interchangeably with 'rational community'. It would be possible for a non-rational community to exist—say, on the principle of 'might is right', rather than on the principle of 'respect the other's freedom'. In the former case, so-called outsiders would fare no better than insiders, meaning that the outsiders, like the insiders, could only establish a position within the community by some show of power (physical or otherwise). But a community that denied or violated the rights of all outsiders would not be a rational one, as I don't see how it would be possible for such a community to maintain the principle of right *within itself*. Second, it's not clear what Darwall means by 'obligations of right'. If he means the obligation not to violate the other's freedom, then Fichte could accept the possibility of various local communities of right so long as they did not attempt to deprive other communities of their freedom. Imagine a misanthropic community that refused all forms of contact with other communities. Such a community would be forced to acknowledge the existence of other communities within its vicinity; but only by avoiding contact with them could it avoid inter-communal obligations of respect. Of course, we might want to reproach the idea of such a community, but I don't think Fichte would find fault in it at a structural level.

In his third *reductio*, Darwall says: 'Fichte asserts that agents demand continued recognition of themselves and their freedom "for all the future" when they reciprocally recognize one another . . . But again, why should this be so on a voluntarist interpretation? It would seem that individuals would be as free voluntarily to obligate one another for a temporally limited period as to do so indefinitely' (Darwall 2005: 109). If the normativity of right springs directly from the mutual willing of individuals (the 'strong voluntarist reading'), then Darwall is right: nothing could stop people from putting a time-constraint on their obligations to one another. This is a genuine *reductio*, but I don't see how it

applies to Fichte. It is clear Darwall is trying to exploit the element of arbitrariness in Fichte's account, but recall that the arbitrary willing of individuals activates, rather than constitutes, the bindingness of right. Once individuals have established a reciprocal relationship, they are bound to the law of rational consistency.¹¹ So in response, Fichte could say Darwall has simply misidentified the voluntary element in his account, and from that misidentification generated a reductio. The reductio goes away once we adopt what I have called the weak voluntarist reading.

I don't suppose Darwall would be happy to do this quite yet, however, since we have not considered his two main criticisms, both of which attack Fichte's position at a deeper level. Let me quote the first of these criticisms in full:

Fichte frequently says that [i] reciprocally recognizing agents recognize one another as rational beings, and that [ii] they are thereby committed to treating one another as rational beings. But these claims presuppose that [iii] there are ways of mistreating rational beings *as such* and, therefore, that failing to recognize a rational being is not simply forbearing to make a voluntary commitment one is free not to make. Rather they presuppose that [iv] rational being is itself a normative standing, that there are ways of respecting or mistreating them just by their nature as rational, and that, therefore, [v] one is not free not to recognize and respect them. (Darwall 2005: 110; roman numerals added)

This passage raises a number of important points. By now we can see the problems with [i] and [ii], since Fichte argues that only active reciprocal recognition binds individuals to obligations of respect. So, in the context of passive recognition, [ii] does not follow from [i]. Without this connection, the rest of Darwall's critique faces many problems. For instance, the 'ways of mistreating rational beings' Darwall speaks of presupposes a prior decision between individuals to enter into mutual interaction. To be sure, this voluntary decision puts them under obligations of respect, and so from *that point on* we can speak of one person 'disrespecting' another. But notice we can only speak of disrespect in reference to the *laws* of right each individual has committed himself to *by virtue of his decision*. Hence, the idea of disrespect has relational value. I can be accused of acting inconsistently with my adopted end of rational activity only if I fail to will the means to that end, i.e. to respect the other's freedom. Thus, [iii] places too much emphasis on the independent standing of the rational agent, overlooking the fact that—for Fichte—this standing only acquires the force of a norm in the activity of reciprocal willing. By [iv] Darwall shifts the bindingness of second-personal relations to the *concept* of rational dignity, again overlooking the fact that for Fichte this concept is normatively weak outside human interaction. The shift is crucial for Darwall's 'presuppositional' thesis, because at this point he has removed any element of bindingness from the individual's choice to interact with others, relocating it instead to the inherent dignity each individual holds as a

rational being. In [v] this new location gives Darwall's thesis a firm basis: If one's decision to engage in communal interaction with others is entirely contingent to the 'background norm' of rational dignity, it follows one is not free to choose that norm.¹² I will return to this point shortly.

