

The First Person and the Moral Law

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Abstract

In *Kant's Defense of Common Moral Experience: A Phenomenological Account*, Jeanine Grenberg argues for the centrality to Kant's ethics of the experience of the feeling of moral constraint, especially as that feeling is described in Kant's fact of reason argument. She criticizes interpretations of the fact of reason that interpret it as primarily a certain kind of act. I defend my version of an act-based interpretation against Grenberg's criticisms, flesh out the Fichtean background of that interpretation and raise some further questions about Grenberg's account.

Keywords: Kant, Fichte, morality, conscience, first person, fact of reason

Anyone who has taught Kant's moral philosophy knows that Kant's terminological apparatus can be a serious obstacle to discussing what is at bottom supposed to be a highly intuitive, non-technical and for the average person non-controversial account of morality. Since professional philosophy thrives on terminological and technical disputation, it is no surprise that scholarship on Kant's moral philosophy has tended to concentrate more on complex theoretical issues in Kant's moral writings and less on the intuitive core of the practical philosophy. It is a genuine service of Jeanine Grenberg's *Kant's Defense of Common Moral Experience: A Phenomenological Account* (2013) that she has put that intuitive core front and centre, giving a new interpretation of the primacy of the practical in Kant's philosophy. By focusing our attention on the 'common' and on 'experience', Grenberg asks us to look again at elements of Kant's moral philosophy that have been taken for granted, relegated to secondary goals or ignored altogether. Most importantly, she provides a way to rejuvenate Kant's moral philosophy by restoring the immediacy of felt experience.

I am going to focus on the issues raised by Grenberg's engagement with my work (Moyar 2008) on the issue of conscience in Kant. First I would

like to frame the dialogue with a few words on the affinities between Grenberg's project and my aims in that essay. My overall goal was to understand just what Kant is up to in his perplexing 1790s writings on conscience, spread out from *Religion within the Limits of Reason Alone* to the essay 'On the Miscarriage of all Philosophical Trials in Theodicy' and the *Metaphysics of Morals*. I came to think that these various attempts to systematize the role of conscience were attempts to further elaborate the fact of reason argument first presented in the second *Critique*. Because for Grenberg the fact of reason is the central argument of Kant's 'common grounding' of morality, my argument for the importance of conscience in the 1790s – which is also indirectly an argument for and interpretation of the fact of reason – shares many elements with her account. To take one central interpretative issue, the fact of reason can be interpreted as a common consciousness of the moral law, a consciousness that is not in the first place *felt*, but rather establishes the authority of rational principles prior to feeling, as on Henry Allison's reading (Grenberg criticizes Allison's view and argues that feeling has to be considered an integral, primary part of the first-person consciousness rather than as a subsequent motivational element (2013: 140ff.)). This same split arises within Kant's discussions of conscience, for he sometimes presents conscience as a consciousness, or even self-consciousness, that appears to float free from our sensible nature, whereas at other times he emphasizes the 'pangs of conscience' that threaten us when we act contrary to the moral law.

Grenberg discusses my interpretation of Kantian conscience alongside Paul Franks's interpretation of the fact of reason (Franks 2005), for both Franks and I interpret it as an *act* of reason. Our views provide a good contrast for Grenberg's account because she holds that the fact of reason is fundamentally a passively experienced feeling of moral constraint. While she likes our accounts for our embrace of the first-person perspective, she thinks that we go astray in holding the fact of reason to be an act. She thus raises doubts about 'the relentlessly active point of view Franks finds in the first-personal perspective of the Gallows Man, one in which the Gallows Man (and we, when we take on his reflections) actually produces the moral feeling of respect through conscious deliberative activity' (Grenberg 2013: 149). Grenberg objects to Franks's claim that the finite agent produces this feeling, for she holds that the finite agent must instead be receptive to the deliverances of noumenal agency, which she holds to be 'more metaphysical than deliberative' (150). While she endorses some of my criticisms of Franks's view, she thinks that my own conscience-based view of Kant also overemphasizes conscious activity and the deliberative point of view.

