

ARTICLE



Fichte's method of moral justification

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ABSTRACT

While Kant's claim that the moral law discloses our freedom to us has been extensively discussed in recent decades, the reactions to this claim among Kant's immediate successors have gone largely overlooked by scholars. Reinhold, Creuzer, and Maimon were among three prominent thinkers of the era unwilling to follow Kant in making the moral law the condition for knowing our freedom. Maimon went so far as to reject Kant's method of appealing to our everyday awareness of duty on the grounds that common human understanding is susceptible to error and illusion. In this paper I shall examine how these skeptical reactions to Kant's position shaped the background for Fichte's method of moral justification, leading up to his own deduction of the moral law in the *System of Ethics* (1798). By way of conclusion, I shall propose a new interpretation of how consciousness of the moral law serves as an entry-point to Fichte's form of idealism.

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... morality first discloses to us the concept of freedom.

– Kant (KpV 5:30).

1. Introduction

While Kant's claim that the moral law discloses our freedom to us has been extensively discussed in recent decades, the reactions to this claim among Kant's immediate successors have gone largely overlooked by scholars. Karl Reinhold, Leonhard Creuzer, and Salomon Maimon were among three prominent thinkers of the era unwilling to follow Kant in making the moral law the condition for knowing our freedom. Maimon went so far as to reject Kant's method of appealing to our everyday awareness of duty on the grounds that common human reason is susceptible to error and illusion. In this context J. G. Fichte stands out as a striking exception, since his writings from the 1790s show a consistent interest in Kant's commitment to moral primacy. Moreover, at the height of his career in Jena, Fichte would end up

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radicalizing the idea of moral primacy, making it the basis of what he called his 'entire science of knowledge'. In this paper I shall examine how these skeptical reactions to Kant's position shaped the background for Fichte's method of moral justification, leading up to his own deduction of the moral law in the *System of Ethics* (1798).¹ By way of conclusion, I shall propose a new interpretation of how consciousness of the moral law serves as an entry-point to Fichte's form of idealism.

2. Historical background: Kant

Although Kant struggled with questions of justification for the majority of his writing career, the *Critique of Practical Reason* (1788)² set the agenda for thinking through the freedom-morality connection during this intellectual period. Kant's approach in this work proceeds in two stages, with the first stage culminating in his 'reciprocity thesis',³ and the second culminating in his 'disclosure thesis'.

The Reciprocity Thesis. The first stage concerns the relationship between (1) the concept of a transcendently free will and (2) the concept of an unconditional practical law. Kant argues, to begin with, that when we ask what law is fit to legislate a transcendently free will, the answer is that it cannot be a material principle or a principle whose validity depends (in some way) on empirical interests, impulses, or inclinations. Only a formal principle, or a principle of the 'mere lawgiving form of a maxim', is fit to legislate a will independent of such elements. And Kant's point is that the reverse claim is also true. When we ask what constitution of will is suited to a formal principle, the answer is that it cannot be an empirically conditioned will. It cannot be, for example, the will of a Humean agent whose ends are assigned by the passions. Only a will free from the passions (a transcendently free will) presents the constitution suited to the concept of a formal law. Thus Kant concludes that 'freedom and unconditional practical law reciprocally imply each other' (KpV 5:29).

The Disclosure Thesis. What the reciprocity thesis tells us is that the concepts of freedom and formal law stand in a relation of co-entailment. By virtue of analyzing one, we are led in our reflections to the other, and *vice versa*. Yet this is only the first stage of Kant's argument. After stating the reciprocity thesis, he asks what term in this relation enjoys epistemic primacy over the other. The question now is 'from what our *cognition* of the unconditionally practical *starts*', that is, 'from freedom or from the practical law?' (KpV 5:29).

¹See Wood (*Fichte's Ethical Thought*) and Ware ('Fichte's Deduction of the Moral Law') for more detailed treatments of this deduction. I have also benefitted from Breazeale's (*Thinking Through the Wissenschaftslehre*) and Bruno's ('Genealogy and Jurisprudence') reflections on Fichte's methodology during the Jena period.

²See the Abbreviations list at the end of the paper. Unless otherwise noted, all translations are my own.

³Allison coined this phrase in his classic 'Morality and Freedom' essay.

Kant denies that freedom can enjoy such primacy, for two reasons. The first is that we are not immediately conscious of freedom in the positive sense of self-legislation; rather, our first concept of freedom is merely negative, that of independence from natural causes. The second reason is that we do not obtain the concept of freedom from experience, since experience only teaches us the rule of mechanism (that every effect must have a cause). By elimination, then, Kant concludes that it must be ‘the *moral law* [*das moralische Gesetz*], of which we become immediately conscious (as soon as we draw up maxims of the will for ourselves), that *first* offers itself to us and [...] leads directly to the concept of freedom’ (KpV 5:29–30).⁴

Of course, the disclosure thesis just stated invites the following question: ‘how is consciousness of that moral law possible?’ (KpV 5:30). Kant’s reply is that we can

become aware of pure practical laws just as we are aware of pure theoretical principles, by attending to the necessity with which reason prescribes them to us and to the setting aside of all empirical conditions to which reason directs us.

(KpV 5:30)

What is distinctive about pure principles is that they bear the mark of necessity: they express what should obtain for an object of the will (in the practical sphere) or what must obtain for an object of possible experience (in the theoretical sphere). If we then attend to this ‘should’ or ‘must’, we then have reason to infer their *pure* source, since we cannot derive any species of necessity from experience. That is why Kant goes on to say in the second stage of his argument that the ‘concept of a pure will arises from the first, as consciousness of a pure understanding arises from the latter’ (KpV 5:30). In fact, this is the basis for his claim that consciousness of the moral law gives us a warrant for thinking of ourselves as possessing a *pure will*. What the moral law brings to our attention (‘as soon as we draw up maxims of the will for ourselves’) is a kind of necessity that could not have arisen from an empirically conditioned faculty. This means, in connection with the reciprocity thesis, that we have a warrant for thinking of ourselves as transcendently free.

Now what is it about this two-stage argument that has caused so much debate among Kant’s readers? The answer, I believe, points us to the kind of primacy Kant assigns to the moral law in his disclosure thesis. Although he just explained that our awareness of pure practical principles is possible

⁴As Kant puts this thesis elsewhere:

Were this law not given to us from within, no amount of subtle reasoning on our part would produce it or win our power of choice over to it. Yet this law is the only law that makes us conscious of the independence of our power of choice from determination by all other incentives (of our freedom) and thereby also of the accountability of all our actions.