Darwall now follows the above-cited passage with a second point of criticism: 'Finally, the most significant problem with the voluntarist interpretation is that, unless we assume a background norm that obligates agents to keep their voluntarily made commitments, it is powerless to explain how reciprocal recognition can give rise to an obligation to respect spheres of freedom' (Darwall 2005: 110). This passage recalls a distinction I made earlier between the Question of Entrance and the Question of Consistency. Darwall is clearly putting pressure on the latter: he is asking why individuals in community should continue to respect each other's freedom. As he puts it: 'what gives the "law" we voluntarily committed ourselves to normative force itself? The fact that we committed ourselves to it, as if adopting it together?' (Darwall 2005: 110). Fichte's quick answer would be 'no'. The law of consistency acquires its force from the general character of reason; it really has nothing to do with the voluntary decisions we make. The nature of hypothetical validity in general is such that *if* the antecedent is met *then* the consequent follows. In Fichte's case, as soon as the action-as-antecedent is determined by mutual choice (*Willkür*), the law-as-consequent holds necessarily. Darwall's worry is that if an arbitrary act of *Willkür* fulfills the antecedent, the arbitrariness will transfer to, and thus undermine, relations of right. But this worry is without basis.

At this stage Darwall returns to a point he made in his first criticism: that rational beings can legitimately demand respect from others by virtue of their normative standing. As he writes: 'Fichte might agree at this point, but nonetheless claim that, even if it is true that a rational person is always in a position to exact respect from any other, it is the fact of recognition that obligates. At this point, however, the idea that recognition is voluntarily assumed is seeming substantially less plausible. Moreover, and this is the final important point, recognition of someone *as a person* seems itself to involve the recognition of a normative standing, a dignity, that it responds to and does not confer' (Darwall 2005: 111). Darwall's characterization of Fichte's counter-response is one I would accept, since it fits with the character of hypothetical validity. The 'fact of recognition' Darwall speaks of must be the *act* of categorical recognition between individuals, and without this act it is meaningless to speak of obligations of respect. Interestingly, Darwall now maintains that the 'idea that recognition is voluntarily assumed is seeming substantially less plausible'. If he means 'problematic recognition', I agree: the idea of choosing to passively recognize another is incoherent. But what are we to make of Darwall's conclusion? In one sense, I think Fichte *would* agree. On the level of problematic recognition, we do not confer normative status on each other by an arbitrary act of will; we are, after all, passive to this kind of recognition. In another sense, Fichte would be uneasy with Darwall's reference to 'dignity'. The reason for this should be easy to predict, since the term suggests—and this is Darwall's point—that passively

recognizing the other's dignity already commits oneself to an obligation, i.e. to respect the other in the active sense.

6. Two Kinds of Respect

The problem with Darwall's analysis, then, is that it fails to distinguish between the two kinds of recognition in Fichte's account, a problem for which Fichte is somewhat responsible given the ambiguity I outlined above. But does this distinction have implications for Darwall's presuppositional thesis? I believe it does. In this section and the next I would like to suggest that second-personal relations require something like Fichte's problematic-categorical distinction. This can be taken as an outline for an alternative conception of the second-person standpoint, the details of which still need filling in.

