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## Fichte on sex, marriage, and gender

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### ABSTRACT

“I am only what I make myself to be”, Fichte tells us. In this paper, I outline Fichte’s views on sex, marriage and gender, with two aims. Firstly, to elucidate an aspect of his moral theory which has received little attention, and secondly to argue that Fichte’s distinctive stance on selfhood, freedom, and normativity lead to a revisionary account of gender expression and identity, where people can freely carve out their own identity, irrespective of “nature”. In this paper, I therefore outline Fichte’s own views, highlighting what I see as a tension in the texts between essentialism and anti-essentialism about gender, before reconstructing a neo-Fichtean view which foregrounds the anti-essentialist aspect.

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There is currently a renewed interest in Fichte’s moral and political philosophy as a distinctive approach, with vigorous debate in the Anglo-American scholarship regarding the status of his account. One aspect of his account which has been under-studied is his thought regarding sex and gender. I will remedy this deficit here. In this paper, I give an overview of Fichte’s views regarding sex and gender in the later Jena works. I follow the recent Anglo-American scholarship in regarding the later Jena works, chiefly the *System of Ethics* and the *Foundations of Natural Right* alongside the unpublished *Wissenschaftslehre Nova Methodo* as expressing a high point in Fichte’s career. This article is then in two main parts. In the first, I outline Fichte’s stated views in these texts regarding sex and marriage, and explore what coherent sense can be made of them. I argue that Fichte’s account begins by reflecting on distinctive moral procedures governing the domain of sexuality, and then progresses in intelligible steps from sex through to marriage. In this section, I am concerned primarily to explicate

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Fichte's own views, and highlight what I see as a tension between essentialism and anti-essentialism about sexuality. In the second, I use the resources from this view to outline why Fichte has resources for a theory of sexuality which is inclusive of transgender and non-conforming identities. I briefly articulate this neo-Fichtean view and its relation to Fichte's account of the body. This paper is then partly contextualist and partly reconstructive.<sup>1</sup>

## 1. Fichte's views

The main *loci* for Fichte's views on sex and gender are found in the *System of Ethics* (from the perspective of moral philosophy) and the *Foundations of Natural Right* (from the perspective of political philosophy).<sup>2</sup> These texts are an interesting case study in a philosopher whose concrete claims pull in different directions. In the case of the *System*, we find condensed into a little over four pages of text a whole range of claims, both relating to traditional sexual morality and hints of a progressive or more liberal view.<sup>3</sup> In the case of the *Foundations*, we find an extensive discussion over many pages regarding all kinds of rights and duties arising. In both works, Fichte appears essentialist about gender. In the *Foundations*, this supports a sexist set of rules according to which women are barred from the public sphere. In the *System*, however, things are not so simple, and there are resources there for a more expansive or revisionary account of human sexuality and gender relations. I propose that this is a genuine tension in his position, which can in principle be resolved either way, but which I resolve by foregrounding the anti-essentialist line, which I think better reflects Fichte's overall view and his 'system of freedom'.

On Fichte's view, there is a "natural arrangement" of nature into two different sexes. (*FNR* 305, *SE* 327). Fichte thinks that this end of species

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<sup>1</sup>When citing Fichte's works, I use the pagination according to *Sämtliche Werke*. The following abbreviations are used for Fichte's works: *EPW* = *Early Philosophical Writings*, *FEW* = *Foundation of the Entire Wissenschaftslehre.*, *FTP* = *Foundations of Transcendental Philosophy*, *SE* = *System of Ethics*, *FNR* = *Foundations of Natural Right*, *VM* = *Vocation of Man*. If pagination is not available in the English translation, such as with *VM*, I use English pages followed by *SW* pagination. With *FTP*, I refer to both the K and H manuscripts, where available.

<sup>2</sup>It should not be forgotten that Fichte was himself married (to Johanna) and had a son, which may well have been formative on his own views. Details of the Fichte household can be found in La Vopa *Fichte and Wulf Magnificent Rebels*.

<sup>3</sup>A similar argument has been made before by Baerbel Frischmann ("Fichte's Theory of Gender Relations", 152) who argues that Fichte takes a synthetic approach, trying to unify two central positions: (a) the Enlightenment notion of the equality of the sexes, and (b) the acceptance of the naturally given differences between the sexes. Frischmann concludes by arguing that Fichte undermines his own universal and egalitarian approach because of his focus on the 'natural'. Heinz and Kuster also remark on the mixture of natural subordination and equality within Fichte's work ("Vollkommene Vereinigung", 837–8). Below, I agree that Fichte is pulled in different directions towards an essentialism on the one hand, and anti-essentialism on the other. An alternative picture, which to my mind is slightly more essentialist, is painted by Yolanda Estes ("J. G. Fichte's Account of Human Sexuality", 64), who argues that "only the inequalities resulting from gender differences allowed for the ethical development necessary to develop the skills of communication that establish human equality within a just society".

propagation is subordinate to our final end – “that reason should have dominion”, also expressed as self-sufficiency or material autonomy (SE 328–9).<sup>4</sup> The following important passage adds nuance:

... an entirely different, less physical aspect of this drive will also reveal itself, and to this extent the command that one permit oneself to satisfy this drive only as a means for propagating the species must already be restricted in a preliminary manner so that if this end fails to be achieved by satisfying this drive the responsibility for this failure must at least not be assigned to us.