(R 6:26n)

by attending to the necessity with which reason prescribes them to us, many commentators have been troubled by Kant's further remark that our consciousness of the moral law 'may be called a fact of reason [*Factum der Vernunft*] ... because it instead forces itself upon us of itself as a synthetic *a priori* proposition that is not based on any intuition, either pure or empirical' (KpV 5:30). The difficulty is that it is unclear why the moral law qualifies as a 'fact' (*Factum*), or why Kant would not seek to derive it from a more fundamental ground, or why he would not regard its underivability as a problem. Instead, Kant views this 'fact' as a basis to declare, with a surprising degree of confidence, that the moral law is 'firmly established of itself' and the key to a deduction of freedom (KpV 5:47). But his immediate successors were not so optimistic in this regard, and much of the landscape of post-Kantian ethics was shaped by an effort to rethink the freedom-morality connection presented in the second *Critique*.

3. Early reactions: Reinhold, Creuzer, Maimon

Signs of dissatisfaction with how Kant framed the connection between freedom and morality are evident in Reinhold's *Attempt at a New Theory of Human Representation*, first published in 1789. In this work Reinhold claims that '[h]e who has not philosophized about freedom is as convinced about its actuality as his own existence' (*Versuch einer neuen Theorie des Vorstellungsvermögens*, 91). Freedom, in other words, qualifies as a 'fact' (*Thatsache*). However, Reinhold is careful to distance this fact from the moral law. Freedom is a *Thatsache*, he writes, that one 'knows from his inner experience' and that one is 'conscious of through self-feeling [*das Selbstgefühl*]' (*Versuch einer neuen Theorie des Vorstellungsvermögens*, 91–92).⁵ The epistemic ground of freedom is therefore independent of the concept of an absolute practical law. We have access to it, Reinhold argues, simply through an inner feeling of activity, of which only philosophers are in the habit of doubting. What is interesting is that Reinhold

⁵In the second edition of his *Letters on Kantian Philosophy* from 1792, Reinhold links the disclosure of freedom directly to self-consciousness:

But reason has a very real ground for thinking of freedom as an absolute cause, namely *self-consciousness*, through which the action of this capacity [*dieses Vermögens*] announces itself as a fact [*Thatsache*], and *common and healthy understanding* is entitled to infer its actuality from its possibility.

(Briefe über die Kantische Philosophie, 283)

However, Reinhold soon came to embrace Fichte's commitment to moral primacy by the mid 1790s. 'Only the moral self-consciousness', he wrote to Fichte in 1795, 'unconditionally ascribes to the transcendental subject the predicate "absolute." For the moral law applies only to the unconditionally free action of the subject, that is, the action which is independent of anything empirical' (Letter to Fichte, December 1795; quoted in Bernecker, 'Reinhold's Road to Fichte'). For helpful accounts of this shift in Reinhold's project, see Henrich (*Konstellationen*), Di Giovanni (*Freedom and Religion in Kant and His Immediate Successors*), and Bernecker ('Reinhold's Road to Fichte').

does not reject the status of the moral law as a fact; on the contrary, he argues that to ask, 'Is there a cognitive ground [*Erkenntnisgrund*] of the moral law?' amounts to the question, 'Is there a moral law?' which he says nobody, not even philosophers, sincerely call into question (*Versuch einer neuen Theorie des Vorstellungsvermögens*, 101). Yet it is clear, both from this text and from the book version of his *Letters on Kantian Philosophy* (1790/92), that Reinhold accepts the status of the moral law as a fact without making it the basis for accessing our freedom.

A similar position appears in Creuzer's *Skeptical Observations on Freedom of the Will* (1793), where he argues that judgments concerning what 'happens' and what 'ought to happen' are part of the most common human understanding. One need only 'hear' the moral law, Creuzer says, to 'understand immediately what it is, namely, an unconditioned, unlimited, unchangeable, and universally valid norm of our actions' – a norm, he adds, that even the 'greatest evildoer' recognizes in his heart (*Skeptische Betrachtung über die Freiheit*, 3). For this reason Creuzer calls the moral law an 'undeniable fact of human nature' (*unläugbaren Factum der menschlichen Natur*), and he appears to side with Kant's disclosure thesis in saying that one 'cognizes himself as a member of the supersensible world' through this fact (*Versuch einer neuen Theorie des Vorstellungsvermögens*, 7). Indeed, Creuzer claims that 'independence from foreign laws and freedom are therefore inseparably bound with one another' and that '[c]onsciousness of freedom is, like consciousness of the moral law, a fact of reason [*ein Factum der Vernunft*]' (*Skeptische Betrachtung über die Freiheit*, 8–9). However, Creuzer qualifies his position in a footnote, saying that he agrees with Kant in making freedom the essential ground of the moral law (its *ratio essendi*), but he disagrees with Kant in making the moral law the cognitive ground of freedom (its *ratio cognoscendi*) (*Skeptische Betrachtung über die Freiheit*, 9 n). In Creuzer's view we have no reason to accept the disclosure thesis because consciousness of freedom is 'already active before the development of the moral law' (*Skeptische Betrachtung über die Freiheit*, 9 n). In line with Reinhold, Creuzer recommends that we should seek to explain freedom as its own 'original immediate consciousness' apart from our notions of duty, obligation, or law (*Skeptische Betrachtung über die Freiheit*, 9 n).

