



## The Idea of Liberty in the Fichtean Natural Right

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**Abstract.** This paper discusses Isaiah Berlin's interpretation of Fichtean political philosophy in terms of organicism. It shows that individual liberties play a fundamental role in the education of future citizens as a task performed by parents, not the state. However, Fichte did not defend an idea of individual liberty or non-interference, even if similarities between his theory and Humboldt's suggest the contrary. At the same time, Fichte also did not espouse the idea of freedom as non-domination, as a comparison with Philip Pettit's theory reveals. By contrast, Fichte posited that the education of future citizens makes sense only if individual liberties are considered inextricably linked to property.

**Keywords:** Fichte, freedom, right, education, property.

### [es] La idea de la libertad en el derecho natural fichteano

**Resumen.** En este trabajo se discute la interpretación de Isaiah Berlin de la filosofía política fichteana en términos de un organicismo. Esta interpretación muestra que las libertades individuales juegan un rol fundamental en la educación de los ciudadanos futuros en tanto que ésta es una tarea realizada por los padres y no por el Estado. Sin embargo, Fichte no defiende una idea de la libertad individual como no-interferencia, aun cuando las similitudes entre su teoría y la de Humboldt sugieran lo contrario. Del mismo modo, Fichte no defendió tampoco la idea de la libertad como no-dominación, como revela la comparación con la teoría de Philip Pettit. Por el contrario, Fichte sostuvo que la educación de los futuros ciudadanos tiene sentido únicamente cuando las libertades individuales son consideradas como inextricablemente unidas con la propiedad.

**Palabras clave:** Fichte, libertad, derecho, educación, propiedad.

**Sumario.** 1. The Problem of Education in the Natural Right. 2. Fichte and Humboldt on Freedom and Education. 3. Is Fichte a Republican? 4. Conclusion.

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The problem of liberty has returned with force in the past decades, particularly due to the division between positive and negative liberty established by Isaiah Berlin. That division led to watersheds in the debate, as with the discussion by John Rawls and Jürgen Habermas about the predominance of individual or political liberties, and in Amartya Sen's thesis that said freedom consists in the development of capabilities to achieve reasonable ends that we might pursue.<sup>2</sup> At the same time, however, it is important to highlight Charles Taylor's radical criticism of the idea of negative liberty, which is understood as the mere realization of our factual desires in order to defend positive liberty as the realization of an authentic life.<sup>3</sup> Also in circulation is the idea that liberty constitutes non-domination—that is, the resilient absence of arbitrary interferences upon the agent—which in turn constitutes the core of Philip Pettit's republicanism.<sup>4</sup> In a sense, that debate can be traced back to Benjamin Constant's critique of Rousseau and is generally understood as a theory of the liberty of the ancients versus the necessary validity of the liberty of the moderns, or negative liberty.<sup>5</sup>

In that context, this paper explores the concept of liberty that Fichte defends in his *Foundations of Natural Right*, which tests Berlin's critique of the Fichtean natural right in terms of organicism. Although Berlin draws upon Fichtean philosophy in different moments of his writings,<sup>6</sup> in *Freedom and Its Betrayal* he developed a more extensive interpretation of the theory.<sup>7</sup> According to his interpretation of the Fichtean theory of the state, freedom entails the integration in a supra-personal totality in which the individual loses him or herself as an individual.<sup>8</sup> According to this reading, Fichte gave no quarter to the idea of negative liberty understood as non-interference. Although Berlin drew on Fichtean texts from different periods—including writings before his time at Jena—in the natural right of that period and in *Addresses to the German Nation*, an argument appears that bears importance for this paper. Berlin supported his interpretation with a passage from *Foundations of Natural Right*, wherein Fichte distinguished the ideas of *totalitas* and *compositum* to argue that the common will of the state can be identified with the former.<sup>9</sup> From that argument, Berlin concluded that Fichte's idea of will as *totalitas* excludes the currency of individual liberties.

<sup>2</sup> Jürgen Habermas, "Reconciliation through the Public Use of Reason: Remarks on John Rawls's Political Liberalism," *The Journal of Philosophy*, Vol. 92, No. 3 (1995), 109-131; John Rawls, "Reply to Habermas," *The Journal of Philosophy*, Vol. 92, No. 3 (1995), 132-180; Amartya Sen, *Development as Freedom* (New York: Alfred Knopf, 2000), 54-86.

<sup>3</sup> Charles Taylor, "What's Wrong with Negative Liberty?" in Robert Goodin and Philip Pettit, eds., *Contemporary Political Philosophy. An Anthology*, (Oxford: Blackwell Publishers, 1997), 421-425.

<sup>4</sup> Philip Pettit, *Republicanism: A Theory of Freedom and Government*, (New York: Oxford University Press, 2002), 17-79.

<sup>5</sup> Benjamin Constant, *Œuvres* (Paris: Gallimard, 1957), 1110-1021; Jean-Jacques Rousseau, *Du Contrat Social*, in *Oeuvres complètes* (Paris: Éditions Gallimard, 1964), Vol. III, 351-393.

