

CHAPTER 3

Moral consciousness and the 'fact of reason'

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I. INTRODUCTION

At the very heart of the argument of the *Critique of Practical Reason*, one finds Kant's puzzling discussion of the 'fact of reason'. Kant introduces the notion in the course of arguing that pure reason is practical, which is the main task of the first chapter of the *Analytic*. Having claimed that 'we' have a 'consciousness of the moral law', and that this leads us to the concept of the freedom of the will (*CpV* 5:29–30), Kant argues that the consciousness of the moral law can be called a 'fact of reason'. This passage is found in the brief remark between the two most important conclusions of the second *Critique*. It is located between the formulation of the 'Fundamental Law of Pure Practical Reason', 'so act that the maxim of your will could always hold at the same time as a principle in a giving of universal law' (*CpV* 5:30), and the 'Conclusion' that 'Pure reason is practical of itself alone and provides (the human being) with a universal law which we call the *moral law*' (*CpV* 5:31). Even if the exact role of the notion of a 'fact of reason' is not immediately clear, there is no doubt that the argument in which it plays a role is central to Kant's moral theory.

Ever since it saw the light of day, however, Kant's argument regarding the fact of reason has met with strong criticism, although the critics disagree fundamentally as to what exactly is wrong with it. Not surprisingly, commentators also have wildly divergent views on the relationship between the second *Critique* and the third section of the *Groundwork of the Metaphysics of Morals*, but most seem to hold that although the account in the *Groundwork* is very problematic, the argument in the second *Critique* is even worse.

Kant's assertions certainly raise many difficult questions. When he introduces the 'fact of reason', he refers to an alleged consciousness of the fundamental law of pure practical reason, which he also calls consciousness

of the moral law. Does this mean he simply regards it as a fact that there is consciousness of the categorical imperative? This might seem odd, because Kant regards himself as the first person to formulate this moral principle clearly, so he cannot be assuming that the articulate consciousness of it is widespread. Or does Kant mean the fact that there is consciousness of moral obligation in general, even if its specific content is undetermined, vague or misconceived? But then, what is this exactly, and, at least as important: how does Kant know? Is his claim an empirical thesis that can be tested? If it is, does it rely on empirical (sociological or psychological) assumptions about the universal acknowledgment of moral obligation, and, if so, could Kant's claim still be defended in an era in which it is recognized that there is widespread disagreement about moral demands? Moreover: even if we granted, for the sake of argument, that there is a universally shared consciousness of moral obligation, how can this help to justify the assumption of freedom? After all, people's belief that they have moral obligations could be illusory. If, on the other hand, Kant should not be understood as making an empirical claim, in what sense is he then speaking of a 'fact', and which fact is he talking about?

There is, then, an entire nest of related questions that emerge on the basis of Kant's equation of a 'consciousness of the moral law' with a 'fact of reason'. Kant further adds to the difficulties by designating as a 'fact of reason' not only the alleged consciousness of this law, but also 'the moral law' itself (*CpV* 5:47, 91), and 'autonomy in the principle of morality' (*CpV* 5:42), and by claiming that the fact of reason is 'identical with consciousness of freedom of the will' (*CpV* 5:42).

In this essay, I attempt to shed some new light on the meaning and the importance of the 'fact of reason' in the second *Critique*. I clarify the meaning of the term '*Factum*' itself, situate the maligned passages within their argumentative context and argue that Kant's argument can be given a consistent reading on the basis of which the main questions and criticisms can be answered. While this does not amount to a full validation of Kant's justification of freedom and morality, it should lay the foundation for one, and it should prompt a re-evaluation of the strength of this argument as compared to the argument found in the third section of the *Groundwork*.

I first situate the occurrence of the terminology of a *Factum der Vernunft* in its argumentative context and provide a first interpretation. I then look at the meaning of the term more closely and clarify the argument further in a second round, also discussing the main standard objections.

II. KANT'S INTRODUCTION OF THE 'FACT
OF REASON'

It is crucial to see that the passage in which Kant introduces the 'fact of reason' continues his discussion of the consciousness of the moral law in the remark at the end of section 6. This link between the remarks of sections 6 and 7 often goes unnoticed, and that makes it harder to make proper sense of Kant's talk of the *Factum*.

In the first six sections of the *Critique of Practical Reason*, Kant establishes the reciprocal relationship between freedom of the will and unconditional practical law: if a will is determined by the principle of the 'mere lawgiving form of maxims' (instead of by their content) this will is free, and if a will is free, only the lawgiving form of the maxim can be its sufficient determining ground. Hence, Kant says: 'Freedom and unconditional practical law reciprocally refer to one another' (*CpV* 5:29). This reciprocity thesis, however, is a conceptual thesis and does not yet show that we have grounds for assuming that our will is *actually* free or that we are *indeed* bound by the law of pure practical reason.

In the Remark in section 6, Kant moves from the conceptual level to the question of whether freedom or the moral law comes first in the order of cognition. He asks 'from whence our *cognitive awareness*¹ of the unconditionally practical *starts*, whether from freedom or from the practical law' (*CpV* 5:29; Kant's emphasis).

Kant's brief answer is that the concept of freedom is not primary. This is, first, because we do not have immediate consciousness of freedom. Our initial concept of freedom is merely negative, Kant asserts, *viz.*, independence from determination by the causality of nature. The positive concept of freedom is mediate (as Kant claims to have shown through his earlier discussions in sections 5 and 6). Second, we cannot infer the freedom of the will on the basis of experience. Experience, after all, presents us with the opposite of freedom, namely, determination by mechanical natural causes (*CpV* 5:29).

