

Citation for the following article:

Eric Manchester, "Fichte's Idealism and Natural Rights: A Key to Understanding Seemingly Inconsistent Arguments for Abortion and Euthanasia," *Proceedings of the Nineteenth University Faculty for Life Conference at the University of St. Thomas School of Law, Minneapolis MN (2009)*, ed. Joseph W. Koterski, S.J. (Washington, D.C.: University Faculty for Life, 2013), pp. 131-174.

Fichte's Idealism and Natural Rights: A Key to Understanding Seemingly Inconsistent Arguments for Abortion and Euthanasia

Eric Manchester

ABSTRACT: Abortion and euthanasia opponents are often puzzled by the seemingly inconsistent position held by defenders of these practices. Prematurely-born infants, for example, are regarded as having a right to life while more physically developed fetuses are not. By contrast, in respect to euthanasia, greater physical functionality generally diminishes the degree to which death is considered acceptable. Such inconsistencies are surprisingly cogent when considered in light of the rights theory advanced by the eighteenth-century idealist philosopher G. W. Fichte. Fichte's views often coincide with contemporary liberal convictions, including the beliefs (1) that the fetus is a part of a woman's body, (2) that morality cannot be legislated, (3) that religious institutions should refrain from political discourse that challenges "rational" secular values, and (4) that one has a right to do whatever he or she wishes, as long as it does not directly interfere with another's body. This essay examines how Fichte's idealism develops conceptions of nature, personhood, and rights that justify abortion and euthanasia. But despite the rigor of Fichte's system, it can only avoid the charge of making certain *ad hoc* metaphysical commitments that are in tension with other contemporary liberal convictions by supplementing its idealistic account of personhood and rights with certain biological criteria that actually undermine the case for abortion and euthanasia.

THOSE WHO OPPOSE ABORTION AND EUTHANASIA often find themselves bewildered at the seemingly obvious inconsistencies exhibited by defenders of these practices. To take one example, it is common for advocates of abortion rights to maintain that while a

prematurely-born fetus has an unmitigated right to life, a woman has a right to abort a much more developed pre-born fetus. In the case of euthanasia, defenders of this practice will generally not allow for individuals who are physically healthy but significantly emotionally or intellectually impaired to be euthanized, but they accept this option for mentally functional individuals who are severely physically impaired. The oddities of these positions are particularly apparent when the cases for abortion and euthanasia are considered together. For example, in the abortion case, the greater physical functionality of the pre-born offspring does not correlate to an increased right to life, while in the euthanasia case, the physical functionality of the mentally impaired person is viewed as sufficient grounds for refusing euthanasia. (Of course, there are those who would allow for euthanasia even in these cases, but they will not be considered here.)

Naturally, pro-lifers are aware of the various responses given to explain such apparent peculiarities. For abortion, it will typically be argued that the greater physical development of the fetus does not correlate to a right to life in the way that it might in the case of the mentally impaired person, since the later-term fetus is still physically attached to the mother. For some (including Fichte, as will be addressed later), this permits one to maintain that a fetus at any stage is “a part of the woman’s body,” or to assert that even if this is not the case, the fundamental physical connection to the mother somehow subverts the right to life that would normally be associated with certain levels of physical development. (Even though biological criteria virtually destroy the former claim, given the unique DNA of pre-natal offspring, this work will demonstrate how Fichte’s idealism avoids this problem by subjugating biological facts to the primacy of self-consciousness, which on his scheme requires inter-subjective recognition, which he takes to be impossible for pre-natal offspring.)

To the pro-lifer, these standard pro-choice assertions require much greater explanation. For instance, precisely what is it about physical connectedness (especially where life is developed enough to be sustained

apart from this connection) that trumps the fetus's right to continued existence? Likewise, if the fetus is biologically advanced enough to survive outside the womb, in what sense can he or she be taken to be simply "part of the woman's body" in any compelling sense?

Similar puzzles arise in the case of euthanasia. Is it not arbitrary to allow for euthanasia in the case of someone who is physically impaired, but not for one who is mentally impaired? If mental impairment does not permit euthanasia for a physically healthy individual, what is the reason for this? If it is prohibited on the grounds that such persons are not sufficiently rational to make this judgment for themselves, why would this lack of rational aptitude not in itself diminish the personhood of these subjects, thereby mitigating their rights to life? Conversely, if they are taken to possess rationality sufficient for full-fledged personhood, then why should they not be able to choose euthanasia for reasons related to physical or emotional impairments if they so desire, just as a physically impaired, fully mentally functional individual would be so allowed? Why should physical functionality establish greater grounds than mental or psychological factors in preserving life against a subject's wishes?

With questions like these in mind, this essay aims to demonstrate that abortion and euthanasia positions like those described above are not necessarily as incoherent as they first appear. To the contrary, this work explores the possibility that rather than being derived from various functionalist or materialistic accounts of personhood (as abortion and euthanasia defenses are often presumed to be), such positions may actually be influenced by developments in philosophical idealism, leading up in particular to explicitly intersubjective accounts of personhood.

While Hegel is often regarded as providing the most comprehensive idealist account of the historical foundations of cultural and political life (including the development of various conceptions of "rights"),¹ this

¹ See Hegel's *Philosophy of Right*. The reader may take particular interest

essay examines the somewhat lesser-known work of J.G. Fichte, whose philosophy serves as a bridge of sorts between Kant and Hegel.² In particular, it considers how his idealistic rendering of the concept of “nature” in his important but often-overlooked work *The Foundation of Natural Right*³ (developed in conjunction with his larger work in the *Science of Knowledge*, or *Wissenschafteslehre*) advances concepts of “personhood” and “natural rights” that provide a relatively coherent philosophical foundation for the seemingly incoherent positions on abortion and euthanasia noted above, at least in respect to the question of rights.

Fichte provides a useful historical focus here for a number of reasons. First, an examination of his views on their own merits reveals much in common with many common current-day assumptions about the nature of rights, as well as the relationship of legislation to morality. These include, as will be discussed below, the frequent (but at times seemingly vacuous) assertion that societies cannot (or at least “should not”) legislate morality, as well as the view that one has a right to do

in some of Hegel’s mention of the influence of Fichte, whom he credits with being the first to understand the importance of the positive aspect of will in relation to the concept of “right,” even as he asserts that a further step was needed for this development to be complete. See Hegel’s Introduction, §6.

² Fichte himself frequently cites Kant, generally favorably, while Hegel in the paragraph mentioned in the previous note addresses the relation of the relation of the conceptions of will as the foundation of right in Fichte and Kant, and the relation of both of these to the development of his own view. Equally interesting is W.L. Reese’s observation that the scheme of “thesis/antithesis/synthesis” often attributed to Hegel is actually implicit in the methodology of Kant and found in explicit form for the first time in Fichte’s writings. See Reese’s entries on “Hegel” and “Fichte” in *Dictionary of Philosophy and Religion: Eastern and Western Thought* (Atlantic Highlands NJ: Humanities Press, 1980) p. 212, para. 4 and p. 173, para. 3, respectively.

³ Citations for this work will be given internally. Generally, they will provide the section and page numbers, in that order. All citations are taken from Frederick Neuhouser’s edition, translated by Michael Baur (New York NY: Cambridge Univ. Press, 2000).

whatever he or she wants, as long as it does not physically harm another against his or her will. Fichte fits contemporary liberal attitudes well on this point by explicitly declaring that people have a right to enter into any consensual adult sexual relationship whatsoever, no matter how “degrading” (*FNR* §21), including all extramarital relations (*FNR* §24, 290), as well as a right to divorce (*FNR* §25-31, 291-97).

Along these same lines, he insists that religious institutions should not “aim to construct theoretical proofs or system of ethics or to speculate at all about [matters of the same],”⁴ a view with which those who assume that efforts to legislate against abortion and euthanasia are “illicitly” based on personal religious convictions will undoubtedly agree.⁵ In fact, Fichte agrees with the common contemporary view that a fetus, no matter how developed, is part of a woman’s body (*FNR* §40, 306), while in respect to euthanasia he declares that the state can make no law prohibiting one from taking his or her own life (*FNR* §21, 286).

Secondly, Fichte is relevant in assessing arguments for abortion and

⁴ See his *System of Ethics*, translated and edited by Daniel Breazeale and Günter Zöllner (New York NY: Cambridge Univ. Press, 2005), §30, 330. Citations from this work will also be internally cited, following the same format as citations from *FNR*.

⁵ Fichte’s view on the relationship between church and state is actually more complex than the previous citation suggests, though still basically in line with contemporary liberal convictions. He goes further than contemporary liberals in proclaiming a “moral duty” to belong to a church (e.g., *SE* §17, 224) and in further declaring that church leaders are properly called upon to be the moral teachers of society (e.g., *SE* §30, 329). The claim that church leaders should be the moral teachers of society seems at odds with his claim that it is not the place of religious institutions to develop moral teachings. These positions are reconciled once one realizes that Fichte, with astounding similarity to attitudes in among many mainstream religious practitioners in contemporary liberal society, ascertains that the proper role of the church is to reinforce and promote ethical ideals discovered by (secular) reason alone, by uniting people under concrete “symbols” and “creeds,” with these necessarily changing over time to reflect the alleged progress in society’s moral understanding (*SE* §17, 224).

euthanasia rights insofar as he conceptually bridges the thought of Kant and Hegel (as noted previously), whose influence in ethics and political theory is well-established. Indeed, one suspects the influence of Hegelian-like idealistic “progressivism” in the popular conviction that law should be interpreted “in light of” contemporary values, from which “new rights,” or at least hitherto overlooked rights (e.g., abortion rights),⁶ are “revealed.”⁷ While Fichte’s scheme is not progressive in the same manner as Hegel’s,⁸ his conviction that “nature” and the rights corresponding to it are revealed as products of consciousness itself provides groundwork for this Hegelian development.

