Kant's Legal Metaphor and the Nature of a Deduction

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I. INTRODUCTION

In the *Critique of Pure Reason* Kant opens his "Deduction of the Pure Concepts of the Understanding" with an intriguing allusion to the legal practice of his day: jurists, when they speak of entitlements and claims, distinguish in a legal matter between the question concerning what is lawful (sui juris) and that which concerns the fact (sui facti), and since they demand proof of both, they call the first that which is to establish the entitlement or the legal claim, the deduction.1 (A848/B864)

Despite its fame, this remark is only partly helpful. It is clear that a deduction is supposed to establish the philosophical analogue of a legal entitlement or claim, but Kant offers few hints as to what this analogue might be. Does he have in mind the individual cognizer's (implicit) claim to possess and use certain concepts with right? Or is he thinking, more figuratively, of a *cognitive faculty* 's claim to have "legislative authority" over some given domain? Might he even have in mind the (still figurative) claims of certain *concepts* to apply legitimately within—or throughout—some domain?

Kant toys with each of these possibilities in his writings, but he settles decisively on none of them.2 In the preamble to the *Transcendental Deduction*, for ex-

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2 Here I follow Guyer and Wood, with minor modifications.


4 I capitalize the word "Deduction" when it figures in the title of a section or chapter, or in a name of an argument, e.g., "Metaphysical Deduction." I leave the word in lowercase when I am speaking of the notion of a deduction.

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ample, he speaks of the "usurped" concepts of fortune and fate as making claims that are occasionally challenged by the question: "quid juris?" (A84/B117). But, having thus implied that the claims of concepts are at issue, he goes on to speak as though what really concerns him are the claims of cognition to employ certain concepts with right (A84–5/B117). In the Critique of Judgement, on the other hand, Kant speaks both of concepts and of cognitive faculties as possessing "domains" over which they exercise legislative authority. 8

I should say straight away that I shall be arguing for a view according to which the claims most centrally at issue in the Deduction are the figural claims of concepts, but for now it will suffice to have registered some uncertainty over the precise manner in which Kant's metaphor is supposed to operate. Further uncertainty surrounds the "question of fact" (quid facti). Kant fails to make clear whether he introduces this notion simply as a neutral foil to the entitle-entitling "question of right" (quid juris), or whether he conceives of it—more interestingly—as corresponding to an initial stage in the argument of the Deduction.

In what follows I propose to investigate these apparently minor questions about the details of Kant's legal metaphor in the hope of illuminating a range of more important issues concerning the nature of—and connections between—the principal "deductions" in Kant's first two Critiques. Along the way, I shall try to clarify several important—yet still obscure—conceptions to which Kant appeals in setting the stage for his Deduction of the Categories. I shall also try to get clearer about the general issue of Kant's attitude to Locke's "physiology of the human understanding" (Anl). My project both builds upon and engages critically with Dieter Henrich's recent scholarly investigations into the institutional background to Kant's legal metaphors. A brief review of Henrich's work will serve to introduce my main concerns.

In his essay "Kant's notion of a Deduction and the Methodological Background to the First Critique" 9 Henrich argues persuasively that in the Critique, Kant is using the term "deduction" in a sense that derives from the eighteenth-century practice of composing voluminous legal documents known as "Deduktionsschriften." Such documents were composed with a view to justifying "controversial legal claims between the numerous rulers of the independent territories, cities, and other constituents of the Holy Roman Empire" (Henrich, op. cit., 32). Their composition was often undertaken merely prospectively, so that recourse to them could be had in the event that a territory or city republic should be called upon to defend its claims before the Imperial Courts. 7 A passage in which Kant refers explicitly to a legal deduction is worth quoting in full. The example concerns an assembly of the States General at the Hague, which took place, according to Kant, "in the first half of the [eighteenth] century". 8

The ministers of most of the courts of Europe and even of the smallest republics lodged with [this assembly] their complaints about attacks being made on one of them by another. In this way they thought of the whole of Europe as a single confederated state which they accepted as arbiters, so to speak, in their public disputes. But later, instead of this, the right of nations survived only in books, it disappeared from cabinets or else, after force had already been used, was re-engaged in the form of a deduction to the obscurity of the archives. (The Metaphysics of Morals, Ak. 6: 350)

This remark provides some evidence of Kant's familiarity with Deduktionsschriften. Moreover, as Henrich notes, the Deduction of the Categories displays certain stylistic affinities with historical Deduktionsschriften (op. cit., 33–4). Henrich's case is, I think, plausible as it stands, but it is worth noting that it derives additional (circumstantial) support from Kant's description of his critical project as "the true court of justice for all controversies of pure reason" (A751/B779), as well as from his description of the Critique as "an exhaustive record" of these controversies, to be deposited "in the archives of human reason" (A704/B732).

According to Henrich, deductions would typically have involved the justification of "hypothetical" or "acquired" rights, which originate in a particular legal action or fact, technically known as a "factum." A deduction involves justifying a claim by tracing it back to the factum in which it originates. The right to bear an academic title, for example, would be "deduced" by tracing it back to the fact that the relevant exams had been passed (Henrich, op. cit., 35). On Henrich's story, then, the factum has a justificatory role to play: it is by producing a factum that one establishes an entitlement (ibid.). 9

In what follows I shall be concerned to evaluate three of Henrich's most important claims: (1) that the legal metaphor operates systematically in the first two Critiques—at least to the extent that in both works philosophical deductions proceed by seeking to ground their claims in various facta; (2) that in the first Critique the philosophical analogue of a legal factum is the Unity of Apperception, which serves as the factum of the Deduction of the Categories; and (3) that in the second Critique the relevant analogue is the "Fact of Reason," which serves as the factum of the Deduction of Freedom. I shall argue that although the textual support for (2) is more contentious than Henrich seems to allow, this thesis is nonetheless defensible. Secondly, I shall argue that, contrary to (2), what is best seen as playing the role of the factum in the Deduction of the Categories is not the Unity of Apperception but rather the fact that the Categories have a priori origins. I will suggest that Kant's main argument for this "fact" is the so-called "Metaphysical Deduction" (B59). 10 Thirdly, I will offer arguments to substantiate thesis (3), which Henrich is content to leave as a conjecture.