Therefore, Kant says, our consciousness of the moral law (or more precisely, as Rawls has pointed out, our consciousness of the moral law as authoritative)² is what comes first: consciousness of moral obligation discloses our freedom. It is 'the *moral law*, of which we become immediately

¹ *Erkenntnis*, see *CpV* A320/B376–7.

² John Rawls, *Lectures on the History of Moral Philosophy*, ed. Barbara Herman (Cambridge, MA: Harvard University Press, 2000), 255.

conscious (as soon as we construct maxims of the will for ourselves), which *first* presents itself to us' and which 'leads to the concept of freedom' (*CpV* 5:30). Consciousness of the moral law leads to the awareness of freedom, Kant argues, because reason presents this law to us as a determining ground in us that is entirely independent of sensible conditions (*CpV* 5:29–30).

It is not immediately clear *how* exactly this happens, and to clarify it further Kant gives the famous false testimony example. He asks his readers to imagine a man whose prince orders him to do something which the man recognizes as immoral (to give false testimony against an honest man), and who is threatened with execution should he fail to obey. Such a man, Kant claims, must admit that it would be *possible* for him to overcome his love of life (and any other inclination he may have) and refuse to commit the immoral act, even if he cannot be certain whether he *would actually* act accordingly in the situation. He *judges* that he *can* act in a way that goes against his inclinations, even against his love of life, in light of his consciousness that he *ought* to. In this way, moral consciousness shows him his freedom (*CpV* 5:30).

Immediately following this argument, Kant formulates the 'Fundamental Law of Pure Practical Reason'. Kant formulates this fundamental law as a categorical imperative: 'So act that the maxim of your will could always hold at the same time as a principle in a universal law-giving' (*CpV* 5:30). The very formulation of the principle (as an imperative) indicates that Kant is here assuming that he has now shown not only what this law entails (which he had already shown in section 4), but also that we stand under the obligation to act in accordance with it. Thus, he assumes he has taken an important step beyond the formulation of the reciprocity thesis. The reciprocity thesis is merely conceptual, and does not entail that we are indeed obligated to act in accordance with the law of pure practical reason. This obligation is established only after the reciprocity thesis is combined with a proof of freedom of the will. And this is what Kant does in the Remark in section 6, illustrated with the false testimony example. Despite being presented as merely a 'remark', then, the justification of the assumption of freedom of the will here, on the basis of moral consciousness, fulfils a crucial role in Kant's argument for the validity of the 'fundamental law', i.e. for its validity, for us humans, as a categorical imperative.

It might seem at first as if Kant argues from the Fundamental Law of Pure Practical Reason to freedom and from freedom to the fundamental law, and hence it might seem as if his argument is blatantly circular. But this is not an accurate description of the structure of the argument. The argument starts

from the *consciousness* of the fundamental moral law as an imperative and justifies the assumption of freedom of the will on this basis. Subsequently, the assumption of the freedom of the will serves to underwrite the actual *validity* of this law for us. So the grounding relationship is different in each direction. Moreover, there is only one starting point: the consciousness of the fundamental law (or, as Kant here also puts it, the moral law). At the beginning of the argument Kant has not yet established that this *belief* that one is obligated is not illusory. In the first step of the argument, the belief that one is obligated is shown to disclose our freedom. On the basis of the reciprocity thesis, this then yields the conclusion that the moral law is indeed valid for us as an imperative.

Kant introduces the terminology of a 'fact of reason' (*Factum der Vernunft*) after the formulation of the fundamental law in section 7.³ He says that 'this consciousness of the fundamental law' (which he introduced in section 6) 'can be called a fact of reason'. Kant mentions two grounds for his terminology. First, one *cannot infer* this consciousness on the basis of antecedent data of reason. It is not a matter of logical entailment but a claim about existence. The fundamental law is 'given': this law 'forces itself upon us' as a synthetical judgment a priori (*CpV* 5:31). This motivates Kant's choice of the term '*Factum*': this law is *not derived but given* in consciousness. Second, the consciousness in question is *not grounded in any intuition*, pure or empirical. This, together with the unconditionality of the law in question, motivates his calling the consciousness of this law a fact '*of reason*'. He emphasizes that although the law is given to consciousness, it is not given empirically: consciousness of the law is a fact of pure reason, and it is the only such fact (*CpV* 5:31).

This passage, wedged between the formulation of the 'fundamental law' and the conclusion that pure reason is practical, is the core passage on the fact of reason. The fact of reason is again mentioned and discussed later in the Analytic, in the section 'On the Deduction of the Principles of Pure Practical Reason' (*CpV* 5:42, 47), as well as in the discussion about the relationship between theoretical and practical reason (*CpV* 5:55), and then again in the Critical Elucidation (*CpV* 5:91,104). All these occurrences, as well as the mention in the preface (*CpV* 5:6), refer to Kant's argument in sections 6 and 7 of the second *Critique*. There is only one fact of reason in the overall argument of the *Critique of Practical Reason*.

In his later discussions, however, Kant occasionally uses strikingly different wording. Instead of speaking of the 'consciousness' of the 'fundamental

³ The 'fact' is also mentioned in the preface but not explained there.

law' he speaks of the 'moral law' as the fact, and he repeatedly adds the qualification 'as it were' (*gleichsam*), saying the moral law is 'given as it were as a fact of pure reason' (*CpV* 5:47, 91).