A key to understanding Fichte rests in comprehending his reasons for asserting the conceptual distinction between “rights” and “morality” (e.g., *FNR* Introduction, sec. II, para. 5, pp. 10-11, §4, 47, and §7, 81). His position, in effect, indicates that while all actions that violate rights

⁶ For an example of someone who speaks specifically of abortion rights in terms of such development (through Hegel, Marx, and others), see Michael Crozier and Peter Murphy, *The Left in Search of a Center* (Urbana IL: Univ. of Illinois Press, 1996), p. 165.

⁷ To be sure, this position is susceptible to charges of arbitrariness. For example, while allegedly “new values” dealing with greater permissiveness in various aspects of human behavior are today often celebrated as “truly progressive,” the emergence of various fascist and nationalistic attitudes and the like are typically not regarded as such, even if in fact Hegel’s system has historically been invoked by some in defense of such developments. Fichte’s scheme, on the other hand, provides a more changeless foundation for recognizing the former, and not the latter (at least where they give rise to certain oppressive activities) as constituting authentic rights.

⁸ Hegel goes a step further than Fichte in conceptualizing states as “organisms” and even “persons” in their own right. See, for example, Reese’s entry on Hegel, p. 213, para.17. See also Hegel’s own critique of Rousseau’s and Fichte’s social contractarian emphasis on the “general will” of the state arising from the primacy of individual wills rather than a “universal will” of the state as a higher order of consciousness transcending (or perhaps even replacing?) individual wills (e.g., *Philosophy of Right*, Third Part, sec. iii: The State, §258).

are immoral, neither the logical inverse (i.e., all immoral actions violate rights) or complement (i.e., all actions that do not violate rights are moral) follows (e.g., §4, 50). The basis of this distinction will be elucidated in section two. In any case, this distinction legitimizes legislation against actions that physically impede the freedom of another to be advanced as protections of basic rights without this constituting a “legislation of morality” as this might be applied to immoral actions that do not involve direct physical obstructions of freedom.

Section two will explain in greater detail the ontological and conceptual basis for distinguishing rights from morality in Fichte. Fichte takes morality to refer to an agent’s decision to treat others according to the principle of rational consistency (where one treats others only as he or she would desire to be treated), where such action is purely self-enforced (i.e., self-determined) apart from any coercive external physical force. By contrast, rights refer to limitations that one chooses to accept respecting his or her actions in relation to the freedom of others, on the condition that they accept these same limitations for themselves, where this agreement is susceptible to enforcement through external physical coercion (such as through a governing authority).

In short, for Fichte morality is purely rationally self-determined, independent of any external enforcement (even that which is assented to). Rights, on the other hand, are rooted in rational agreement, but are accompanied by susceptibility to external enforcement. “Rights” in a certain sense have a priority over morality in that they establish the social conditions needed for moral living to be effectively pursued, even though morality exemplifies a higher development of consciousness (insofar as it is motivated purely by one’s own freedom, apart from any external coercive force). In fact, Fichte’s idealism has been interpreted by some to be pantheistic⁹ (this led to accusations of atheism in his own

⁹ For those who speak of him more as a pantheist, see especially the entry on Fichte by Garrett Green in the *Encyclopedia of Religion*, 2nd ed., edited by Lindsay Jones (Detroit MI: Macmillan Reference USA, 2005), p. 3049, as well

time),¹⁰ while he understood consistent living according to moral-consciousness as constituting the fullest realization of self-consciousness.¹¹ (Other statements by Fichte, considered in this work's final section, are even suggestive of deism, though it is doubtful they represent his sincere position.)

With the distinction of rights from morality in mind, fairness requires pointing out that while Fichte's scheme explicitly denies a right to life to pre-natal offspring (and even to post-natal infants), as well as possibly allowing for certain cases of euthanasia, his *System of Ethics*¹² (which immediately follows *FNR*) indicates that mothers typically feel a maternal protective instinct toward pre-natal offspring that provides a natural foundation for the development of further moral sensibilities (§27, 317). Likewise, he explicitly declares suicide to be gravely immoral, though there might be instances when it manifests a degree of courage (*SE* §20, 252ff, esp. 256).

Despite Fichte's own rigorous distinction between "morality" and "rights," one suspects that in popular belief and practice, what is legally declared as a fundamental right comes to be regarded as morally acceptable. It is far from likely that the obtuse goal of achieving quasi-panteistic moral self-awareness will motivate the average citizen to sacrifice certain immediate conveniences that they have come to regard as fundamental rights. While people can easily comprehend that certain

as Radoslav Tsanoff's entry on Fichte in *The Encyclopedia of Philosophy*, ed. Paul Edwards (New York NY: Macmillan Free Press, 1967), pp. 193-94.

¹⁰ There are many commentaries regarding the so-called "Atheism Controversy" in Fichte. Helpful general discussions can be found in *Fichte: Early Philosophical Writings* by Daniel Breazeale (Ithaca NY: Cornell Univ. Press, 1988), pp. 40-44, and *The Fundamental Principle of Fichte's Philosophy* by Ellen Bliss Talbot (New York NY: The Macmillan Company, 1906), pp. 57-58.

¹¹ See, for example, Reese's entry on Fichte, p. 173, para. 7-8.

¹² Citations from this work will also be given internally following the same format as those provided for *FNR*.

actions may be politically tolerated for pragmatic reasons without appearing to receive moral sanction from the state, it is much more difficult to regard acts as immoral that are construed as *fundamental* rights *requiring* (rather than merely *permitting*) legal protection.

In addition, if what is a fundamental right tends to become equated with what is morally approvable, then a right to express moral disapproval of what has been deemed a right may come to be denied, assuming that it is considered immoral to morally disapprove of what is deemed morally approvable. In effect, the term “tolerate” shifts from implying legally permitted but morally disapproved to suggesting that something is morally approved. Thus, what is morally disapprovable (such as expressing disapproval for approvable actions) is “intolerable,” and hence need not itself be “tolerated” (as the sense of “legally permitted though morally unapproved” has now been lost). One sees an example of this in Fichte’s own assertion, noted earlier, that one has an absolute right to all consensual sexual relations, even though he morally disapproves of any such relation outside of traditional marriage. In contemporary society, his expressed moral disapproval of such protected actions would be deemed by many as “intolerant.” From this, one can imagine many questioning whether one has a fundamental right to express such disapproval, or could in fact be “rightfully” subject to prosecution, especially due to its perceived association with violence.

The view that verbal expression can be legally prosecuted, it should be noted, fundamentally undermines the basic tenets of Fichte’s idealism-based liberalism, thereby destroying the intelligibility of rights. As section two in this essay explains, for him rights arise from the fact that consciousness is determined purely by its own freedom, and cannot be causally determined by factors outside of it, whether physical or rational (though one’s conscious bodily activity may be *physically*—but not rationally, as through speech—impeded). In this case, the claim that speech can be legally restricted as a means of protecting others’ rights is self-contradictory. This is true in that such a view presupposes one’s thoughts and actions can be causally determined by non-physical forces

(e.g., speech), whereby Fichte takes “rights” to be rooted in a freedom that cannot be causally determined.¹³ This position also contradicts itself (from Fichte’s perspective) in that it justifies using the *explicit* coercive force of law to protect rights against possible violence *implicitly* associated with such speech (i.e., where one ascertain that such speech *could* influence violence, keeping in mind that even then it could never *determine* anyone to violence).

Given the potential distortions that can arise from a tacit acceptance, and later reversal, of Fichtean-like distinctions between rights and morality, pro-lifers must remain vigilant not only in retaining a public voice against such practices, but against this voice itself being diminished through the force of law through its association with violence.

This concern is not intended to preclude the possibility that there could be genuinely rightful prohibitions on alleged “hate speech” (the equation of moral disapproval with such speech is highly dubious to begin with) and the like. Rather, it intends simply to point out that such prohibitions run counter to the very notions of liberalism relied upon elsewhere in defending abortion and euthanasia rights.

Before moving into section one, which describes Fichte’s conception of personhood, it should be stressed that this essay, in considering how Fichte’s idealistic conception of “natural rights” provides cogency to otherwise seemingly incoherent arguments for abortion and euthanasia, does not aim to defend these practices. To the contrary, it is my hope that in examining how certain developments in philosophical idealism may provide a generally overlooked, relatively coherent conceptual foundation for such views, pro-lifers can respond more effectively to arguments for abortion and euthanasia rights by better understanding the

¹³ Fichte’s position allows for laws against forms of speech (e.g., slander, libel, perjury) that unjustly harm one’s “honor” (*FNR* §20, 247) and thus may limit his or her ability to obtain within society other goods to which he or she has a right. However, such laws cannot be compared to legal prohibitions on expressed disapproval of particular actions in that the latter are general and do not speak against any particular individual, unlike the case with slander.

some of the underlying (if often overlooked) principles relied upon in advancing these positions. Where these positions are blithely dismissed as simply incoherent, little progress can be made in encouraging proponents of these practices to reflect more critically on the historical and conceptual bases of particular conceptions of “liberty,” “rights,” and even “personhood.” If in fact their conceptions are derived even in part from largely coherent (not to say correct) accounts of nature and personhood (however unaware they may be of these historical origins), the immediate rejection of their views as “irrational” is itself likely to seem reactionary and irrational.