1 The Cambridge Edition of the Works of Immanuel Kant, Critique of the Power of Judgment, Paul Guyer, ed., Paul Guyer and Eric Matthews, trans., 2nd introduction (Cambridge: Cambridge University Press, 2000), §2. I am indebted to David Hills for discussion of this point, and for drawing my attention to it. 8


3 It appears that the documentation of a state's claim was not always aimed at defending territories already possessed. R. W. Harris tells of a Professor Ludvig von Halle who had "compiled a voluminous proof of the rights of Brandenburg to the whole of Silesia in the event of the failure of the male line of the Habsburgs" (R. W. Harris, Absolutism and Enlightenement 1660–1789 [New York: Harper & Row, 1961], 177).

4 The passage is cited by Henrich, op. cit., 33.

5 Surprisingly, given his account of the role of facta in deduc- tions, Henrich at one point claims that the genus facta "can be answered in a satisfactory way even if the genus facta meets with insurmountable difficulties" (Henrich, op. cit., 36). Much of this essay will be taken up with showing that this remark, involved as it is intended to apply to Kant's understanding of these terms, cannot be correct.

6 In arguing for this thesis I will be attempting to substantiate a claim made, without supporting arguments, by H. J. de Meeschauwer in his La situation transcendante dans l'Ennem de Kant, 3 vols. (Paris, Antwerp, and The Hague: Leroux, De Sikkel, and Nijhoff, 1934–7), vol. 3, 144.
Along the way, I hope to make clear precisely what Kant means by a "deduction" in his first two Critiques, and, in so doing, reveal something new about the structure of arguments that go by this name. But perhaps my most ambitious goal is to make more comprehensible the role played in Kant's system by the infamous "Pact of Reason" in the second Critique.

2. THE FACTUM

Let me begin by examining some texts that may, on first acquaintance, appear to undermine Henrich's account. First, an undated Reflexion: "The quesatio facti is, in what manner one has first come into possession of a concept; the quesatio juris, with what right one possesses and uses it" (Reflexion 563, Ak. 18: 267). Next, two passages from Kant's metaphysics lectures from the period 1782-3:

We can distinguish physiology, critique of pure reason, and system of science. Physiology of pure reason is the inquiry into the origin of concepts. It is an investigation of the facti; it is, as lawyers say, quæstio facti. How has it come to that? This investigation can be quite subtle, but it does not belong to metaphysics but since we do have concepts, we must ask by what right we avail ourselves of them. This latter question has a far more important influence in metaphysics, for that is critique, quæstio juris. The former question has been the business of two philosophers, of Locke and Leibniz. (Metaphysik Monogonius, Ak. 29: 763-4)

An investigation of facti, how we arrive at cognition, whether from experience or through pure reason. Locke accomplished much here, and this can also have uses, but it is not especially needed and also scarcely possible—it would be better to ask how many concepts are of pure reason, what is their meaning, i.e., to which objects they can apply, how can they be used, and within which boundaries must they be held? This is a critique of pure reason. We see here with what right we avail ourselves of concepts apart from experience, whether we do this not illegitimately. (Metaphysik Monogonius, Ak. 29: 783-2)

Taken together, these passages give the impression that Kant introduces the notion of a quæstio facti merely as a neutral foil to the entitlement-establishing question of right. Kant's main message seems to be that Locke and Leibniz are concerned with the question how concepts come to be in the mind, but not with the further question with what right we possess and use them. Does this mean that Henrich is simply overreading Kant's juridical metaphor by discerning a justificatory role for the factum where none exists?

I think not. Although the passage from the Reflexion does suggest that the question of fact concerns a concept's origins, it is, strictly speaking, neutral on the further question whether the facts it discloses would be relevant to establishing the question of right. The same, I think, goes for the passages from the Monogonius lecture notes, but it should be conceded that their tone does seem more congenial to the "neutral foil" reading than to its rival. On the other hand, it is unclear how much weight ought to be placed on these remarks, which occur only in the context of student lecture notes. For one thing, Kant's attitude to Locke's project is sufficiently nuanced that it would be rash to infer anything very definite about it from uncorroborated student notes. For another, there are more authoritative texts that point unambiguously in the opposite direction.

Perhaps the most important of these texts is the very passage from the first Critique with which we began (A84/B77-86). There, jurists are said to demand proof of both the question of what is lawful and of the question of fact. But, obviously, jurists would be unlikely to demand proof of something that had no bearing on the legal question at issue, so this suggests that a proof of the quæstio facti must constitute an initial stage in the proof of the quæstio juris. Moreover, there is a body of independent evidence suggesting that Kant regards a proof of the question of fact as a necessary first step in establishing a legal question.

Consider, for example, the following passage from Frederico Brauer's notes of Kant's 1786** ethics lectures:

Impuatio facti [imputation of fact] does not necessarily imply impuatio legis [imputation of law]. When a man has killed another it does not necessarily follow that he has murdered him. The first question which arises is whether he has in fact done the deed. If he is also to be held responsible for the factum before the law, then he has a double responsibility. The question of legal responsibility is whether the action falls under this or that practical law. (Lectures on Ethics, 58)**

Here Kant is distinguishing causal from legal responsibility. The factum—what is imputed by the impuatio facti—is the action described in a way that carries implications for the question of causal responsibility but without prejudice to the question of legal responsibility. In order to secure a conviction, lawyers would obviously need to establish both the impuatio facti and the impuatio legis. So again the factum would seem to be relevant to the quæstio juris.