The designation of the law itself (instead of the consciousness of it) as a fact (or at least as given to us as a fact) is probably best explained by pointing out that in so far as the law is *given to us* it is of course given in the form of our consciousness of it. In this sense, Kant can also say that the moral law 'provides' the fact (*CpV* 5:43).

Why Kant modifies his talk of a fact by repeatedly adding 'as it were' is less clear. He often emphasizes the difference between the fact of reason and all other facts, viz., that the first is non-empirical and that it is the only fact that has its origin in pure practical reason. Therefore, it is likely that the qualification is meant to underscore this difference and to avoid a misreading of the fact of reason as empirical.

III. THE *FACTUM* OF REASON: INTERPRETATIONS AND PROBLEMS

It has seemed to many commentators that by appealing to a 'fact' of reason Kant merely bluntly stipulates what he should have carefully argued for. Yet there are profound disagreements among interpreters regarding the way in which the expression is to be understood, and in order to assess these criticisms, it is important to look at these different interpretations of the meaning of '*Factum*' in *Factum der Vernunft*.

Most commentators read the term 'fact' in the (currently) common sense of the word as 'something that has actual existence' (*Tatsache* in German). This has led to a number of questions and objections. In the eyes of many, Kant simply seems to assume the existence and validity of a certain kind of moral experience. Occasionally, a commentator commends Kant for doing so;⁴ most interpreters, however, see it as a ground for criticism, because they take Kant to be starting his argument from an 'ultimately un-argued-for premise of the validity of morality'.⁵ The problem they see is that the existence of moral experience could be challenged on empirical grounds.

⁴ Dieter Henrich, 'The Concept of Moral Insight and Kant's Doctrine of the Fact of Reason', trans. Manfred Kuehn, in Dieter Henrich, *The Unity of Reason: Essays on Kant's Philosophy*, ed. Richard Velkley (Cambridge, MA: Harvard University Press, 1994), 55–87, here 83. Originally published as 'Der Begriff der sittlichen Einsicht und Kants Lehre vom Faktum der Vernunft', in Dieter Henrich (ed.), *Die Gegenwart der Griechen im neueren Denken: Festschrift für Hans-Georg Gadamer zum 60. Geburtstag* (Tübingen: JCB Mohr, 1960), 77–115.

⁵ Karl Ameriks, *Interpreting Kant's Critiques* (Oxford: Clarendon Press, 2003), 176, cf. 254.

Moreover, it looks as if Kant starts from an intuitionist claim to moral insight that is not properly available to him in his own terms. Thus, the appeal to a fact of reason looks to some like a form of 'footstamping'⁶ or 'moralistic bluster' that makes Kant's argument in the *Critique of Practical Reason* 'significantly weaker' than the argument of the *Groundwork*.⁷ Milder assessments, too, see the 'fact of reason' argument as resting on substantive presuppositions that many readers won't accept.⁸

Some commentators deal with the perceived problems by downplaying the importance of the fact of reason. Onora O'Neill and Paweł Łuków regard Kant's argument as a kind of encore, as an explication of how practical reason registers in the 'ordinary lives of ordinary people',⁹ without it being part of the main argument of the *Critique of Practical Reason*. Kant's argument concerning the fact of reason doesn't constitute a *failed* justification, on this view, because he does not intend it to be a justification at all. Łuków writes, referring to *CpV* 5:42, that the fact of reason 'is introduced for the first time as a Remark *after* Kant has shown how pure reason could be practical', and that 'this suggests that the doctrine of the fact of reason supplements rather than constitutes the main argument of the second *Critique*'.¹⁰ A fatal problem for this line of interpretation is that the fact of reason is actually introduced *before* the claim that pure reason can be practical (in *CpV* 5:31), and this latter claim is introduced as a 'Conclusion' immediately following the introduction of the fact of reason.

Two other interpretative proposals take a different approach, both focusing on the term 'fact' and breaking with the standard interpretation. One proposal, given its strongest and most detailed defence by Marcus Willaschek, is to read the term '*Factum*' not as *Tatsache* (fact) but as *Tat* (deed). The *Factum* of reason, on this approach, is a 'deed of reason', viz., reason's activity in producing the consciousness of moral obligation.¹¹

⁶ Paul Guyer, 'Naturalistic and Transcendental Moments in Kant's Moral Philosophy', *Inquiry* 50 (2007), 444–64, here 462.

⁷ Allen W. Wood, *Kantian Ethics* (Cambridge: Cambridge University Press, 2008), 135.

⁸ Henry E. Allison, *Kant's Theory of Freedom* (Cambridge: Cambridge University Press, 1990), 230–49.

⁹ Paweł Łuków, 'The Fact of Reason: Kant's Passage to Ordinary Moral Knowledge', *Kant-Studien* 84 (1993), 203–21, here 210; Onora O'Neill, 'Autonomy and the Fact of Reason in the *Kritik der praktischen Vernunft* (§§ 7–8, 30–41)', in *Immanuel Kant: Kritik der praktischen Vernunft*, ed. Otfried Höffe (Berlin: Akademie Verlag, 2002), 81–97, here 83, cf. 89.

¹⁰ Łuków, 'The Fact of Reason', 210, referring to *CpV* 5:42. O'Neill speaks of a 'complementary' role of Kant's comments on the fact of reason: O'Neill, 'Autonomy and the Fact of Reason', 83, also 88–9.