<sup>6</sup> See Isaiah Berlin, *The Proper Study of Mankind* (New York: Farrar, Straus and Giroux, 1998), 220-221, 424 ff., 569-575; *The Roots of Romanticism* (London: Chatto & Windus, 1999), 88-99.

<sup>7</sup> Isaiah Berlin, *Freedom and its Betrayal* (London: Chatto & Windus, 2002).

<sup>8</sup> *Ibid.*, *Freedom and its Betrayal*, 67-73

<sup>9</sup> Johann Gottlieb Fichte, *Grundlage des Naturrechts nach Prinzipien der Wissenschaftslehre*. 2. Teil, in *Johann Gottlieb Fichte: Gesamtausgabe der Bayerischen Akademie der Wissenschaften*, ed. Reinhard Lauth and Hans Jacob (Stuttgart-Bad Cannstatt: Frommann Verlag, Günther Holzboog, 1966, Volume I, 4), 14-19; Berlin, *Freedom and Its Betrayal*, 70-71.

To test Berlin's criticism, it is necessary to show that Fichte's educational policy, developed in the family, implies the neutrality of the state in moral problems and the defense of freedom of conscience without state interference. Nevertheless, such an idea does not mean that Fichte is an advocate for negative freedom.

## 1. The Problem of Education in the Natural Right

Fichte based his concept of state on the principle of right (*Rechtssatz*) that makes it possible to guarantee equal spheres of action for all individuals. That idea does not apply to matrimony, however, which stipulates a moral and natural community that precedes the juridical order.<sup>10</sup> For that reason, the right must regulate the family once its structure is established.<sup>11</sup>

The moral and natural character of matrimony derives from the nature of spouses' sexual drives, which form the starting point of Fichte's argument. On one hand, there is the masculine sexual drive that has an active character and is therefore compatible with reason. On the other hand, the feminine drive fulfills a passive role in procreation that must be sublimated to take the active form of love for men.<sup>12</sup>

However, the moral character of these natural drives remains unclear. The moral dimension surfaces only when human liberty comes into play in order to satisfy those drives, or not, which is possible by virtue of the conscience we have of them.<sup>13</sup> Women have the drive to sacrifice their preferences for others', which morally takes the form of love.<sup>14</sup> This drive is the proper origin of matrimony and the family because men do not have that drive and develop it in a different way than women.

This Fichtean thesis becomes clearer when addressing the problem of children's education. Fichte stated that though the father has a moral drive to take care of vulnerable beings, he does not have the drive to take charge of a particular subject, his child. To anchor that drive, Fichte argued that the father possesses it in only a derivative way—that is, by way of the emotional bond that unifies him with his wife, which leads him to make her preferences and interests his own. Thus, a husband develops an attachment to his child and the drive to take care of his or her needs from the impetus of his wife's love.<sup>15</sup>

At the same time, men develop magnanimity according to their natural drive mediated by freedom. Magnanimity consists of being worthy of a wife's respect. Ultimately, marital tenderness unifies spouses and makes it possible for them to complement each

<sup>10</sup> On this point, Fichte opposes the romantic thesis of the conventional character of matrimony; see Juan Cruz Cruz, *Fichte: La subjetividad como manifestación del absoluto* (Navarra: Ediciones de la Universidad de Navarra, 2003), 220.

<sup>11</sup> Fichte, *Grundlage des Naturrechts*, 95.

<sup>12</sup> *Ibid.*, 97. The idea that each gender looks for the satisfaction of his or her sexual drive, which results in procreation, is opposed to the Christian idea that the sex act has an exclusively reproductive function; David Archard, "Family Law (First Annex)," in Johann Gottlieb Fichte: *Grundlage des Naturrechts*, ed. Jean-Christoph Merle (Berlin: Akademie Verlag, 2001), 188-189.

<sup>13</sup> Fichte, *Grundlage des Naturrechts*, 98, 138-139.

<sup>14</sup> *Ibid.*, 100. This ideal is denominated by Duden as the "beautiful soul"; Barbara Duden, "Das schöne Eigentum," in *Kursbuch 47*, eds. Karl Markus Michel and Harald Wieser (Berlin: Kursbuch Verlag, 1977), 137-138. This idea also appears in Wilhelm von Humboldt, "Ideen zu einem Versuch, die Grenzen der Wirksamkeit des Staates zu bestimmen," in Wilhelm von Humboldt: *Werke in fünf Bänden. I. Schriften zur Anthropologie und Geschichte* (Darmstadt: Wissenschaftliche Buchgesellschaft, 2010), 79-80.