These conclusions are corroborated by a passage from the Vigilantius lecture notes* in which Kant presents, in syllogistic form, an illustrative legal argument which makes the role of the impuatio facti especially vivid. He says:

In a syllogism, the impuatio facti always constitutes the minor premise, and the law the major; the impuatio legis is then inferred from them, e.g.:  

\begin{tabular}{ll}
  lex (pt. maj) & The abuser shall restore his honour to the abused. \[1ex]
  imp. facti (pt. min) & He has abused me. \[1ex]
  Therefore & He must make amends.
\end{tabular}

(Vigilantius Ethics Lectures, Ak. 27: 565)

The major premise of the syllogism states the law; the minor, the facts of the case; and the conclusion, the law upon these facts. In terms of the legal jargon that Kant borrows from Baumgarten, the conclusion reports the impuatio legis, which is the "applicatio legis ad factum sub lege sumptum" [the application of law to the fact...
subsumed under it)” (ibid.). The example suggests that this application yields a verdict or ruling. In the same place Kant characterizes the “quaestio facti” as an investigation that examines: (1) whether an action exists that is to be regarded as an evenus causae liberae [an effect of free causes] (2) whether, if an action is present, such an action be a factum, or have causality and (3) whether this person be the auctor14 of the factum” (Vigilantius Ethics Lectura, Ak. 27: 562). So in investigating a quaestio facti one seeks, among other things, to identify the facta relevant to the case. It is important to realize, however, that it is not necessary for an action to count as a factum that its description be free of legal presuppositions. On the contrary, as Kant emphasizes: “the law... contributes to the more complete determination of the factum itself” with the consequence that “for finding the momenta in facta [the factors in the case], it is already necessary to have regard to the law” (Ak. 27: 565). So even if we should have already applied the law in determining whether, for example, a particular action constitutes “abuse,” the statement “He has abused me” will still report a factum. What distinguishes the imputatio legis from the imputatio facti is not that the former presupposes legal notions while the latter does not, but rather that only the former consists in the issuing of a final ruling.

These passages have so far been gathered only from student lecture notes, so it is worth noting that Kant also distinguishes between two varieties of “imputation” in his published writings. In the “Introduction” to the Metaphysics of Morals he says:

Imputation (imputatio) in the moral sense is the judgement by which someone is regarded as the author [Ethelen] (census ibi) of an action [Handlung], which is then called a deed [Thum] (factum) and stands under law. If the judgement also applies with the rightful consequences of the deed, it is an imputation having rightful force (imputatio iudiciaria s. valida); [judicacy or valid imputation]... The (natural or moral) person that is imputed to have rightful force is called a judge or a court (index s. forum). (The Metaphysics of Morals, Ak. 6: 227)

There is evidence to be found, then—both in notes of Kant’s lectures and in his published writings—that Kant had a conception of a factum as a fact to be discovered in the course of determining the question of an action’s lawfulness, hence as something whose proof is relevant to establishing a legal question. We should not forget, however, that in the extended legal metaphor of the Transcendental Deduction15 we are not dealing with the culpability of individuals, but with the validity (or otherwise) of the claims of rulers and states. And while the prosecutor in a murder case must establish a person’s guilt, Kant’s jurist must establish a claim’s legitimacy. In consequence, we cannot simply assert that the distinction between imputations of fact and imputations of law, which, as we have seen, has its home in criminal law, maps straightforwardly onto Kant’s quid facti/quid juris distinction. Nonetheless, it is very plausible to suppose that there is a general distinction between questions of fact and questions of law that carries over from the criminal to the civil (or political) setting. This is the distinction between, on the one hand, a relatively neutral statement of fact—as it might be, the statement that I am the child of such-and-such parents, and, on the other, a formally fully loaded statement of fact—as it might be, the statement that I am the rightful heir to the throne. Notice that in the process of transplanting the metaphor, the idea of the factum as an act recedes from view: what emerges as being of central importance is the status of the factum as a fact that is relevant to, but falls short of, a final ruling. Notice, also, that because the question quid juris is established by applying the law to a factum, where this “application” can take the form of a syllogistic inference, recognizing Kant’s special legal understanding of the notion of a deduction is not incompatible with supposing that a legal deduction can take the form of a deductive argument. This last point is borne out by one of the few examples of a legal deduction Kant mentions, namely the “Deduction of the right of a publisher against an unauthorized publisher” (Ak. 8: 79–80), which takes the form of a syllogism.

So, to sum up: I have argued that what Kant means by a legal “deduction” in the opening passage of the Deduction chapter is a proof of what is lawful in a given case from the facts of the case and the laws of the land. To give such a proof is to establish a quaestio facti. I have suggested, further, that since such a proof rest on a prior proof of a question of fact, or quaestio facti, there is reason to expect that the Deduction of the Categories will contain an identifiable first step that purports to establish something analogous to a legal factum. I shall shortly turn to the task of locating this argument, but before I do it, it will be helpful as a preliminary to identify an important and pervasive ambiguity in Kant’s use of the term “Deduction.”

3. Two senses of “Deduction”

The German noun “Deduktion” is derived from the Latin verb “deduco,” which can mean “to lead or draw out (or off or down),”16 but also “to derive (from a source)” and “to trace (by logical argument), or deduce.”17 The legal sense of “deduction” that Kant is exploiting, although related to the original Latin meaning, is plainly distinct from it: a legal deduction is concerned specifically with establishing the validity of a claim. One factor contributing to the difficulty of Kant’s discussion of the Transcendental Deduction is his willingness to retain the broader sense of the word “deduction,” as a tracing of something from (or, more commonly for Kant, to) its origins, alongside the narrower legal sense of a conclusive proof of validity. The older and broader sense is apparent, I believe, in the phrase “Metaphysical

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14 Kant defines an “auctor” as “an originator of an action” (Ak. 27: 358).
15 Compare Baumgarten’s Intra § 18: “Indagationes enthurn factum et QUIESTIONES FACTI. Enumeratum momentorum in facto est SPECIES FACTI (factum).”
16 I follow standard practice in using the phrase “Transcendental Deduction” throughout this essay to mean simply the Deduction of the Categories in the first Critique, even though Kant sometimes uses this phrase to refer to a proper part of the Deduction of the Categories (cf. B 139).
17 It will be important to keep this observation in mind when we come to discuss the fact of Reason.
18 I take the idea of “lawfulness” to include what the law permits and what it demands.
20 ibid., 497, entry 13.
This can give the impression that the factum of the Deduction is whatever fact Locke's investigation seeks to uncover. It is worth explaining why this cannot be so.