¹¹ Marcus Willaschek, 'Die Tat der Vernunft: Zur Bedeutung der Kantischen These vom "Factum der Vernunft"', in Gerhard Funke (ed.), *Akten des Siebenten Internationalen Kant-Kongresses* (Bonn: Bouvier, 1991), 455–66; Marcus Willaschek, *Praktische Vernunft. Handlungstheorie und Moralbegründung bei Kant* (Stuttgart: Verlag J. B. Metzler, 1992), 174–93; along similar lines see Paul W. Franks, *All or Nothing. Systematicity, Transcendental Arguments, and Skepticism in German*

Linguistically speaking this interpretation is certainly plausible. The first meaning of ‘*Factum*’ in eighteenth-century German was ‘deed’, and it is beyond doubt that Kant uses the term in this sense in other passages. Moreover, as I shall argue below, interpreting ‘*Factum*’ in *Factum der Vernunft* as ‘deed’ is appealing for philosophical reasons and sheds interesting light on Kant’s argument, although – as I also show – it does not mesh equally well with all the relevant passages.

Another, third approach, defended by Ian Proops, is to read ‘*Factum*’ as a technical term that designates a particular moment in Kant’s proof structure.¹² Dieter Henrich has drawn attention to the important role of legal metaphors in Kant’s critical project.¹³ On Henrich’s view, the term ‘deduction’ should be read in the sense of the eighteenth-century *Deduktionsschriften* that provided legal justifications for territorial claims. According to Henrich, these deductions would typically involve tracing the claim back to a legal action or fact in which the claim originates, and this origin was called a ‘*factum*’. In other words, one would establish a legal entitlement by proving a ‘*factum*’. Proops argues that the ‘fact of reason’ in the *Critique of Practical Reason* should be read in this sense. On his interpretation, ‘the *factum* of the Deduction of Freedom consists in the fact that the moral law has a pure origin’, i.e. an origin in pure practical reason.¹⁴ Proops sees this as incompatible with the second reading, and he even claims, with reference to the fact of reason in the second *Critique*, that ‘in the process of transplanting the [legal] metaphor, the idea of the *factum* as an act recedes from view’.¹⁵

IV. *FACTUM*: FACT, DEED OR A TECHNICAL TERM?

Should ‘*Factum*’ be understood as fact, as deed, or as a technical term? The Latin verb ‘*facere*’ means ‘to do’ or ‘to make’. The perfect participle ‘*factum*’ can refer both to that which was done (the deed) and to that which was made (the product). In Zedler’s *Universallexikon* (1732–54), ‘*That*’ (deed) is the very first meaning of ‘*Factum*’, followed by ‘*das geschehene Ding*’ (the

Idealism (Cambridge, MA: Harvard University Press, 2005), 278; most recently also espoused by David Sussman, ‘From Deduction to Deed: Kant’s Grounding of the Moral Law’, *Kantian Review* 13 (2008), 52–81, here 68.

¹² Ian Proops, ‘Kant’s Legal Metaphor and the Nature of a Deduction’, *Journal of the History of Philosophy* 41 (2003), 209–29.

¹³ Dieter Henrich, ‘Kant’s Notion of a Deduction and the Methodological Background of the First *Critique*’, in Eckhart Förster (ed.), *Kant’s Transcendental Deductions* (Stanford: Stanford University Press, 1989), 29–46.

¹⁴ Proops, ‘Kant’s Legal Metaphor and the Nature of a Deduction’, 228.

¹⁵ *Ibid.*, 215, and 215n. 19.

thing that happened) and other ways of referring to the *product* of the deed.¹⁶ The German word '*Thatsache*' (fact, matter of fact) did not exist until the second half of the eighteenth century, when it was a neologism devised to translate '*res facti*' (matter of fact).¹⁷ Zedler's lexicon (which predates '*Thatsache*') defines '*res facti*' as 'that which actually exists as a result of the activity of humans or of nature'. '*Thatsache*' came to serve as a translation not only of '*res facti*' but also of '*factum*' in its meaning of 'product'. By the end of the eighteenth century, then, '*factum*' could mean either 'deed' (*That*) or 'fact' (*Thatsache*).

Kant uses '*Factum*' in both senses, and he translates the Latin *factum* into German either as *That* (deed) or as *Thatsache* (fact), depending on which meaning is intended. He often uses it in the sense of 'fact'.¹⁸ He uses *That* (deed) when the term refers to an imputable act, as, for example, in the following passage: '*Imputation (imputatio) in the moral sense is the judgment by which someone is regarded as the author (causa libera) of an action, which is then called a deed (factum) and stands under laws*' (*MdS* 6:227).

If the consciousness of the fundamental practical law is *produced* by reason, the term 'fact of reason' can naturally be understood to refer to a *deed* of reason. This reading would block interpretations according to which the fact of reason is a brute fact that reason simply has to swallow, a state of affairs that impinges on reason from the outside. Instead, this reading emphasizes that the consciousness of the law originates in reason's own activity.

The 'deed of reason' reading has obvious philosophical advantages over the older reading of the fact of reason as a brute fact. Instead of reading the *Factum* as a state of affairs which reason simply happens to find itself confronted with, on this interpretation it is a deed of reason itself.