Both Franks and I interpret Kant in light of the way that J. G. Fichte appropriates Kant in his Jena system. Because Grenberg has taken Kant in a very first-personal direction, her account actually has some natural affinities with Fichte's radically first-person view of ethics. As I view Kant's developing views on conscience in the 1790s, he is struggling with issues that Fichte made central to his own ethical theory, a theory that remains Kantian in spirit while departing in significant ways from Kant's official view. The quotation with which I begin my essay is a good indication of the direction in which Fichte takes Kantian ethics. Fichte states Kant's universal law formula of the categorical imperative as 'Act in such a way that you could think of the maxim of your will as a principle of a universal legislation' and then writes,

It is by no means a principle (*Prinzip*), but only a consequence of or an inference from a true principle, that is, a consequence of the command concerning the absolute self-sufficiency of reason. The relationship in question is not that something ought to be a maxim of my will because it is a principle of a universal legislation, but rather the converse – because something is supposed to be a maxim of my will it can therefore also be a principle of a universal legislation. The act of judging comes purely and simply from me (*geht schlechthin von mir aus*). This point is also clear from Kant's proposition, for who is it that judges in turn whether something could be a principle of a universal legislation? This is surely I myself. (Fichte 2005: 222–3; 4: 234)¹

The instability in Kantian autonomy arises because, as Fichte puts it here, two aspects of Kant's conception of moral freedom can be separated: 'the absolute self-sufficiency of reason' and the 'principle of a universal legislation'. In this passage Fichte wants to emphasize that the thesis of universal legislation follows from the primacy of first-person judgement rather than the other way around. In so far as this distinction bears on Kant's fact of reason argument, it implies a thoroughgoing activity of the judging subject, who is bound by the law through his or her own activity. For Grenberg, by contrast, the Gallows Man in the fact of reason argument experiences moral constraint through a feeling that has an essential element of passivity.

It is worth noting that, although Fichte can sound rather subjectivistic in writing of the primacy of the individual's act of moral judgement, he espouses an even more demanding account of morality than the one we find in Kant. By focusing on the subject's activity, Fichte places an almost

unlimited responsibility on the individual agent, who must always do what is right regardless of the consequences to his or her own well-being. The uncompromising character of Fichte's moral philosophy resolves certain tensions in Kant's view, though it also shows why the transcendental framework is ultimately inadequate. To lay my cards on the table, I do not think in the end that the orthodox Kantian view or the Fichtean view is the correct one. My goal in showing that the most consistent Kantian position is a Fichtean one is ultimately to set up the issue of autonomy for a Hegelian solution. Once we see that the formality of Kantian moral law is expressed in its purest form in Fichte's self-determining I, we see the need to move towards a more social understanding of the content of practical philosophy and a theory of action that better opens first-personal willing to second- and third-personal engagement.

Grenberg is sympathetic to my focus on the first-person perspective of conscience while objecting to my claim that Kant cannot hold the sharp distinction between practical reason and first-person deliberation. The first point I want to make in response is that she misreads my use of first-order and second-order judgements to interpret Kant's claim in the *Religion* that 'Conscience could also be defined as *the moral faculty of judgment, passing judgment upon itself*' (Kant 2001b: 203; 6: 186). I introduced the idea of a second-order judgement to describe the role of conscience as a judgement of the quality of one's first-order judgement of an ethical case. One has to judge whether one has fully and honestly carried out the process of deliberation and thus whether one is in a position to correctly identify one's obligation. Grenberg takes my use of 'first-order' and 'second-order' to refer to 'obligation' and 'choice' (Grenberg 2013: 153), or also to 'what I should do' (first-order) and 'what I will in fact do' (second-order) (153; see also 88, 171, 177, 203). The first-order is roughly right, but my use of second-order judgement is not supposed to describe 'choice' (a term I never discuss in the essay) or 'what I will in fact do'. There is in the *Religion* a reference to the need to achieve certainty in conscience before one acts, so perhaps Grenberg is thinking that my focus on conscience as second-order is a focus on the moment of actually acting on certainty. She might also be thinking that conscience as second-order operates after the deed and holds up to me my actual action. But the basic contrast for me is not between obligation and choice. Rather, the contrast is between the assessment of the case of action, on the one hand, and on the other hand the supervisory capacity of the subject, where the latter is tasked with making sure that all aspects of the case, and all relations to one's own desires and beliefs, are accounted for in arriving at the judgement of the obligatory course of action.