To understand how Kant regarded Locke's project, it is crucial to distinguish the project that Kant saw Locke as unsuccessfully attempting to engage in, from the one on which he saw him as successfully—albeit unwittingly—engaged. I want to devote a section to this topic both because it sheds further light on the factum—and because the question of Kant's attitude to Locke's project is, I think, of interest in its own right.

Let us begin by distinguishing a Lockean "physiology of the human understanding" (Aix)—or, as Kant also terms it, a "physiological derivation" (A87/B119)—from an "empirical deduction." The latter is said to be an investigation that shows "the manner in which a concept is acquired through experience and through reflection upon experience" (A85/B117). It is said to concern "the lawfulness [Rechtmäßigkeit] of a concept" but the fact from which the possession has arisen (ibid.). Since an empirical deduction is meant to show "the manner in which a concept has been acquired through experience" we can be sure that it is by its very nature something appropriately undertaken only for empirical concepts. And because it does not seek to establish the lawfulness of the concepts with which it deals, we may be sure that it is a "deduction" not in the legal sense, but only in the broader sense of a "derivation." An empirical deduction, then, is a tracing of an empirical concept to its point of origination, namely, to the perceptions which form the basis for its acquisition by comparison, reflection, and abstraction (cf. The false Logos, Ak. 9: 94–5).

Locke's "physiological derivation," on the other hand, seeks "the occasioning causes of a concept's production" (my translation); it involves "a tracing of the first endeavours of our power of cognition to ascend from individual perceptions to general concepts" (A86/B119). The resemblance this description bears to Kant's characterization of an empirical deduction has led some commentators to suppose that Kant must be using the term "empirical deduction" merely as a further description of a Lockean "physiology of the human understanding."*4 On reflection, however, this cannot be correct, for Kant is explicit that the two projects differ in respect of their applicability to the a priori concepts of space, time, and the Categories. Thus, whereas Kant characterizes the attempt to give empirical deductions of these a priori concepts as "labour entirely lost" (A83–6/B118), he describes Locke's search after the "occasioning causes" of their production—that is to say, a "physiology"—as being "of great utility" (A86/B118–9).

Kant views the concepts peculiar to a given faculty as being called forth, as the occasion demands, by various stimuli: "If one sets a faculty of cognition into play, then on various occasions different concepts will become prominent that will make this faculty known" (A66/B91). I want to suggest that a physiological derivation of a pure concept of the understanding forms part of an account in the order of time of how a particular cognitive faculty—the understanding—is awakened into ex-

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4 Reading with Erdmann "Abbildung" for "Ausführung."
Kant views Locke as having failed to recognize the true nature of his own physiological derivation—and consequently as having misinterpreted its deliverances, that he describes Locke’s project as merely an “attempted physiological derivation” (A86–7/B119, my emphasis). Because an empirical deduction has consequences for the justification of concepts that are not shared by a physiological derivation, Kant regards Locke’s mistake as philosophically significant. If a concept purporting to contain genuine marks of necessity and universality—and thus presenting itself as a “Pure Concept of the Understanding”—were to turn out to have a merely empirical origin, its implicit claim to validity would be thereby invalidated (cf. Prolegomena, Ak. 4: 258 and Critique, A94/B127–8). Thus, from Kant’s perspective, because Locke treats what is in fact a physiological derivation of the Pure Concepts of the Understanding as an empirical deduction of them, he ends up impugning their origins (cf. A16).

With these last remarks I may seem to have set my reading in tension with Kant’s claim that an empirical deduction does not concern a concept’s “lawfulness” (Rechtsmäßigkeit) (A85/B117); for I have implied that the facts disclosed by an empirical deduction, unlike those disclosed by a physiological derivation, may after all have bearing on a justificatory question. An empirical deduction, after all, has the power to validate an empirical concept and to invalidate a purportedly pure one. But I think the appearance of a difficulty here is deceptive. To resolve the tension it suffices to read Kant’s remark that an empirical deduction does not “concern” a concept’s lawfulness as meaning that an empirical deduction does not, in the first instance, address the question of a concept’s lawfulness. To favor the alternative reading—namely, that an empirical deduction’s results are devoid of any bearing on the question of a concept’s lawfulness—is to deny the obvious fact that if a representation can be shown to have been derived from experience, any claims it might make to a priority will have thereby been invalidated.

The upshot of these reflections is this: neither a physiological derivation nor an empirical deduction can play the role of a proof of the factum of the Deduction of the Categories. A physiological derivation, when properly conceived, does not even purport to have relevance to the justificatory question, while an empirical deduction can be involved only in the justification of empirical concepts.

5. THE KEY IDEA OF THE LEGAL METAPHOR

I have argued that the proof of the quid juris is a necessary first step in the proof of the quid facti. Combining this conclusion with Henrich’s historical observations about the nature of Deductionsschriften, we obtain a strong case for the wisdom of seeking something in the Deduction chapter that might play a role analogous to a proof of a legal quaestio facti. Reflection on the details of Henrich’s historical scholarship suggests that a proof of the Categories’ a priori origins is the most likely candidate for this job.

I shall develop this idea shortly, but I should first say a word about Henrich’s own candidate for the Deduction’s factum, namely, the Unity of Apperception. Henrich offers no specific textual evidence in support of this suggestion, but his conjecture follows plausibly from his general take on the factum as a basic fact in which certain rights and claims may be thought to originate. I have argued that,
being relevant to a legal question, a factum stands in need of a proof. Consequently, to complete his interpretation Henrich would need to show how the Unity of Apperception could be established by means of a proof, and he would need to indicate what further facts it was proved from. It is unclear to me whether Henrich could provide an account of the Unity of Apperception that enables it to be conceived of in this way, but I would stress that he does owe one such an account, and I would contend that, until one is provided, we have good reason to treat the factum as the fact that the Categories have an a priori origin.

