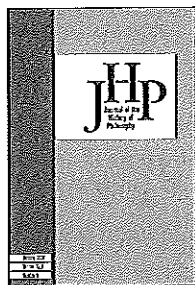


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## Kant's Legal Metaphor and the Nature of a Deduction

IAN PROOPS\*

### I. INTRODUCTION

In the *Critique of Pure Reason*<sup>1</sup> 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 (*quid juris*) and that which concerns the fact (*quid 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*.<sup>2</sup> (A84/B116)

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 no one of them.<sup>3</sup> In the preamble to the Transcendental Deduction,<sup>4</sup> for ex-

<sup>1</sup> In translating passages from the first *Critique* I usually follow the translation of Paul Guyer and Allen Wood, trans. and eds., *The Cambridge Edition of the Works of Immanuel Kant, Critique of Pure Reason* (Cambridge: Cambridge University Press, 1998), but occasionally I prefer the less literal translation of Norman Kemp Smith, trans., *Immanuel Kant's Critique of Pure Reason*, 2nd ed. (London: Macmillan, 1933). The basis for my own translations is the Academy edition: Ak. = *Gesammelte Schriften, Königlich Preussischen Akademie der Wissenschaften*, 29 vols. (Berlin: 1900–; 2nd ed., Berlin: De Gruyter, 1968). In the case of Kant's other works, except where indicated, I follow the relevant translation from *The Cambridge Edition of the Works of Immanuel Kant*.

<sup>2</sup> Here I follow Guyer and Wood, with minor modifications.

<sup>3</sup> A detailed survey of Kant's legal metaphors is contained in volume I of Hans Vaihinger, *Kommentar zu Kant's Kritik der Reinen Vernunft*, 2nd ed., 2 vols. (Stuttgart, Berlin, and Leipzig: Union Deutsche Verlagsgesellschaft, 1922; first published 1881), 107–16.

<sup>4</sup> 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 *cognizers* to employ certain concepts with right (A84-5/B117). In the *Critique of Judgment*, on the other hand, Kant speaks both of concepts and of *cognitive faculties* as possessing "domains" over which they exercise legislative authority.<sup>5</sup>

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 figurative 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 entitlement-establishing "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" (Aix). 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*"<sup>6</sup> 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, city republics, 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.<sup>7</sup> A passage in which Kant refers explicitly to a legal deduction is worth quoting in full. The example concerns an

<sup>5</sup> *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 this passage to my attention.

<sup>6</sup> Dieter Henrich, "Kant's notion of a Deduction and the Methodological Background to the First *Critique*," in *Kant's Transcendental Deductions: The Three "Critiques" and the "Opus Postumum"*, Eckart Förster, ed. (Stanford: Stanford University Press, 1989), 29–46.

<sup>7</sup> 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 Ludewig at 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 Enlightenment 1660–1789* [New York: Harper & Row, 1966], 177).

assembly of the States General at the Hague, which took place, according to Kant, "in the first half of the [eighteenth] century":<sup>8</sup>

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 arbiter, 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 relegated 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.)<sup>9</sup>

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 (1) is more contestable than Henrich seems to allow, this thesis is nonetheless defensible. Secondly, I will 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" (B159).<sup>10</sup> Thirdly, I will offer arguments to substantiate thesis (3), which Henrich is content to leave as a conjecture.

<sup>8</sup> The passage is cited by Henrich, op. cit., 33.

<sup>9</sup> Surprisingly, given his account of the role of *facta* in deductions, Henrich at one point claims that the *quaestio juris* "can be answered in a satisfactory way even if the *quaestio facti* meets with insurmountable difficulties" (Henrich, op. cit., 36). Much of this essay will be taken up with showing that this remark, insofar as it is intended to apply to Kant's understanding of these terms, cannot be correct.

<sup>10</sup> In arguing for this thesis I will be attempting to substantiate a claim made, without supporting arguments, by H. J. de Vleeschauwer in his *La déduction transcendentale dans l'œuvre de Kant*, 3 vols. (Paris, Antwerp, and The Hague: Leroux, De Sikkel, and Nijhoff, 1934–7), vol. 2, 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 "Fact of Reason" of 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 *quaestio facti* is, in what manner one has first come into possession of a concept; the *quaestio iuris*, with what right one possesses and uses it" (*Reflexion* 5636, 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 a *res[us] facti*, it is, as lawyers say, *quaestio 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 such concepts, we must also ask by what right we avail ourselves of them. This latter question has a far more important influence in metaphysics, for that is critique, thus *quaestio iuris*. The former question has been the business of two philosophers, of Locke and Leibniz. (*Metaphysik Mrongovius*, 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 Mrongovius*, Ak. 29: 781–2)