As mentioned, Fichte would likely be uneasy with Darwall's appeal to the rational 'dignity' of the other. He would probably ask how we arrive at a conception of the other's dignity in the first place, a question that is absent in Darwall's account. Indeed, Darwall takes it for granted that we know what the other's dignity is. He might say it's not the kind of knowledge we do arrive at, but is rather the kind of knowledge we presuppose in order to begin relations with others. To get a better sense of his position, consider his well-known distinction between 'appraisal respect' and 'recognition respect'. According to Darwall, the object of appraisal respect is always specific 'to someone's conduct or character or of something that somehow involves these' (Darwall 2006: 122).¹³ This kind of respect has two distinguishing features: first, it admits of varying degrees, and second, I am under no obligation to recognize it. To take a simple example, I may evaluate my friend as cultivating a healthy life style, and in doing so I might give her a high rating on the scale of healthy living, or I might compare her lifestyle to my own, less healthy one. In any case, I am under no obligation to make such judgments. No one could reprimand me for failing to acknowledge my friend's healthful habits (and though my friend might expect to hear a compliment from me now and then, she couldn't base that expectation on moral grounds). On the other hand, the object of recognition respect does not depend on esteem based on another's character or conduct. As Darwall points out: 'The object of recognition respect is not excellence or merit; it is dignity or authority. Recognition respect concerns, not how something is to be evaluated or appraised, but how our relations to it are to be regulated or governed' (Darwall 2006: 123; cf., Darwall 1977: 44). Moreover, recognition respect is not something I can fail to make without reproach, as in the case of evaluating my friend's healthy living. In the case of second-personal relations, the ultimate object of recognition respect is autonomy: the rational being's capacity for moral action. It is this capacity that gives someone a value beyond calculation and a worth beyond comparison—a *dignity*.¹⁴ And Darwall's point is that the other's dignity makes a claim on me whether or not I want it to; it demands my respect.¹⁵ The force of this demand springs from the other's status as a rational human

being, not from my recognition of that status. It is a non-relational source of value.

But how is recognition respect possible? How do I come to regulate my relations with others according to this idea of 'dignity'? Notice that the presuppositional thesis does not raise this question: it proceeds from a concept of persons as 'self-originating sources of valid claims'—to borrow John Rawl's expression.¹⁶ That is to say, it derives 'substantive constraints on conduct' from an idea of equal second-person authority, an idea Darwall takes to be the 'most fundamental' (Darwall 2006: 121). Now in some senses Fichte would agree with all of this. The other's rational standing must transcend the particularities of his or her physical appearance, and that standing must have non-relational value, or what Kant calls 'dignity'. But Fichte's point is that our problematic recognition of the other is not enough to ground second-personal relations of respect. So while the principle of right must derive from a non-relational value—the value of the other as a free and rational person—the force of this principle cannot be reduced to our passive recognition. The normativity of right must originate, not in any fact, but in an *act of will*. We must will *community* as a mutual end.

7. The Body of the Other

In light of the previous discussion, one might complain there is still something mysterious about this. *How* do we come to acknowledge the rational status of another person, a 'you'?¹⁷ Fichte attempts to explain this, and he models his explanation on what Kant, in the third *Critique*, called 'reflective judgment' (Kant 2000). Though Kant used the term primarily in the context of aesthetics, Fichte applies it to the question of how we originally come to acknowledge the other through his or her physical appearance.¹⁸ The question here is how I initially recognize another's humanity before I directly interact with him. His answer, which is both complicated and at times strange, is roughly this: I initially recognize the other as a potential bearer of rights by way of his body, his sensible form, although nothing in this form contains the *idea* of humanity. At this point the other can only offer me expressions of his humanity, and that is why my encounter with him calls for *reflective* judgment. I must reflect on his particular bodily expressions, and from these expressions gradually infer the concept of his humanity. I would be lost any other way; for if I started with a set judgment of 'rational nature' I would never be able to find an empirical person, a 'you', to subsume under it. Fichte's point is well taken. We do not first encounter others under the generalized notion of humanity; rather, others gradually reveal themselves to us through their expressions (Fichte 2000: 74–75; SW 79–80). This is obviously true in the case of infants and young children, but—and this is a point I will come back to—the same holds for adult others who have yet to make themselves intelligible to us.