To motivate this last claim, I want to return to the details of Henrich’s detective work. Henrich explains that historically “most of the legal controversies [for which Deduktionsschriften might be written] concerned [the] inheritance of territories, the legal succession of reigns, and so forth” (Henrich, op. cit., 32, my emphasis). If that is so, then in most deductions the first step to be taken in justifying one’s claim would have been to establish one’s parentage. A claimant to an inheritance would typically have needed to prove that he was indeed the legitimate child of the previous (legitimate) ruler. So, one factual question—or “quaestio facti”—that most deductions would have needed to address would have been the question of personal origin, or pedigree.

Having grasped this point, it is hard not to be struck by the frequency with which Kant appeals to genealogical metaphors in discussing the legitimacy (or otherwise) of concepts. As we have already seen, Kant compares Locke’s “physiology of the human understanding”—which, as we saw, deals specifically with concepts—to a false genealogy that impugns the ancestry of metaphysics—the “Queen of the sciences”—by tracing her birth “to the rubble of common experience” (A166). In the preamble to the Transcendental Deduction, Kant says that since their future use should be entirely independent of experience, the pure a priori concepts “must be in a position to show a certificate of birth [Geburtsbrief] quite other than that of descent from experiences” (A86–7/B119). He adds that “geometry [does not have to] beg philosophy for any certification of the pure and lawful pedigree of its fundamental concept of space” (A87/B120)—thus implying that in other cases philosophy is in the pedigree-certifying business. Finally, in the Prolegomena, Kant portrays Hume as having concluded that “reason completely and fully deceives herself with this concept, falsely taking it for her own child, when it is really nothing but a bastard of the imagination” (Prolegomena, Preface, Ak. 4: 257–8).

Kant’s recurrence to these genealogical metaphors calls for two observations: first, it lends further credence to the idea that the claims at issue in the Deduction are, most centrally, those of concepts; secondly, it suggests that the question of a concept’s legitimacy turns upon facts about its origins. If I am right in thinking that the historical quaestio facti would typically have been the question of personal pedigree, then there is reason to think that Kant may be exploiting the legal metaphor in a quite specific way. The Deduction’s factum is not merely a fact in which certain claims originate. Although it is at least that, it is, in addition, a fact specifically about origins, namely, the fact that the concepts of cause, substance, and so forth, have origins that are a priori.

6. THE METAPHYSICAL DEDUCTION AS THE PROOF OF THE CATEGORIES’ A PRIORI ORIGIN

Kant believes that we take our first step toward establishing the a priori origin of the concepts “cause,” “substance,” and the other putative Pure Concepts of the Understanding when we recognize that these concepts contain universality and necessity among their marks (A91/B123–4). If these concepts contain such marks, they cannot, Kant thinks, have been derived from experience (A112a). In Kant’s view of empirical-concept acquisition, we form general representations by abstraction from less general ones and, ultimately, from perceptions of individual things. Since Kant believes we can only have perceptions of a limited stretch of what is existent and actual, he concludes that we lack the raw materials from which to abstract concepts that include necessity or universality among their marks (cf. A91–2/B124).

Strictly speaking, however, Kant is entitled to assume only that the concepts of cause, substance, and so forth appear to contain necessity and universality among their marks. That these concepts have this appearance is nonetheless good evidence against their having been derived from experience by means of a process of Lockean abstraction, for on Locke’s story it is hard to see how even the appearance of necessity or of universality could have been generated. But, as Kant well knew, the fact that the concepts of cause, substance, etc., appear to contain marks of necessity and universality cannot by itself guarantee their a priori origins. For there is an alternative explanation of this appearance that is consistent with the idea that these concepts originate in experience. This is the Humean idea that certain apparently objective features of things (hence, for Kant, certain apparently genuine marks of concepts) may be merely the subjective products of habit. For Hume, the idea of necessity, for example, arises as the by-product of a disposition of the mind to pass from the idea of a cause to the idea of its customary effect: the idea of necessity arises from some impression. There is no impression convey’d by our senses, which can give rise to that idea. It must, therefore, be deriv’d from some internal impression, or impression of reflection. There is no internal impression, which has any relation to the present business, but that propensity, which custom produces, to pass from an object to the idea of its usual attendant. This therefore is the essence of necessity.

Because it has no (external) impressional archetype, but only an internal one—and because this internal archetype is not a representation but only a "propensity," the idea of necessary connection, as Hume conceives it, cannot be said to be

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33 No doubt, the proof of this circumstance would have made appeal to the legal facts that the previous ruler was legitimate, and that one’s parentage were legally marked, but, as we saw in §1, this is compatible with the circumstance being a factum.

34 The Pure Concepts of the Understanding include the Categories—which Kant also terms "the predicaments" (A81/B117), but also certain concepts derivable from them such as action and force, which Kant terms "predicables" (A81/B118). It follows that, strictly speaking, there is an inaccuracy—albeit one encouraged by Kant himself (cf. A76/B102)—in the usual practice of treating "Category" as synonymous with "Pure Concept of the Understanding."

"abstracted" from experience in Locke's sense of this term. On the other hand, because the idea is grounded in subjective features of experience, it must nonetheless be classified as a posteriori and empirical rather than a priori and pure (cf. B127). Consequently, even if it were to be demonstrated that the Categories are not obtained by Lockean abstraction, the question would remain whether they might come from experience by means of a Humean route, their apparent marks of necessity and universality being merely felt or subjective necessity and universality, and so not, after all, genuine constituent-marks of these concepts. Kant was well aware of this possibility. He says that Hume was constrained to derive the pure concepts of the understanding "from experience (namely from a subjective necessity arisen from frequent association in experience, which is subsequently falsely held to be objective, i.e., custom)" (B127; cf. Polemogena, Ak. 4:258).