Taken together, these passages give the impression that Kant introduces the notion of a *quaestio 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 over-reading 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 Mrongovius 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/B116). There, jurists are said to demand proof

both of 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 *quid facti* must constitute an initial stage in the proof of the *quid 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 1780<sup>11</sup> ethics lectures:

*Imputatio facti* [imputation of fact] does not necessarily imply *imputatio 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)<sup>12</sup>

Here Kant is distinguishing causal from legal responsibility. The *factum*—what is imputed by the *imputatio 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 *imputatio facti* and the *imputatio legis*. So again the *factum* would seem to be relevant to the *quid juris*.

These conclusions are corroborated by a passage from the Vigilantius lecture notes<sup>13</sup> in which Kant presents, in syllogistic form, an illustrative legal argument which makes the role of the *imputatio facti* especially vivid. He says:

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

<i>lex</i> (pr. maj)	The abuser shall restore his honour to the abused.
<i>imp. facti</i> (pr. min)	He has abused me.
Therefore	He must make amends.
	( <i>Vigilantius Ethics Lectures</i> , Ak. 27: 562)

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,<sup>14</sup> the conclusion reports the *imputatio legis*, which is the "*applicatio legis ad factum sub lege sumptum* [the application of law to the fact

<sup>11</sup> The date is conjectural.

<sup>12</sup> Kant, *Lectures on Ethics*, Methuen library reprints, Louis Infield, trans., J. Macmurray, ed. (London: Methuen & Co. Ltd, 1979). This is the translation of a text constructed by Paul Menzer in 1924 from a transcription, since lost, of Brauer's notes. The editor expresses confidence that the notes were taken during the actual delivery of Kant's lectures, and they date them—more speculatively—to 1780 (op. cit., introduction, ix).

<sup>13</sup> The notes were begun in 1793 and are entitled "On the metaphysics of morals." They are collected in Ak. 27.

<sup>14</sup> The textbooks Kant used as the basis for his ethics lectures were A. G. Baumgarten's *Ethica Philosophica* (1st ed. 1740, 2nd ed. 1751, 3rd ed. 1763, Ak. 27: 733–1015) and *Initia Philosophiae Practicae Primae* (1760, Ak. 19: 7–91). In the *Initia*, Baumgarten devotes several sections to the topic of "Imputatio facti," drawing the distinction between *imputatio facti* and *imputatio legis* in much the same terms as Kant (cf. *Initia*, VII, §125 ff.).

subsumed under it]" (ibid.).<sup>15</sup> 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 *eventus 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 *auctor*<sup>16</sup> of the *factum*" (*Vigilantius Ethics Lectures*, Ak. 27: 562).<sup>17</sup> 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 facto* [the factors in the case], [it is already necessary] to have regard to the law" (Ak. 27: 563). 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 [Urheber] (causus libera) of an action [Handlung], which is then called a deed [Tat] (factum) and stands under laws. If the judgement also carries with it the rightful consequences of this deed, it is an imputation having rightful force (imputatio iudiciaria s. valida); [judiciary or valid imputation] . . . The (natural or moral) person that is authorized to impute with rightful force is called a judge or a court (iudex 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 Deduction<sup>18</sup> 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 assume that the distinc-

tion 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 forensically 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.<sup>19</sup> 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*<sup>20</sup> from the facts of the case and the laws of the land. To give such a proof is to establish a *quaestio juris*. I have suggested, further, that since such a proof rests 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 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),"<sup>21</sup> but also "to derive (from a source)" and "to trace (by logical argument), or deduce."<sup>22</sup> 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

<sup>15</sup> Compare the Powalski ethics lectures: "*Imputatio legis* in the juridical sense is the applicatio legis ad factum. The *imputatio legis ad factum* is actually the subsumption of an action [*Handlung*] under moral laws" (Ak. 27: 159, my translation).

<sup>16</sup> Kant defines an "auctor" as "an originator of an action" (Ak. 27: 558).

<sup>17</sup> Compare Baumgarten's *Initia* §128: "Indagationes variorum facti sunt QUAESTIONES FACTI. . . Enumeratio momentorum in facto est SPECIES FACTI (factum)."

<sup>18</sup> 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. B159).

<sup>19</sup> It will be important to keep this observation in mind when we come to discuss the Fact of Reason.

<sup>20</sup> I take the idea of "lawfulness" to include what the law permits and what it demands.

<sup>21</sup> Cf. *Oxford Latin Dictionary*, F. G. W. Glare, ed. (Oxford: Clarendon Press, 1984), 496, entries 1–4.