Fichte goes even further. He claims that merely reflecting on the other's bodily expressions will not complete my understanding of his humanity. The

indeterminacy of the other's appearance forces me to turn inward and seek a concept of humanity within myself. 'In order to be able to think something there', he writes, 'the rational observer must supply the concept of himself, because none is given to him' (Fichte 2000: 74; SW 80). The human body remains indeterminate, and no amount of reflection on it will ground my judgment of the other's standing as a free and rational being. Here we reach a remarkable turn in Fichte's analysis, for he goes on to argue that I can only acknowledge the other's humanity by actively *becoming human*, as it were, *to myself*. I must give shape to my own rational nature *by determining myself freely, by exercising my rational capacity to set ends*. Only through an act of self-determination can I render the other's particular expressions under a universal idea, the idea of humanity.¹⁹

Whether or not we accept the conclusion of Fichte's explanation, I take his starting point to be uncontroversial. There is a period of time when I do not know if the other is a rational being, a being capable of setting ends for himself. By virtue of his human form, I immediately recognize his rationality, but only on a problematic level. I assume he is rational by reflecting on his bodily gestures, which are at best proto-rational. But none of these particular expressions add up to the concept of his humanity. So I must supply that concept myself; I must reflect on my own nature and determine a concept of my humanity in order to interpret the other's. If during this time the other has undergone a similar process of reflection on my bodily gestures and expressions, thereby reflecting on his rational nature in order to interpret them, the two of us have achieved common cognition. But to move toward common *willing*, I must do something more, since the mere concept of the other 'in the innermost regions of my consciousness remains accessible only *to me*, and not to anyone outside me' (Fichte 2000: 41–42; SW 45). I now address the other directly: I acknowledge him, thus showing him that he is free to respond, that he is under no form of coercion. I *act* on him in a manner exemplary of my humanity. And in doing this, I *call* on him to respond, to exhibit his humanity to me. I act on him assuming (problematically) that he is rational. But I do not know this yet. There is no determined norm, such as the other's dignity, from which I can regulate my standing to him. Recognition respect is not an option here, so I can't assume the other will immediately respect me. I have not—indeed, I could not—compel him to acknowledge my humanity, since all I have offered him in the summons is a particular expression of myself. I can beckon the other to regard me as a rational being, and so to respect me as one, but my beckoning is limited. The most I can do is express my rationality to the other by way of my actions. After that, I can only hope he will reflect on those actions and respond accordingly. But I can't demand this of him. How could I?

In response to this scenario Darwall could simply reject Fichte's explanation from the outset. After all, it is a rather strange analysis of how we first come to recognize the humanity in ourselves and in others. One could argue that what Fichte is saying bears no likeness to our real-life experiences of the second person. When do we ever *not* experience the other as fully human? When are we ever *not* in a position to recognize the other's dignity? And so when are we ever at a *loss* to exact respect from him? Fichte's answer is ready and waiting:

specifically, when we relate to young children. But his answer has wider application: to all others who are, as of yet, unintelligible to us.²⁰

8. In Closing: Rationality by Example

There are four insights I would like to draw from Fichte's account:

- I. There is a time when I don't know if the other is rational or not.
- II. I originally encounter the second person as a particular physical form.
- III. The second person's form is sufficiently proto-rational for me to recognize, but this recognition is only problematic.
- IV. Only through a reciprocal expression of rationality (my summons to the other, the other's response) can we achieve active recognition of each other and thus establish enduring relations of right.