<sup>15</sup> Fichte, *Grundlage des Naturrechts*, 139.

other's virtues and mutually support their individual moral development, according to the ideal of *Empfindsamkeit*.<sup>16</sup>

Yet a woman's love is problematic, because it requires that she renounces all forms of property and civil rights to her husband as the juridical spokesperson of the family.<sup>17</sup> Moreover, that sacrifice implies the exclusion of women, once married, from the superior educational and public functions.<sup>18</sup> Interestingly, Fichte did not conclude that idea from premises proposing women's inferior physical strength or intellectual capability in comparison to men. On the contrary, he maintains the equality of the natural endowment of the sexes, in line with Theodor von Hippel, despite his being on the opposite side in respect to questions of gender.<sup>19</sup> Nevertheless, Fichte followed Rousseau's argument in Book V of *Émile ou de la éducation*, in which Rousseau discussed the psychologies of the sexes and, after having attributed to men the capability to ascend to the highest theoretical and moral universal principles, leaves to women empathy for children's needs and a preoccupation with the empirical details of the domestic sphere.<sup>20</sup>

As a result, according to Fichte, even though women can exercise property rights and access both education and public positions, their moral psychology leads them to eventually reject them because of their drive of love.<sup>21</sup> As Marion Heinz, Frederike Kuster, and Hanelore Schröder pointed out, it is contradictory to state that women have to voluntarily abandon their rights, since *right* implies the compatibility of one's freedom with others' and the independence of one's rational will from the arbitrary will of all others.<sup>22</sup>

Independent of some advances that the Fichtean ideal of the family makes in comparison with its time, especially regarding the possibility of divorce and the legalization of cohabitation,<sup>23</sup> it is clearly a model of a patriarchal family.<sup>24</sup> Nevertheless,

<sup>16</sup> Ibid., 103. This ideal guided Fichte and Johanna, who structured their relationship around intimacy and the free sharing of thoughts and emotions; Anthony J. La Vopa, *Fichte: The Self and the Calling of Philosophy, 1762-1799* (Cambridge: Cambridge University Press, 2009), 159-160, 165-166. Honneth states that this ideal of a community based on emotional bonds of mutual care later belongs to the Hegelian tradition; Axel Honneth, "Between Justice and Affection: The Family as a Field of Moral Disputes," in *Privacies: Philosophical Evaluations*, ed. Beate Rössler (Stanford: Stanford University Press, 2004), 146, 153-159; Karen Kenkel, "The Personal and the Philosophical in Fichte's Theory of Sexual Difference," in *Impure Reason: Dialectic of Enlightenment in Germany*, eds. W. Daniel Wilson and Robert C. Holub (Detroit: Wayne University Press, 1993), 284-285; Ilse Kammerlander, *Johanna Fichte: Ein Frauenschicksal der deutschen Klassik* (Stuttgart: Verlag W. Kohlhammer, 1969), 26.

<sup>17</sup> Fichte, *Grundlage des Naturrechts*, 113-114.

<sup>18</sup> Ibid., 133-135.

<sup>19</sup> Ibid., 128-129. Theodor Gottlieb von Hippel, *Über die bürgerliche Verbesserung der Weiber* (Frankfurt: Syndikat, 1977), 30-31; Isabel V. Hull, *Sexuality, State and Civil Society in Germany 1700-1815* (Ithaca: Cornell University Press, 1996), 327-329.

<sup>20</sup> Jean-Jacques Rousseau, *Émile ou de l'Éducation* (Paris: Garnier-Flammarion, 1966). Fichte, *Grundlage des Naturrechts*, 135. For a criticism of this line of reasoning, see Mary Wollstonecraft, *A Vindication of the Rights of Woman* (London: Penguin, 1992), 142-174.

<sup>21</sup> Fichte, *Grundlage des Naturrechts*, 129-130.

<sup>22</sup> Marion Heinz and Friederike Kuster, "'Vollkommene Vereinigung': Fichtes Eherecht in der Perspektive feministischer Philosophie," in *Deutsche Zeitschrift für Philosophie*, 46. Jahrgang Heft 5 (1998), 838; Hanelore Schröder, *Die Rechtlosigkeit der Frau im Rechtsstaat: Dargestellt am Allgemeinen Preussischen Landrecht, am Bürgerlichen Gesetzbuch und an J. G. Fichtes Grundlage des Naturrechts* (Frankfurt: Campus Verlag, 1979), 120.

<sup>23</sup> Fichte, *Grundlage des Naturrechts*, 118-119, 121-128. The Fichtean theory actually constitutes progress in comparison to the Napoleonic Code; La Vopa, *Fichte: The Self and the Calling of Philosophy*, 346.

<sup>24</sup> Daniel Morrison, "Women, Family and State in Fichte's Philosophy of Freedom," in *New Perspectives on Fichte*, (Atlantic Highlands: Humanities Press International, 1996), 183.

it is in that domain that Fichte said that liberty of conscience and its associated rights must be made valid.

The basis for the education of children above all revolves around biology. The first bond between mother and child occurs during gestation, when their organic union is absolute. Once the child is born, the mother's natural feeling of compassion for her child's needs, derived from love, comes into play.<sup>25</sup>

Next, Fichte said that parents' natural drive to suppose that their child is a rational and free being surfaces.<sup>26</sup> Although it is not clear whether that drive is natural, Fichte did not speak in a biological sense, but instead refers to the idea that the assumption of the other's rationality derives from subjectivity. At the same time, although Fichte argued that parents want happiness for their children, particularly in the sense of self-realization, liberty is also a central element of happiness, which implies that the parents will promote it in their child. Accordingly, parents raise their children toward self-determination and establish a relationship that makes self-consciousness possible. The other fundamental condition of self-consciousness is the self-preservation of biological existence, meaning that parents will circumscribe their children's use of freedom against circumstances that endanger the children's physical integrity.