It is because he needs to eliminate this Humean possibility that Kant requires a proof of the a priori origin of the Categories that appeals to more than their (putative) marks of necessity and universality. In the Critique Kant draws attention to considerations supporting the a priori of various individual concepts, but he also offers a systematic argument that purports to establish the a priority of the set of twelve primitive concepts listed in the Table of Categories. This argument is the Metaphysical Deduction (A76/B102–16). Kant introduces the Metaphysical Deduction as a proof of the completeness and systematicity of the table of Categories; but it is clear, particularly from the second edition, that he also wishes to use the fact that a concept can be paired with a function of judgement, and as assigned a place in the table of Categories, as evidence for that concept's a priori origin. Having earlier described the table of categories as an "ancestral registry [Stammregister] of the understanding" (A81/B107), Kant says: "In the metaphysical deduction the a priori origin of the categories in general was established through their complete coincidence with the universal logical functions of thinking" (B159, my translation).14

Kant regards the Metaphysical Deduction as providing evidence that the representations familiar to us as the concepts of cause, substance, and so forth, are just the logical functions of thinking/judgement in another guise. They are these very functions "as far as the manifold of a given intuition is determined with regard to them" (B143). Because, in Kant's view, the logical functions of thinking/judgement are unproblematically non-empirical and primitive, this identifi-

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13 Kant's assumption of a trichotomy of possible theories of the origin of a representation. A representation is either (1) "selfevident" a priori, (2) acquired from experience (by Lockean abstraction or Hume-style brain-generating), or (3) divinely implanted. He argues against the third alternative, which he terms a "preformation-system of pure reason," at B167.

14 It is noteworthy that in the Polemogena Kant describes Hume's problem as a question concerning the origins of the concept (Polemogena to Any Future Metaphysics that will be able to come forward as an account of this kind as— as Kant puts it—the imagination's passing off "a subjective necessity (i.e., habit) as "an objective necessity" (ibid.).

15 As, for instance, at Bé he argues for the purity of origin of the concept of substance.

16 For confirmation that Kant sees the table of judgements as concerned with establishing the origins of the categories see the Metaphysik der Sphäre (Ak. 35: 801). That Kant drew no distinction between the logical functions of "judgement" and "thinking" is indicated by his identification of the faculty of judgement with the faculty of thought at A87/B106.
is the argument of sections 75–26 of the Deduction chapter. It takes the *quaeestio facti* as established, and aims to prove the categories' legitimacy on this basis. That is to say, it aims to show that a priori discursive representations can be legitimately applied in experience. However, it is only the combination of these two arguments that would, if successful, vindicate the Categories. So the Metaphysical Deduction has to be viewed as an essential first stage in the Deduction of the Categories.  

The kind of two-step structure for which I have been arguing is one that would seem to be acknowledged in a passage from the second *Critique* in which Kant is surveying the accomplishments of the first:  

The *Critique* has shown by [*the* deduction, *first* that [*the* Categories] are not of empirical origin but have their seat and source a priori in the pure understanding, and second that, since they are referred to objects in general independently of intuition of these objects, they indeed bring about *theoretical cognition only in application to empirical objects*.  

I would claim that the two results claimed here for the Deduction of the Categories are established by the two sub-arguments outlined above.  

7. THE "FACT OF REASON"

Do these conclusions about the probable identity of the Transcendental Deduction's *factum* shed any light on the mysterious "Fact of Reason" of the second *Critique*? In particular, might any of Kant's remarks on this topic be construed as deliberate allusions to a legal *factum*? I believe that some, at least, may be. Consider, for example, two key passages from the second *Critique*.  

This analytic proves that pure reason is practical, i.e., that of itself and independently of everything empirical it can determine the will. This it does through a fact [*Faktum*] wherein pure reason shows itself actually to be practical, namely, autonomy in the principle of morality by which reason determines the will to action. (KprV, Ak. 5: 42, my translation)  

But that pure reason is also of itself alone practical, without any admixture of any kind of empirical grounds of determination—one had to be able to show this from the *common* practical use of reason by producing evidence that the highest practical principle is a principle recognized by every natural human reason as the supreme law of its will, as a law completely a priori and independent of any sensible data. It was necessary that to establish and justify it, by proof of the purity of its origin, even *in the judgement of this common reason* [*gemeines Vernunft*], before science could take it in hand to make use of it, so to speak, as a fact [*gleichsam als ein Faktum*] which precedes all dissertation about its possibility and all consequences which may be drawn from it. (KprV, Ak. 5: 92, my translation)  

That pure reason is practical, that it can of itself determine the will, is something that Kant elsewhere equates with freedom (*Groundwork*, Ak. 4: 459; cf. KprV, Ak. 5: 72). So the first passage suggests that freedom is established through a fact, or *Faktum*, namely "autonomy in the principle of morality by which reason deter

mines the will to action." Autonomy in the principle of morality is the fact that this principle is not grounded in anything other than practical reason; it is the fact that it is not, for example, a disguised precept of prudence or imperative of skill.  

The second passage suggests that this *Faktum* itself admits of a proof, which takes the form of a demonstration of the *purity of origin* of "the highest practical principle." This principle is the moral law as expressed in the Categorical Imperative.  

The phrase "gleichsam als ein Faktum" does not signal caution, as Lewis White Bock suggests,  

but rather figuration:  

*science* takes the moral law in hand, and makes use of it *so to speak* as a legal *factum*. The moral law is put to use as a starting point in the "Deduction of Freedom" (KprV, Ak. 5: 48); it has the "credential" that it is laid down as a "principle" of this deduction (ibid.).  

The broad outline of Kant's Deduction of Freedom is familiar: The fact that we are under genuine categorical obligations implies that we must be capable of discharging them. This means we must be able to resist our strongest impulses toward transgressing the moral law. But our possessing the capacity to resist these impulses is precisely that in which our freedom consists. Kant does not explain how the proof of the purity of origin of the moral law is supposed to go, but he is clear that such a proof is required, and his reference to "the judgement of common reason" points to a number of possible locations for the proof.  