I think that Grenberg's real issue with my first-order/second-order distinction is with the way I use it to show that Kant cannot hold a sharp line between foundational issues and the issues of application, or between the bindingness of the moral law in the abstract and the dynamics of moral judgement in concrete cases. The point I was after in drawing attention to the split between a first-order object-oriented judgement (where the object is the case of action) and a second-order subject-oriented judgement is that these levels cannot be kept so neatly apart, especially in an agent-centred theory of obligation like Kant's. In principle I would think that Grenberg would be amenable to the emphasis on the role of subjective attention to self, which does give priority to something akin to a first-person phenomenological view. But she is wary of my claim that the first-personal authority of conscience bleeds into the authority of the moral law considered in the abstract. She thus disapproves of the following passage that she quotes (Grenberg 2013: 153) from my essay: 'The separation of a first-order judgment and a subsequent second-order judgment judging itself begins to seem like a rather desperate assertion of the ideal objectivity of moral judgment' (Moyar 2008: 346–7). Kant struggles in the 1790s writings on conscience to maintain that the objective facts of the matter in a moral case are separate from the subject's struggle to reach a judgement through an examination both of those facts and of his or her motivations and reasoning. I admit that it is hard to find a good way on strict Kantian grounds to bridge the gap between these two elements, but I also do think that some such bridge is needed. Kant's tendency to over-compartmentalize, and to multiply faculties, muddies rather than resolves the issue of the unity of the subjective and objective elements in his moral philosophy.

As I see it, the first-order judgement is supposed to be an assessment via practical reason of a case: what the relevant *prima facie* duties are, what possible maxims could be appropriate. Kant often gives the impression that this judgement is supposed to be reachable without considering anything in particular about the individual agent. The second-order judgement, though, views all of these same elements but in relation *to me*, as imputable *to my will*. This is what Kant means when he says in the *Vigilantius* lectures that '*Conscientia*, taken generally, is the consciousness of our self, like *apperceptio*; *in specie* it involves consciousness of my will, my disposition to do right, or that the action be right, and thus equals a consciousness of what duty is, for itself.' (Kant 2001a: 357; 27: 613–14). To draw an analogy with the theoretical case, the various elements of the moral manifold would be nothing 'for me' unless they were all accompanied, or at least could all be accompanied, by consciousness

of myself: consciousness that I think or I will. To the extent that this parallel holds, the unity of moral self-consciousness becomes the most fundamental requirement of judgements of duty, displacing the universality of the law as the most basic condition of ethical objectivity. As we can already see from the *Vigilantius* passage, we do not reach consciousness of our duty without the consciousness of our will. To focus on the self in this way is to remain focused on transcendental apperception, not empirical apperception, so that by giving priority to the subject's activity we are not saying that the contingent empirical self can somehow decide at will what is moral and what is not (sometimes Fichte is misread this way). But the self-consciousness of the will at issue here also cannot remain a merely formal unity of 'I think' or 'I will', for in the practical stance (as opposed to the idealized theoretical stance of the Transcendental Analytic of the first *Critique*) the objective judgement of the case does involve individual and situational factors.

Another way to see the problem with trying to separate these two sides is to focus on the question of moral motivation. I think that Kant does give motivation a central epistemic and justificatory role – a judgement that takes into account all of one's existing motivations in arriving at one's obligation will be the right one. This aspect of motivation is implicit in Kant's account of an action's moral worth, for the result of judgement should be an intention that includes the right kind of motivation, since the action should be performed for the sake of duty. If the moral worth of the action, and not just its conformity with duty or legality, is determined by the grounds on which one acts, it seems that the relation of the case of action *to me* is essential to determining which maxim of action is the right one.