Accordingly, Fichte believed parents will give their children an education that promotes their freedom. Therefore, this education must be a moral and geared toward the development of the child's capacity to realize the widest variety of ends possible. In contrast to the development of instrumental capabilities, morality cannot be promoted through coercion or artificial institutions, but has to be born from the subject's innermost being as the result of his or her responsibility.<sup>27</sup>

Parents must plan a child's education, an idea that takes ample support from the moral and natural community of marriage. However, that does not mean that the state has the right to coerce parents to fulfil that obligation. To arrive at that conclusion, Fichte deemed it necessary to take an additional step.

The state obtains its powers from the contract of citizenship, which prescribes that all citizens have to promote conditions for the possible benefit of the political community by all available means. This foundational instance grants the state the power to coerce citizens to educate their children in an aim to replace the ever-aging population. Thus, the state ensures that it has the provision of force necessary for tax collection, internal and external defense, and above all, the social distribution of labor.<sup>28</sup>

In other words, citizens contribute to the self-preservation of the state by educating their children toward making them capable of proposing and realizing all kinds of rational ends. The state is obliged to ensure that parents satisfy the basic needs of their children—including the need for interaction with other humans—so they meet the minimal conditions for education.<sup>29</sup>

Nevertheless, the state cannot interfere with the means that parents use to carry out their task. Briefly, if the state or other citizens interfere in that work, the parents

<sup>25</sup> Fichte, *Grundlage des Naturrechts*, 138-139

<sup>26</sup> *Ibid.*, 140-141.

<sup>27</sup> *Ibid.*, 141.

<sup>28</sup> *Ibid.*, 142.

<sup>29</sup> *Ibid.*, 144. Humboldt also said that interaction with other individuals is a fundamental moment of one's formation; von Humboldt, "Ideen zu einem Versuch," 82-83.

cannot plan their children's education according to their own criteria. In other words, the parents' plan would be interrupted arbitrarily by external factors.<sup>30</sup> Given that parents must plan their children's education, they also have to decide when that education is complete. In some societies, this is decided when the state offers a job to the child or when the child decides to marry.<sup>31</sup>

This theory is valid in respect to the development of capabilities and moral education. In that sense, parents must be able to educate their children in the moral maxims that they judge to be correct, because they follow those maxims for that very reason. If the state coerces parents to convey a determinate moral ideal to their children, then the educational process would self-abort. Therefore, the state must leave the parents free to follow their moral conscience. At most, the state can open public educational institutions that parents can use when deemed necessary.<sup>32</sup>

Fichte's argument ended by declaring that the parents' freedom of conscience is a means of the integral education of their children. For that reason, Berlin's interpretation of the Fichtean concept of liberty must be rejected. Nevertheless, once that reading is discarded, another hermeneutical problem emerges: this untouchable, non-coercive exchange of ideas and values promotes an interpretation of the Fichtean text as a liberal theory. In other words, we may subscribe to a concept of individual liberty made up of an absence of interference or negative liberty. Such a hypothesis is supported by its similarities with Wilhelm von Humboldt's theory.

## 2. Fichte and Humboldt on Freedom and Education

In the same vein as Fichte, Humboldt argued that education must remain in the hands of parents and not the state. Humboldt said the state tends to favor some particular ideal of a good life, thereby stifling other moral ideals followed by other citizens. According to Humboldt, such a dynamic occurs even when the state's interference is limited to paying teachers' salaries and excludes intervention in educational planning.<sup>33</sup>

In response, Humboldt argued that parents are more motivated to realize the best education for their children.<sup>34</sup> However, Humboldt also defended the idea that familial relationships are more intense and make it possible to more deeply and authentically influence children.<sup>35</sup> Furthermore, if parents take the initiative to administer their children's education, that will strengthen the children's sentiment of freedom, which is an inevitable catalyst of morality.<sup>36</sup> As a result, Humboldt supported the formation of complete human beings, not mere citizens.<sup>37</sup>

As in Fichtean thought, Humboldt avered that the state is allowed to intervene only when parents fail to fulfill basic conditions for the task of educating their children.<sup>38</sup> Nevertheless, the state may not demand that parents issue a certain type

<sup>30</sup> Fichte, *Grundlage des Naturrechts*, 144.

<sup>31</sup> *Ibid.*, 146-147.

<sup>32</sup> *Ibid.*, 144-145.

<sup>33</sup> Wilhelm von Humboldt, "Über öffentliche Staatserziehung," in Wilhelm von Humboldt's *gesammelte Werke* (Berlin: G. Reimer, 1841, Vol. 1), 337-342.

<sup>34</sup> von Humboldt, "Über öffentliche Staatserziehung," 340-341.

<sup>35</sup> von Humboldt, "Ideen zu einem Versuch," 108-109.

<sup>36</sup> *Ibid.*, 92.

<sup>37</sup> *Ibid.*, 105-107.

<sup>38</sup> *Ibid.*, 200-201.

of formation or prescribed plan.<sup>39</sup> As with Fichte's theory, parents have the right to demand the state provide the indispensable means to complete their task.