Nor were Reinhold and Creuzer alone in advocating this separation. It set the backdrop against which Maimon would propose to 'improve' upon Kant's moral philosophy, starting with his 1794 essay 'Attempt at a New Presentation of the Moral Principle and a New Deduction of Its Reality'. What is unique about Maimon's contribution is that he criticizes Kant's methodology for its 'unscientific' reliance upon 'common human understanding' (*gemeinen Menschenverstandes*). Common human understanding, he says, is prone to error and illusion, and so there is no reliable way to tell if the concepts we develop from this standpoint rest on mere 'psychological deception'

(*psychologische Täuschung*) ('Versuch einer neuen Darstellung des Moralprincips', 404). It may be an 'immediate fact of consciousness' (*unmittelbare Thatsache des Bewußtseins*) that the moral law issues its commands unconditionally, but that in itself tells us nothing about the moral law's objectivity. Even if we feel ourselves under moral constraint, for instance, how do we know that the moral law is really binding upon our will? In reply, Maimon offers a new methodology that begins with a more primary 'fact of consciousness'. The specific *Thatsache* he argues is more primary than our everyday consciousness of duty is our 'drive for the cognition of truth' (*Trieb zur Erkenntnis der Wahrheit*) ('Versuch einer neuen Darstellung des Moralprincips', 407), a fact he says is not suspect of psychological deception. And this last point is crucial, since Maimon goes on to claim that as rational beings we necessarily strive to meet a principle of 'universal validity' (*Allgemeingültigkeit*) in our thoughts, the same principle, he contends, under which we necessarily strive to meet the 'demands of duty' in our actions ('Versuch einer neuen Darstellung des Moralprincips', 419). This link to universal validity – a general principle of reason as such – is what secures the objectivity of the moral law. Or so Maimon argues.

In this way Maimon rejects, much more clearly than his contemporaries, Kant's commitment to the primacy of the moral law (the disclosure thesis). By starting with our drive for the cognition of truth, Maimon does not presuppose Kant's doctrine of the fact of reason, insofar as this doctrine operates from the standpoint of common human understanding. For Kant, the buck stops with our consciousness of the moral law, since there is no alternative means for accessing the concept of an absolute practical principle. That is why Kant says, in answer to the question, 'how is consciousness of that moral law possible?', that we need only attend to its *necessity* (KpV 5:30). While Reinhold and Creuzer seem to agree with this point, they both deny that the moral law reveals our freedom to us, either because we can access our freedom through self-feeling (Reinhold), or because our consciousness of freedom is active prior to the moral law (Creuzer). But neither of them went as far as Maimon in raising the skeptical possibility that Kant's *Factum* might be a grand delusion, and neither of them went as far as Maimon in developing a foundationalist strategy for securing the moral law's objectivity. It is these latter, more radical developments in the history of post-Kantian ethics that shed light on Fichte's commitment to moral primacy, to which I now turn.

4. Fichte's contribution

While questions of Fichte's intellectual development are notoriously difficult to settle, it is safe to say that his commitment to moral primacy underwent two general phases during the 1790s.

- I. In the revised edition of his *Attempt at a Critique of All Revelation* (1793), Fichte distinguishes two ways our faculties of mind can disclose their existence to us. On the side of theoretical cognition, we have sensibility, understanding, and reason, along with their respective objects, intuitions, concepts, and ideas. In each case, Fichte explains, these faculties apply to their objects with strict necessity. As a result they 'proclaim' their existence to us through a consciousness of constraint: we experience their effects as something 'given' to us, not as something we 'produce' (VKO 5:22). On the side of practical cognition, however, Fichte thinks we find something special. With the higher faculty of desire, he argues, we have a power that applies to itself, not coercively, but spontaneously, through the representation of its own universal form.⁶ Accordingly, among the various ways our faculties of mind can influence us, only the higher faculty of desire elicits a 'fact' (*Thatsache*) through our common consciousness of duty that testifies to the existence of an autonomous will within us (VKO 5:22–23).
- II. A further phase in Fichte's commitment to moral primacy appears in the 'Second Introduction' to the *Wissenschaftslehre* (1797), where he argues that we have only one way to support 'belief' or 'faith' (*Glaube*) in the reality of intellectual intuition: namely, 'by exhibiting the moral law within us' (ZEWL 1:466). 'Our intuition of self-activity and freedom', he goes on to say, has its foundation in our consciousness of this law, 'which is unquestionably not a type of consciousness derived from anything else, but is instead an immediate consciousness'. Here Fichte speaks of a demand to self-activity, adding: 'It is only through the medium of the moral law that I catch a glimpse of *myself*; and insofar as I view myself through this medium, I necessarily view myself as self-active' (ZEWL 1:466).⁷

⁶We find a similar claim in Fichte's 1793 review of Creuzer's free-will book: 'Self-activity gives this faculty its *determinate form, which is determinable in only one way* and which appears as the moral law' (CR 8:413).

⁷The review Fichte wrote during the autumn of 1793 on Frederick Heinrich Gebhard's book *On Ethical Goodness as Disinterested Benevolence* appears to be an anomaly within this development. At a crucial point in his discussion, Fichte raises the question of how reason can be practical, remarking that this must be proven and not assumed. 'Such a proof', he then states, 'must proceed somewhat as follows':

The human being is given to consciousness as a unity (as an I). This fact can be explained only by presupposing something in human beings that is simply unconditioned; we must therefore assume that there is within human beings something simply unconditioned. What is simply unconditioned, however, is practical reason.

(GR 8:425)

Beiser cites this passage as evidence of his 'break' with Kant (*German Idealism*, 291). On Beiser's view, what Fichte came to see clearly by 1793 was that skepticism renders any appeal to 'facts of consciousness' empty, since facts cannot rule out the possibility that our will is dictated by mechanisms beyond our control. Accordingly, Beiser thinks that in this review Fichte is seeking a 'strict proof' that treats freedom 'as the necessary condition of the unity of apperception, and thus as the first principle of the possibility of experience' (*German Idealism*, 292). See also Neuhauser (*Fichte's Theory of Subjectivity*, 24–26) for an admirably clear treatment of Fichte's Gebhard review.

One difference worth noting about the second phase, to which the *System of Ethics* belongs, is that Fichte seeks to derive our conviction in freedom, not from duty as it appears factually as a *feeling of necessity* in common consciousness, but from the moral law as it appears conceptually as the *ground of this feeling* in philosophical consciousness.⁸ Among the factors that contributed to this shift in his position, there is no doubt that Maimon's skepticism played a crucial role. As we have seen, Maimon argues that the feeling of necessity we attach to our ordinary experience of duty is open to suspicion. There is no way to tell, he explains, whether this experience has an objective basis or is the product of mere psychological deception. For this reason Maimon claims that we need a new foundation for the moral law, one that is not only independent of the standpoint of common consciousness, but also independent of practical reason altogether. The more fundamental 'fact' he thinks provides this foundation is theoretical, our drive for the cognition of truth.