Grenberg does of course have a point in worrying about what happens to Kant's picture of obligation once the pure activity of the self in judgement is given priority and the universality of the law is no longer the most fundamental element. The rational will for Kant is almost unthinkable without its constitutive connection to lawfulness. Yet Kant's main argument for identifying the activity of the will with the form of the law turns on his understanding of causality, and I find it intriguing that it is precisely a reliance on theoretical arguments about causality that Grenberg is determined to reject in the name of the common point of view. She criticizes Kant's argument in *Groundwork* III in part by arguing that it relies on a thesis of 'global causal determinism' (Grenberg 2013: 128–9). Yet it is very hard for a Kantian to give up the equation of moral willing = rational cause = law. I think that Grenberg does rely

on this equation when she argues, regarding formal determination of the will, that ‘a rational cause that holds with necessity has to be a merely formal cause’ (Grenberg 2013: 239), so there does seem to be a certain tension in her view on this point. One could try to do without causation altogether, but that would itself be contrary to our common moral intuitions about willing and responsibility.

The question this discussion of causality raises is the following: is there a way to affirm freedom phenomenologically without mistakenly subsuming the practical under categories that are fitting only for theoretical philosophy? Fichte’s idea was to identify a free cause not first and foremost with the law, but rather to identify freedom in the first-person phenomenological viewpoint with pure activity, the basis of an intelligible or rational causality that is more primitive than the universality of law.² The phenomenological, practical point of view becomes the most basic philosophical point of view in so far as we rule out (on moral grounds) a theoretical mode of explanation that would seek to find causes behind the consciousness of our activity.³ In the Fichtean interpretation of Kant that is focused on the first-person point of view, the noumenal self is the self viewed from the idealist standpoint, where all normativity is grounded in activity and therefore in reason.

Grenberg thinks that I go astray both in stressing the deliberative aspects of Kant’s view of conscience and in claiming knowledge of the noumenal that we cannot countenance in a Kantian framework. She writes that ‘Moyar thus goes beyond the limits that Kant has finally set in the second *Critique*, illicitly asserting that finite sensible affected agents do encounter themselves as active, rational, autonomously productive beings’ (Grenberg 2013: 204). The key point is that I claim (following Fichte’s reading of Kant) that noumenal agency is just the consideration of action under the perspective of freedom, whereas Grenberg has a more metaphysical picture of noumenal agency in mind. She thus continues disapprovingly,

Moyar instead affirms his commitment to integrating the noumenal self into his account. ... So, although he goes on to describe the very familiar, this-worldly experience of the judgments of conscience, Moyar understands these judgments within which the agent determines the content of those oughts upon her will that are categorical to be the acts of this ‘noumenal agent.’ (Grenberg 2013: 204)

My reading of Kant’s noumenal agency does owe much to Fichte’s strong two-standpoint reading, for I hold that ‘noumenal agency’ is best conceived

as a claim about responsibility, the fact that I see my action as up to me. Of course it is hard to establish that the conditions under which such responsibility is affirmed are the conditions of moral action, but I think that is the challenge that both Kant and Fichte (and in a different way, Hegel) take up. I also think that such a two-standpoint view is closer than a more metaphysical reading of noumenal agency to capturing essential aspects of common morality.

For Grenberg, the moral law's objectivity is secured by the passivity of feeling, so it is important for her to argue against (what I take to be) the standard interpretation of Kantian respect, which is that it is a feeling consequent upon our representation of the moral law. Her argument is structurally similar to the one that Descartes gives about the external world in Meditation 6, where it is the passivity of sensation from which we infer (with the help of knowledge of a non-deceiving God) the objectivity of the external world. In Grenberg's view, the passivity of our feeling of constraint in the fact of reason enables us to appreciate the objectivity of the moral law. She thinks that an account like mine that stresses the production of the feeling through action will not be able to establish that objectivity. She writes of my active first-personal approach:

Moyar is, however, wrong to insist that a first-personal reading of the Fact requires of us the separation between the activity of the rational self and lawfulness. Moyar misses the connection between first-personal moral experiences and lawfulness because he does not explore more carefully how attention to receptive and felt experience (instead of active, nonfelt experience) points us, mysteriously, to just this objective moral law as the ground of our felt experience of constraint. (Grenberg 2013: 155–6)

Not surprisingly, I have some questions about this mystery. In particular, I am just not sure how Grenberg makes the case that this feeling of constraint is indicative of the objective moral law. Could there not be another source of this feeling? With the active account of the source of this feeling we have a relatively straightforward story to tell about the *origin* of the constraint, even if the *authority* of that constraint (as a *self-binding*) is rendered rather enigmatic as a result.