(SE 328–9)

I take Fichte here to mean that the natural drive which impels humans toward sexual activity is seen to be a special drive. It is not enough to say that we have a natural drive toward sexual activity, which has the end of species propagation. It needs further investigation or needs to be ‘restricted’ so that if we do not propagate the species it is not a moral failure on our part. In other words, one might think that we have a duty of species-propagation. But there are some (as yet unspecified) circumstances where we cannot fulfil the duty but are not blameworthy for doing so – the duty is a collective human duty, not one that applies in a distributive manner to all individual humans. Presumably Fichte here wants to ward off any concern that his theory will morally blame those people unable to have children. But the importance of this passage, in my view, is broader. It is that Fichte has already at the outset laid it down that his account of sex is not one which foregrounds procreation. This will, as we might expect, get reinterpreted and restricted later, but it is important to be clear that this is a possibility that Fichte recognizes immediately.

It is worth spending a bit of time outlining Fichte’s account of nature here in order to see his justification for the ‘arrangement of nature’. Fichte claims that nature has inner purposiveness, a concept taken from Kant’s third *Critical* (e.g. 5:180–2, 189–90, 375–7). Purposiveness is inner insofar as it is for its own sake, not for the sake of some other being. All natural things are characterized by drives – e.g. in organic nature, drives to propagate the species. Both inorganic and organic nature are characterized by the drive to unity – he says “every part of nature strives to unite its being and its efficacious action with the being and efficacious action of another determinate part of nature ... This drive is called the *formative drive*” (SE 121). The formative drive itself has an active and a passive guise – “as a drive to form or to shape or to cultivate and as a drive to allow oneself to be formed or shaped or cultivated” (SE 121). Nature is therefore constituted by drives, with one chief drive being the drive to unity. In human beings, this drive

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<sup>4</sup>Michelle Kosch in *Fichte’s Ethics* has recently emphasised the importance of self-sufficiency for Fichte.

takes the form of the drive to procreate and to form couples.<sup>5</sup> Fichte's speculation on nature and species in *Foundations* is as follows: he argues that the formative drive in organic nature takes the form of the power "to form a being of one's own kind" – but if the sufficient conditions for this forming were always active "nature would be in a state of perpetual flux from one shape to another, and no shape would ever remain the same. There would be eternal becoming, but never any being ... " (*FNR* 305). The thought here seems to be that if nature did not set limits to the ability of organic beings to propagate themselves, then there would be such a flux and change that no stable life forms would be able to emerge. These stable life forms then are made into sexually dimorphous forms.

Fichte follows traditional sexual thinking by claiming that one sex is active and one is passive.<sup>6</sup> His reasoning is that, in order for the flux and instability to be avoided, sexual dimorphism occurs, but also that the specific way that the dimorphism happens is that the first moving part is given to one kind of organism (the male) and the rest of the developmental system is given to another kind of organism (the female) (*FNR* 305–6). This biology has antecedents in Aristotle, notably in the *Generation of Animals*, but similar accounts were part and parcel of the received scientific wisdom of Fichte's day.<sup>7</sup> For example, Johann Blumenbach, one of the foremost German scientists of the period, tried to account for sexual dimorphism and spoke in terms of active and passive (or 'receptive'). Blumenbach was influential on Kant, Schelling, and Hegel's thinking about organic nature, and Fichte, as we have seen, earlier in the system praises Blumenbach's notion of a formative drive (*Bildungstrieb*).<sup>8</sup> Thus we have circumstantial evidence that Fichte's account of sex and nature is in dialogue with the natural science of his day. Fichte,

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<sup>5</sup>The antecedent of Plato's *Symposium* is relevant here – in Plato's view love is an attempt to overcome an original split in humans. As Estes ("J. G. Fichte's Account of Human Sexuality") notes, Fichte's account has the drives coming to consciousness (in my language 'showing up') as yearnings or longings. For more on Fichte's multi-faceted theory of drives in various domains, see Wood ("Fichte's Philosophical Revolution", "Drive, Desire and Volition"), Ivanenko ("J. G. Fichte's Conception of the 'New Upbringing'"), Ware ("Agency and Evil"), Kosch ("Fichtean Kantianism"), Schmidt ("Streben und Trieb"), Gardner ("The Desire of the Whole"). Fichte's account of nature has been discussed by Breazeale ("Against Nature?") and Phillips ("Transcendental Idealism and Naturalism").

<sup>6</sup>Estes argues that Fichte means this in the purely physiological sense or due to "the organic structures of their bodies" (67), which would, I think, make him more similar to Blumenbach. I'm unsure whether this is true, as Fichte says elsewhere that woman's destiny (*Bestimmung*) is to be passive (though of course this is in turn tempered by the claim that a drive to passivity ought to be transformed into a kind of activity – love).

<sup>7</sup>Note however that Aristotle regarded men as the source of the efficient, final, and formal causes, with women only the source of the material cause. Fichte seems to suggest here that men are the efficient cause alone. See Horowitz "Aristotle and Women" for discussion on Aristotle. Heinz and Kuster ("Vollkommene Vereinigung", 832) note the ongoing influence of Aristotle on Fichte's language here.

<sup>8</sup>For Blumenbach on sexual difference, see *Elements of Physiology* §539: "As the male organs are fitted for giving, so the female organs are fitted for receiving, and are correspondently opposite to the former. In some parts, the organs of both sexes are very analogous to each other in structure" and also §561. The formative drive is most fully outlined in *Über den Bildungstrieb*, but is also discussed in *Elements* §587–8 and in *On the Natural Variety of Humanity*, §33.

however, argues that this is not a mere fact to be taken account of, but a *problem* to be solved. Indeed, he says that there would be no need for a thorough investigation into sexual morals if both parties were active (*SE* 329). This is important as it will inform Fichte's account of gender later.

So Fichte's views rely on some claims about nature (the division into sexes, sexual activity having an end) and how those natural features are taken up in human relations.