Interestingly, while Fichte agrees that a deduction must go beyond the facts of common consciousness, he does not think that these facts merit a skeptical response, as Maimon does. On the contrary, Fichte is careful to draw a distinction at the very start of the *System of Ethics* between two ways we can relate to the feeling of necessity attached to our ordinary experience of duty. One is common, and it involves 'factual cognition' (*faktischen Erkenntnis*) of this feeling; the other is philosophical, and it involves 'genetic cognition' (*genetische Erkenntnis*) of this feeling (SL 4:13–14).⁹ What lies at the basis of this distinction, I believe, is Fichte's view that common consciousness is the 'original form of thinking' (*ursprüngliche Denkform*) for the philosopher to work upon. 'Is this original consciousness', he asks the reader at one point, 'any different from the one that we, as philosophers, have just produced within ourselves? How could it be', he continues,

given that it is supposed to have the same object, and given that the philosopher, as such, certainly possesses no other subjective form of thinking than that common and original form that is present in all reason [*die gemeinsame und ursprüngliche aller Vernunft*]?

(SL 4:31)

For Fichte, genetic cognition is cognition that goes beyond facts of common consciousness to their higher ground, yet in a way that reproduces what is original to reason and hence common to all.¹⁰

What is therefore primary in Fichte's system of ethics – the 'ground' for the feeling of moral compulsion noted above – is not itself a 'fact' on some more

⁸Thanks to a BJHP reviewer for pressing me to draw this distinction more sharply.

⁹In §1 Fichte also states, quite clearly, that affirming the feeling of moral compulsion in an attitude of *Glaube* is 'sufficient for engendering both a dutiful disposition and dutiful conduct' (SL 4:14).

¹⁰This is why, as Allen Wood (*Fichte's Ethical Thought*) has observed, the philosopher in Fichte's system is always *below* or *subordinate* to the common person, even though transcendental reflection requires the philosopher to go *beyond* or *above* the mere facts that present themselves to ordinary life.

primitive level. Rather, it is an original ‘act’ of the I as such, of which the philosopher can freely reproduce in the space of transcendental reflection. This is why by the time he formulates the first version of his ‘Doctrine of Science’ (*Wissenschaftslehre*) in 1794, Fichte breaks decisively with Reinhold who characterized the first principle of philosophy in terms of a ‘fact’ (*Thatsache*), and coins the expression of a ‘fact/act’ (*Thatandlung*) to convey the original spontaneity of his alternative first principle. In subsequent writings from the 1790s we find Fichte separating the concept of a ‘fact’ as what appears to common consciousness from the concept of a ‘fact/act’ as what the philosopher can access by ‘reverting inward’ and ‘intuiting’ her own self-activity. In one place Fichte even claims that the idea of an immediate ‘intuition’ of our self-activity is already present in Kant’s work, i.e. in our consciousness of the moral law as a *Factum* (ZWEL 1:472). Although Fichte does not elaborate upon this claim, it is worth noting that Kant sometimes speaks of a *Factum* in its original Latin sense, that of ‘something done’ (and in Roman law, as a ‘deed’ imputable to the agent).¹¹ Yet there is no question that Fichte is employing this idea in an original way, as I wish to show, since he makes this form of genetic moral cognition the entry-point for his form of idealism, the *Wissenschaftslehre*.

Looking back, however, one might ask: Is the difference between Fichte and Maimon not simply that Maimon locates a basis for the moral law in theoretical reason (our drive for truth) and Fichte locates this basis in something broadly practical (the activity of the I as such)? To be sure, there is evidence to suggest that Fichte was attracted to foundationalism in some of his early writings, and some scholars have attempted to read the *System of Ethics* within this framework. But it is clear, when we turn to the details of this work, that Fichte’s strategy is more complex than any standard foundationalist approach. His deduction of the moral law does not proceed in a unilinear style, from a first premise to a chain of inferences, but rather approaches the concept of the I under three aspects: the objective, the subjective, and their reciprocal interaction.¹² Though a first principle is present in this progression, the multi-lateral style in which the principle operates is unique, and I believe it is more distorting than clarifying to characterize Fichte’s method in foundationalist terms. This point of interpretation will be important when we turn to consider Fichte’s method of moral justification in greater detail, since he will end up defending a version of Kant’s claim that the moral law discloses our freedom to us. As we shall see, one difficulty facing a foundationalist reading is that it cannot explain *why* Fichte would invoke the disclosure thesis at all.

¹¹For an attempt to unpack these intricacies in Kant’s doctrine of the fact of reason, see Ware, ‘Rethinking Kant’s Fact of Reason’.

¹²I am drawing this unilinear/multi-lateral distinction from Breazeale’s (*Thinking Through the Wissenschaftslehre*) excellent discussion of how Fichte’s methodology underwent a change from the 1794 incarnation of the *Wissenschaftslehre* to the ‘new method’ lectures he delivered in the late 1790s.

5. Regressive vs. dialectical methods

For these reasons I have reservations with how Paul Guyer ('Fichte's Transcendental Ethics') has presented Fichte's deduction of the moral law, which is otherwise well-argued and sympathetic to the aims of the *System of Ethics*. Guyer interprets Fichte's deduction as a paradigmatic case of a transcendental argument.¹³ On his reading, Fichte's starting-point concerns a distinction between the self as active and the self as passive, and the goal of the deduction is to investigate the conditions necessary for thinking of oneself in the former way. More specifically, Guyer takes Fichte to begin with the following claim:

- (1) In order to think of my self-consciousness, I must think of myself as not merely having representations but as acting upon representations.