I had thought that my view of respect, as a feeling consequent upon our representation of the law, was a straightforward interpretation of Kant's well-known footnote on respect in the *Groundwork* (Kant 1999: 56; 4: 401).

But Grenberg thinks that such a view of moral feeling robs it of its mystery and robs noumenal agency of its point. Grenberg writes:

But for Moyer, as we have seen, moral feeling is an *effect* of the judgment of this noumenal agent, not something upon which the agent focuses to access her noumenal self ... As such, he cannot appeal to consideration of this feeling as the vehicle via which one appreciates one's noumenal self, for one's noumenal self is already what consciously produces this feeling. (Grenberg 2013: 204)

If we translate this dispute into the language of conscience, I think we can see that we do not need to accept Grenberg's either/or here. When in deliberation I consider what my conscience would say if I acted for my happiness rather than on the law, I am representing the law to myself. I cannot see why such an act of entertaining the moral law to myself in conscience would prevent me from feeling something like pangs of conscience, or from taking those pangs as confirmation that I must act morally (under the perspective of freedom). This dynamic actually seems to be what Kant is getting at when he refers to conscience in the second *Critique* (Kant 1999: 219; 5: 99). The activity of conscience does not 'consciously produce' feeling from scratch, without any reference to our sensible nature (I am not even sure what that would mean). I always act as a natural, finite being. My emphasis on activity is not meant to imply that we can completely transcend our limitations.

I do think that Kant is pulled in two directions on the main issue, and while Grenberg defends the transcendence of noumenal agency, my interpretation follows Fichte's in stressing an intuitive access to self-conscious freedom in action. I conclude by saying a few more things about Fichte's interpretation of Kantian morality and use Fichte's position to press Grenberg further on a couple of points. One point concerns the 'forced' character of the fact of reason that Grenberg stresses. She holds that viewing the fact of reason as an act is incompatible with viewing it as forced. But I do not see why this is so, given that an act can be just as necessary as a feeling. With a forced act you are forced to *do* something rather than being forced to feel, but in the sense of necessity or unavoidability there does not seem to be a problem with conceiving of a forced act. As I read the fact of reason, it is about just such an unavoidable act, an act without which morality would be impossible. Fichte most frequently discusses the act in question as a freeing of the self from given determinations. The act is a 'tearing away' of the I from the sensibly given, as he sometimes puts it, in order to take responsibility for one's thought and action.

The issue that distinguishes Fichte's position is our conscious access to this act and the philosopher's ability to theorize ethical norms on the basis of a series of such necessary acts. This is what Fichte is talking about in a memorable passage from the 1797 Second Introduction to the *Wissenschaftslehre*, where he writes,

I would very much like to know what those who assume a familiar air of superiority whenever they encounter any mention of 'intelligible intuition' imagine our consciousness of the ethical law to be like, or how they are able to construct for themselves concepts such as 'right,' 'virtue,' and the like – concepts that they certainly do possess. According to them, there are but two *a priori* intuitions: time and space ... Consequently, their 'right' would have to turn out to be, let us say, square, while their 'virtue' would perhaps have to be circular. ... If they observe correctly, they will discover that what underlies these concepts is acting as such, i.e., freedom. (Fichte 1994: 50–1; I: 467–8)

There is quite a lot packed in here, including a challenge to the limitation on experience of the self from the Paralogisms that Grenberg cites in criticizing my view. Fichte argues that we can only construct ethical concepts because we have a third form of intuition, the intuition of acting as such. Fichte admits that the 'reality' of this intuition is not to be had outside the standpoint of morality itself. Freedom is confirmed in our consciousness of the moral law, and in no other way. He is thus not making the claim that our activity can be shown to be exempt from global determinism in a way that would satisfy natural science, but rather the claim that as practical beings we can think of ourselves in no other way than under the idea of freedom.