In support of reading *Factum* as 'deed', the reading defended by Willaschek, one can point to passages in which the fact of reason is mentioned in a context in which reason is portrayed as active. Kant claims, for instance, that 'in' the *Factum*, pure reason 'proves itself indeed practical' or 'practical in the deed' (*in der That praktisch*, *CpV* 5:42). In the preface Kant writes that 'if it [viz., reason] as pure reason is actually practical, it proves its reality and that of its concepts through the deed, and all subtle reasoning against the possibility of its being practical is futile' (*CpV* 5:3).

¹⁶ Johann Heinrich Zedler, *Grosses vollständiges Universallexikon* (Leipzig: Johann H. Zedler), 1732–54.

¹⁷ Jacob Grimm and Wilhelm Grimm, *Deutsches Wörterbuch*, 16 vols. (Leipzig: Hirzel, 1854–1960), under '*Thatsache*'. See also Kant's translation of *res facti* as *Thatsache* in *CU* 5: 468.

¹⁸ E.g. *CrVA* 84/B116; *MdS* 6:371.

Willaschek rightly points out that Kant uses ‘*Factum*’ in both senses (deed and fact). The question is, however, whether ‘*Factum*’ in the core ‘*Factum der Vernunft*’ passages in the second *Critique* (especially *CpV* 5:31) is best read as ‘deed’, as he believes that it is.¹⁹ A first indication that this might not be so is the circumstance that this interpretation makes it difficult to make sense of comments such as Kant’s statement that the ‘moral law provides a *Factum*’ (*CpV* 5:43) (*das moralische Gesetz gibt ein ... Factum an die Hand*). The moral law does not provide a deed – it would be hard to know what that would mean. As I explain below, I believe that ‘fact’ is the better reading of the crucial passage in section 7, but with the understanding that this fact is the result of a deed of reason.

The textual difficulties with reading ‘*Factum*’ as a technical term for a specific moment in a proof, as proposed by Proops, are considerable. At first sight, this proposal looks promising. As mentioned, Kant draws heavily on juridical terminology at many crucial junctures in his *Critiques*, which motivates Proops’s proposal to read ‘*Factum*’ as a technical juridical term. His view is that despite the contrast Kant draws in the *Critique of Pure Reason* (*CrVA* 84/B116) between questions of right and questions of fact, his ‘deductions’ involve *both* and have a two-step structure, starting with a proof of a particular action or fact in which the claim at issue originates.²⁰ In the second *Critique*’s deduction of freedom, so Proops argues, this ‘*Factum*’ is the fact of reason.²¹

One problem for this reading, however, is that Kant’s own explanation for his choice of the term ‘*Factum*’ has nothing to do with the proof structure of a deduction but rather with the consciousness of the fundamental law of pure practical reason as ‘given’. Furthermore, there are no passages elsewhere in the *Critique of Practical Reason* where ‘*Factum*’ is used in an unambiguously technical sense and which could directly corroborate this reading.

Another disadvantage of Proops’s reading is that it downplays the active role of reason. As mentioned above, he even claims that the active meaning of *Factum* recedes from view in the second *Critique*. Given that many of the ‘fact of reason’ passages portray reason as active, it would seem that something important is left out if this aspect cannot be captured. This is not to

¹⁹ Willaschek, *Praktische Vernunft*, 184–93 (‘Die Tat der Vernunft und die Begründung der Moral’).

²⁰ Proops, ‘Kant’s Legal Metaphor and the Nature of a Deduction’, 211. Zedler’s *Universalexikon* includes a separate entry for ‘*Factum*’ in a technical legal sense of a ‘*casus*’, as the case ‘without precise insight [into which] the law cannot be applied’; Zedler, *Grosses vollständiges Universalexikon*.

²¹ Proops, ‘Kant’s Legal Metaphor and the Nature of a Deduction’, 228–9. It is somewhat puzzling that Proops formulates the first step in different ways: either as the proof that the moral law has a pure origin, or as the proof ‘that the obligations we take ourselves to be under are genuinely *categorical* obligations, as opposed to hypothetical principles of prudence, or whatnot’ (228–9).

deny that the deduction of freedom could be fruitfully reconstructed as an argument that starts with the fact of reason, but such a reconstruction does not depend on reading '*Factum*' in the technical sense. Therefore, it is unclear what novel hermeneutical insights are disclosed by this reading, whereas it is clear that this reading has significant drawbacks.

I believe that a better interpretation can be developed by modifying the first reading (*Factum* as fact), making use of the insights of the second reading (*Factum* as deed). This is to read '*Factum*' as a fact, that is, to take moral consciousness as something which exists – but not as an alien fact that reason happens to be confronted with, such as the existence of a contingent set of parochial values. Rather, it is to take moral consciousness as a fact that is the result of reason's activity. This is to read the '*Factum*' as a fact (*Tatsache*) that is generated by a deed (*Tat*) of pure practical reason itself, namely as the consciousness of the fundamental law (of pure practical reason), a consciousness that reason produces in rational agents. The fact is then a fact 'of reason' just as a decision can be 'a decision of the king', or a painting 'a painting of Rembrandt'. Read in this way, the fact of the consciousness of the fundamental law of practical reason is the result or product of a deed of reason. '*Factum*' is therefore best translated as 'fact', not as 'deed'; but what exactly the fact *is* is to be understood by taking into account that *Factum* is the perfect participle of the verb 'to do, to make', and that the fact at issue is the *product* of reason's own activity.