Two things are important to note here: Firstly, this essentialism extends to the psychological constitutions of men and women, and Fichte seems to think that each have distinct ways of experiencing the phenomena of love and sexual arousal (*SE* 330–2). This seems to have phenomenological importance, insofar as the characteristic emotions Fichte thinks are felt by men and women here differ.<sup>9</sup> Secondly, despite this essentialism, Fichte thinks that this is a way in which nature ought to be transformed by reason. That is, Fichte does not think, as a traditional natural law theorist might, that women's supposed passivity in sexual matters is something normatively binding, or something from which we can derive moral claims. On the contrary:

It is impossible that in a rational being there could be a drive to behave only passively, a drive simply to surrender oneself, as a mere object to be used, to some foreign influence. Sheer passivity stands in outright contradiction to reason and abolishes the latter.

(*SE* 329)

Reason is then said to transform the woman's sexual drive, which "naturally" is a drive for "mere passivity" into a "drive for activity". This is an instance of a familiar Fichtean theme – the sole normative authority of reason, or the sole proper right of reason. Fichte therefore thinks that a woman's experience of love, which is "nature and reason in their most original union" (*SE* 329), is the woman's natural drive for passivity transformed and suffused by active reason. Fichte says nothing about how this transformation of the natural drive by reason is supposed to come about, though he does seem to think that it must happen co-originally with the summons – that is, with the bringing about of a rational being by other rational beings. He says that "just as surely as a woman possesses reason and just as surely as reason has exercised any influence upon the formation of her character, her sexual drive cannot appear as a drive for a state of mere passivity ..." (*SE* 329). This is suggestive of a 'transformative' view of reason, at least in the domain of sexual activity, according to which to have reason is to already be distanced in a certain way from merely natural beings.<sup>10</sup> This would mean that sexual activity, rather than being an animal impulse or animal activity, is already a properly human activity, which in part establishes the norms governing it. In this way, Fichte is closer to Hegel than

<sup>9</sup>Though see Fichte's claim on *SE* 332 for nuance. I discuss this claim toward the end of this section.

<sup>10</sup>For an account of 'transformative' reason, see Boyle ("Additive Theories").

to Kant – in Kant’s view, sex is the area of our life where we are most animal-like, which is part of the reason why Kant views it with suspicion. But for Hegel, sexual activity is taken up by spirit, and so is already a part of the life of reason. In Fichte’s and Hegel’s writing, sex appears as grounded in the natural, but as transformed or taken over by culture.<sup>11</sup> Having said that, Fichte also claims that the “destiny [*Bestimmung*] of feminine nature is to be passive” (*FNR* 316).<sup>12</sup> In the same passage, Fichte criticizes the practice of polygamy (more precisely, polygyny) for drawing “one-sided conclusions” from this “destiny”. I suggest that Fichte intends to contrast this with his own position, drawing a fuller or truer conclusion, which is not one-sided: women are passive (in contradistinction to men) but part of their distinctive vocation is to make themselves more active (in their own distinctive ways).<sup>13</sup>

One disturbing consequence Fichte draws from this is:

In its raw state, a woman’s sexual drive is the most repugnant and disgusting thing that exists in nature, and at the same time it indicates the absolute absence of all morality.

(*SE* 330)

This is probably one of the most prominent statements of essentialism in Fichte’s sexual ethics. I will only say that the most charitable reading is that what is ‘repugnant’ and ‘disgusting’ about the drive in question would be that it is a drive to passivity, and, absent control or transformation by reason, is an unrestricted drive to passivity and inertia. Given Fichte’s theory of moral evil as laziness and inertia, it makes sense that he would regard anything which is naturally directed at inertia as evil.<sup>14</sup> One has to wonder, however, whether Fichte ought to consider the man’s sexual drive as even worse – if the woman’s sexual drive is a drive to passivity, does it follow that the man’s sexual drive is a drive to make passive another rational being? In this case, just as a woman ought to transform her drive to passivity, a man ought to transform his drive to dominate.<sup>15</sup> Otherwise, similar things

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<sup>11</sup>Kant *Doctrine of Right* 6:277, Hegel *Philosophy of Right* 161 and Gans’ addition. However, Fichte does say that sex “in itself carries the stamp of animal crudeness” (*SE* 331) – I read this as saying that sex which has not yet been ‘taken up’ into rational life, as Fichte then says, in marriage, that sex “obtains an entirely different character, one that is worthy of a rational being. It becomes the complete fusion of two rational individuals into one ...”.

<sup>12</sup>*Bestimmung* is a polysemous word which could be translated as: destiny, vocation, determination, designation, destination, *inter alia*. Dawson (“And This Shield”) notes ways in which this concept was used in early feminist writers, notably Marianne Ehrmann and Emilie Berlepsch, who were contemporaries of Fichte.

<sup>13</sup>The *caveat* “in their own distinctive ways” is necessary because Fichte thinks that women should not hold public office or be educated at universities, and thinks that it is “contrary to feminine dignity” for the woman to exercise her rights directly. Fichte is keen to stress that he still thinks the woman has the rights, but cannot exercise them *in her own person*.

<sup>14</sup>This is also Frischmann’s (“Fichte’s Theory of Gender Relations”, 155) reading.