Undoubtedly, it would be simplistic to suggest say that current defenses of abortion and euthanasia are simply, or even primarily, the product of philosophical idealism. Nevertheless, raising these points for consideration may help pro-lifers understand at least a piece of how our culture got to where it stands today in respect to these issues. In addition, despite the impressive degree of originality and cogency in Fichte’s philosophy, his position is susceptible to certain critiques that indicate that his system may ultimately rely on certain concepts that, if properly acknowledged, promote a reconsideration of “rights” and “personhood” more amenable to those who argue against abortion and euthanasia rights.

With these many issues in mind, section one of this essay provides a general overview of Fichte’s idealistic account of how self-awareness and awareness of the external world arise within consciousness in respect to one’s own body, the body of inanimate external objects, and the bodies of others. After this, section two examines how this account of consciousness provides a foundation for personhood and natural rights and elucidates the difference between rights and morality. Section three then explores the implication of these conceptions for defending a right to even late-term abortion, as well as (more questionably) to euthanasia in at least certain cases. Lastly, section four exposes possible inconsistencies and/or arbitrary elements in Fichte’s thought. In offering this critique, it is my hope that those who unreflectively rely upon Fichtean-

like conceptions in defending abortion and euthanasia rights will be made aware that these same foundations can only be consistently sustained by accepting certain other principles that likely challenge other classically liberal sensibilities at least as much as those they often presume to be “illiberally” advanced by abortion and euthanasia opponents.

1. SELF-CONSCIOUSNESS AS A GROUND FOR PERSONHOOD AND RIGHTS

In order to understand Fichte’s conception of rights, it is helpful to realize that his scheme largely marks a development from Kant, who distinguished between things-in-themselves (*noumena*) and things-as-they-are-perceived (*phenomena*).¹⁴ Going beyond the distinction between primary and secondary qualities proposed by rationalist like Descartes¹⁵ and empiricists like Locke,¹⁶ Kant maintains that all knowledge unavoidably entails knowledge of how our mind conceptualizes what is, and cannot, by definition, understand (conceptualize) the nature of anything that may exist apart from the mind. Strictly speaking, one should not even speak of “mind” if one takes this to refer to something known to exist over time as a substance in its own right (though Kant concedes that the simultaneous and sequential awareness of diverse perceptions renders the postulation of a “unifying principle” practically necessary). In any case, on the Kantian scheme, “nature” itself is to be understood as the ultimate unity of all possible perceptions, under the conditions of consciousness that (once again) cannot be assumed to refer to actual traits of “noumenal” objects existing independently of consciousness, but only to the presentation of particular concepts and to relations between these concepts as they arise in consciousness itself.

¹⁴ Immanuel Kant, *Critique of Pure Reason*, Book II, ch. 3.

¹⁵ See, for example, Descartes’s Sixth Meditation in *Meditations on First Philosophy*.

¹⁶ See, for example, Locke’s *Essay Concerning Human Understanding*, Book II, ch. viii.

One notices here a move that will prove critical to Fichte's conception of rights. For Kant, "nature" itself is no longer to be understood as something that could theoretically exist independently of consciousness, which reason seeks to know (as in the case of most classic thinkers), or even as something that exists apart from and incomprehensible to consciousness. Instead, "nature" is defined only through the categories of thought and the pre-perceptual "intuitions" of time and space.¹⁷ In furthering this approach, Fichte's "natural" rights do not presuppose a consciousness-independent nature from which "rights" are derived, so that rights correlate to a nature possessing certain rational capacities. Rather, "nature" itself, and thus the rights correlating to it, are constructs of consciousness. In other words, consciousness precedes, or is the foundation of, "nature," rather than the other way around.

Fichte goes further than Kant in this way: while Kant takes the principles of reason to order the relations between perceptions,¹⁸ as other mental intuitions and categories¹⁹ "shape" our perceptions, Fichte's scheme suggests that perception itself provides the foundation for reason. For example, even the logical principles of identity and non-contradiction arise in perceptual experience for Fichte. In that in his analysis, the very "identity" of a thing (A), as well as the awareness of that which does not share its identity (not-A) can only be derived from consciousness encountering limits (while also expanding its freedom) in what it comes to posit as (1) a body associated directly with this consciousness itself, (2) external objects that are not directly moved through the act of willing, but only through perceived contact with the

¹⁷ Kant, *Critique of Pure Reason*, Transcendental Aesthetic, First Part, §1 (on space) and §2 (on time).

¹⁸ E.g., Kant, *Critique of Pure Reason*, Second Part, Transcendental Logic, §1-2 ("of Logic in General, and "of Transcendental Logic").

¹⁹ These include the predisposition to order empirical experiences according to relations of cause and effect, substance and accident, and so on. Kant provides a table of categories in The First Division of the Transcendental Logic, under the "Analytic of Concepts," in sec. 3 (§10).

subject's body, and (3) external objects that are taken to be the bodies of another consciousness. This third group is posited through the observation of bodies that exhibit an indeterminacy of action virtually infinite in its variations (*FNR*, §5-6, 57ff) that consciousness associates with its own body and that distinguishes it from presumably inanimate external objects that behave in relatively "fixed" and determined ways under particular circumstances. Moreover, these other bodies are distinguished from inanimate objects in that they are able to exert an influence on, and respond to, the "higher" operation of reason (especially as exemplified in speech).²⁰ (The details of this three-fold schemata are addressed later in this section.)

On Fichte's view, the "I" knows itself through its act of willing. However, willing is always directed at some *thing*, and this "thing," in being known, is a content of consciousness. Given this, consciousness knows itself only through knowing itself both through the thing it wills, as well as in respect to itself as the act of willing (*FNR* §1-2, 18ff). In this way, consciousness constitutes a willing and a thing willed. Fichte emphasizes that the "I" is not something separate from the willing, to which the act of willing is attributed. Rather, the willing *is* the I, or at least marks the consciousness will come to know itself as an I (*FNR* Introduction, 4). This I, however, has a particular identity in that in any given moment, it knows itself both in relation to that conscious content that "it goes out into," as well as that which knows itself to have existed before (and thus as surpassing even now) the boundaries of this new content (*SE* §6, 90).

Insofar as the I knows itself only in relation to that which is perceived as beyond it, however, this content of consciousness beyond

²⁰ Fichte also considers animals and "lower" living organisms within this scheme, maintaining that while they lack the freedom associated with truly rational consciousness (and thus cannot be the subjects of rights), there is nevertheless a basis for positing their existence as something distinct from merely inanimate objects (e.g., *FNR*, §6, 74-77).

it becomes part of the I's very awareness of itself. Thus, that which is not-I (that is, that which is willed by the I, and in being so willed, is known by the I to be beyond and thus distinct from it) is now contained in the I's idea of itself. (The term "not-I" is found mainly throughout *System of Ethics*, though it is in accord with *Foundation of Natural Right's* conception of limits encountered by original consciousness in coming to know itself and the external world.) It follows from this that there must be something that is not the I, for the I to know itself. On the other hand, in knowing this other through which it knows itself, this other cannot be utterly separated from the I's idea of itself. Hence, this other (i.e., this not-I), is realized to be both beyond, and a part of, the I's self-awareness.

The I comes to know itself through what it is not, which in turn becomes part of its idea of itself. However, in knowing itself as a certain "thing," the I must have an idea of itself. Put differently, the I is what it knows, but since it knows that it knows, part of what the I consists of is its awareness of its awareness of itself. Thus, the I's own self-awareness constitutes an idea (call it I*), which, in being an idea or concept, is both something other than, and a part of, the consciousness that knows it (e.g., *FNR* §1, 18-19). However, because I* represents the I, this idea must represent the I as it actually is. At the same time, because the I is that which is both distinct from, and partly identified with, *both* the not-I that is originally beyond the I, *and* its idea of itself that represents it, I* must *itself* contain an idea of the original not-I and the I as that which are different from *it* (i.e., I*).

Put differently, the original not-I (which served as a limit to consciousness) is a "not-I" to *both* the I and I*. Likewise, the original I that is defined through the original not-I and through I* is itself a not-I to I*. Consequently, I's awareness of itself includes not-I, I*, and its being not-I*. This means, though, that I* (which is I's awareness of itself) also contains not-I* as part of *its* identity, and so on. Additionally, because I* must represent I, and because I knows itself as that which has an idea of itself (I*), I* must also have an idea of itself (e.g., I**) that

identifies itself as being other than the original I, the original not-I, and not-I*. But since I** represents I* (which includes the concept of I**), I*** must also have an idea of *itself*, and so on.

A version of this problem remains even if one proposes that there need be no ensuing series of I**...s if I itself is I*'s concept of itself, just as I* is for I. This is true, in that from the standpoint of I*, I would both precede it and be a product of its reflection, and *vice versa* in respect to the standpoint of I. Hence, the awareness of each of itself as both a cause and product of the other would result in each forming a new concept of itself (one as the other's cause, the other as the other's product), so that a purely internalized (as opposed to "outwardly" generated) series of I-concepts would result, in a kind of solipsistic gridlock, through which I could never "break out" to be aware of something that did not have its origin in I.