V. MORALITY AND PRACTICAL REASON

The proper way of *reading the expression* 'fact of reason' does not yet tell us how successful Kant's use of it is in his argument. Much more needs to be said in order to address the many questions and objections mentioned at the outset. Kant claims that consciousness of the moral law (as binding) exists, and a recurring complaint in the literature is that he fails to question critically the validity of the belief that one is morally obligated. Therefore, it is important to examine what exactly the consciousness *is* that Kant claims exists, and what his reasons are for claiming that it exists.

Virtually all authors who discuss the fact of reason do so in terms of morality. They introduce the 'consciousness' that Kant calls a fact of reason as the 'consciousness of the *moral law*' or '*moral consciousness*'. This is certainly right, because Kant does. But it can also be misleading. Most of the worries that I mentioned at the outset can be traced back to a failure to interpret properly Kant's equation of the fact of reason with moral consciousness.

It is striking and significant that the argument of the first chapter of the *Critique of Practical Reason* proceeds not in terms of morality and the moral law, but in terms of practical reason and the fundamental practical law. Indeed, the term ‘moral’ and related terms (*moralisch*, *Moral*, *sittlich*, *Sittengesetz*, and so forth) do not occur until *CpV* 5:29, just before the formulation of the Fundamental Law of Pure Practical Reason of which Kant then adds: ‘which we call the moral law’ (*CpV* 5:31). We find a similar locution in the *Metaphysics of Morals*: Kant says that the positive concept of freedom grounds ‘unconditional practical laws, which are called *moral*’ (*MdS* 6:221).

The consciousness of the fundamental law of pure practical reason is indeed most fundamentally the consciousness of a rational principle. Kant also calls this law the moral law. That should not be surprising: morality concerns the most fundamental principles for action, and so if a *rational principle* has been identified as the *most fundamental* principle of action, this rational principle can be called the *moral law* (see also *ZeF* 8:370). Once Kant has explicitly equated the two, he refers to the fundamental law of pure practical reason more frequently as the moral law. In essence, however, it is the consciousness of the fundamental law of pure practical reason that is called a fact of reason. This law is subsequently called the moral law – not the other way around.

Paying attention to this feature of Kant’s argument helps to clarify some of the common questions and objections that are raised in response to Kant’s discussion of the fact of reason. As I mentioned, one often hears the objection that Kant should not have assumed that there is widespread agreement about moral obligation. But it should now be clear that this objection attaches itself to the wrong object. Discussing the fact of reason exclusively in terms of a moral consciousness, instead of consciousness of the fundamental law of pure practical reason, creates the risk that ‘morality’ is read in terms of readers’ own ‘material’ conception of morality instead of in terms of Kant’s formal concept of it. The proper object of criticism should instead be Kant’s claim about the alleged consciousness of the law of practical reason. For *that* is the alleged fact; and Kant calls it ‘moral’ consciousness simply because it is our consciousness of the most fundamental normative principle guiding human action.

This is not to answer the objection, of course, but merely to shift it to the proper location. The next question, then, is whether Kant’s fact of reason argument fares any better as a result. Sceptics, psychological egoists and many other critics are likely to object to Kant’s claim in its refined form, too, as the claim that there is consciousness of the law of pure practical reason which is produced by reason.

VI. KANT'S ARGUMENT REVISITED

Many critics see the major weakness of Kant's account in the second *Critique* as lying in his claim that moral consciousness is a fact and the basis for our assumption that we are free. Some challenge Kant's assertion regarding the very existence of the consciousness at issue. Others fault Kant for a bootstrapping problem in the argument. What is missing in the fact of reason argument, they say, is a convincing account of how *normativity* emerges from the mere existence of a particular consciousness or belief. In their eyes, Kant fails to address the problem that morality might be a 'figment of the brain', as he himself called it in the *Groundwork* (*G* 4:407, 445), where he did acknowledge this objection.

In order to assess whether these criticisms can be answered, we need to look more closely at what exactly the 'fact' is, and how Kant argues for its existence. The weight of the argument is on the assumption of the existence of this consciousness – both on the positing of its universal existence and on the articulation of what it consists in, and it is crucial to assess Kant's argument for both parts of the claim.

Now some commentators have suggested that we should not raise the bar too high with regard to the first part. Proving the *universal* existence of moral consciousness of one kind may not be possible, but it is nevertheless philosophically worth while to capture the principle underlying a form of moral consciousness that appears to be widespread.²² Only very few people would deny or doubt the claim that it is wrong to torture babies for fun (to take just one example from the literature), and thus only very few people would deny or doubt that there are normative constraints on action at all. So most people, they argue, can be said to have a consciousness of moral obligation, even though there are of course vast differences when it comes to specific conceptions of how one is morally required to act. The substance of Kant's argument, on this reading, concerns the precise articulation of the principle of normative constraint (and the defence of this articulation), and this argument should speak to the vast majority of people.

The ambition of both Kant and most Kantians, however, is to accomplish much more, namely, to ground the consciousness of moral obligation in the structure of practical reason, so as to reach conclusions that apply universally. Kantian theorists from Habermas to Korsgaard have developed arguments to reply to the objections at issue. I would here like to examine, however, whether one can make good sense of Kant's own second *Critique*

²² See, for example, Ameriks, *Interpreting Kant's Critiques*, 260.

argument regarding the consciousness of the fundamental law of practical reason in a way that answers the criticisms.