These insights support the two basic claims of Fichte's voluntarism: (a) problematic recognition of the other is a necessary precondition for human relations, and (b) rational actions are necessary to establish substantive norms of respect. What I would like to point out is that, even if one were inclined to reject (a) and (b) by discounting (III) and (IV), one would have a hard time discounting (I) and (II), which I take to be uncontroversial. Also, (I) and (II) pose a serious threat to Darwall's presuppositional thesis, since they prevent us from using the notion of a 'background norm' to explain how normative principles come about second-personally. We might think of Fichte's four insights as explaining how Darwall's norm is established in the first place, its genesis. Now, Darwall might want to reject claim (b), that only rational actions establish normative principles of respect, but in that case he will either have to reject (I) and (II), or he will have to offer a story of how, in light of those insights, we arrive at a concept of the other's rational authority. To make that story credible, however, it seems he would need to posit something like Fichte's problematic-categorical distinction in order to render our original encounter with another intelligible. I don't see how he could avoid that distinction if he accepted (I) and (II). If there is a time when I don't know the other's rational status, then in order to establish human relationships built on mutual respect I must assume the other's rational nature. If I recognize the other, but only problematically, I can't exact respect from him. The most I can do is enact my rationality. I can respond to him as a rational being in the hope that he will be appropriately responsive to me.

Darwall might point out that this account opens up a normative gap between passive and active recognition. It should now be clear, however, that this gap does not prevent our success in establishing relations of right. On the contrary, it places particular requirements on the individual who does desire community with others. In the event that I adopt communal activity as an end, I am required to be expressive of my rationality, to display my authority to others by way of my actions. What is more important, it requires me to adopt my self-expression from

a first-person standpoint. I must choose from within that standpoint to act on the other respectfully, since it isn't something I can immediately demand of him. Fichte himself shifts emphasis onto the first-person in §7 of theorem five, where he writes: '*I have resolved with complete freedom . . . to exist in community with free beings*', '*I want nothing more than to stand with him in a community of rational treatment*' (Fichte 2000: 81–82; SW 88—my emphasis). It is from the first-person stance of the summoner that we can make sense of the normativity of right: as a summoner it is in my power to reveal my rational nature to the other, to make myself intelligible to him. And that is what the summons is supposed to do. Of course, if I am summoning a young child then I will have to withstand the child's incomprehension of me. I will have to re-summon him, perhaps indefinitely, and this will make my desire for community a task of educating the other.²¹ It will also make that task a test of patience. But until the child or adult other responds to my self-expression, I cannot make claims on him without his active recognition of me. I can always ask myself, 'Has he recognized me? Will he respect me now?'—but only the other himself can answer this.

In saying this, my point is not that Darwall's notion of recognition respect is wrong. Far from it: it's *exactly* the kind of respect we hope to achieve in a free community. I want you to regulate yourself with respect to my rational authority; and you presumably want me to regulate myself with respect to yours. Fichte's claim, however, is just that: forming substantive norms of respect is something you and I have to work at. It is something we both have to adopt as an end, mutually and voluntarily. It is not something we can presuppose.²²

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NOTES

¹ See Fichte 2000. Following the English, I will cite the page of I. H. Fichte, (ed.) *Johann Gottlieb Fichtes sämtliche Werke* (Berlin: Veit & Comp, 1845–6; reprint: Berlin: Walter de Gruyter, 1971): hereafter SW.

² Not any kind of summons will do, however. For Fichte, it is crucial that the summons beckon me to exercise my free efficacy. It must take the form of a request or invitation, for any element of coercion in it would not leave me free to respond back.

³ I should emphasize I do not think Fichte's appeal to rational consistency is unproblematic. We could, in fact, criticize Fichte's broader account of normativity by questioning this appeal. It is not obvious how individuals can act 'inconsistently' once they have engaged in reciprocal recognition. While I think this is an important line of questioning, my aim here is slightly different. I wish to show that, even on the assumption Fichte's appeal to consistency is valid, his account of normativity runs up against deeper problems of justification.

⁴ I will return to this point in more detail in section 7.

⁵ Paul Franks offers a helpful point of clarification here: he notes that Fichte employs the idea of a 'concept (or relation) or right' in two different senses, transcendentially and normatively. As Franks writes: 'He uses the same term because he wants to show that a transcendental condition for the possibility of finite rationality is isomorphic with a normative principle. But this should not mislead us into thinking that the transcendental condition is itself normative' (Franks 2005: 325). I will return to Franks's reading below.