It is evident from the above descriptions that an inescapable introspective infinite regress of some kind looms on the epistemological horizon for Fichte. At the same time, the philosopher himself anticipates the opposite problem of a methodological circle that threatens to render even the first concept of the I (I*) impossible, rather than generating a regress of I**... 's. To the point, in order for the I to form a concept of itself in the first place, it must be something definite. It can only be something definite, though, in relation to something previously outside of its consciousness, as was just explained. But another object cannot relate to it if this consciousness does not yet have a definite form as a "this" as a thing to which something else can relate. Conversely, this other cannot be a definite "object" (as it must be to be an "other") if the first consciousness is not yet a definite "this" by which something outside of it can be experienced as a definite other (*FNR* §3, 32).

Despite these apparent difficulties, Fichte is able to avoid the difficulties of infinite regress, solipsism, and potential self-contradiction in accounting for the possibility of the I through the fact that the I only

forms an idea of itself (I*)²¹ insofar as it originally desires some not-I that differs from both I and I* and from which the possibility of the I, and thus I*, arose (*FNR* §1, 19). Even though this not-I becomes “part” of the I’s self-awareness (as well as of I* that represents I), a solipsistic gridlock is avoided by the fact that the I is constantly confronted by new experiences beyond itself, which it then assimilates into a new idea of itself (*FNR* §1, 19). Hence, the I and its corresponding I* are constantly undergoing change, moving forward into ever-greater awareness as the I encounters and wills to “take into” its consciousness new things beyond it (*FNR* §2, 27-28). While this does entail that the I’s concept of itself is ever expanding, it is ever expanding in a way that allows it to “break free” of its own previous limitations, thereby “entering into” a world previously entirely different than it and all of its ideas.

As for the problem of consciousness needing to already be defined in order to define another that can define it (i.e., consciousness), this is averted by the fact that the initial freedom, in encountering new experiences from without, comes to realize that it is free to either pursue or reject these experiences as something that can be defined as an other. This reflective awareness of the ability to continue to act, or not act, toward these as-of-yet indefinite limits provides the foundation for consciousness to be defined as a subject that has the freedom to act or not act in specific ways.

In addition, its decision to act or not act in particular ways toward these limits establishes points of “fixture” for these limits, whereby they can be defined as particular objects. In effect, the moment when consciousness realizes this freedom to act or not act in respect to encountered limits constitutes a moment of simultaneity in which the definite I and the definite objects external to the I, both of which mutually define one another, occurs. Even so, the fact that this awareness originates in the consciousness awareness of this freedom, consciousness

²¹ The designation of the I’s self-concept as I* is mine, and not used by Fichte, though this still matches his description.

is discovers that it is basically self-defining, since it is through this freedom that the objects through which consciousness is defined are themselves defined (*FNR* §3, 32-33).

For Fichte, these constantly arising new experiences constitute the “external” world of matter. At the same time, his scheme is idealistic in that these new experiences arise within consciousness itself. Fichte does not posit a “realm” fundamentally outside of consciousness, for if one imagines such a realm, it would exist in consciousness as a concept, and thus not be outside of it. Here is where the seeds of Fichte’s purported pantheism become apparent. Consciousness is constantly becoming “more than it currently is” through what becomes newly present to it.

While one is tempted to posit a “cause” outside of consciousness to explain for these otherwise seemingly *ad hoc* new experiences, this is precluded in that “cause” itself is something only understood through one’s sensory experience. Consequently, “causality” itself is a product of consciousness (e.g., *SE* Part II, 65, and §14, 149-54). In this way, attributing these new experiences to an external cause would require thinking of them as arising through a prior act of consciousness. This seems to point to either another infinite regress, or to consciousness being the constant emergence of new contents that, even as they have their origin in consciousness, consciousness freely determines how it will be defined through them (and hence through itself). Consciousness is the freedom of the self-defining defined. (The manner in which this indicates consciousness to ultimately be eternal—perhaps as God—is addressed mostly in section four.)

To continue, the emergence of new sensory experiences within self-consciousness allows Fichte to deduce three distinct limits to the exercise of freedom that characterizes the I. Precisely speaking, these perceptual encounters with the not-I that enables free consciousness to form an idea of itself are the experience of particular kinds of limits to the exercise of conscious freedom.

First, Fichte notes the perception of the subject’s own body, as addressed previously. The body both limits and increases freedom. On

the one hand, the will directs the actions of the body, which in turn enables it to exercise a degree of physical control over other things external to the body. On the other hand, the body's encounter with these things also places certain limits on the subject's freedom. The limit that is the subject's body, then, is concomitant with the subject's awareness of objects outside of it. Fichte's idealism remains intact in that these objects are necessarily known within consciousness.

External objects differ from the body in that they cannot be manipulated by a sheer act of will, unlike voluntary bodily motions. Rather, these objects can only be controlled through direct physical contact, by either the subject's body or another object.

Thus, these objects constitute a distinct type of limit on freedom. In addition, Fichte suggests that it is only by observing interactions between objects, which appear to occur in a strictly determinate manner, that subjects come to form an idea of physical causality. This concept is taken to be fundamentally different from the exercise of freedom the subject's experiences over his or her own body, which is highly variable and able to interact with (including refraining from physical interaction with) external objects.

The above analysis prompts Fichte to absolutely reject deterministic accounts of action (*SE* §14, 149ff). Physicalist determinism is rejected insofar as the idea of causality between inanimate objects differs even in our experience from that we experience in willing (*SE* §14, 151-52 and *FNR* §3, 35). Beyond this, even forms of so-called "rational determinism," where subjects are said to be determined to act (apart from direct physical causality) from "motives" deterministically formed through comparatively "stronger" perceptions, are precluded.

Fichte rejects "rational determinism" on a number of grounds. First, his analysis of the I has already demonstrated that conscious freedom is the foundation by which concepts of the I and external objects constituting not-I's come to be. In this case, freedom is known to precede one's awareness of such objects (as well as of their causal capabilities), so that attributing the activity of the will to such objects is conceptually

backward.

Similarly, the very judgment concerning the comparative “strength” of various perceptions associated with diverse objects presupposes that consciousness must to some extent “transcend” these experiences in order to assess and compare them. (This is in line with Fichte’s view that the I’s concept of itself is identified in part in relation to particular not-I’s, while also remaining “outside” of them). Likewise, reflection reveals that desires sometimes grow stronger the longer they are not acted upon, thereby indicating that consciousness has a power to not act on them (*SE* §14, 153-54). The very capacity to form such judgments, then, implies for Fichte the freedom to determine itself in respect to whether or not a particular desire linked to a certain perception will serve as its motive for action. While all actions are directed toward *something* originally “outside” the I, the I in effect retains an implicit ability to determine *which* desire it will act upon.

Finally, along with the subject’s own body and external inanimate objects, freedom encounters objects outside itself that (1) exhibit a variability of activity resembling free activity more than the highly determinate actions of other external objects and (2) are able to both influence, and be influenced by, the subject’s free activity apart from direct physical contact, particularly in respect to verbal utterances, which themselves demonstrate a high degree of variability as opposed to rigid determinacy (*FNR* §3, 31ff). Given this variability of motion and non-tactile responsiveness, the I posits these objects as bodies correlated to a conscious freedom apart from its own. The realization of conscious subjects apart from oneself forms the basis for Fichte’s account of “personhood,” as will be now be addressed.

2. PERSONHOOD AND NATURAL RIGHTS

Much as consciousness becomes aware of itself through its interaction with objects and subjects outside of itself, for Fichte consciousness can only be *personal* through the realization of the consciousness of others. Nevertheless, just as his account of the I must be qualified in order to

avoid an infinite regress and/or solipsism, his explication of personhood faces similar challenges. These difficulties will be introduced in this section, and critiqued in section four.

A. PERSONHOOD

For Fichte, one is a person (P1) both through recognizing the personhood (made evident through P1's perception of their free activity) of another (P2), and by being recognized by another (be it P2 or someone else) as a person. However, just as P1 is only a person by recognizing another as a person, P2 can only be a person by recognizing someone other than himself or herself as a person (whether this is P1 or someone else). This means that, for Fichte, one cannot be a person without recognizing others as persons, and without being recognized as a person oneself (e.g., *FNR* §6, 68-69). This process exemplifies (as noted in the introduction) the essentially intersubjective nature of Fichtean personhood. As he expresses, "But prior to his [i.e., the other's] influence upon me, *I am not an I at all*" (*FNR* §6, 69, emphasis Fichte's).

Because being a person requires (1) realizing the personhood of another, (2) realizing one's own personhood, and (3) being recognized as a person by others, the above scheme reveals, more deeply, that one can only be a person if he or she realizes that P2 recognizes his or her own (P2's) personhood, which in turn requires P2 knowing that some other recognizes him or her (P2) to be a person. In other words, one must not merely be recognized as a person by another; he or she must realize that he or she is so recognized, and that this other realizes his or her own recognition by another. Fichte comments on this very point, stating, "Thus I must suppose that the person outside me... assumes the very same things about me that I assume about myself and about him; and I must assume that he simultaneously assumes that I am also assuming the very same things about him" (*FNR* §6, 69).