Advocates of state intervention in the formation of citizens' morals so law is obeyed invoke the ancient Greeks and Romans. However, Humboldt countered that those populations had such an enthusiasm about living in a free organization that they barely noticed the unhealthy effect of the restriction of their individual liberties. That deficit was compensated for by stronger political liberties, enabling their participation in political government in contrast to tendencies in the monarchic regimes of Humboldt's Europe. Moreover, legislation was often confined to giving written form to morals that guided the community's life, largely to give them stability and help citizens uphold them.<sup>40</sup>

Also in the Fichte's sense, Humboldt saw moral development as the work of the interior. In that light, formation (*Bildung*) consists of the spontaneous development of the individual as the product of her or his initiative and an infinite task.<sup>41</sup> In contrast to Fichte, however, Humboldt avered that such works consist of promoting personal forces toward a sense of harmonic totality.<sup>42</sup> As Zöllner claimed, an individual is the result of the joint play of multiple forces,<sup>43</sup> which, though initially indeterminate, later act out and determine themselves, depending on the changing circumstances the individual has to face.<sup>44</sup>

Humboldt's reasoning about the education of children makes sense in light of the background of his principle concerning the limits of state action, which involves the prescription that the state does not take care of citizens' welfare, but only of their safety. As a consequence, such limitation restricts the state's freedom on behalf of the ultimate end of personal safety, which implies protection from unprovoked harm to freedom and property.<sup>45</sup>

In view of the similarities between the Fichte's and Humboldt's theories, besides being written at the same time by authors who knew each other, it is reasonable to ask whether Fichte could have built a liberal or "negative" concept of freedom. To answer that question, it is helpful to examine James Clarke's plausible response to the problem.

### 3. Is Fichte a Republican?

Clarke maintained that the idea of liberty in Fichte's thought does not entail the mere absence of interference of others in personal courses of action. Thus, that idea is not only a negative liberty in the liberal sense. On the contrary, Clarke characterized it

<sup>39</sup> Ibid., 204.

<sup>40</sup> von Humboldt, "Über öffentliche Staatserziehung," 336-337; von Humboldt, "Ideen zu einem Versuch," 104-105.

<sup>41</sup> Wilhelm von Humboldt, "Über die sittlichen Verbesserung durch Anstalten des Staats," in Wilhelm von Humboldt's gesammelte Werke (Berlin: G. Reimer, 1841, Vol. 1), 319-321; Günter Zöllner, "Mannigfaltigkeit und Tätigkeit": Wilhelm von Humboldts kritische Kulturphilosophie," in *Bildung als Kunst: Fichte, Schiller, Humboldt, Nietzsche*, eds. Jürgen Stolzenberg and Ulrich Lars-Thade (Berlin: De Gruyter, 2010), 187-188.

<sup>42</sup> von Humboldt, "Ideen zu einem Versuch," 88, 129-130.

<sup>43</sup> Zöllner, "Mannigfaltigkeit und Tätigkeit," 182-185.

<sup>44</sup> Ibid., 183.

<sup>45</sup> von Humboldt, "Ideen zu einem Versuch," 90, 96, 145-146, 150-151, 156, 159. On this point, Humboldt anticipates John Stuart Mill's political conception; John Stuart Mill, *On Liberty* (New Haven: Yale University Press, 2003).

with the concept of liberty as non-domination, an idea coined by Philip Pettit in the framework of his republican theory.

Pettit's example of the master–slave relationship can help explain the concept of non-domination. That relationship is one of domination because the master can interfere in the slave's course of action when he or she wants, thereby forcing the slave to act according to his or her own belief regardless of the slave's agreement. Nevertheless, it could be that the master is benevolent and does not interfere in the slave's course of action, or that the slave is cunning enough to manipulate the master into not coercing him or her. However, in that case, domination without interference occurs, because the master can interfere at any time.<sup>46</sup>

Nevertheless, another person could interfere in my course of action only to favor my interest, but not to dominate me, like lawyers deal with their clients. If another person wants to interfere in my actions but on other conditions, I can stop him or her either by myself or by calling the police—that is, the state. In such cases, the other person cannot interfere arbitrarily.<sup>47</sup> Therefore, domination can occur without actual interference and vice versa, which implies that negative liberty and freedom as non-domination are different ideals.<sup>48</sup>

To complete the idea of non-domination, Pettit added that it must be resilient, meaning that it must be able to linger in the field of possible accessible worlds. Suppose that a weak individual tries to protect him or herself from a powerful person by befriending the powerful person or by using his or her shrewdness in other forms. If some of those mechanisms fail in the future, then the powerful person will arbitrarily interfere in the weak person's course of action. In other words, non-interference must not be enjoyed contingently, but has to be guaranteed permanently.<sup>49</sup>

Pettit argues that some structural elements are shared by negative liberty and freedom as non-domination, because the aim in both cases is to free the subject from a certain type of interference by others. In the case of negative liberty, that type is non-interference in general, whereas in freedom as non-domination, it has to do only with arbitrary non-interference.<sup>50</sup>

In the republican tradition, the law and government of a well-ordered society is compatible with freedom as non-domination. Thus, freedom as non-domination is not hindered by legal coercion, but produced by it.<sup>51</sup> Interference does not constitute domination insofar as it is not arbitrary—when it is controlled by the interests and opinions of those affected—meaning that such interference is at their service.<sup>52</sup>

Clarke's interpretation of the Fichtean idea of freedom is based on two grounds. First, Fichte emphasizes the idea that agents must guarantee the non-interference of others. That dynamic implies that freedom does not consist of the subject having negative freedom merely in the present moment, but that the subject must be sure that he or she will continue enjoying it in the future. In a sense, Fichte argued that the

<sup>46</sup> Pettit, *Republicanism...*, 22-23. For an exploration of this problem in gender relationships, see Victoria Costa, "Is Neo-Republicanism Bad for Women?" *Hypatia*, Vol. 28, No. 4, (2013), 921-936.