<sup>15</sup>One notable absence from Fichte’s *SE* is an account of sexual violence. There is some discussion of this in *FNR* (318–21). Fichte’s only remark in the *SE* is that if a sexual union is good, then it is a “law unto itself” and if not, it is a “single continuous crime” (332).

can be said about this passage that are said in similar contexts (e.g. Hegel's discussion of the role of women in the family) – they can be eliminated in favour of a better line, which is also (in this case) more consistent with the philosopher's other commitments.<sup>16</sup>

The developmental aspect of sexual ethics – that we ought to discipline, amend, or transform our given drives – can be seen as a specification of a more general theory of moral development from Fichte's theory of evil, outlined most fully in section 16 of *SE*.<sup>17</sup> Agents begin with the mere natural drive, which is then freely reflected upon (possibly occasioned, but not caused or necessitated by society), and brought to consciousness (*SE* 178–9). With this act of reflecting, the agent becomes 'an intelligent animal' – a living consciousness for-themselves. But they ought not to remain at this stage, although it is possible that they do. I do not have the space here to recount the rest of the developmental story.<sup>18</sup> Important for my purposes, however, is Fichte's remark that "... it remains true that a human being ought to raise himself above the laws of nature, and he is also capable of doing this; and it always remains his own fault if he does not do so" (*SE* 185). In other words, we have sexual drives, but these sexual drives must be disciplined and transformed into rational sexual drives before we can view them as properly part of a moral life. Two more things are noteworthy. Firstly, Fichte explicitly says that vigilance and attentiveness "must be constantly continued; and without continued effort no one is secure in his morality for even a single second. No human being ... is ever *confirmed* in the good" (*SE* 193). In other words, the developmental story that Fichte tells is not linear. It is possible to 'fall' at any stage. This means that the transformation and discipline of our sexual drives is also an ongoing process, and not something that can be regarded as 'finished'. Finally, the transformation and discipline of the sexual drives is not a complete change, but something which moralizes them.<sup>19</sup> Fichte conceptualizes this by saying that the direction of the causality of the drive "is still absolutely none other than the direction that nature too would have taken had it been left to itself" (*SE* 200). So it is not the *object* of the drive which is transformed, but the *manner* of the drive.

Fichte's views on sex can be summarized as follows: Firstly, there is an essential difference between male and female members of the species,

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<sup>16</sup>For example, Honneth, *The Pathologies of Individual Freedom* argues that Hegel's patriarchal assessment of the women's role in the family can be removed and amended with no problem for his overall picture.

<sup>17</sup>That Fichte is concerned with development here is clear from his remark that describing the acts of reflecting which make possible the moves from stage to stage would be to "provide the history of an empirical rational being" (*SE* 178).

<sup>18</sup>More detailed expositions are given by Ware *Fichte's Moral Philosophy* and Wood *Fichte's Ethical Thought*.

<sup>19</sup>Heinz and Kuster claim that, in the woman's act of love, the drive is "sublimated and at the same time moralized" ("*Vollkommene Vereinigung*", 833, my translation).



which is due to natural drives. Secondly, these natural drives inherent in us show up as sexual drives and desires, and women (typically) have a passive drive, whereas men (typically) have an active drive. Thirdly, although women (typically) have a passive drive, they can and ought to transform this into an active, rational drive, which takes the shape of love. Fourthly, men reciprocate this active love, and each grow into more full human beings with each other.<sup>20</sup> And finally, though the ‘courting’ phase of the relationship is initiated by the man, the relationship proper (marriage, as we shall see) is in some way initiated by the woman with her exercise of active love.<sup>21</sup>

These claims ground some traditional sexual moral thinking. For example, Fichte thinks that because women have a choice between passivity and immorality on the one hand, and love on the other, he thinks it follows that in love a woman “gives herself entirely ... and she gives herself forever” (SE 330). Fichte’s arguments here are very quick. The ‘entirety’ claim is justified by the following:

... she gives her personality; if she were exempt anything from this subjugation, then what she had exempted would have to have a higher worth for her than her own person, which would amount to the utmost disdain for and debasement of the latter, which is something that simply could not coexist with the moral way of thinking.

(SE 330)

The idea is that the woman cannot but think of her act, if it is to be moral, as an action which concerns herself – her ‘empirical I’. It is not something which concerns only a part of her. Similarly, when thinking about ‘forever’, Fichte then says:

Her surrender occurs out of love, and this can coexist with morality only on the presupposition that she has lost herself completely – both her life and her will, without holding back anything whatsoever – to her loved one, and that she could not exist except as his.

(SE 330)

In other words, if there were inherent restrictions or time-limits on the giving, she would not be making the commitment in the way that she ought, and would indeed be using the man (and herself) as a mere means – it would demonstrate a lack of respect for one’s own person, the other person, and

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<sup>20</sup>Frischmann (“Fichte’s Theory of Gender Relations” 157) argues that in Fichte’s model, love functions somewhat as an ideological cover for the oppression of women. This seems right to me up to a point, but the relationship as Fichte describes it seems to have a reciprocity involved which in the good cases would ameliorate this. As Wood (*Fichte’s Ethical Thought*, 278) remarks, it ought to be acknowledged that “Fichte clearly intends love to be something more than submission or willing self-objectification”.

<sup>21</sup>I am in partial agreement with Estes “J. G. Fichte’s Account of Human Sexuality”, who also reads Fichte as saying that the relationship is initiated by the woman. In my reading, there would be a pre-marital status which is initiated by the man.

the commitment itself. Though Fichte does not say so explicitly, it seems that the man's reciprocation ('magnanimity' [*Grossmut*]) (*SE* 331) would also have to be thought of as entire and forever – otherwise the same consequences apply.<sup>22</sup> Here is another place of tension between what Fichte says in the moral work and in the political work. In the moral work, there is a notion of reciprocation – the woman “submits” to the man, but the man can never “cease to return to her everything that she has given him” – there is a mutual sharing within the marriage. But in the political work, this very same argument is used to exclude women from public life. For example, Fichte argues that women should not be allowed to hold public office because their duties to the office and their citizens would conflict with their duty to their husband. But it is difficult to understand (given reciprocation and sharing) why this would not also be true of the husband. Here, as elsewhere, I consider Fichte's thought to be inconsistent on these matters, and the moral philosophy contains a better (both more consistent and more plausible) account.