Kant claims that the fundamental law of practical reason immediately presents itself as soon as an agent constructs maxims for his will (*CpV* 5:29). Maxims are, on Kant's theory of action, the principles an agent adopts as rules for action. Mere behaviour on blind impulse does not involve the use of maxims. Maxim construction presupposes an agent who deliberates about possible courses of action in light of a normative standard. Kant's claim is that this standard is provided by practical reason. He claims that the very moment agents consciously reflect on possible maxims of action, they 'immediately' become conscious of the fundamental law of pure practical reason (*CpV* 5:29).

This claim requires further elaboration, but it is important to note at the outset that Kant's argument starts by positing the existence of agents who face decisions and who deliberate about maxims. That seems not too much to presuppose as a starting point: Kant's critics, too, will have to grant that agents, from the agents' own perspective at least, face decisions and deliberate about possible rules of action. Some may wish to add that the agents' sense of freedom in such situations is a mere illusion or that deliberation can concern only means–ends relationships, but that is not of concern until the next step in the argument.

What does it mean for Kant to say that agents become conscious of the fundamental law of pure practical reason the moment they start constructing and evaluating possible maxims of action? Agents who regard themselves as facing a decision and as deliberating about possible maxims of action ascribe to themselves (implicitly or explicitly) the capacity to guide their actions on the basis of reasons. They ask themselves how to act and why. Their questions do not confine themselves to questions of expediency and prudence, because if and when they seriously ask themselves *why* they would act in a certain way, their reflection naturally leads to questions regarding ends and general principles of acting. Such agents ask themselves not merely whether certain actions are instrumental in achieving a given end, but also whether the end itself is worth pursuing (and why). And this means that they can (and will, if they are serious and push this process far enough) ask themselves whether to act on their inclinations at all.

This very question, however, indicates that their deliberation about maxims presupposes a normative principle, and that this normative principle is conceived as independent from the inclinations. That is, when they conceive of themselves as acting on reasons, they conceive of their will as a causality on the basis of reason and 'independent from empirical conditions' (*CpV* 5:31). 'Independent' here does not mean that inclinations play no role

in practical deliberation, but rather, that the will is conceived as *not dependent on* inclinations, in the sense that agents judge that they can choose to act in a way that runs counter to all of them if they see reasons to do so. According to Kant's analysis, as we saw, this comes down to saying that they judge that their will is free. A free will conceived as a causality on the basis of reason, however, is, as Kant has argued earlier in the *Analytic*, a pure will, 'determined *by the mere form of the law*' (*CpV* 5:31). Therefore, from the standpoint of the deliberating agent, the 'fundamental law' is regarded as the supreme condition of all choice of maxims (*CpV* 5:31). Kant writes,

The fact mentioned above is undeniable. One need only analyze the judgment that people pass on the lawfulness of their actions: one will always find that their reason, whatever [their] inclination may say to the contrary, nevertheless, incorruptible and coerced by itself, always compares the maxim of the will of an action to the pure will, i.e., to itself, insofar as [reason] regards itself as a priori practical. (*CpV* 5:32; cf. *CpV* 5:91)

In other words, agents who regard themselves as having a will regard the fundamental law of practical reason as the normative principle guiding their choice of maxims (implicitly, or explicitly when they reason correctly). In attributing a will to themselves, agents implicitly acknowledge this principle as the normative standard for the assessment of maxims. This fact, i.e. the consciousness of this fundamental law, on the part of agents who regard themselves as facing choices regarding maxims, is exactly what Kant calls a fact of reason.

Given Kant's equation of the fundamental law of pure practical reason with the *moral* law, this comes down to saying that agents who regard themselves as facing a decision about maxims must (and do, at least implicitly) recognize the moral law as valid. But the core argument can be crafted entirely without using moral terms, and no parochial set of moral intuitions or moral values is presupposed. All that Kant presupposes, beyond the earlier argument in the *Analytic*, is the perspective of agents who regard themselves as reasoning about courses of action and who construct and assess maxims on the basis of this reasoning. And what Kant claims to prove is that such agents are conscious of the fundamental law of practical reason as the normative standard that should guide their deliberation.

If this reconstruction of Kant's argument is correct, a common view on the relationship between the *Groundwork* and the second *Critique* needs adjustment. It is often thought that Kant's claim that moral consciousness is a 'fact of reason' reflects his recognition of the futility of his earlier attempt, in the *Groundwork*, to offer a 'route into morality from truly non-moral

concerns and self-conceptions'.²³ In some sense, Kant does offer a non-moral route in the *Critique of Practical Reason*: the entire argument can be cast in (presumably 'non-moral') terms of a theory of action and be regarded as the articulation of the self-understanding of agents who take themselves to be reasoning about which maxims to adopt and why. But this argument is not a mysterious 'route into' morality. The fundamental law of rational agency *is*, as Kant puts it, 'what we call the moral law'. Morality is nothing other than the (set of) standard(s) determining how we ought to act. If how we ought to act is determined by a single rational principle, as Kant claims it is (viz., the categorical imperative as the fundamental law of pure practical reason), then this rational principle is suitably called the moral law. There is nothing enigmatic about that.

By saying that the relation between the arguments of the *Groundwork* and the *Critique of Practical Reason* needs to be re-evaluated, I do not mean to imply that his arguments in the two books are identical. The most striking difference is Kant's reversal of the order of the argument concerning freedom. In the *Groundwork* he argues from freedom of the will to the moral law, whereas in the second *Critique*, the argument proceeds from consciousness of the moral law to freedom of the will. Thus, even though the aim of Kant's argument in the second *Critique* shows more continuity with the *Groundwork* than is usually thought, Kant's argumentative strategies in pursuing this aim are different in important respects.