The above requirement, however, presents a difficulty similar to that addressed previously in respect to the self-definition of consciousness. To be recognized as a person, one must already be a person (i.e.,

something cannot be recognized as that which it is not). But it has been demonstrated that one can only be a person by being recognized as one! Consequently, it appears, in circular fashion, that personhood is both a pre-condition for, and result of, being recognized as a person by another (*FNR* §6, 70ff).

Fichte responds to this puzzle by suggesting that the recognition of another and oneself as personal necessarily arises from the fact of recognizing the comparability of the indeterminacy of another's activity to one's own, relative to more determinate objects (*FNR* §6, 74ff). Hence, it is more accurate to say that the mutual awareness of freedom, as opposed to personhood, is a precondition for establishing personhood. Fichte expresses this in terms of recognizing a "potential" personhood that is made "actual" in the actual intersubjective realization of personhood (*FNR* §6, 69).

The philosopher further maintains that this particular realization happens necessarily, and not as a matter of choice (*FNR* §7, 79ff), as "choice" already presupposes a recognition of oneself as an I with power to act upon various desires in response to particular perceptions. In exercising freedom in one's own body and observing it in the activity of another body, the I (and thus one's own personhood) is posited, along with the simultaneous awareness of the other as an I that, in being another I, is an I for-itself, and not just for the "original" I. Strictly speaking, the other is not an I until he or she is "summoned" (e.g., *FNR* §2-4, 31-41) by another, and responds in such a way to establish and convey one's own personality.²² One must therefore be able to speak of a particular consciousness as being recognized as potentially personal before becoming an actual person, as the latter only occurs when one realizes personality in one's self and others (*SE* §6, 69).

A complication arises here as to how exactly one is able to know that the indeterminant bodily activity perceived in another is necessarily

²² For a helpful summary of this process of "summoning," see also Neuhauser's introduction to *FNR* pp. xv-xvi.

the result of a conscious freedom like one's own. Certainly, one can infer that this is *likely*, as such activity is possible in oneself only through conscious freedom. Still, how can one *know* this?

Stated more precisely, this difficulty arises from the fact that the I realizes itself through a reflective act by which it comes to form a concept of itself (I*) through its identification-within-distinction in relation to what it is not (not-I). In this case, the fact that personal awareness arises in associating the indeterminate activity observed in another body/object with a person (P2) distinct from oneself requires realizing that this other (P2) also has an idea of itself, formed in an identification-within-distinction with what this other is not. Put differently, the I cannot enter into this other's consciousness to know what concepts it has, or to even know that it is conscious at all. As Fichte declares, "Each rational being, just as surely as he is one, can rationally presuppose of others... that they have the same concepts of these objects" (*FNR* §6, 69). How this point can be justifiably presupposed, though, requires elaboration.

As mentioned earlier, Fichte contends that consciousness becomes aware of consciousness outside itself by observing the free indeterminate bodily activity of another, along with the ability to influence, and be influenced by, this other through verbal utterances (*FNR* §6, 65-66, and 71). For Fichte, the mere perception of an object possessing a bodily shape similar to one's own (which, as has been shown, represents another limit on and instrument for freedom) produces in one an "expectation of reciprocal communication." He adds: "This is the case not through habituation and learning, but through nature and [natural] reason" (both quotes from *FNR* §6, 75).

Though one encounters the other through the sheer exertion of the will, one has no control over recognizing this similarity to one's own body. He goes as far as to assert that consciousness instinctually recognizes the "human shape" as "sacred" (*FNR* §6, 79). On the surface, this assertion may sound *ad hoc*. It is more tenable, however, when one considers that freedom by its very nature, as pure undetermined willing,

strives to exist, and hence resist attempts to control it. As a result, perceiving such freedom outside oneself immediately brings to mind, by association, an awareness of this striving, which is now attributed to this other.

Insofar as one has an idea of oneself, and this idea involves a concept of indeterminate action manifested as conscious striving, this indeterminacy perceived in the not-I has now become joined to the idea of conscious striving in the I's idea of itself. In this way, this indeterminacy in the other, the concept of which is now taken into part of the I's very concept of itself as I*, becomes attached to (i.e., associated with) the awareness of conscious freedom already contained in the idea of oneself. Given this, Fichte is able to assert that upon observing the other's free bodily activity, and the use of its "higher organ" (e.g., *FNR* §6, 62 and 65-68) through vocalization, one is "compelled" to recognize the other as free and rational (*FNR* §7, 79). Hence, this recognition is "necessary" rather than the result of a "free" choice, even though it naturally arises from one's awareness of his or her own freedom.

The assertion that the human shape is instinctually regarded as "sacred" and is immediately associated with freedom holds significant implications for abortion and euthanasia. Obviously, at a very early prenatal stage the human shape is readily apparent, just as it clearly is for a person in a physically limited state. As he states, it is by "an instantaneously grasped connection, as given to the senses...compels everyone with a human countenance to recognize and respect the human shape everywhere—regardless of whether that shape is merely intimated and must still be transferred (albeit with necessity) to the body that intimates it, or whether that shape already exists at a certain level of completion" (*FNR* §6, 78-79). Nevertheless, while Fichte makes it clear both here and later in *Foundations of Natural Right* and *System of Ethics* that there is an natural impulse to care for offspring, he also stresses that pre-natal offspring do not have any rights *per se*. (These claims are addressed in more detail later.)

One can infer at this point that this lack of rights naturally follows

from the fact that the offspring do not perceive the free bodily activity of those outside the womb, and thus cannot achieve the intersubjective recognition necessary for full-fledged personhood. One suspects, then, that while Fichte would personally be averse to the idea of abortion, his system nevertheless lacks grounds for granting offspring the rights needed to merit societal protection. This becomes more evident here in the following discussion where the details of his distinction between rights and morality are clarified.

B. RIGHTS

For Fichte, rights differ from morality in this: while one cannot help but recognize the other as a person upon observing his or her free bodily activity (through the process described above), one can freely choose not to agree to limit his or her freedom in respect to the freedom of another. This marks the difference between rights and morality. In recognizing another as a person, one is necessarily aware that rational consistency demands that he or she regard the other as his or her “equal” (*FNR* §6, 74) and thus treat him or her in a way consistent with how he or she desires to be treated. Morality, then, occurs where the individual agrees to act according to this necessary awareness, outside of any external force which is capable of determining, or impeding, the subject’s actions. Where physical force is threatened, even in respect to defending a morally proper action, the condition of self-determination according to the principle of reason alone has been violated, and the possibility for morality is nullified. Accordingly, proper political authority must refrain from asserting its coercive power as a means of bringing about proper moral behavior. To do so would, in effect, constitute an injustice against morality.

By comparison, right involves persons mutually expressing to one another limitations on one another’s behavior, with the implicit permission to have these limitations maintained, if necessary, by physical force (*FNR* §8, 88ff). Though rights are recognized and established by reason, they are secured through the “lower organ” of the physical force.

In this way, morality is a more advanced activity than the establishment of rights, as it pertains only to self-determined freedom, irrespective to any possible relation to external force.

Once again, as a rational being, one by necessity (through the mutual process of personalization addressed above) cannot but help realize a moral duty toward the other, as well as this other's qualification to be a rights-bearing subject. Nonetheless, the recognition of this duty and this qualification does not in itself constitute an agreement to actually limit one's freedom according to this recognition. The recognition that one should place oneself under the determination of reason (which Fichte notes fundamentally differs from physical determinism) is unavoidable. The agreement, however, to subject oneself to physical force in assuring such compliance is a different matter altogether (*FNR* §7, 81). As he exclaims, "[i]n relation to a particular person, I am absolved from adhering to the law [i.e., of reason and right] requiring me to treat him as a free being, and the question of how I treat him depends entirely upon my choice, or I have a right to coercion against him" so that "this person cannot, *through the right alone* [emphasis Fichte's] prevent my coercion of him (although he may do so...by appealing to the moral law," though (once again) "my coercion is not against *this* law [i.e., the law of right]" (all quotes are from *FNR* §7, 83; the emphasis is Fichte's).

Fichte avers that the decision to grant such recognition is "arbitrary" (*FNR* §7, 81). This holds in that while the rational subject comprehends that rational consistency dictates that if he or she wishes his or her own freedom to be respected he or she must respect such freedom in others, there is nothing that necessitates a choice to live by this principle of consistency (*FNR* §7, 80).

Ironically, though in one sense Fichte takes morality to be the highest aim of consciousness insofar as it is totally self-determined and free from all application of physical force, there is a sense in which right epitomizes freedom on his view. This is true in that morality is determined according to the laws of reason, though Fichte insists that this is fundamentally different than physical causality; it is a determination

rooted in the nature of reason itself. Nevertheless, one's agreement to have the exercise of his or her freedom limited in relation to another is *necessitated* neither by reason nor physical force, though this ability is made *possible* by reason. Likewise, the decision not to live according to the rule of right allows one to be the target of physical coercion against his or her will. As he states, "[t]he rational being is not absolutely bound by the character of rationality to will the freedom of all rational beings outside him [i.e., to acknowledge the exercise of their freedom as a right]" (*FNR* §7, 81).

The above assessment has implications for practices such as abortion and euthanasia in that even if Fichte takes such practices to always be morally unacceptable (as will be touched upon later), a legal prohibition of these could be construed as logically violating the principle of "natural rights." This follows from that fact that moral behavior must be self-determined (and therefore cannot be legislated), thereby suggesting a wrongful violation of "natural freedom" where compliance with morality (where it does not involve directly limiting the freedom of others) is coerced by law. Hence, his claim that maternal instinct provides support for the development of morality does not provide a basis for legally mandating women to give birth (or, for physically debilitated individuals to choose to remain alive).