<sup>47</sup> Pettit, *Republicanism...*, 23.

<sup>48</sup> *Ibid.*, 23.

<sup>49</sup> *Ibid.*, 24.

<sup>50</sup> *Ibid.*, 25-26.

<sup>51</sup> *Ibid.*, 31, 39.

<sup>52</sup> *Ibid.*, 35.



recognition of the other makes it possible to constitute self-consciousness only once the subject sees him or herself in the future.

For those reasons, Clarke stated that Fichte defended an idea of liberty in the sense of being resiliently free from the arbitrary interference of others.<sup>53</sup> That idea of freedom would be plausible, according to Clarke, because the right to coercion works due to the egoism of citizens that obey the law only in fear of losing their freedom and property.<sup>54</sup>

Nevertheless, I seek to show that, against Clarke's interpretation, the Fichtean idea of liberty is intimately bound to the concept of the necessary means for self-subsistence. That element is not central to Pettit's concept of freedom as non-domination, which is close to the idea of liberty as mere non-interference.

If we scrutinize the Fichtean justification of civil law, then it becomes clear that freedom is inextricably linked with property from the very beginning. The principle of right at the base of state-building involves the determination of equal spheres of action for citizens. However, those spheres of action consist of certain objects or prerogatives that exist in view of the freedom enjoyed by citizens.<sup>55</sup> Given that the contract of property—the first of all contracts of citizenship—prescribes respect for another's property, it is closer to the idea of negative liberty when understood as the absence of interference on another's freedom. Yet, the contract of protection prescribes active intervention in light of the other's property, meaning that the latter is a form of positive liberty, albeit not oriented directly to a citizen's self-government in terms of the exercise of autonomy.

The most important property is that which makes self-preservation possible (e.g., food, water, and shelter), because it will ensure an individual's existence in spite of any action that the agent cannot foresee.<sup>56</sup> As such, Fichte said the state, not the market, must guarantee the material means of subsistence due to mistrust of the blind hazard that governs free transactions.<sup>57</sup> By extension, the economy must be centrally planned for the state to guarantee the right to existence. Thus, each citizen has the right to earn a living from his or her own labor (*das Lebenkönnen*).<sup>58</sup> However, that requires the obligation to work so others can live by their labor as well (*Arbeitspflicht*),<sup>59</sup> which creates the social division of labor. First, there are producers who take the raw materials necessary for nutrition and hydration from nature, along with other elements indispensable for life.<sup>60</sup> Second, there are artisans who manufacture raw materials obtained by producers.<sup>61</sup> Finally, there are merchants who play the necessary role of mediators between the producer's raw materials and

<sup>53</sup> James A. Clarke, "Fichte and Hegel on Recognition," *British Journal for the History of Philosophy*, Vol. 17, No. 2 (2009), 374-375.

<sup>54</sup> *Ibid.*, 371.

<sup>55</sup> Fichte, *Grundlage des Naturrechts*, 20.

<sup>56</sup> *Ibid.*, 21.

<sup>57</sup> See Johann Braun, *Freiheit, Gleichheit, Eigentum. Grundfragen des Rechts im Lichte der Philosophie J.G. Fichtes* (Tübingen: J. C. B. Mohr, 1991), 34-35; Xavier Léon, *Fichte et son temps. II. Fichte à Berlin (1799/1813): Première Partie. Lutte contre l'esprit de réaction (1799/1806)* (Paris: Librairie Armand Colin, 1924), 98; Jean-Christoph Merle, "Johann Gottlieb Fichte, *Der geschlossene Handelstaat* (1800)," in *Geschichte des politischen Denkens*, ed. Manfred Brocker (Frankfurt am Main: Suhrkamp, 2006), 396.

<sup>58</sup> Fichte, *Grundlage des Naturrechts*, 22.

<sup>59</sup> *Ibid.*, 23.

<sup>60</sup> *Ibid.*, 26-36.