One way to think about Fichte's position here is by using the distinctions provided by Mendus (“Marital Faithfulness”). Mendus argues that we should distinguish between “having an intention to do something permanently” and “having a permanent intention”. As Mendus puts it: “if I claim that A is unconditionally committed to B, that is not a prediction that A will never desert B, it is a claim that there is in A a present intention to do something permanently, where that is distinct from A's having a permanent intention” (247). In the context of marriage, this distinction allows us to say that people can be unconditionally (entirely and forever) *in principle* or *in intention* for their beloved, without claiming that it would thereby be immoral for that same person, in the future, to withdraw that commitment. That Fichte thinks of marriage this way is supported by his claims regarding divorce: he says that if the union of hearts ceases to exist, then being coerced into remaining in this state is ‘contrary to right’, because if the spiritual union is removed, then “the marriage between them is thereby canceled” (*FNR* 335–6).

This does not mean, however, that the commitment is rendered unnecessary or less important. This can be seen insofar as the impermissibility of casual sex, defined here as sex outside of spiritual marriage falls out of the requirements of giving oneself entirely and forever. This is not the usual way one might imagine a Kantian to argue for the impermissibility of sex of this kind. The most straightforward way would be to argue that this kind of sex

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<sup>22</sup>Fichte does argue (in *FNR* (328–30) – these passages are absent from *SE*) that the man's infidelity is not as bad as the woman's. This is strong evidence for an essentialism in Fichte. I can make no sense of this outside of the essentialist framework which holds that men and woman are psychologically constituted quite differently. As I have argued, however, the essentialism runs in tandem with an anti-essentialism, and this tension calls out for resolution I therefore happily relinquish this view in my neo-Fichtean account, which I develop more fully in the later section of this paper.

involves using the other person (and perhaps oneself) as a mere means, thus falling foul of the formula of humanity. But Fichte's account has some similarities with this straightforward argument, as the reason for the impermissibility of violating the 'entirely and forever' condition (understood as having an intention to do something permanently) is that to do so would be to treat both the other and oneself as a mere means to pleasures. However, unlike Kant, Fichte regarded marriage as only symbolized, but not constituted by, the public declaration and public union. As Frischmann ("Fichte's Theory of Gender Relations", 153) puts it, marriage is "prior to every possible juridical process as a natural and moral relation". This gets right the fact that for Fichte, marriage is logically prior to political and public action. But it is only 'natural' in the sense that our education and culture (*Bildung*) takes up, transforms, and sanctifies our pre-existing natural drives. Marriage is therefore the guise that sex takes when it is permissible. This is not to say, I think, that marriage is a sufficient condition for permissibility, but only a necessary condition.

This raises the issue of marital rape. Fichte is, I think, divided on its possibility. On the one hand, in the political philosophy, Fichte says explicitly that women ought to submit to their husbands unconditionally, which suggests that marital rape would not be a crime. On the other hand, he is very clear about the kinds of coercion (physical, verbal, emotional) that rape involves, and nothing in his account of coercion suggests that rape becomes permissible because of marriage (*FNR* 319–20). It might be the case that, for Fichte, marital rape is conceptually impossible because he thinks that such an act of coercion would annul the spiritual union – thereby breaking the marriage (in reality, if not in symbol). This is perhaps the meaning of his laconic remark that if the conjugal relationship is not the kind of relationship it ought to be then "it constitutes a single, continuous crime, which is incapable of improvement by means of ethical rules" (*SE* 332).

Marriage – spiritual companionship – is then a condition in which sexual activity is sanctified. But this is not the only function of marriage. Marriage also performs the function of uniting human beings in companionship. In fact, I would argue that in Fichte's view, this is actually its *primary* function. Procreation is conceptually downstream from unity – it is one visible sign of the inward unity and must be preceded by it.<sup>23</sup> This is another way in which 'mere nature' is taken up and spiritualized by reason. As I outlined above, Fichte thinks that organic nature is characterized by a drive to unite and form wholes. We, as embodied natural beings, are also characterized by this drive. This drive shows up as the desire to be sexually active and

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<sup>23</sup>Here I agree with Estes ("J. G. Fichte's Account of Human Sexuality" 69) who argues that Fichte's theory separates the reproductive function from other functions of sexual activity, and acknowledges that "human beings transform a basic animal function into a complex and dynamic activity whereby they develop as social beings".

procreate. Marriage is then the aspect that this drive takes in rational life. Given that the formative drive is itself the ground of the drive for sexual activity and procreation, it follows that actually the basic function of marriage is unity, and procreation is a derivative function. Marriage (companionship) is then the way that love (nature and reason in original union) manifests in the world. It is also the unique way in which we can develop some of our capacities – including our “most noble ones” (*SE* 332) – love, magnanimity, sacrifice, friendship, and so on.<sup>24</sup>

Not only are human beings split asunder – as Fichte puts it, a single person is “only half a human being” (*SE* 332) – we are also mixtures of male and female.<sup>25</sup> I pursue a companion to find some measure of unity, but also strive to unify myself in doing so. Fichte’s account of marriage thus leads to his thought on gender, which is the most potentially radical part of these passages.

## 2. Fichte on gender

The most radical claim Fichte makes in these sections reads as follows: “The physical human being [*physische Mensch*] is neither a man nor a woman, but is both; and the same is true of the moral human being” (*SE* 332). Fichte makes no direct argument for his claim here, but antecedents can be found in Blumenbach and other German natural scientists of the day. Blumenbach downplayed the significance of sex for humanity, and Döllinger even argued that some organs of the woman are “masculine” and some of the organs of the man are “feminine”.<sup>26</sup> Here again it may be true that Fichte was repeating contemporary science.