According to Guyer, Fichte's guiding question is what further conditions are necessary to think of 'acting upon representations'. The answer, he thinks, points us to the concept of willing, from which we can derive the following chain of inferences:

- (2) In order to think of myself as acting upon representations, I must think of myself as willing.
- (3) In order to think of myself as willing, I must think of myself as acting in accordance with the concept of an end.
- (4) In order to think of myself as acting in accordance with the concept of an end, I must conceive of that end as self-sufficient and independent.¹⁴

¹³In a similar vein, Neuhauser writes:

Fichte's rejection of Kant's appeal to the notion of a "fact of reason" is most plausibly understood as based upon the belief that, in taking this position, Kant fails to carry out a thoroughgoing, consistent application of his own Critical principles to the field of moral philosophy.
(Fichte's *Theory of Subjectivity*, 27)

Others who defend this interpretation include Irie and Rivera De Rosales:

Kant's moral philosophy places the moral law as a "fact of reason" first and examines what the moral law must be, if it exists. In contrast, Fichte puts the existence of self-consciousness ahead of a system of ethics and demonstrates that an acceptance of a principle of morality is a prerequisite for such self-consciousness.
(Irie, 'Der transzendente Beweis der Sittlichkeit bei Fichte', 13)

[In contrast to Kant] Fichte precisely wants to deduce this moral law [...] Therefore, he does not start from the moral law as a "fact of reason," but rather seeks to explain it through its transcendental conditions of possibility.
(Rivera De Rosales, 'The Transcendental Deduction of the Categorical Imperative', 238)

Those who find continuity between Kant's doctrine of the fact of reason and Fichte's position include Ameriks (*Kant and the Fate of Autonomy*), Franks (*All or Nothing*), Breazeale (*Thinking Through the Wissenschaftslehre*), and Wood (*Fichte's Ethical Thought*).

¹⁴As Guyer explains:

The key to understanding the nature of self-consciousness in general thus becomes the understanding of human action, and the key to understanding this is understanding freedom. The key to understanding freedom, in turn, is to understand that activity must have its own law distinct

- (5) An end that is self-sufficient and independent is the concept of the moral law.
- (6) Therefore, given (1)-(5), in order to think of my self-consciousness, I must think of myself as willing in accordance with the moral law.

On this reconstruction, Fichte is advancing a regressive style of argument, since it begins with the premise that we must think of ourselves as active in order to think of ourselves at all, and it then works ‘backwards’ to the conditions necessary to think of such activity. The moral law receives a warrant, on this account, because it emerges as the only concept fit to serve as the end of self-active willing. In Guyer’s view, rather than treat the moral law as an undeniable ‘fact of reason’ that we must accept on the basis of ‘faith’, Fichte’s deduction has the form of a transcendental argument to the conditions of self-consciousness, which he adds ‘eluded Kant’ (‘Fichte’s Transcendental Ethics’, 147).

Guyer’s reading certainly has the virtue of bringing clarity to what is, in truth, a long, convoluted, and even repetitive stretch of text. However, this clarity comes at the cost of overlooking some key distinguishing features of Fichte’s approach in Part I of the *System of Ethics*. One I have hinted at is that Fichte organizes his deduction into three stages, reflecting the three sections of Part I (§§1–3), and attention to these stages indicates that he is operating, not regressively (as Guyer assumes), but dialectically. Fichte proceeds by issuing a *problem*, i.e. to think of the I under a certain aspect, and the goal for the reader is to proceed as far as possible under this aspect until we reach a *limit*, the discovery of which motivates a *transition* to a new aspect. Strictly speaking, the deduction does not commence with the assertion that I must think of myself as acting upon representations. Rather, the deduction begins with a ‘task’ (*Aufgabe*):

§1. TO THINK OF ONESELF MERELY AS ONESELF, I.E. AS SEPARATED FROM EVERYTHING THAT IS NOT OUR SELF.

(SL 4:18)

The aim of §1 is to think of the I under an objective aspect – as it is given in reflection – and Fichte’s point is that the I is given in reflection only as *willing*. Our goal is then to proceed in thinking of the objective aspect of the I as far as possible. What we learn is that the I qua will appears to be absolute, but the limit we encounter is that nothing under this aspect informs us about how we

from the laws that govern that which is represented merely as object, and the key to Fichte’s transcendental derivation of the moral law is then the insight that the moral law is the only candidate for such a law of the distinctive activity of the self.

(‘Fichte’s Transcendental Ethics’, 139)

What Guyer then calls the ‘crucial claim’ of Fichte’s deduction is that ‘understanding oneself as self-determining requires the concepts of practical philosophy and ultimately the recognition of oneself as governed by the moral law’ (‘Fichte’s Transcendental Ethics’, 141). Note that Guyer draws much of his interpretation from the Introduction to the *System of Ethics*, whereas I am focusing on the deduction proper (in §§1–3 of Part I).

can think of the will's absoluteness. That is the limit Fichte wants us to discover in §1, and he uses it to motivate a new task in §2:

§2. TO BECOME CONSCIOUS IN A DETERMINATE MANNER OF THE CONSCIOUSNESS OF ONE'S ORIGINAL BEING.

(SL 4:30)

The aim of §2 is to think of the I now under a subjective aspect – as it is engaged in reflection – and Fichte's point is that the I is engaged in reflection only as *intelligence*. Our goal is then to proceed in thinking of the subjective aspect of the I as far as possible. What we learn is that the I qua intelligence is a potential power of self-activity, but the limit we encounter is that nothing under this aspect informs us about how we can become conscious of our self-activity as a real tendency. That is the limit Fichte wants us to discover in §2, and he uses it to motivate a final task in §3:

§3. TO OBSERVE HOW THE I BECOMES CONSCIOUS OF ITS OWN TENDENCY TO ABSOLUTE SELF-ACTIVITY AS SUCH.

(SL 4:39)

This section reveals a further sense in which Fichte's method is dialectical, since he goes on to argue that the only way we can fulfill the task of §3 is to unite the two previously separated aspects of the I, the objective and the subjective, in a relation of 'reciprocal interaction' (*Wechselwirkung*). What Fichte eventually claims is that we can become conscious of our self-activity as a real tendency only by thinking of this activity under the law of absolute self-sufficiency, or what amounts to the same thing, under *the moral law* (SL 4:51).

Granted, this is only a brief sketch of Fichte's deduction,¹⁵ but it contains enough detail to show why I am hesitant to follow Guyer, who interprets this portion of the *System of Ethics* along the lines of a regressive argument. A drawback of this reading is that it renders Fichte's final step puzzling, since the concept of the moral law emerges, not as a transcendental condition of self-activity (or a condition of its being), but as an epistemic condition of self-activity (or a condition of its knowledge). A regressive interpretation would have us treat the moral law as the '*ratio essendi*' of freedom, whereas Fichte – and in this respect I take him to be following Kant – wants us to treat the moral law as the '*ratio cognoscendi*' of freedom. The moral law in Fichte's view is the law of absolute self-sufficiency, and this is the 'medium' for accessing our real tendency to self-activity. Not surprisingly, Guyer believes that Fichte's deduction has the form of an argument which 'eluded Kant' ('Fichte's Transcendental Ethics', 147), who he says was content to treat the moral law as a *Factum* that we must accept on the basis of faith ('Fichte's

¹⁵See Ware, 'Fichte's Deduction of the Moral Law' for a fuller discussion.