The first occurs early in the second *Critique*. Having just characterized the fact of the moral law as given—as "the sole fact of pure reason," Kant continues:  

The fact mentioned above is undeniable. One need only analyze the judgment that people pass upon the lawfulness of their actions in order to find that, whatever inclination may say to the contrary, their reason, incorruptible and self-constrained, always holds the maxim of the will in an action up to the pure will, that is, to itself inasmuch as it regards itself as a priori practical. (KprV, Ak. 5: 32)  

The remark suggests one reason for supposing human beings to be conscious of the moral law in the form of the Categorical Imperative, namely, their experience (as representatives of "common reason") in morally appraising their actions. The fact that the moral law forces itself on us as the standard to which our maxims

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11. Kant characterizes autonomy of pure reason as "independen[ce] of any empirical condition" (KprV, Ak. 5: 43), and autonomy in legislation as "legislation" where there is neither feeling, nor inclination, nor speculative reason, nor another will ("*Morgenstätten ethik hermeneum*", Ak. 5: 629), English translation in *The Cambridge Edition of the Works of Immanuel Kant*, *Lectures on Ethics*, Peter Heath and J. B. Schneewind, eds., Peter Heath, trans. (Cambridge: Cambridge University Press, 1997).  


14. Compare Kant's use of the qualification "as it were" in the overly figurative passage, *A704/ B732*, quoted in n. 10.  


16. That Kant moves freely between speaking of the fact as the moral law (KprV, Ak. 5: 47-8), and our consciousness of it (KprV, Ak. 5: 30), may be explained, on my reading, by the fact that a legal *facies", being an item of *evidence*, inherits much of the ambiguity of this notion. Just as evidence is sometimes understood objectively, as certain facts, and sometimes subjectively, as our knowledge or acquaintance with them, so the *factus* is sometimes understood as the moral law (or the fact that we are under it), and sometimes as our consciousness of the moral law (or of this fact).
must conform, and does so however much we may care to ignore it, gives us reason to think that our interest in the moral law is independent of inclination.4

But what if it is not, after all, the moral law, but only past training and education that speaks to us in the voice of conscience? Kant has an answer: "Many have contended that conscience is a product of art and education, and that it judges and speaks in a merely habitual fashion. But if that were so, the person having no such training and education of his conscience could escape the pains of it, which is not in fact the case" (Collins ethica lectures, Ak. 27: 355–6). One wonders how many people Kant could have encountered with absolutely no moral training, but his remark at least points to the kind of evidence that would support his hypothesis. What would reveal the non-empirical origin of the idea of duty would be its constancy across persons whose quality and level of moral education differed widely. Whether this constancy is in fact observed, is, of course, a controversial question.

The second relevant passage occurs in the "Critical Elucidation of the Analytic of Pure Reason":

The justification of moral principles as principles of a pure reason could also be carried out very well and with sufficient certainty by a mere appeal to the judgement of common human understanding, because anything empirical that might slip into our maxims as a determining ground of the will makes itself known at once by the feeling of gratification or pain that necessarily attaches to it insofar as it arouses desire, whereas pure practical reason directly opposes taking this feeling into its principle as a condition. (KpV, Ak. 5: 92–3)

Here Kant is portraying the judgement of common sense as sufficient by itself to justify putative moral principles as principles of a pure reason. If a principle were to lack this status—if it were to be heteronomous in some way—this fact, he thinks, would betray itself in feelings of gratification (or pain) that would attach to the thought of obeying (or contravening) the principle, and this would, in turn, betray the principle's status as a merely hypothetical imperative. Again, Kant appears to be thinking of the need to eliminate a rival explanation of our sense of duty in terms of habituation and training. We might take him to be implicitly reasoning as follows: if the feeling that we ought to refrain from some action were to be grounded only in parental training, then the thought of transgression (or of obedience) would be accompanied by an expectation of the pain of punishment (or of the pleasure of reward). That being so, the absence of such feelings gives us reason to infer that our sense of moral obligation must have another source.

Kant sees the robustness of the dictates of morality in the face of countervailing inclinations as indicative of their status as genuinely moral principles. As he puts it in the Groundwork: "The sublimity and inner dignity of the command in a duty is all the more manifest the fewer are the subjective causes in favour of it and the more there are against it" (Groundwork, Ak. 4: 425). The continuation of the passage from the "Critical Elucidation" echoes this idea:

The dissimilarity of determining grounds (empirical and rational) is made known by this resistance of a practically lawgiving reason to every meddling inclination, by a special kind of feeling which, however, does not precede the lawgiving of practical reason but is instead produced only by it and indeed as a constraint, namely, through the feeling of a respect such as no human being has for inclinations of whatever kind but does have for the law. (KpV, Ak. 5: 92)

So it is not only the absence of concomitant feelings of pleasure or pain that exhibits a principle’s “rational ground” or “inner dignity”; its association with a peculiar, distinct feeling of “respect for the law,” which Kant also terms “moral feeling” can do so too.4 Again, Kant emphasizes the inevitability and ineluctability of this feeling: “Before a humble common man in whom I perceive uprightness of character in a higher degree than I am aware of in myself my spirit bows, whether I want it or whether I do not.” Naturally, one doubts that these "proofs" of the purity of origin of the moral law can be conclusive, but it is plain that Kant believes they ought to have some probative force—in the way, perhaps, that legal evidence has defensible, non-demonstrative force. But what really matters, for present purposes, is the very fact that Kant envisages such proofs at all. That he does so supports a view of the Fact of Reason as the factum of the Deduction of Freedom, for as we have seen, a factum is a fact that needs to be proved in the course of a deduction.4

Here would be good place to discuss an alternative interpretation the Fact of Reason that has been suggested recently by Paul Franks.4 Franks urges that Kant’s “Faktum of Reason” should be understood not as a fact, but as an act of reason. As support for his suggestion he cites Kant’s allusion in the second Critique to Juvenal’s sixth Satire. Kant says: "In order to avoid misinterpretation in regarding [the fundamental law of pure practical reason] as given, it must be noted carefully that it is not an empirical fact but the sole fact of pure reason, which, by it, proclaims itself as originally lawgiving (sic volo, sic jubeo) [What I will, I command]” (Ak. 3: 311) (my translation). Franks sees the violence of Juvenal’s poem as supporting his view of the Faktum as associated with “willfulness and violence,” and he views these associations, in turn, as indicating a close connection between Kant’s Faktum and Fichte’s notion of a Tathandlung, which Franks characterizes as the “spontaneous activity of the subject.”