Now someone might wonder whether this reconstruction of Kant's argument in the *Critique of Practical Reason* does not wrongly present the belief in freedom of the will as an inference from the mere capacity to reason as such, and whether in doing so it does not lose sight of the fact that Kant's defence of freedom appeals specifically to *moral* consciousness. In the false testimony example, Kant relies on the agent's recognition of the authority of morality, and not on a general capacity to reason, to back up the belief in freedom. Hence, one could think, there is still a 'moral remainder' that cannot be captured by an analysis of the argument in terms of practical reason.

In response to this worry, it is important to point out that Kant certainly did not argue, in the second *Critique*, that the mere capacity for means–ends reasoning could suffice to show us that our will is free. The employment of practical reason in the service of an end given by inclination, even if this end is a very general one such as one's happiness, does not suffice to show us our freedom. Thus, whether or not one is able to resist one's lustful inclination when threatened with execution at the gallows should one give in to it, one

²³ Sussman, 'From Deduction to Deed', 65; see also Ameriks, *Interpreting Kant's Critiques*, 256–9.

does not learn of one's freedom here (see *CpV* 5:30). Only when one realizes that one could act against *all* of one's inclinations, as in the false testimony example, does one become aware of one's freedom in the sense required by Kant. In such cases it is not inclination which is conceived as determining the will, but pure practical reason. Only such cases, and not instrumental practical reasoning, disclose the freedom of the will.

One objection has not yet been touched upon, and this is the claim that the *belief* that we are morally obligated does not prove we *are*, that morality might be a figment of the brain, and that freedom of the will (of the Kantian variety) could be a mere illusion.

In assessing the strength of this objection, it is crucial to remind oneself of Kant's distinction between theoretical and practical reasoning. From a theoretical perspective, Kant holds, all our actions (not just some of them) as appearances are entirely determined by natural causal laws. But Kant denies that it is possible for agents qua deliberating agents (that is, from the practical standpoint) consciously to regard their own judgments as determined by natural causes.²⁴ From the perspective of deliberating agents no inclination sets absolute limits to their own freedom. Kant's argument for the assumption of freedom has a conclusion that is indeed radical. This is what the false testimony example is meant to illustrate: agents judge that they *can* determine their will in accordance with what is right, because they judge that they *ought* to do so.

But what are we to say about the possible illusoriness of this judgment, i.e. this belief in freedom of the will? Believing something does not make it so, and therefore it has been objected that having the consciousness of the fundamental law, and hence having the belief in freedom of the will, does not guarantee that we are 'really' free.²⁵ Note, however, again looking back to the false testimony example, that Kant's argument establishes that one must *judge* that one can (i.e. that one must judge that one is free), not that one 'really' can. The latter claim would entail metaphysical knowledge of freedom from an objective and theoretical point of view. Kant, however, does not claim to prove freedom in that sense; his project in the *Critique of Pure Reason* led to the conclusion that doing so is impossible. But the first

²⁴ See his comment in the *Groundwork* that it is impossible to conceive of a rational being that consciously regards its own judgments as determined by natural causes (*G* 4:448), because then such a rational being would not count these judgments as its own.

²⁵ Barbara Herman presses the point that *believing* we are able to act from respect for the moral law 'does not bootstrap us up to transcendental freedom'. Barbara Herman, 'Justification and Objectivity: Comments on Rawls and Allison', in Eckhart Förster (ed.), *Kant's Transcendental Deductions* (Stanford: Stanford University Press, 1989), 131–41, here 135.

Critique also showed that there is no viable perspective from which to prove that the belief in freedom (in the moral context, by the deliberating agent) is illusory – for this proof similarly requires metaphysical knowledge of a kind that is not available to us. In this way, the assumption of freedom of the will, which is a necessary presupposition from the perspective of the deliberating agent, can be ‘defended’ against the charge of illusoriness.

Thus, starting from the *consciousness* of the fundamental law of pure practical reason, Kant justifies the assumption of freedom of the will. The assumption of freedom of the will in turn establishes the *validity* of the fundamental law for us. At the point at which the argument starts, Kant has not yet shown that the belief that one is obligated by the law is non-illusory. But after justifying the assumption of freedom (on the basis of this belief), he establishes the validity of the fundamental law, and at that point the consciousness of obligation can no longer be judged to be illusory (e.g. as a mere product of imagination). Given the justification of the validity of the fundamental law (also known as the moral law), the consciousness of this law must be regarded as a product (‘fact’) of reason. This argument is convincing only from the agent perspective, but in so far as this is a perspective which is inescapable for us humans and which cannot be undermined from a theoretical perspective, it is for us, in Kant’s view, fully convincing.

Kant’s account of the fact of reason is, therefore, radically agent-based. The argument is developed from the agent’s point of view, because it concerns practical reasoning from the perspective of agents, not theoretical reasoning *about* agents from an external perspective. It is an argument not from the concept of morality, nor from the concept of an agent, nor even from the fact that there are agents. Rather, it is an argument developed from and valid for the perspective of those who take themselves to be agents. The argument establishes what such subjects must judge when they engage in practical deliberation about maxims. Kant grants the point that, merely theoretically speaking, freedom of the will might be an illusion, but settling this question lies entirely outside the purview of theoretical reason. Freedom of the will is a necessary assumption for someone judging from a practical point of view, and it can be defended on the basis of the consciousness of the fundamental law of pure practical reason, a consciousness which Kant calls a fact of reason.²⁶

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