⁶ I am modeling this distinction after Christine Korsgaard's discussion of 'explanatory adequacy' and 'normative adequacy' (Korsgaard 1996: 13).

⁷ See Darwall 2005 and Darwall 2006 (especially Chapter 10 'Dignity and the Second Person: Variations on Fichtean Themes': 252–262).

⁸ Fichte's account seems to be in tension here. One might ask: *Where* is the source of normativity for the principle of right? On one reading, mutual willing is what activates an independent norm of reason: in adopting the end of communal activity, we are bound to its means—namely, the principle of right. On another reading, mutual willing discloses a fact about the other—the fact that the other is rational—and the normativity of respecting the other is tied to this. In this case the normativity of right then originates in the other's capacity to set ends for himself, a capacity we recognize as having intrinsic value.

For lack of space I prefer to leave Fichte unresolved on this point, but I will point to a solution. In the *Critique of Practical Reason* Kant says the moral law may be the 'self-consciousness' of a pure practical reason, the latter of which is identical with the concept of freedom (Kant 2006b: 27). He then says he is not concerned with the identity between the two but rather with our point of access to them. He concludes that the moral law is the epistemic route to freedom and that without being confronted with an unconditional practical law we would never discover freedom within ourselves. Fichte might be making a related claim. The norm of means-end consistency, he could say, is identical to the 'self-consciousness' of a rational being. It is simply the norm under which a rational being acts when it engages in the activity of end-setting. But because we lack the cognitive resources to discover this capacity within ourselves, we need an epistemic route to it. To use Kant's idiom, the summons would then provide the '*ratio cognoscendi*' of free efficacy. I am grateful to an anonymous reviewer of this journal for pressing me to clarify this.

⁹ Evidence of this misidentification can be found in Darwall's appeal to Cudworth's criticism of voluntarist theories (Darwall 2005: 110). Darwall thinks this criticism—originally aimed at Hobbes and Pufendorf—applies to Fichte as well. This is questionable. Traditional theological voluntarists argue that the force of the law springs from God's will and his power of sanction. But there is no analogue of this in Fichte's account. The force of right, for Fichte, springs from the character of reason to which individuals bind themselves in mutual activity.

¹⁰ I also think Fichte is making a pedagogical point here. As social educators we can't beckon the other to reflect on a norm that would, in itself, bind him to the principle of right. That is, we can't demand his endorsement of human community. While it is true that an individual who doesn't want to restrain his freedom would have to respectfully exit from all human affairs, the force behind Fichte's claim speaks also to the educators of social life. It just as much reveals the nature of summoning, of our attempts to invite someone into communal activity, as it reveals the character of an individual's choice to actively respond to our invitation. Without an implicit norm, summons and response must be issued freely. This is really a different way of looking at the structural point.

¹¹ I suspect Darwall is reading Fichte's reference 'for all the future' too literally, since Fichte is speaking of the fact that relations of right apply 'categorically' between

individuals once established. The expectation that these relations hold 'for all the future' is thus a normative expectation, not a temporal one.

¹² Darwall's final conjunction in [v] is revealing. To repeat, 'one is not free not to recognize and respect' other rational agents. The conjunction shows that Darwall has nothing against what he believes is Fichte's motivational internalism. For Darwall, to recognize someone just is to respect her. The mere appraisal 'This is a rational person I'm looking at' commits one to an *internally motivating presupposition* of the other's dignity. Darwall's broader point is that Fichte's internalism is incompatible with the voluntarist thesis. In recognizing someone as a rational person, I have non-voluntarily accepted the force attached to the concept 'rational person', and so I am already bound to obligations of respect because of that recognition. According to Darwall, Fichte's error is to think the normativity of respect is something I *confer* onto second-personal relations by virtue of my choice to become social. This normativity, Darwall argues, is not something I can choose; it is rather constitutive of recognizing another second-personally. After forming the judgment, 'This is a rational person I'm looking at', it does not make sense to ask, 'Why should I respect this person?'. The concept of respect is internal to the concept of recognition; that is, the 'Why?'-question is built into the structure of the judgment. To ask the question again is unnecessary; it assumes—falsely, in Darwall's opinion—that the question of second-personal respect *can* be raised separately from the question of second-personal recognition. See section 8.