Franks’s interpretation is certainly available etymologically speaking, but it is not, I think, particularly suggested by the texts. Kant places his main emphasis in the remark just quoted on the Fact’s status as a pure rather than empirical datum. Kant’s concern is to warn readers against an erroneous conception of the moral.

4 Cf. KpV, Ak. 5: 88 and The Metaphysics of Morals, Ak. 6: 400. In the Collins version of the ethics lectures Kant describes the moral law as “a standard set by reason” (Ak. 27: 357). In the Metaphysics of Morals he says that “conscience is practical reason holding the human being’s duty before him for his acquittal in every case that comes under a law... it is not something incumbent on one, a duty, but rather an unavoidable fact” (The Metaphysics of Morals, Ak. 6: 400; English translation in Gregor, op. cit., 329).


4 KpV, Ak. 5: 76–7. Note that Kant’s announced ground for calling the “objective reality” of “a pure practical reason” a “Faktum” is its unavoidability in determining the will (KpV, Ak. 5: 53).

4 We should not be concerned that the proof of the factum takes very different forms in the two Critiques. In a law court, a variety of kinds of evidence would have been adduced in support of a diverse range of facts.

law as an object of sensible intuition. His point is that the moral law is a datum of reason, not of sense. I therefore find it more natural to view Kant's allusion to Juvenal as designed merely to illustrate the idea of a law that has a certain status—namely as "originally lawgiving" (my emphasis). Given the availability of this alternative reading of the significance of Kant's allusion, this passage cannot afford very strong evidence for Frank's interpretation of the Fact of Reason as an act.

I have argued that just as the factum of the Transcendental Deduction consists in the fact that the Categories have a pure or non-empirical origin, so the factum of the Deduction of Freedom consists in the fact that the moral law has a pure origin. It is interesting to note that in keeping with this parallel the genealogical theme, which, as we saw, loomed large in the first Critique, surfaces once more in the second. In a famous apostrophe Kant asks:

Duty! Sublime and mighty name that embraces nothing charming or insinuating but requires admission... what origin is there worthy of you, and where is to be found the root of your noble descent which proudly rejects all kinship with the inclinations, descent from which is the indispensable condition of the only worth which human beings alone can give themselves? (KprV, Ak. 5: 86)

Naturally, the answer to this rhetorical question is: "in Pure Reason."

The image of bastardy, which, as we saw, played a role in Kant's descriptions of his aims in the theoretical philosophy, also resurfaces in his ethical writings. In the Groundwork Kant warns us to be on guard against the laxity of reason, which "seeks its principle among empirical motives and laws; for human reason in its weariness gladly rests on this pillow and in a dream of sweet illusions... it substitutes for morality a bastard patched up from limbs of quite diverse ancestry" (Groundwork, Ak. 4: 436). Kant's concern here is with the danger we face of coming unconsciously to rely on a hotchpotch of principles founded in self-love, perfectionism, and so forth, in preference to the moral law.

At this point two clarificatory remarks are in order. First, it is important to note that Kant's claim that we can have insight into the "inner dignity" and "rational ground[edness]" of the command of duty in no way conflicts with his antinomianism about whether, as a matter of fact, we ever do purely for the sake of duty (Groundwork, Ak. 4: 407; Metaphysics of Morals, Ak. 6: 392-3). Kant is not claiming that we can know of any particular action that it is motivated solely by our interest in the moral law. His point is rather that in reflecting on our motivations we are able to recognize the genuinely moral among them as genuinely moral, even if in the case of any particular action we must always remain uncertain about which motivations it was that produced it. Nor should we regard the fact that Kant argues for the purity of origin of the moral law as being in any way in tension with his insistence in the second Critique that the moral law requires no deduction (KprV, Ak. 5: 47). What I have identified as the proof of the factum is not a way of grounding or justifying the moral law. It is not a way of demonstrating that we ought to follow it, but rather an argument that we take to be our obligations—the deliverances of conscience—are indeed genuine manifestations of the moral law.

We have arrived, then, at a picture of the Deduction of Freedom as a proof in two parts. First, we show that the obligations we take ourselves to be under are genuinely categorical obligations, as opposed to hypothetical principles of prudence, or whatnot. Then, with that much established, we reason that such obligations are only possible if Pure Reason is practical, that is to say, if we are free. This act of becoming conscious of one's own freedom can be thought of as a proof of one's entitlement to regard oneself as free—a proof, that is to say, of a quid juris.

8. Closing Remark

There is a traditional view of the Fact of Reason according to which it is supposed to be something too fundamental to admit of proof. This view is often attributed to Hegel, who famously characterizes "chill duty" as "the final undigested lump left within the stomach, the revelation given to reason." Such an idea can seem to involve Kant in an embarrassingly unKantian dogmatism about the true ground of the deliverances of conscience. Against this, I hope to have indicated one path through Kant's texts that can make his appeal to the Fact of Reason seem both coherent and well motivated. The function of the Fact, as Henrich was the first to suggest, is to play the role of the factum in the Deduction of Freedom. Far from being assumed as a brute commitment at the bottom of Kant's theory, the Fact, being a factum, both requires a proof and, in Kant's view, admits of one. 85

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85 Kant speaks of common reason's "rightful claim to... freedom of will" (my emphasis) in the Groundwork of the Metaphysics of Morals. Ak. 4: 435; English translation in Gregory, op. cit., 433.

86 Whether Hegel understood "chill duty" to be the same thing as the Fact of Reason is, of course, open to question—particularly as Hegel levels this charge against Fichte as well as Kant. See Hegel, Lectures on the History of Philosophy, E. B. Halecnd and Frances H. Simpson, trans. (London: Routledge and Kegan Paul, 1963), vol. 3, 461. This quotation is cited by Henry Allison (op. cit., 281-2, n. 2), along with further references to philosophers who share Hegel's allegedly dissonant view of the Fact.