To repeat, one is not necessitated to place oneself under threat of coercive force in respecting the freedom of another. Once one does assent to this, though, he or she places himself or herself under certain requirements of reason. The most notable of these Fichte terms "original rights" (*FNR* §8-11, 85-108). In particular, these include the right to not have one's freedom and personality rendered impossible (*FNR* §8, 87). This logically demands (of particular relevance to pro-choice arguments) the "absolute inviolability of the body" so that "there should be absolutely that produces an immediate effect upon the body" (*FNR* §11, 108). In respect to the pro-choice position, this of course presumes that terminating a pregnancy does not involve an infringement upon anyone's bodily rights (e.g., the fetus). Section three examines why in fact Fichte

maintains that no such infringement can logically apply for pre-natal offspring.

Besides these rights, original rights in general can be summarized by the principle that no one's right may be limited by another unless this other has assented to an equal limitation. This agreement must be taken to "command universally and categorically" without exception to all who accept its conditions (*FNR* §8, 86). Given that the limitation of right must involve assent, one who limits the freedom of another in a particular way implicitly agrees to have his or her right limited in a similar way (*FNR* §8, 86-87). Lastly, a right to continued existence also entails that one has right to provide himself or herself with the basic goods needed to secure such survival, including adequate food, shelter, and property in general (e.g., *FNR* §18, 184ff), as well as meaningful employment sufficient to obtain these necessities (*FNR* §18, 186, and §19, 202-04).²³ These rights are "natural" in the sense that they all flow from the natural exercise of conscious freedom, remembering that for Fichte, there is no "nature" outside of consciousness.

It is important to note in this explication that right pertains only to the agreement to refrain from actions that theoretically impinge upon the freedom of others. This means that in principle there cannot be a right to form a mutually binding agreement to limit one's activity in respect to those things that do not potentially involve a physical imposition on another's freedom. Certainly, people may elect to limit their own behavior in ways that do not involve direct imposition on others, but they cannot form a binding agreement (backed up by law) with others to do the same. Consequently, Fichte surmises that society must necessarily permit free speech (except where it could cause undue harm), intellectual

²³ Interestingly, Fichte proclaims that beyond simple materially sufficient employment, society should strive to establish conditions in which one can seek a profession that best "fits" his or her individual personality, as opposed to merely assuming a profession based on one's parents' profession, one's familial or other social circumstances, and so on. See *SE* §21, 260.

inquiry, religion, and the like (*SE* §29-31, 327-36).²⁴ Perhaps more intriguingly, he ascertains that no law can rightfully be made against any consenting sexual relation, including adultery (*FNR* §24, 290), or divorce (*FNR* §25, 291).²⁵ While certain instances of these activities may be morally objectionable, one nonetheless has a natural right to them.

Now that a basic outline of the basis and nature of Fichte's conception of personhood and natural right has been provided, a brief assessment of the application of these principles to the practice of abortion and at least certain cases of euthanasia can be provided. Once again, it should be stressed that while Fichte may well morally object to these practices, his philosophy conceptually precludes a basis for legislating against them. In this case, the ability to choose these activities, even if immoral, is a "natural" right, and cannot be legally restricted without violating the proper (for him) purview of rights. Following this, a few critical comments will be given in regard to theoretical shortcomings in Fichte's position.

3. APPLICATION TO ABORTION AND EUTHANASIA

A. ABORTION

In respect to abortion, Fichte directly states that the fetus cannot be regarded as a person and must be perceived as part of the woman's body (*FNR* §40, 306). This must be the case, as the fetus, being within the womb, is incapable of the mutual recognition of freedom required for

²⁴ Precisely speaking, Fichte's system requires distinguishing the acts that come from belief or thought and the beliefs and thoughts themselves. For him, there can be no right to "conscience," "belief," and so on in that "rights," by definition, only apply to physical activities observed in the "sensible" world (*FNR* §4, 51).

²⁵ According to the logic of his system, however, laws may be made which preserve the partners' capacity to secure the basic goods needed for reasonable existence, where such security is jeopardized by the dissolution of a relationship upon which they were dependent for meeting these needs. See *FNR* §26ff.

personhood. This holds true no matter how developed the fetus is, since prior to birth “it” has not been spatially removed from the mother in a way that enables the fetus to regard the mother (or the mother to regard the fetus) as a personal “other” through a mutual experience of external limitation. By contrast, a much younger prematurely born infant would have entered into this “field” of sensory perception, and thus encountered the conditions through which personhood and the development of rights are made possible.

Fichte assertion, noted previously, that there is “natural drive” for the mother to protect her offspring without this implying a “matter of right” is poignantly elucidated when he proclaims:

One can just as little say that the child has a right to demand this physical preservation from his mother, as that the branch has the right to grow on the tree; conversely, one can just as little say that the mother has a duty to preserve her child, which she can be coerced to fulfill, as that a tree has a duty to support the branch which it can be coerced to fulfill. (*FNR* §41, 308)

Following this, he adds that even infanticide, while a “monstrous” and “atrocious” act, is not a “crime against the child’s external rights,” as “[t]he child has no external rights in relation to the mother” (*FNR* §48, 312).

In fact, even Fichte’s suggestion that the mother has a moral obligation to preserve her offspring is mitigated by the claim that while there is natural instinct to care for her offspring, there is “just as little a moral duty, i.e., a *special* duty, to preserve precisely *this child*” (*FNR* §41, 308, emphasis Fichte’s) until this general instinct has felt this general drive in respect to this particular child. A similar remark is made in *System of Ethics* when he declares that initially the woman’s care for her offspring only arises as an animal instinct, and thus “falls below” the concept of morality and duty (*SE* §27, 316). He concedes, nevertheless, that one incapable of such feeling can never advance to the more specifically rational experiences of “compassion” and “pity” that provide the groundwork for the moral experience of recognizing the dignity of

others through which one respects their rationality and freedom (*SE* §27, 316-17).

Amazingly, Fichte's logic leads to the even more troublesome conclusion that the father's sense of duty to a particular child can be expected to develop even later. According to him, "[b]etween father and child there is absolutely no natural connection that is guided by freedom and consciously established" (*SE* §27, 316). Even after birth, Fichte's scheme dictates that the father has no more direct interest in the care of his own child than he would for any child he observed; any special interest he holds is strictly on behalf of the mother, with whom he has freely entered into a relationship (*FNR* §42, 308). Consequently, where a child is born out of wedlock, neither the mother nor infant has a right to receive care from the father (*FNR* §42, 309), though the state can still hold the father responsible in that other's in society may suffer the consequences if these children do not receive adequate economic support (*FNR* §47, 312).

Section two's earlier statement that the mere "human shape," no matter how vague, elicits "respect" and is inclined to be regarded as "sacred" might lead one to hope that contemporary technology, which allows observers to visually perceive the shape and free bodily activity of pre-natal offspring, might be viewed as providing a basis for recognizing pre-natal offspring to have rights. Unfortunately, this is still not possible for Fichte, in that the fetus would not be able to reciprocate in this recognition, as personhood and rights requires. In fact, as mentioned a moment ago, Fichte proposes that even small children are not yet persons with rights, as they fail to demonstrate a variability of activity greater than what one observes in animals (*FNR* §43, 309).

Ironically, at most Fichte's system might allow for the state to forbid abortions (so that it would not not an absolute right) in the case where the repopulation (and thus survival) of the state depends upon this (*FNR* §46-50, 311-14). Fichte only mentions infanticide here, though (*FNR* §48, 313), and it is unlikely that this logic can carry over to abortion, as already-born infants are spatially separate from their mothers. Thus, even

if they have not exhibited the intersubjective awareness needed for full-fledged personhood, they are at least something external to the mother's body, and thus the state can put certain restrictions on the mother's treatment of them, if it is in the interest of securing others' freedom, just as it could in respect to citizens' interaction with other external objects. In any case, though infanticide can never be mandated by the state, nor can it be explicitly permitted through its laws, it can be implicitly permitted by remaining silence on the subject (*FNR* §48, 313). Certainly, at least these standards apply to abortion, along with the possible further condition (unlike the allowance, though not obligation, for outlawing infanticide) that the mother could never be legally required to bring the offspring to full term. In this event, the right to an abortion would not only be allowable, but necessary; this actually seems to better fit Fichte's reasoning.

B. EUTHANASIA

The use of Fichte's principles to justify the legality of euthanasia in certain cases is more questionable in that he directly insists in a number of places in *System of Ethics* that one morally cannot take one's own life, nor provoke others to do so (§20, 250ff). On the other hand, though the topic of suicide is given much more attention in *System of Ethics*, in *Foundations of Natural Right* he remarks in passing that same logic which mandates legally allowing all consensual sexual relations also entails that "the state cannot pass a law against suicide" (§21, 286).

In fact, even in respect to morality and not rights, Fichte concedes that one who commits suicide "with cool and thoughtful self-awareness" rather than out of rash and impulsive desire to escape suffering exhibits "proof of strength of soul" that "necessarily merits respect" as a demonstration of freedom (*FNR* §20, 256). In the end, though, he concludes that even a suicide like this is morally unacceptable in that an even greater degree of freedom is exhibited in the ability to form a law (principle) for living by which one freely continues to abide, regardless of external circumstance.