This summary paragraph has Fichte argue that it is a moral duty incumbent on all rational agents to do everything in their power to enter the estate of marriage (defined in its Fichtean spiritual manner). He even says that an unmarried person is “only half a human being” (*SE* 332), and that the union of the two sexes in marriage is the “realization of the *whole* human being as a perfected product of nature” (*FNR* 315).<sup>27</sup> But the real

<sup>24</sup>Fichte says explicitly that true friendship is “possible only in marriage, but there it ensues necessarily”. He does not attempt to justify this claim, so I can only speculate as to his reasoning – it could be that the union required for friendship can *only* be attained within a giving and mutually enriching companionship.

<sup>25</sup>The theme of being split is present throughout Fichte’s early work, especially the lectures on the vocation of the scholar, collected in Fichte *EPW*. Breazeale (“The Divided Self”) thematizes this and discusses it at length.

<sup>26</sup>See Schiebinger “The Anatomy of Difference” for these sources. Schiebinger (390) argues that Blumenbach thought of *racial* difference as much more important than *sexual* difference. See also Gauthier “Brain Imaging” for a recent article which, because there are no stable criteria which distinguish the sexes reliably or concretely, we cannot say that there is evidence of “brain-based sexual dimorphism” (42).

<sup>27</sup>This fits well with Ware’s (*Fichte’s Moral Philosophy*) perfectionist account of Fichte’s ethics.

import of this passage is its potential to undermine Fichte's earlier neat claims for nature and the natural division of the sexes. It would be one thing to claim that human potentiality cannot ever be actualized in one person, and therefore each person needs a companion with which to share their life, in order to reach a fuller and more well-rounded life. But it is quite another to conceptualize this by saying that the 'physical human being' is neither man nor woman but both. It would be anachronistic to argue that Fichte is here revealing a distinction between sex and gender. Yet Fichte's assertion remains puzzling. The assertion, which I call the 'indifference claim', suggests that there is a Fichtean argument regarding sex and gender to be made. In what follows, I suggest a way in which Fichte's position can be plausibly extended. This section of the essay will be more speculative and reconstructive than the previous.

Anti-essentialism is evident throughout Fichte's oeuvre (e.g. *SE* 32, 36, 37, 138, 222, 228 *VM* 68–9, *SW*:249–50). Fichte rejects any form of thinking of rational agents as static, substantial souls or minds with essential properties. He conceives of the mind as dynamic, a kind of agility (e.g. *FEW* 176, 256) Claims such as 'I am only what I make myself to be' abound. In the sphere of human sexual relations, we found a different kind of anti-essentialism. Fichte's Aristotelian essentialism was never full-blooded. He agrees with traditional views regarding the 'essence' of men's and women's sexual drives. But he does not think that we can or should rest easy with these essences – especially when it comes to women. Reason therefore transforms the pre-existing natural essence. This is a kind of anti-essentialism insofar as, whilst admitting the existence of natural essences, supersedes these natural essences with rational, autonomous norms – second nature. It is not that Fichte thinks we have no 'essence' (or that he would agree with existentialists that 'existence precedes essence'). It is that our essence consists in freedom – our essence is not determinate, not fixed in advance, and makes room for all kinds of individuality.<sup>28</sup>

The Fichtean argument regarding sex and nature can therefore be put thus: We already know that reason can and should supersede some natural tendencies in humanity with its own autonomous norms. For example, I am to consider how best to hone my practical activities in conformity with the moral law, so as to best serve those around me through my vocation. It is not that I am born with a vocation, but my vocation

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<sup>28</sup>This is linked to ideas of whether Fichte can be seen as a proto-existentialist (close to, e.g. Sartre) or as a perfectionist (close to, e.g. Wolff). Though Fichte does talk in terms of perfection and harmony – terms that Kosch argues he took from the Wolffian school (*Fichte's Ethics*, 47) – it seems to me that these are unspecifiable in advance in just the way that Wood (*Fichte's Ethical Thought*, 148–9) argues. Part of this is due to their infinite character. Therefore whilst it makes sense to say that our moral goal is perfection, I think Fichte would say that these statements are tautological or uninformative, and not to be used as a criterion of right action (which, on Fichte's view, is of course conscience).

is a function of facticity and choice – with choice being the predominant part.<sup>29</sup> Working within the situation in which I find myself – my time, my place – I am to shape my body and mind the best way I see fit, again in accordance with the moral law. This would involve, for example, treating myself with respect, engaging my talents to the fullest, and allowing for room for service to others and community. Fichte says,

... from the moment I become conscious, I am *what I freely make myself to be, and this is who I am because this is what I make of myself*. – At each moment of my existence, my being is through freedom, if not with respect to its conditions, then at least with respect to its *ultimate* determination.

(SE 222)

What I am calling here ‘the situation in which I find myself’, Fichte refers to as ‘conditions’.