<sup>61</sup> *Ibid.*, 37-38.

the products created by artisans, thereby preventing the excessive accumulation of goods in order to raise prices.<sup>62</sup>

In that scheme, property is defined in respect to the fundamental right to live by one's labor. A producer's property of a piece of earth is determined according to his or her fundamental task, and only those who do not infringe upon that task's primary purpose (e.g., to mine the land or use grass left after harvest) can use the soil.<sup>63</sup> To that end, the borders of land devoted to agriculture must be marked by milestones (*Grenzsteine*) and the surface of the cultivated fields must be large and fertile enough in order to meet the producers' needs. Vegetables that grow wild in the marked field belong to the producer because were a stranger in possession of them, he or she could interfere in the tasks assigned to the producer.<sup>64</sup>

In respect to mining, by some contrast, the problem emerges that we cannot know the laws by which nature produces minerals. As such, we cannot produce them ourselves; we cannot command nature to make it useful for our aims, as is the case in agriculture.<sup>65</sup> Since we can only find minerals, it cannot be guaranteed that any particular individual will be able to make a living from them. For that reason, Fichte argued that the state must take charge of that task, since it is the only one that can pose problems in making a living. Therefore, miners are public employees and the state must possess the property under which to explore to plan and control the process of exploration and extraction without interference from other agents or groups.<sup>66</sup>

Fichte developed an analogous argument when thinking about property as it pertains to breeding livestock. To take advantage of raw materials embodied in animals, the animals must depend on themselves, so their behavior can be controlled and their use planned. It is also necessary to provide nourishment for the animals that is not always provided by nature. For that reason, it is necessary to continuously and permanently support animals. Given those conditions, animal farmers must have the exclusive property of their animals and the tools required by the task.<sup>67</sup>

However, it is sometimes not enough to demarcate territory in which the animals are kept by their owners to guarantee the right of animal property because they could escape or be lost when led to graze with another owner's cattle. In such cases, identifying cattle is possible only by a sign that legally designates an animal as the property of a particular citizen.<sup>68</sup> By contrast, it is possible that the animal could be identified as the property of someone if it remains inside a determinate place—for example, birds in cages or fish in a pond or aquarium.<sup>69</sup>

Another case is that of wild, undomesticated species that cannot be subjected to human purposes, because they cannot be integrated into a predetermined plan. They are no one's property and can be taken by the first person who catches them.<sup>70</sup> Thus, the hunter is the owner of his or her prey and all benefits of its death (e.g., fur, leather, and meat).

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<sup>62</sup> *Ibid.*, 38-41.

<sup>63</sup> *Ibid.*, 26.

<sup>64</sup> *Ibid.*, 27.

<sup>65</sup> *Ibid.*, 28.

<sup>66</sup> *Ibid.*, 29.

<sup>67</sup> *Ibid.*, 30.

<sup>68</sup> *Ibid.*, 32.

<sup>69</sup> *Ibid.*, 32-33.

<sup>70</sup> *Ibid.*, 34.

Therefore, the inextricable union between freedom and property of the means for subsistence is clear. To test Clarke's hypothesis, it is relevant to consider the conceptual bond between freedom and property in Pettit's theory.

First, there is a bond between freedom and property in republicanism. As Pettit explained, republicanism is a political philosophy that could appeal to socialists. Socialism originated in the 19th century out of criticism of slave-like salaried work, which led workers to either seek protection against capitalists (i.e., *caution*) or manipulate them to earn their favor (i.e., *deference*). Even if employers never abuse their power for reasons of economic rationality or morality, workers are still exposed to the possibility of arbitrary interference from their bosses. For instance, employers can fire their employees at any time.<sup>71</sup>

Republicanism supports politics that give citizens economic independence so they are not dependent on anyone's benevolence. This requires the right to access certain goods such as adequate nourishment, shelter, and medical care.<sup>72</sup> Republicanism is critical of the idea that labor contracts are always free because they are agreed upon by adults, since workers are liable to accept exploitative contracts due to intense pressure from one source or another.<sup>73</sup>

Meanwhile, in order to protect the poor from domination by the rich or the state, Pettit argued that it is unnecessary to endorse strict egalitarianism. In other words, it is unnecessary for all citizens to have the same quantity of goods, but only that they have goods or resources that are not at the mercy of the arbitrary interference of others.<sup>74</sup> In that light, social assistance must take the form of a right, not a gift that depends on the whim of the giver, so the freedom of the poor as non-domination can be increased.<sup>75</sup> Conversely, economic prosperity gives subjects more non-dominated choices and the intensity of freedom as non-domination increases while citizens enjoy it.<sup>76</sup>

Even though these elements could create the impression that Pettit's theory of freedom is inextricably linked with property, this hypothesis can be disproven following a detailed analysis of the concept of freedom as non-domination. To that end, first we have to consider what type of actions or conditions fall into the category of domination. For one, domination is an intentional action by the powerful against the weak. As such, it does not have to be a product of mere hazard, natural laws, an accident, or a previous handicap, to name a few possibilities.<sup>77</sup>

In Pettit's republicanism, the concept of interference includes a series of possible behaviors from the physical coercion of the body through the punishment or threat of punishment (e.g., economic and social), to the manipulation or non-rational formation of personal beliefs and desires.<sup>78</sup> Some resources that could allow a subject to interfere with others are those "of physical strength, technical advantage, financial clout, political authority, social connections, communal

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<sup>71</sup> Pettit, *Republicanism...*, 140-142.

<sup>72</sup> *Ibid.*, 158.

<sup>73</sup> *Ibid.*, 165.

<sup>74</sup> *Ibid.*, 161.

<sup>75</sup> *Ibid.*, 162.

<sup>76</sup> *Ibid.*, 163.

<sup>77</sup> *Ibid.*, 52.