Transcendental Ethics', 147). Yet what Guyer does not mention is that Fichte himself cites Kant's *Factum* with approval, writing that '[i]n many places Kant derives our conviction concerning freedom from our consciousness of the moral law' (SL 4:53). In my view, this is yet more evidence to suggest that Fichte, in contrast to Reinhold, Creuzer, and Maimon, does not think that we have purely theoretical or morally neutral grounds to access our freedom in a positive sense.

6. Morality, freedom, and faith

But now the kind of skeptical worries that animated Maimon's alternative deduction of the moral law return with renewed force. After all, if Fichte is rehabilitating some version of the disclosure thesis and assigning what I am calling epistemic primacy to the moral law, it seems we have won an account of how we become conscious of our freedom at the cost of making the moral law (or our consciousness thereof) open to doubt. Maimon's question, 'How do we know that the moral law is actually binding upon our will?' appears to remain unanswered, and that means Fichte's deduction has failed to satisfy a condition of objectivity. One obvious attraction of the Maimonian-foundationalist strategy is that it promises to rule out skepticism about the moral law's bindingness by deriving the law from a theoretical 'fact' about our drive for truth. However, I think Fichte has resources to address this concern, since he is careful to distinguish between the specific actions we feel 'should' and 'should not' be done, and the conceptual formulation of the moral law as a law of self-sufficiency. The aim of his deduction is to offer 'genetic cognition' of the former, to trace the 'fact' of moral compulsion to its 'ground' in the reciprocal interaction of the I considered both objectively and subjectively. The bindingness of the moral law thereby receives a warrant on Fichte's account, since it turns out to have a necessary connection to the first principle of his system.

This is the sense, on my reading, in which Fichte's deduction does satisfy a condition of objectivity. It shows that our everyday feelings of moral compulsion have a rational basis and so are not a grand delusion after all. But it is important to see why Fichte is unwilling to seek a further deduction of the moral law itself, as the necessary manner of thinking our own freedom. 'This is of special importance for our science', he tells the reader, 'so that we can avoid being *misled* – as has so often been the case – into wanting to provide a *further explanation* of our consciousness of having duties' (SL 4:47; emphasis added). Fichte goes on to speak of this mistaken approach in terms of 'wanting to derive' our consciousness of having duties 'from grounds outside of itself', which is, he adds, 'impossible' and contrary to the 'dignity and absoluteness of the law' (SL 4:47).¹⁶ While our everyday feelings of moral compulsion admit of a deduction, their higher ground does not lie in

a theoretical or non-moral fact (*pace* Maimon). For Fichte, their higher ground lies in the absolute activity of the I as such, which we can think of objectively as a law of self-sufficiency. Of course, Kant has his own reasons for regarding a deduction of the moral law as unnecessary, since he thinks that in order to see how our consciousness of the moral law is possible, all we need to do is attend to the necessity with which reason prescribes its claims to us (KpV 5:29–30). Yet both Kant and Fichte agree that the buck stops with the moral law, meaning that the ultimate source of its normativity cannot be derived from ‘antecedent data’ (such as we might gather from an analysis of theoretical reason).¹⁷

This puts us in a better position to see what motivates Fichte’s claim that idealism is for those who have faith in freedom. In the *System of Ethics* Fichte arrives at this point because, on his view, a derivation of freedom would destroy freedom: it would trace the appearance of absoluteness to another ground, and thereby render the appearance illusory. Freedom in this way counts as a fact of consciousness, and for that reason one is always at liberty to explain this appearance further. But if, Fichte adds,

one nevertheless decides not to explain this appearance any further and decides to consider it to be absolutely inexplicable, i.e. to be the truth, and indeed our sole truth, according to which all other truth has to be measured and judged – and our entire philosophy is based on precisely this decision – then this is

¹⁶We find an equally clear statement to this effect in Fichte’s essay, ‘On the Basis of Our Belief in a Divine Governance of the World’, published in 1798:

Therefore, conviction in our moral vocation already flows from a moral voice and is *belief* or *faith* [*Glaube*]; and in this respect one speaks quite correctly in saying that belief or faith is the element of all certainty [*das Element aller Gewissheit ist Glaube*]. – And so it must be, since morality, insofar as it is morality, can be constituted absolutely only through itself and in no way through some logically coercive thought.

(GGW 5:182)

A page later Fichte continues:

That I should and *what* I should is the first and most immediate. This permits no further explanation, justification, or authorization; it is known for itself, and it is true for itself. It is grounded and determined by no other truth; instead, all other truth is rather grounded in it. – Whoever says, “I must first know whether I can [do something] before I judge whether I should,” either abrogates the primacy of the moral law [*den Primat des Sittengesetzes*], and thereby the moral law itself, when he judges this way practically, or he completely misrecognizes the original course of reason when he judges this way speculatively.

(GGW 5:183–84)

Thanks to a BJHP reviewer for directing my attention to this essay.

¹⁷As a BJHP reviewer has helped me to see, the difference between Maimon and Fichte is not just a matter of where they locate the basis of their deduction, with Maimon privileging a theoretical ground and Fichte privileging a practical ground. The difference is that Maimon’s deduction of the moral law goes beyond the standpoint of common reason altogether: it seeks a purely theoretical ‘fact’. Fichte’s deduction, by contrast, seeks to give a philosophical investigation (and ultimately, a justification) of our common standpoint. While Fichte arrives at conclusions only accessible to the transcendental philosopher – concerning, above all, the concept of the moral law – his entire approach remains ‘inside’, as it were, the framework of common reason.

not because of any theoretical insight, but because of a practical interest. I *will* to be self-sufficient, and I therefore take myself to be so. Such a taking-to-be-true, however, is *faith* [*Glaube*].