¹³ See Darwall 1977.

¹⁴ See Kant 2006a.

¹⁵ Darwall frequently cites Kant's claim from the *Doctrine of Virtue* that a person possesses a dignity 'by which he exacts *respect* for himself and from all other rational beings in the world'. Darwall will often take Kant's emphasis off 'respect' and add his own emphasis on 'exacts' (Darwall 2006: 120). This shift illustrates the point of emphasis in the presuppositional thesis: it assumes that respect is, in a fundamental sense, the 'fitting response' to dignity, without explaining how we ever arrive at having that response in the first place.

¹⁶ Quoted in Darwall 2006: 121.

¹⁷ Note that Fichte's goal is to understand how we come to acknowledge the other's rational nature, his capacity for self-determination, not his autonomy, or capacity for moral action.

¹⁸ Kant distinguishes between the determining power of judgment in which the universal ('the rule, the principle, the law') is given and subsumes the particular under it, and the reflecting power of judgment, in which the particular is given 'for which the universal is to be found' through reflection (Kant 2000: 67). Fichte is unique in using reflective judgment as the model of second-personal relations. As I will suggest below, this model shapes his idea of problematic recognition.

¹⁹ Now I must also assume (again, problematically) that the other has reflected on *my* proto-rational expressions, turned inward to form a self-concept of his rationality, and thereby rendered my expressions intelligible through that concept. The result is that by grounding my relation to the other in the concept of my own rationality, I meet the other as an equal, and vice versa. In Fichte's words: 'The rational observer is completely unable to unite the parts of the human body except in the concept of *his equal*, in the concept of freedom given to him by his own self-consciousness' (Fichte 2000: 74).

²⁰ One could argue that young children are different from adults for two fundamental reasons. (1) With young children, we must recognize them problematically, since they *are not* rational yet. And (2) recognizing them in this way is *constitutive* of their self-

consciousness (for example, treating a child as a rational being is necessary for the child to become one). But (1) and (2) do not apply to adults. First, adults *really are* rational. And second, recognizing them does not condition their self-consciousness. So, one could conclude, problematic recognition is only necessary in the context of young children. The problem with this conclusion is it forgets that even adult individuals are opaque to each other, and that relations in the second person cannot bypass this opacity. I can acknowledge that you are an adult, but in our initial encounter this does not allow me to forego recognizing you problematically. That is why, in order to acknowledge one another rationally, we have to engage in common willing. We still need to establish our rationality in action, so to speak. Lastly, while my summons to an adult other may not condition her self-consciousness in any strong sense, it does draw her awareness to her own agency in an irreducibly second-personal manner.

²¹ Fichte calls this *Erziehung*, meaning 'rearing', 'educating', or 'upbringing'. As he writes: 'The summons to engage in free self-activity is what we call upbringing. All individuals must be brought up to be human beings, otherwise they would not be human beings' (Fichte 2000: 38; SW 39).

²² This paper grew out of a presentation for Paul Franks's seminar on German Idealism at the University of Toronto (February, 2007), and I would like to thank the seminar members for their feedback. I am grateful to Paul Franks, Anna Leah Harms, Carolyn Richardson, and an anonymous reviewer of this journal for their many helpful suggestions. I owe a special debt to Arthur Ripstein for his astute and extensive written comments on earlier drafts of this paper. Thanks also go to the Social Sciences and Humanities Research Council of Canada for their financial support during the research and writing of this paper.

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