So given that the physical and moral human being is neither male nor female, but both, it may well be that which sides of our multi-faceted personalities gets emphasized is itself up to autonomous rational activity – as nature itself provides no authoritative key. Fichte here seems to me to echo one of Wollstonecraft’s major claims – that virtue is not gendered.<sup>30</sup> Having said that, Fichte has earlier said that the source of a woman’s virtue is a chaste heart; this seems to imply that there are differences. I suggest that this is one area in which Fichte’s commitments pulled in different directions. It is one more area in which Fichte’s essentialism and anti-essentialism are in tension. If we emphasize the essentialist angle, we have a theory where virtue is gendered, in the sense that what counts as a virtue for a man might not count as a virtue for a woman and vice versa. This essentialist angle also makes sense of Fichte’s phenomenological descriptions of sexual and romantic desire. On the other hand, if we emphasize the anti-essentialist angle, we have a theory where virtue is not gendered (as the ‘moral human being’ is neither male nor female), and we make sense of Fichte’s intention to have reason alone as the normative foundation of our lives. I am emphasizing the anti-essentialist view here. Which aspects of our characters, our selves, and our lives get honed and which get neglected, in the pursuit of unity, is up to the free use of reason.<sup>31</sup> It is then a matter of practice and self-determination. Duty and vocation, in Fichte, is always itself the *locus* of our freedom, never (properly conceived) an imposition on us from outside. Our

<sup>29</sup>The one exception is the artist – following Kant and other writers on aesthetics, Fichte thinks of the artist as a born genius – he says that one ought not to make oneself into an artist “against the will of nature ... It is absolutely true that an artist is born an artist. A genius is reined in by a rule, but no rule can make a genius” (SE 355).

<sup>30</sup>See especially chapters 2–3 of Wollstonecraft’s *Vindication of the Rights of Women*.

<sup>31</sup>Reason is ‘free’ in a double sense here – (a) it is free insofar as it is under no outside coercion, whether social, political, or economic, and (b) it is free insofar as the person who lives the life of reason exercises their power of self-determination and will.

commitments and projects in our lives, and the way they fit into our vocation, are expressions of this freedom. To explain how this is relevant to gender, I will explain Fichte's doctrine of the body, with particular attention to the notion that the articulated body is a product of freedom.

In Fichte's view, the natural body is both organized and articulated. Organization, in this context, means that parts interrelate and serve the whole with appropriate functioning. Articulation is a property of bodies. A necessary condition for any embodied activity is that it must come from an articulated body. An articulated body is one that has part-whole relations, such that the parts are movable or modifiable relatively independently of the wholes. Fichte says:

I move my entire body: taken by itself, my body is a whole; in relation to nature [as a whole], however, my body is only a part. I move my arm: this too, taken by itself, is a whole; at the same time, however, my arm is also a part of a larger whole, namely, my body, etc.

(FTP K235/H257)

Whilst articulation is a feature of a body that it has in virtue of part-whole relationships, organization (which a body must have if it is to have articulation) is a label that refers to the fact that the body as a whole is a "real whole" (FTP K236/H258). Organization is said to "follow from" articulation, and by this I take Fichte to mean that one can infer from the presence of articulation to organization, but not the reverse, i.e. organization is a necessary condition for articulation and articulation is a sufficient condition of organization (FTP K236/H258). The body, and everything else in nature, is a real whole because the boundaries of the things are "also nature and [are] posited by nature" (FTP K236/H258). Nature itself is therefore "[not only] an organising power, it is [also] organised" (FTP K237/H259). Fichte also says:

{Nature as a whole} must necessarily be an organised whole, because individual organised wholes are possible within nature, and these are made possible only by means of the entire force of nature. Individual organised wholes are simply products of the organisation of the whole universe.

(FTP K238/H259)

So my organized body is the 'real whole' of my natural body, and my articulated body is the parts of my body I have control over, in the sense that I can act basically. But things are not as simple as that. Fichte makes this striking claim: "The articulation *as such*, as an *instrument of freedom*, is not, properly speaking, a product of nature, but is a product of the exercise of freedom" (SE 129). This means, I think, that the control we have over our bodies is itself a result of practice. Walking, raising our arms, and all these other putatively basic actions are skills that we learnt long ago. The ability to drive a car, ride a bike, kick a ball, open a door, and myriad other sundry activities are

also learnt and remembered. What things we are able to do with our articulated bodies is then up to our free choices and our facticity.<sup>32</sup> It also must be the case that if our articulated bodies are products of freedom then *to a certain degree* our organized bodies are also products of freedom. The most obvious example is athleticism – practices and training enable the athlete to perform feats of strength or agility which they were unable to perform before, and this is also reflected in the shape of their body as well as the ways they can move their body.

To return to gender. All this adds up to the idea that our articulated, and therefore to some extent our organized bodies, are under rational control. If they are under rational control (which is a condition of being free), then the natural drives could not by themselves dictate in advance the ways that our bodies are directed.<sup>33</sup> The natural drives are always mediated by reason and reflection. Given that the natural drives for sex, in Fichte's view, do not have procreation as their primary object, but union instead, there is no barrier to thinking that these drives can be taken up in a variety of different ways, reflecting a variety of different sexualities. Though there are relations in which we stand due to natural causes (spouses, parents, and children), even these are taken up by reason, as it is contrary to dignity for a rational agent to act solely on a natural impulse, even if that impulse will reliably aim at the right or the good (*SE* 333–4). Only reason can have authority here, as everywhere else. My body ought therefore to be subject to my command, within the circumspection of the moral law. Fichte acknowledges this, and gives some moral precepts about how to treat one's body – these are mainly to do with remaining healthy and eating well. So as long as the way I treat my body is within these bounds, the direction I take it is up to me – my vocation. In this way, we might say, my body is only what I make it to be.

Fichte's indifference claim therefore opens the door for the possibility of a Fichtean perspective on transgender and non-conforming identities. This is because nature, including the shape of the body, does not rationally determine what kind of person I turn out to be. I work within nature and some natural limits, of course, but Fichte is always keenly aware of supposed

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<sup>32</sup>Fichte does not mention the possibility of disability, but it is clear that it would play an important role here – it couldn't be the case that our articulated bodies were the product of freedom alone, but rather that they are the result of 'taking up' a natural organised body – so for some disabilities this 'taking up' would be either impossible or much more difficult than for abled bodies. One thing to say is that given Fichte's confidence in the ability of technology to enhance our capabilities and capacities (see e.g. *SE* 95), there might be grounds for thinking in a Fichtean way to a social model of disability, according to which people are disabled relative to environments.