(SL 4:25–26)

It is only at the end of the deduction in §3, however, that Fichte spells out this ‘practical interest’ in terms of Kant’s *Factum* of reason, which he says ‘derives our conviction concerning freedom from our consciousness of the moral law’ (SL 4:53). Once again Fichte writes that one might wish to explain the appearance of freedom further and ‘thereby transform it into an illusion’ (SL 4:53). But now Fichte adds a new detail: he explicitly connects our practical interest for not transforming freedom into an illusion with our consciousness of the moral law:

If, however, one does not go beyond the moral law, then one also does not go beyond the appearance of freedom, which thereby becomes for us the truth, inasmuch as the proposition, ‘I *am* free; freedom is the sole true being and the ground of all other being,’ is quite different from the proposition, ‘I *appear* to myself to be free’. What can be derived from consciousness of the moral law, therefore, is faith in the *objective validity of this appearance* [of freedom].

(SL 4:54)

What this passage shows, on my reading, is that Fichte is radicalizing Kant’s disclosure thesis in two ways. First, he regards consciousness of the moral law as a basis to assent to the *appearance* of freedom, whereas Kant regards moral consciousness as a basis to infer a *faculty* of a pure will within us (the faculty of pure practical reason). Although Fichte speaks of a ‘derivation’ in this context, what is derived on his account is the subjective attitude of ‘taking-to-be-true’ (*Fürwahrhalten*), and the object of that attitude is the sheer absoluteness of freedom as such, not an underlying faculty. Secondly, and relatedly, while Kant’s disclosure thesis would entitle one to affirm the first part of Fichte’s proposition, ‘I *am* free’, it would not entitle one to affirm the second part, that ‘freedom is the sole true being and the ground of all other being’ (SL 4:54). For Kant, what the moral law brings to our awareness is the real possibility of acting against our sensible inclinations as a sum-total, and that warrants our claim to possessing a higher faculty of self-determination (a ‘pure will’). But there is no sense in which, for Kant, the real possibility of freedom extends our cognition to ‘the ground of all other being’, even if we qualify all talk of ‘being’ to the strictly idealist (or non-dogmatic) sense Fichte wants to uphold. Whatever we make of these two departures, there is no doubt that Fichte is putting the disclosure thesis to novel use by making consciousness of the moral law fundamental, not just to his doctrine of ethics, but also to his doctrine of science as a whole.

7. Entering the *Wissenschaftslehre*

This brings us at last to what has become a major interpretive controversy in Fichte scholarship. What lies at the core of this controversy is a question of how Fichte frames the entry-point of the *Wissenschaftslehre*, and how he considers the relationship between (a) consciousness of the moral law and (b) the indubitability of his first principle, the freedom of the I as such. On a non-moralistic reading, as defended by Paul Franks (*All or Nothing*), Fichte's strategy appeals first to the philosopher's intellectual intuition of her own self-activity, without referring to notions of duty, obligation, or law, and only after establishing the first principle on theoretical grounds does she then appeal to the moral law (among other concepts) in deriving a complete set of conditions for this principle's application (Franks, *All or Nothing*, 319, 324, 325). On this line of interpretation, a form of non-moral intellectual intuition of self-activity provides access to the *Wissenschaftslehre*'s first principle (Franks, *All or Nothing*, 318). The starting-point of the doctrine of science is therefore 'practically neutral'. The transcendental philosopher, in order to enter into the system of idealism, does not require anything like consciousness of the moral law.

On a moralistic reading, as defended by Karl Ameriks (*Kant and the Fate of Autonomy*), Frederick Beiser (*German Idealism*), and Daniel Breazeale (*Thinking Through the Wissenschaftslehre*), our point of entry into the doctrine of science is practical in a very strong sense.¹⁸ Consciousness of the moral law, on this view, is the philosopher's pre-condition for adopting the system of idealism. As Breazeale presents this claim,

Fichte did not think that such a system could be established on purely *theoretical* foundations, inasmuch as it *presupposes* the kind of *practically grounded belief* in the reality of human freedom that – as he repeatedly conceded – is based upon a morally motivated *decision* not to doubt the reality of the same.

(Thinking Through the Wissenschaftslehre, 266)

What Breazeale calls 'the ultimate certainty of human freedom' comes from 'one's "normative" intuition of actual moral obligations rather than any purely speculative or transcendental intuition of the original spontaneity of the I' (*Thinking Through the Wissenschaftslehre*, 267). In this way Breazeale denies that non-moral intellectual intuition of self-activity is *prior* to the 'moral resolve' at the basis of our conviction in the reality of freedom, and so it does not serve to establish (as Franks upholds) the philosopher's entry-point into the *Wissenschaftslehre*.

¹⁸Sebastian Gardner defends a similar claim in an illuminating essay devoted to comparing Fichte and Schelling. As he explains, Fichte 'identifies the supremacy of practical reason with the categoricity of moral demands – an alignment which in Schelling's eyes disqualifies it, by subordinating the unconditioned to the inherent conditionedness of morality' ('Fichte and Schelling', 334).

Where does the account I have presented in this paper fit within this dispute? In my view, the way Fichte appropriates Kant's *Factum* to support conviction in the reality of freedom as 'the sole true being and the ground of all other being' (SL 4:54) is evidence to suggest that consciousness of the moral law plays a key role in supporting his system of idealism. Yet that is not to say I agree entirely with the moralistic reading, since this reading admits of two versions which commentators are not always careful to distinguish. On a strong version of this reading, it is one's experience of moral compulsion from the standpoint of common consciousness that secures the first principle of Fichte's idealism. On a weak version, by contrast, the entry-point to this first principle comes from one's cognition of the ground of this experience from the standpoint of philosophical reflection. In other words, the very notion of 'moral primacy' in Fichte's system remains ambiguous unless we separate (1) duty as it appears factually in common consciousness from (2) the moral law as it appears conceptually in philosophical consciousness, and it is the latter, on my reading, that reveals the underlying principle of duty in terms of self-sufficiency. This is precisely the distinction Fichte draws in the *System of Ethics* between 'factual' and 'genetic' cognition of our moral nature.