<sup>78</sup> *Ibid.*, 53.

standing, informational access, ideological position, cultural legitimation, and the like.<sup>79</sup>

The idea of arbitrary interference implies the worsening of another's situation such as when a pharmacist refuses to sell a medicine that a patient needs urgently, even when prescribed by a doctor, or when a judge chooses to keep a prisoner in jail, given the option of releasing him or her. Furthermore, interference could constitute morally correct conduct, such as when a person impedes another from making an urgent phone call by occupying the only phone available.<sup>80</sup>

Interference is arbitrary because it represents a decision made by an agent in light of his or her own preferences without considering the interests and opinions of the dominated. However, an act of interference can be arbitrary in a procedural sense, as when its content accords with the opinions and interests of the oppressed and the latter thus has no control over the decision making.<sup>81</sup> The only relevant interests are those of the affected. For example, if the state has to design a tax system, it does not have to take into account my interest in not paying taxes, but it must consider the interests that I have in common with other citizens since the state must govern us all. That thinking implies that, for instance, my interest in a reasonable moratorium is relevant.<sup>82</sup>

As a result of the previous argument, the idea of freedom as non-domination is not connected in its core with property but only in some contexts and situations. As María Julia Bertomeu and Antoni Domenech pointed out, the idea of freedom as non-domination is actually a refined form of liberty as non-interference.<sup>83</sup> Therefore, this idea does not allow us to correctly interpret the idea of liberty defended by Fichte when discussing the education of future citizens. To clarify the problem, it is necessary to return to the fragment of family right analyzed previously.

#### 4. Conclusion

Returning to the problem of children's education, Fichte offers an argument analogous to that developed for a worker's property. As in the case of the farmer or breeder, the parent's property is a function of the availability of the means necessary to fulfill their role. For Fichte, the state must guarantee parents the indispensable means for their task. That role requires that parents have nourishment, clothes, housing, interaction with other people, and other elements at their disposal, as long as those things represent the basic conditions for their child's development. The freedom of conscience, however, is another indispensable means for their children's formation. That sphere of possible moral convictions, insofar as it is a set of opportunities, is a property from which parents must exclude all other citizens and the state if they want to achieve the outstanding moral formation of their children.

Such thinking not only represents a concept of liberty that shares elements with Berlin's negative liberty, but also delineates where the capacity of action lies or

<sup>79</sup> Ibid., 59.

<sup>80</sup> Ibid., 54.

<sup>81</sup> Ibid., 55.

<sup>82</sup> Ibid., 55-56.

<sup>83</sup> María Julia Bertomeu and Antoni Domenech, "El republicanismo y la crisis del rawlsismo metodológico. Nota sobre método y sustancia normativa en el debate republicano," *Isegoria*, Vol. 33 (2005), 69.

the set of free options at one's disposal.<sup>84</sup> This concept of liberty includes several ideals of moral perfection and the so-called good life from which an individual can legitimately choose. Accordingly, individuals are free to choose their conception of the world as a whole and the values that will structure their plans for life.<sup>85</sup>

By contrast, the idea of positive liberty prescribes that individuals must be able to follow a determinate normative ideal, according to which they can govern their inferior passions through the exercise of reason. For that purpose, individuals must wake up to their most authentic being, of which they are unaware, and be coerced by the church, nation, revolutionary leader, or state.<sup>86</sup> Among the range of concepts of positive liberty that Berlin acknowledges is "the retreat to the inner citadel," when the authentic subject escapes from external pressures and develops moral autonomy. Into that concept, Berlin inserts Kantian ethics that imply the rejection of all forms of paternalism and is therefore clearly distinguishable from the above-mentioned forms.<sup>87</sup>

Taking into account the sense of positive liberty in general and each of its varieties in particular, it is clear that they are absent from the Fichtean argument in respect to the education of children. The parents of the Fichtean family are not forced to endorse any normative ideal of self-government or follow patriarchalism, insofar as they are free to marry, cohabit, or live alone. Negative liberty is not exactly the concept Fichte has in mind when he contemplates the freedom of parents' conscience. Instead, he grounds his statements in the idea that the means to perform work assigned to each citizen are property.

Nedim Nomer argued that Fichte defends the idea of positive and negative liberty even though he conceives them as imbricated in a system of mutual and inalienable rights.<sup>88</sup> Nevertheless, Nomer stated that the nature and identity of those rights remain unclear.<sup>89</sup> In light of my interpretation, the fundamental right to freedom is property itself. For that reason, the individual liberties Fichte defended are not the products of the absence of coercion by the state, but instead the empire of law and right or the regulation of citizens' property.

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<sup>84</sup> Isaiah Berlin, "Two Concepts of Liberty," in: *Liberty: Incorporating Four Essays on Liberty* (Oxford: Oxford University Press, 2002), 169.

<sup>85</sup> *Ibid.*, 176-177.

<sup>86</sup> *Ibid.*, 178-181.

<sup>87</sup> *Ibid.*, 184-186.

<sup>88</sup> Nedim Nomer, "Fichte and the Idea of Liberal Socialism," *The Journal of Political Philosophy*, Vol. 13, No. 1, (2005), 59.

<sup>89</sup> *Ibid.*, 60.