While it is clear that Fichte finds any form of self-killing to be immoral, it must be remembered that this does not mean that one does not have a right to do it. The reasons for this right are relatively plain upon further analysis.

To begin, “rights” pertain to activities that others have permitted one to do that place limits on their freedom, on the condition that this subject also agrees to limit his or her actions in identical ways for the sake of their freedom. This, in turn, implies agreeing to allow political authority to use coercive force to assure compliance with these limits. It follows from this that one cannot have a “right” to prohibit an individual from doing something that does not observably affect the freedom of others. Hence, it is difficult to see how the state could have a right to forbid people from taking their own lives, or requesting another to take them, as long as the others were not *required* by the coercive force of law to take them.

One could perhaps rebut this conclusion by pointing out that insofar as “right” pertains to an exercise of freedom, one does not necessarily have a “right” to act in a way that would essentially end his or her freedom, as this implies a contradiction (i.e., “I have an absolute right to violate my own rights”). There is some evidence that Fichte’s reasoning might allow for this answer. For example, he states in *System of Ethics* that “indentured servitude” is “absolutely contrary to right” (§32, 340). Taken literally, this would mean that one did not have a right to voluntarily give up his or her freedom to another. Accordingly, it could be argued that one did not have a right to surrender his or her freedom by ending his or her life.

Looked at more closely, however, this comment regarding indentured servitude is not reasonably applicable to a ban on suicide. First, Fichte may be speaking only of servitude that is involuntary, which is most always the case; the example of voluntary slavery is quite hypothetical. Secondly, even if Fichte’s prohibition on servitude did include that which was voluntary, its principle is not sufficiently parallel to euthanasia. One cannot freely limit one’s activity toward another in a slave-like

fashion, since rights are predicated on a reciprocal limitation by the other. Obviously, though, it is unintelligible for some people to make themselves the slave of another, and for these others to make themselves slave to the first. If both agree to be slaves for the other, then there is no master, but if there is no master, there is no slave!

In short, mutual voluntary enslavement would be logically self-cancelling. By comparison, one can coherently will to allow another to have his or her own life taken, on the condition that the other allows him or her this same free choice. Likewise, in respect to slavery, it is self-contradictory to say that one can freely surrender his or her freedom, as this would be maintained by an ongoing free decision to continue surrendering it. A one-time decision to be killed does not involve this same kind of contradiction, however, since once one is dead, the loss of his or her life (freedom) is not sustained by his or her freedom; rather, his or her freedom simply no longer exists.

The above demonstrates that it is unlikely one can make a plausible Fichtean case against a right to euthanasia. This would especially be true, however, in cases like that mentioned in this essay's introduction, where one's physical mobility was limited to such an extent that the range of motion typically associated with freedom was no longer evident. As section one detailed, personhood is dependent upon recognizing another to have a degree of freedom similar to one's own. In the case of a severely physically debilitated person, this would no longer be apparent.

To be sure, we could recognize such an individual's personhood by virtue of his or her previous demonstration of sufficient variability, as well as through his or her ability to speak and the like. Still, as these capacities were lost, the basis within Fichte for recognizing this individual as a person would diminish. In fact, as mentioned previously, Fichte technically declares "rights" to thought that do not correspond to actions to be unintelligible, as "right" refers by definition to the physical manifestation of will. Given this, more than merely the allowance for voluntary euthanasia, a possible case for *involuntary* euthanasia in cases of extreme debilitation arises.

Finally, the above case might even be made more convincing by the fact that the continued care of such persons actually infringes on the freedom of others, and thus (perhaps improperly) limits their rights. It is *possible* that such a conclusion might be avoided if one suggested that the original agreement to live in a state implied tacit assent to take care of severely debilitated persons on the condition that each citizen would be cared for himself or herself under these conditions. Such an argument may not be compelling, though, in that it presupposes that one is agreeing to care for *persons* in certain situation, on the condition that he or she would receive the same care *as a person* in similar circumstances. However, while agreements can be made with *persons*, the very point in question in this scenario is whether one would in certain circumstances be a “person” with whom such an agreement could be made.

Now that it has been shown how Fichtean principles can be used to provide an surprisingly cogent case for abortion and euthanasia rights in contexts that would otherwise seem incoherent, a brief consideration of potential conceptual difficulties with Fichte’s system is in order.

4. FINAL REFLECTIONS: A PRELIMINARY CRITIQUE OF FICHTEAN RIGHTS

Though Fichte’s systematic account of self-awareness, personhood, and natural rights is deduced with striking originality and rigor, it is not without weaknesses that detract from the strength of his conclusions. Space does not permit an extensive investigation of these points. Even so, it is worthwhile to investigate these issues enough to realize that what many presume to be “common sense” views regarding certain alleged rights are largely dependent upon potentially problematic concepts that, if elucidated, reveal that many of the conceptual underpinnings of the current liberal paradigm may be inadequate for continuing to support certain contemporary liberal conclusions. It is hoped that once these difficulties are apparent, proponents of these views will be honest enough to re-evaluate their position, while those resisting these views will gain insight as to which alternate direction to pursue in formulating sufficiently liberal arguments against abortion and euthanasia.

As noted in section two, for Fichte, freedom is understood in the context of rights when persons are able to agree to certain limits on their freedom, on the further condition that violations of this agreement are to be subjected to coercive external force. Such a scheme, however, requires articulating terms of this agreement. Similarly, interpersonal recognition itself is facilitated through a “summoning,” which may involve bodily gestures that demonstrate freedom, but also suggests the capacity to influence another through rational speech. The difficulty here is that communication, which is needed both to authenticate personhood and establish the conditions for rights, is itself a highly developed social product.

Indeed, Fichte himself acknowledges that this process in practice is not carried out merely by a two-way intersubjective recognition, but involves an entire community of rational beings (*FNR* §6, 68, and §7, 79ff, especially 82). This, however, points to a potential chicken-and-egg type problem. Simply put, language cannot be developed apart from persons, but presumably there cannot be persons until there is language (however rudimentary) by which to communicate personhood. Fichte himself seems to be thinking of something like this when he notes that for a rational being to determine itself (i.e., to recognize oneself as a free rational being) “in consequence of the summons” of another, “it must first understand the summons, and so it is dependent on some prior cognition of the summons,” in which case “the purposiveness of the summons is conditional on the understanding and freedom of the being to whom it is being addressed” (all from *FNR* §3, 35; see also earlier citations in section two regarding the role of speech in establishing personhood).

Along similar lines, section two considered a potential methodological circle in Fichte’s account of personhood. One must be regarded as a person to be a person, but one cannot be regarded as a person unless one already is a person. Personhood, then, seems to be both a precondition for, and product of, being recognized as a person. Fichte resolved this by appealing to the recognition of potential personhood, exhibited by

recognizing that another possessed a body similar to one's own, which he or she therefore associates with freedom through his or her experience of his or her own body.

This solution, however, begs the question as to how can one recognize "potential" personhood without already conceptualizing actual personhood, which requires already being a person. The answer, as Fichte realizes, is that the person recognizing the potential personhood of the other must have already attained personhood by the recognition of some third party, who at some point had recognized this first subject's potential personhood. This process of personalizing intersubjective recognition therefore requires in practice more than merely two subjects; it presupposes a community of "several" rational beings, some having realized personhood prior to others (*FNR* §7, 82). On Fichte's scheme, then, two subjects must either recognize one another (and hence themselves) as persons at almost exactly the same moment, or at least one of them must have been recognized as a "potential person" (though not yet having rights) by some prior person, until he or she at some "magical moment," so to speak, becomes aware of his or her own and others' personhood.

The simultaneity presumed in this first possibility verges on miraculous, and seems rather *ad hoc*. Furthermore, even if such a mutual personalization did occur at exactly the same moment, the question would remain as to whether this could have occurred apart from the sufficient development of language needed for each to verify the personhood of one another, and establish agreements concerning rights. Accordingly, only the second possibility remains: namely, that each is "preserved" in a condition of pre-personal freedom until through this freedom self-awareness (and other-awareness), and hence personhood, is realized.

The second option, however, raises the chicken-and-egg problem alluded to above: it requires that the "chain" of prior persons who can recognize the potential personhood of others must extend back infinitely. One must therefore posit a beginning of this system at which some first

beings were recognized as persons, without “coming into personhood” through their recognition by another as potentially personal. Such a concession, however, completely violates Fichte’s account of personhood, and looks even more miraculous and *ad hoc* than the appeal to simultaneity in the first option.

This difficulty leads Fichte at least verbally to acknowledge the existence of a “rational being...that is not a human” who “brings up” the “first human beings,” though “only to the point where humans could start bringing one another up” (all quoted remarks are from §3, 38). A few lines later he directly identifies this “being” as a “spirit” akin to one mentioned in the Book of Genesis.

The allusion to God in this context is fascinating for a number of reasons that can only be touched upon very briefly here. Conceptually, he is suggesting that though human beings were first “made” persons by God, God intentionally removes Himself from the process after that, leaving personalization entirely up to humanity. One finds a peculiarly deistic conception here; though God is the original source of personhood and rights, He designed things so that we are not to consider Him at all (except as a necessary first personal cause, kept in the speculative background as far as possible) when determining whether something outside of us is a person with rights.