<sup>33</sup>The neo-Fichtean account I am developing here would then have affinities with Dembroff and Saint-Croix's ("‘Yep, I’m Gay’") position, according to which 'agential identity' is a bridge between the way we see ourselves and our position relative to others.



'natural' limits being overcome by human artifice – his own example in the *System* is hot air balloons.<sup>34</sup> He scorns those who say that the human will is bounded by its natural limits, because our wills could be enhanced by artifice (*SE* 94–5). As Fichte puts it:

And as regards what our own age is not yet able to do, *inasmuch* as it has not yet found the means to do so: who says that *human beings* are unable to do this? I sincerely hope that an age such as ours will not take itself to be identical with humanity.

(*SE* 95)<sup>35</sup>

Fichte makes further claims of this kind in his work on the nature of the scholar.<sup>36</sup> For example, he says that the “purpose of all human knowledge is to see the equal, continuous, and progressive development of all human talents” (“Some Lectures Concerning the Scholar’s Vocation” in *EPW*, 172). What makes this Fichtean proto-theory of non-conformity particularly interesting is that it is a non-medical theory. This follows from the general point that nature itself cannot have rational authority. People can, on this view, decide to direct their life (and their body) in a direction, which may have nothing whatsoever to do with any putative illness or medical condition (though, of course, it may).<sup>37</sup> Thus, a person may decide to transition into another gender. This decision will be enacted in practices and reaffirmed (or not, as the case may be) as their life goes on. Of course, there are many questions here that can be raised – legal questions of access to transition aids, moral questions of whether it would legitimately be part of an individual’s vocation to transition, and so forth. But this should not obscure the resources that a neo-Fichtean account has for non-medical views of transgender and non-conforming identity – its strong stance with respect to rational authority, its equally strong denial that ‘nature’ has anything to do with these kinds of choices, and so on.<sup>38</sup> Those who experience their sexual orientation or gender as a deep and important fact about them, as a kind of given, also,

<sup>34</sup>It is worth noting that the first major successes in ballooning occurred during the 1780s, with the Montgolfier brothers’ demonstrations in 1783. It is probable that Fichte’s reference to ballooning is with this development in mind.

<sup>35</sup>This is one reason why Fichte and the German Idealists (and their Marxist successors) are said to be ‘Promethean’. This kind of Promethean view has recently been criticised by MacPherson, *The Virtues of Limits*.

<sup>36</sup>Christensen, *Hans Christian Ørsted*, records that the Danish scientist Hans Christian Ørsted, as well as members of his family and wider circle, were influenced by Fichte’s writings on the scholar, as well as his philosophy of history and philosophy of religion. Bagge (“Akademikerne i Dansk”, 433) claims that Fichte’s thought here was influential in Denmark until around 1830.

<sup>37</sup>Non-medical views are found in the existing literature on transgenderism, e.g. Engdahl, “Wrong Body” and Dembroff, “Moving Beyond Mismatch”.

<sup>38</sup>One might question here whether Fichte’s theory would countenance transhumanism or posthumanism. I cannot do justice to this question, though I would note that Fichte may well be of the opinion that transhumanist artifice is beyond the bounds of justice unless open to all. For example, he says in the *Closed Commercial State* “Let all be sated and dwell securely before someone decorates his dwelling. Let all be comfortably and warmly clothed before anyone dresses himself sumptuously” (99).

on this model, enact and re-enact this given in whichever ways they see fit. The 'given' is taken up and made part of a life which aims at a kind of unification of the person. Importantly, in the neo-Fichtean model, there is room for more than one way of conceiving of oneself and one's gender identity and gender expression. The important feature of the account is that, whether experienced as a given or not, one's sense of oneself can be affirmed, endorsed, and taken up in any number of ways.<sup>39</sup>

I will now make explicit the links in this neo-Fichtean account between sex, marriage, and gender. Our sexual capacities arise out of the formative drive. This drive also shows up in our consciousness as a drive for companionship. These drives can only be jointly satisfied in marriage, which is a spiritual union of two rational agents. Marriage sanctifies sexual activity, enabling us to come to a fuller, more human, and more complete version of ourselves. Because we are what we make ourselves into, and because each of us has male and female aspects, each of us is confronted with the decision of which practices to engage in and how to change and adapt our articulated and organized bodies. The only norms which govern this are rational and moral norms as I carve out my vocation for myself. No 'natural' or cultural given norm can decide this for me, though I have to work within my given conditions or facticity.<sup>40</sup>

The nature of marriage, combined with Fichte's account of the body, leads to the indifference claim. I have tried to explicate a way in which these claims can be taken. This neo-Fichtean account has conservative claims about sexual morality – fidelity and monogamy are important values, casual sex is regarded as impermissible, and in principle sexual union should be intended for a lifetime. But it is revisionary with respect to gender. Any coercive gender norm cannot withstand the tribunal of reason. Though Fichte the political philosopher enshrined sexist rules within his outline of natural right, Fichte the moral philosopher has arguments which in the end, subvert those very same rules.

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<sup>39</sup>There are unexplored ways in which Fichte anticipates positions akin to those defended by Korsgaard (*Self-Constitution*).

<sup>40</sup>It seems to me that the neo-Fichtean account is similar to a Marxian anti-essentialist view. Grant ("Gender and Marx's Radical Humanism"), using resources from the early Marx, outlines such a view. The recent collection of essays collected by Gleeson and O'Rourke (*Transgender Marxism*) contains much material on these issues from various Marxist standpoints.

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