Along with his phenomenological orientation, Fichte's moral philosophy is also relentlessly first-personal. This is why conscience, as a *feeling* of certainty, is the centrepiece of his ethical theory. For Fichte the feeling of certainty about a specific case is both epistemic and justificatory, yet Fichte's model of feeling is based on the Kantian judgement of beauty, and is thus characterized by a harmony of the faculties and by a version of Kant's subjective universality. He claims that the feeling of certainty is 'the immediate consciousness of our pure, original I' (Fichte 2005: 165; 4: 174), and he deduces an ethical drive and ethical duties based on this feeling. The question Fichte's example raises for me is just how Grenberg wants to develop the Kantian appeal to feeling. Is the feeling of respect illustrated by the Gallows Man just supposed to provide a grounding for morality *in general*? Or does feeling also have an epistemic and

justificatory role in the process of practical judgement? I take it that Grenberg finds more attractive the model of morality in which the finite subject passively feels the force of the moral law against inclination. This could result in the directive ‘If it feels bad, it must be right’, though I would be surprised if Grenberg would endorse any such idea. I am really not sure what direction exactly Grenberg wants to go here, and I would like to learn more about her views on ordinary moral judgement.

My final question has to do with the relation between the common perspective and the philosopher’s perspective. I worry that Grenberg goes too far in privileging the common over the philosophical, and that she may have trouble reconciling the two perspectives in the end. Again, Fichte’s case is instructive here, for he basically says that the felt criterion of conscience suffices for the common standpoint. There is nothing more that the individual needs beyond the feeling of certainty in conscience to know that her judgements are well-grounded. Fichte writes of conscience, ‘This would suffice for actual acting, and nothing more would be required in order to make possible such acting. The educator of the people, for example, can leave it at that and can conclude his instruction in morals at this point’ (Fichte 2005: 198; 4: 208). There is an implicit premise here, as I believe there is in Grenberg’s account, that the entry into speculative philosophy corrupts the common standpoint of morality. But I worry that this move puts too much faith in the common.

Do we simply assume that the content of common morality will be the same as that of the philosophically (i.e. rationally) sanctioned morality? When are we licensed to correct common morality with the tools of philosophy? Grenberg is sympathetic to the emphasis on *attention* in Descartes’s *Meditations*, and there is a similar argument that Fichte makes about conscience. If you turn out to have been wrong in your judgement, that just means that you were not attentive enough to the voice of conscience (conscience properly speaking can never lead one astray). But it seems then that we are left with an oddly internal, perhaps even private criterion for ethical action. More to the point, I do not see how as a philosopher you would be able to avoid saying ‘Just be more attentive and you will discover what I know is there.’ I am worried that we will end up like Descartes in his Replies to the *Meditations*, insisting that the idea of God will be evident if one just meditates hard enough. How do we avoid just demanding attention to our own philosophical knowledge in the face of the contravening phenomenological experience of others?

Notes

- 1 References by volume and page number will be to Fichte 1971, and for Kant to the Akademie edn.
- 2 For evidence of freedom in the sensible world Fichte holds that we associate a free cause with purposiveness: we can infer from a purpose to a free cause behind it. This is the strategy that Fichte uses in his famous argument for recognition in writing of a ‘summons to freedom’ of one agent by another. See Fichte 2000: 34–9; 3: 36–40.
- 3 Here is an important passage in which Fichte explicitly compares his view with Kant’s: ‘In several passages Kant derives our conviction concerning freedom from our consciousness of the moral law. This is to be understood as follows: the appearance of freedom is an immediate *Factum* of consciousness and by no means a consequence of any other thought. And yet, as was previously pointed out, one might still wish to explain this appearance further and could thereby transform it into an illusion. There is no theoretical reason for not doing this, but there is a practical one: namely, the firm resolution to grant primacy to practical reason, to hold the moral law to be the true and ultimate determination of our essence, and not to transform it into an illusion by means of sophistical reasoning – which is certainly a possibility for the free imagination.’ (Fichte 2005: 55–6; 4: 53–4)

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