It is questionable whether Fichte is being sincere in his acknowledgment of a Creator. Historians are well-aware of the so-called “Atheism Controversy”²⁶ that he faced toward the end of his career, and a common scholarly view today is that he was more of a pantheist²⁷ who indicates at times that the order of the world (including the moral order) cannot be conceived where God is conceived as something independent of God *via* creation.²⁸ Indeed, Fichte may be tipping his true metaphysical hand, so to speak, a bit when he exclaims in §3 that the supposition of a

²⁶ See n10 for sources which provide a helpful overview.

²⁷ See n9.

²⁸ Talbot, p. 57.

Creator “is surely a necessary assumption point in one’s reflection” without clarifying whether this a more advanced or less mature stage of understanding.²⁹

This suspicion is supported elsewhere in his writing where he refers to the “indissoluble conflict” and the “self-contradiction” of the conception of a “first cause.”³⁰ Nonetheless, he does hold in the same text that the “existence of God” is “subjectively certain,” even though no objective concept of Him can be formed (even by God Himself!), in that the I’s continual striving to understand its relation to the not-I (i.e., as an identification-with-distinction, as discussed in section one) promotes a general concept of “all that is not-I,” which necessarily produces belief in God. This concept, though (as just mentioned), cannot be “objective”; it can be “nothing more than belief,” with belief being only subjective.

This enigmatic comment seems to indicate (though Fichte does not say so directly) that the belief itself that there must be a God *is* God.

²⁹ This assessment also illuminates a noteworthy line of conceptual development through Kant, Fichte, and Hegel regarding the relationship between God and morality. To comment on this very briefly, whereas Kant eventually posited the existence of God (along with immortality) as a “necessary postulate” for the sake of completing his moral scheme (see, for example, Book II, ch. 2, in *Critique of Practical Reason*), Fichte apparently comes to equate the moral law itself with God (i.e., God *is* the moral law), while Hegel begins to push this further in locating higher degrees of divine self-awareness within the participation in the state (e.g., *Philosophy of Right*, Third Part, sec. iii, esp. §258). In respect to Fichte’s views, see Talbot, pp. 57-58 n1, who quotes the following from Fichte in vol. 5, p. 186 of *Sämmtliche Werke* (Berlin, 1845-86), 8 vols; see Talbot’s Preface, p. iii for bibliographic reference: “The living and working moral order is itself God; we need no other God and conceive no other.” Also of interest here is *SE* §19, 245, where he cryptically proposes that “Everyone becomes God, to the extent that one is permitted to do so—that is, so long as one preserves the freedom of all individuals.”

³⁰ See Fichte’s review of *Aenesidemus*, as found in *Fichte: Early Philosophical Writings*, translated and edited by Daniel Breazeale (Ithaca NY: Cornell Univ. Press, 1988), pp. 76-77.

Insofar as belief is only subjective to the consciousness that has it, though, this conclusion appears to amount to pantheism, as mentioned here in the previous paragraph.³¹ As Talbot states, it is a matter of debate as to whether Fichte intends to deny God a transcendent consciousness of any sort outside of human consciousness (a view closer to atheism or pantheism), or whether he simply refrains from referring to God as “conscious” in that we as finite beings necessarily think of consciousness in finite terms of a limited I, whereas God’s “consciousness” would be (inconceivably to us) infinite.³²

Whatever Fichte’s own understanding of the nature of God and His relation to morality and rights, it is evident that his liberal conception of rights relies heavily on certain metaphysical perspectives. Ironically, if a deistic interpretation is retained, one must hold to very specific views about the supposed intention of the Creator (i.e., to be left out of the picture). It also requires an *ad hoc* conviction that “personhood” originally came from God, but remains unaffected by God after this. In fact, such an assertion begs the further question as to how *God* could be personal without being recognized as a Person by some other Person. Given this, Fichte’s analysis of personhood would require holding (once again, in *ad hoc* fashion) that God’s personhood, unlike all others, did not require intersubjective recognition, or that God’s being “itself” was interpersonal, as in the doctrine of the Trinity.³³

It is extremely difficult to discern if Fichte could allow for such a view, as he denies the possibility of an “objective concept of God,” whereas the intersubjective awareness in which personhood is realized for him, as has addressed earlier, in that the I experiences a concept of itself (I*) as an object of consciousness, as well as an objective concept of the other, in this process. By contrast, if God was an interpersonal

³¹ *Ibid.*, p. 76.

³² Talbot, pp. 57-58.

³³ In researching the sources and texts used in this present work, no statements suggestive of this doctrine were found.

community of Persons, it seems that on Fichte's scheme, each Person would have an objective concept of Himself and each other Person, thereby contradicting his conviction that God could exist only subjectively. In fact, this demand for subjectivity seems to preclude the possibility of there being an infinite, or eternal, self-consciousness, so that "God" exists only where there are finite persons to believe in God (i.e., allow for a unity of not-I's which they can never conceptualize, as the "flow" of not-I's is continual and never completed). Fichte hints at this (once again, rather cryptically) in asserting that no consciousness could never know itself to be eternal, as knowledge presumably refers to objects of thought of which consciousness becomes aware *at some point* (i.e., in time).³⁴

By comparison, a much more consistent account would hold that if God established personhood for human beings originally, then this basis for personhood and rights is preserved within the entire process of human development as it was designed by God. In this case, a good argument can be made that the most objective criterion for determining personhood would be in the created biological order, with "personhood" being ascribed to anyone possessing human biological traits. Put differently, one is a person when God regards one as a person (however God's personhood may be understood), with it being presumed (to avoid arbitrariness) that the first point of this recognition traces all the way back to one's biological origin.

On this line of thinking, God would not intend for us to leave Him out of the picture and "produce" personhood through a purely human intersubjective recognition, but rather to regard ourselves as having been designed to *participate with* God in the formation of personhood. Accordingly, one's "right" to existence would originate in God's design. This also would entail that abortion and euthanasia were violations of the rights of persons.

It is obvious that an alternative basis for rights such as one just

³⁴ Ibid.

considered carries far too many theological overtones for the comfort of those who desire to leave God “out of the picture” in their conception of liberal rights. At the same time, it appears that the Fichtean position that appeals to most of their other sensibilities of such individuals (such as the prohibition on legislating morality, having a right to do whatever does not physically affect another against his or her will, and so on) itself relies on arguably even more specific (and arguably less consistent) metaphysical requirements. This is evidenced in its ultimately *ad hoc* acceptance of an infinite regress of finite consciousness, or in its need to allow for exceptions to its conception of personhood in accounting for the origins of this process.

In closing, one may suspect that this whole quagmire of complexities is the result of a highly-nuanced idealism that most would take to be *prima facie* implausible, so that a more “naturalistic” (i.e., materialistic) account of personhood that *presupposes* objectivity (as opposed to regarding it as a subjective construct) should be adopted instead. This approach, however, is itself inadequate as a support for liberal rights, particular in respect to abortion and euthanasia, as will now be explained.

First, if one attributes personal rights in something “physically objective,” the most objective “point” for locating these would be in the biological origin and features of a subject, suggesting a right to life wherever biological human life is detected. In fact, the commonly accepted pro-choice view that a late-term fetus has no right to life, whereas a functionally much less developed born offspring does, is only cogent on an idealistic scheme such as Fichte’s, and not on a strictly physicalistic one.

Secondly, Fichte could rightfully claim that for all its empirical posturing, such a naturalism is actually decidedly unempirical in that one can never provide direct evidence for origins outside of consciousness, as “evidence” in itself is realized only in thought. To be sure, one could make an *inference* to such a pre-conscious set of conditions, but such an inference could never, in principle, be directly empirically verified. By

contrast, Fichte proposes a method that, theoretically, is “verifiable” to anyone capable of carefully reflecting back on what they experience within his or her own consciousness.

Lastly, Fichte could point out that rights are only possible where one accepts as a brute fact (accessible he thinks to the evidence of reflection) a conscious freedom that is purely self-determined, and in this sense “transcends” the limits of the external world of inanimate physical reality. If physical reality is presumed as a starting point, freedom, and thus genuine personhood and rights, appears to be impossible. In this case, assigning “personhood” and “rights” at any point (or even to posit them as an “objective” fact at all) is far and away more arbitrary than anything proposed by Fichte himself, or the alternative theistic conception provided here that coherently traces these back to biological origin.

CONCLUSION

A close examination of Fichte’s idealistic philosophy provides magnificent insight as to particular developments in the concept of “personhood,” “nature,” and rights that remarkably coincide with many basic contemporary liberal convictions, generally held as “common sense with little awareness of their significant philosophical influences. This is perhaps nowhere clearer than in positions often taken in respect to abortion, particularly in granting a right to life to prematurely-born offspring who are functionally much less developed than late-term prenatal offspring who are not recognized as persons with rights. Despite its impressive degree of detail and considerable rigor, however, Fichte’s scheme appears to ultimately rely upon highly metaphysical (and arguably arbitrary) conceptions that run counter to any number of other liberal sensibilities. In addition, alternatives with debatably less arbitrary foundations ultimately replace the purely intersubjective account of personal rights with a theocentric one that is also incompatible with these liberal convictions. At the same time, attempts to skirt these implications by assuming a purely naturalistic (physicalistic) approach to these issues conceptually fare even more poorly in grounding

personhood and rights in anything objective, including the attempt to defend a fundamental right to abortion.