With this distinction in view, I am willing to endorse a weak moralistic reading, since it fits Fichte's own use of the disclosure thesis. To quote the relevant passage once more, Fichte tells us that if 'one does not *go beyond* the moral law, then one also does not go beyond the appearance of freedom' (SL 4:54; emphasis added). As I understand it, the sense of the 'moral law' in this passage is the 'law of self-sufficiency' Fichte had formulated qua philosopher, not the feeling of moral 'compulsion' he introduced at the beginning of the work qua ordinary person. After all, the aim of his deduction is precisely to 'go beyond' the latter feeling as a fact of common consciousness and reveal its rational source. What strikes me as a flaw to the strong moralistic reading is that, by making an ordinary 'normative' intuition of moral obligations the basis for securing the first principle of the *Wissenschaftslehre*, it forces us to view Fichte as a kind of Reinholdian philosopher who argues regressively from facts of consciousness, which does not square with the textual evidence we have before us. Worse still, this reading renders Fichte's deduction of the moral law viciously circular. For it would have us treat our common consciousness of obligations as a basis to derive conviction in the reality of freedom, whereas Fichte himself introduces such consciousness in Part I as precisely what stands in need of a deduction.¹⁹

¹⁹At the level of transcendental reflection – to which Fichte guides the reader in §3 of the *System of Ethics* – the moral law is the 'the conceptual consciousness that the I has of its freedom', as a BJHP reviewer puts it. On my view, this is another instance in which Fichte is radicalizing Kant's disclosure thesis, since he views freedom and morality as two aspects of the I as such, rather than as two co-entailing concepts (*pace* Kant's reciprocity thesis). See Wood (*Fichte's Ethical Thought*, 123) and Ware ('Fichte's Deduction of the Moral Law') for further discussion.

To be clear, the ordinary person need not go beyond the feeling of compulsion that comes attached to her awareness of obligations,²⁰ but the philosopher must, in Fichte's view, if she wants to secure knowledge of her moral nature. Yet this does not mean the philosopher must go beyond the moral law itself; that is the mistaken strategy of those who want to 'derive' our consciousness of having duties 'from grounds outside of itself', which Fichte says is contrary to the 'dignity and absoluteness of the law' (SL 4:47). In other words, genetic cognition brings us to the moral law as the necessary manner of thinking our own freedom, but we should not then seek some independent ground to derive this manner of thinking (for example, by linking it to our drive for the cognition of truth). It is the dignity and absoluteness of the law, for Fichte, which supports one's *refusal* to transform the appearance of freedom into an illusion. And that is the nature of his commitment to moral primacy, on my account. Of course, this is not to deny that Fichte appeals to non-moral forms of intellectual intuition to initiate transcendental reflection. But it is to deny that such theoretical intuition serves to ground the subjective attitude of 'taking' freedom 'to-be-true' (*Fürwahrhalten*), which is, for Fichte, the all-important 'decision' at the basis of his science of knowledge.

8. Closing remarks

Though Fichte would end up radicalizing Kant's 'fact of reason' for the purposes of the *Wissenschaftslehre*, there is no question that he was the great champion of the disclosure thesis when compared to his contemporaries, all of whom were resistant to making the moral law a condition for knowing our freedom. Little did Fichte know, as fate would have it, that he would also be the *last* champion, as the course of philosophy in the nineteenth century redoubled the initial suspicions of Reinhold, Creuzer, and Maimon, leading some of the most prominent thinkers of the age to decry Kant's *Factum* as 'the last undigested log in our stomach, a revelation given to reason' (Hegel) or as 'a Delphic temple in the soul from whose dark holiness issue oracular sayings' (Schopenhauer).²¹ Yet despite these later reactions, Fichte's contribution remains of crucial interest, not only for understanding the history of ethics after Kant, but also for presenting us with an alternative (and to this day novel) method of moral justification. Whatever our attitudes we may have toward the 'disclosure' of the moral law, we have much to learn, I believe, from the individual who made this disclosure the basis for an entire system of idealism.

²⁰For Fichte, the ordinary person need only follow the dictates of 'conscience' (*das Gewissen*), which he characterizes in terms of our higher faculty of feeling. See Ware, 'Fichte on Conscience' for further discussion.

²¹Cited in Henrich, *The Unity of Reason*, 69.

Abbreviations

- Kant** Citations to Kant appear in the order of abbreviation, volume number, and page number from the *Akademie Ausgabe, Kants Gesammelte Schriften*, edited by Königlich-Preußische Akademie der Wissenschaften (29 vols. Berlin: de Gruyter, 1900).
- KpV** *Kritik der praktischen Vernunft* (1788). Translated by Mary Gregor: *Critique of Practical Reason* (Cambridge: Cambridge University Press, 2015).
- KU** *Kritik der Urteilskraft* (1790). Translated by Eric Matthews and Paul Guyer: *Critique of the Power of Judgment* (Cambridge: Cambridge University Press, 2001).
- MS** *Die Metaphysik der Sitten* (1797). Translated by Mary Gregor: *The Metaphysics of Morals* (Cambridge: Cambridge University Press, 1996).
- R** *Die Religion innerhalb der Grenzen der bloßen Vernunft* (1790). Translated by Allen Wood and George di Giovanni: *Religion within the Boundaries of Mere Reason* (Cambridge: Cambridge University Press, 2018).
- Refl** *Reflexionen* (notes written by Kant), various dates. Translated by Paul Guyer, Curtis Bowman, and Frederick Rauscher: *Notes and Fragments* (Cambridge: Cambridge University Press, 2009).
- Fichte** Citations to Fichte appear in the order of abbreviation, volume number, and page number from *Fichtes Werke*, edited by I. H. Fichte (11 vols. Berlin: de Gruyter, 1971).
- GGW** 'Ueber den Grund unsers Glaubens an eine göttliche Weltregierung' (1798). My translations: 'On the Basis of Our Belief in a Divine Governance of the World.'
- GWL** *Grundlage der gesammten Wissenschaftslehre* (1794). My translations: *Foundation of the Entire Wissenschaftslehre*.
- CR** 'Recension Creuzer' (1793). Translated by Daniel Breazeale: 'Review of Leonhard Creuzer, Skeptical Reflections on the Freedom of the Will (1793).' *Philosophical Forum* 32 (2002): 289–296.
- SL** *Das System der Sittenlehre nach den Prinzipien der Wissenschaftslehre* (1798). Translated by Daniel Breazeale and Günter Zöller: *The System of Ethical Theory According to the Principles of the Wissenschaftslehre* (Cambridge University Press, 2005).
- VKO** *Versuch einer Kritik aller Offenbarung* (1793). Translated by Garret Green: *Attempt at a Critique of All Revelation* (Cambridge: Cambridge University Press, 2010).
- ZWEL** *Zweite Einleitung in der Wissenschaftslehre* (1797). Translated by Daniel Breazeale: *Second Introduction to the Wissenschaftslehre* (Indiana: Hackett, 1994).

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