<sup>22</sup> *Ibid.*, 497, entry 13.

Deduction," which Kant first introduces in the second edition of the *Critique* as a label for the argument of the chapter entitled the "Clue to the Discovery of the Pure Concepts of the Understanding." It would be a mistake to imagine that the Metaphysical Deduction is so called because it plays the role of a deduction in the strict legal sense. For, unless the Transcendental Deduction is to be rendered superfluous, the Metaphysical Deduction cannot be a *conclusive* proof of the validity of the concepts with which it deals. The Metaphysical Deduction is rather termed a "Deduction" because it is a tracing of the concepts of cause, substance, and so forth, to their common origin in the Understanding (cf. A81/B107). Kant seems to signal this usage in the *Prolegomena* when he describes the Metaphysical Deduction as the Categories' "derivation [*Ableitung*]"<sup>23</sup> or deduction" (*Prolegomena*, Ak. 4: 324, my emphasis).

Like the Metaphysical Deduction, an "empirical deduction" counts as a deduction in the broad sense of a "derivation," since, as we shall see in the next section, it addresses itself to the question of a concept's origins. The Deduction of the "Ideas of Reason," on the other hand, is harder to classify. Kant terms it a purely "subjective derivation"<sup>24</sup> in order to distinguish it from the kind of "objective deduction," that is possible only for representations, such as the Categories, that have relation to an object (A336/B393). The Deduction of the Ideas, I take it, seeks to establish the non-psychological status of these representations by tracing them to their source in the faculty of Reason. It is therefore a deduction in the sense of a "derivation," but, unlike the Metaphysical Deduction, it is *also* a deduction in the narrow legal sense, for it purports to be a conclusive vindication of the claims with which it deals. On the other hand, these claims are not the implicit claims of the Ideas to have instances, but rather *our* claims to their rightful *regulative* employment (A671/B699).

The Deduction of the Categories, taken as a whole, is a deduction in the narrow legal sense, but the Metaphysical Deduction is a deduction in the broader sense—and in this sense alone. Consequently, although Henrich is right to depict Kant as sometimes employing the notion of a "deduction" as a "derivation" or "tracing" of one thing back to another, he is wrong, I think, to treat this broader sense of "deduction" as the one most central to Kant's employment of the legal metaphor in the Deduction of the Categories (cf. Henrich, *op. cit.*, 35). On the contrary, the key notion, as the passage which opens the Deduction suggests, is the narrowly *jurisprudential* notion of a deduction as a proof of the question: *quid juris*.

#### 4. LOCKE'S "PHYSIOLOGY OF THE HUMAN UNDERSTANDING"

Before asking what *does* play the role of the *factum* in the Deduction of the Categories, it will be useful to first dispose of a red herring. Recall that in his metaphysics lectures Kant describes Locke's "physiology" as an "investigation of a *res facti*."

<sup>23</sup> "*Ableitung*" can mean "derivation," "descent," and "genealogy." "*Ableiten*" has among its meanings "to trace (back)." See Langenscheidt's *Enzyklopädisches Wörterbuch*, Otto Springer, ed. (Berlin: Langenscheidt, 1979), pt. 2, vol. A–K, 20.

<sup>24</sup> Reading with Erdmann "*Ableitung*" for "*Anleitung*."

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*—by making clearer what it is *not*—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 "not 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 Jäsche Logic*, 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."<sup>25</sup> 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" (A85–6/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-

<sup>25</sup> See, for example, Béatrice Longuenesse, *Kant and the Capacity to Judge: sensibility and discursivity in the transcendental analytic of the Critique of Pure Reason* (Princeton: Princeton University Press, 1998), 119.

exercise" by sensory promptings (cf. B1). It is an account of which sense impressions first provoke the exercise of a particular concept; it does not address the deeper question of *how* this concept comes to be present in the mind in the first place. A physiological derivation of the pure concept of cause-and-effect, for example, would tell us that the first exercise of this concept must be preceded by an experience of constant conjunction. The concept of "an event of the same kind" will need to have been acquired before we can (in another sense) "acquire"<sup>26</sup> the concept of cause-and-effect—that is to say, before the latter concept can stand forth and make itself known as a component concept of the faculty of Understanding.<sup>27</sup> Note that this remains the case even though for Kant experience is not possible unless it is experience of a thoroughgoing causal order—a point that should serve to remind us that the account is given only in the order of *time*. We may conclude that a physiological derivation provides not even the beginnings of a *justification* of a concept, for it aims merely to identify and describe the sensory promptings that occasion a concept's first exercise.<sup>28</sup> Since it does not aim at justification, a physiological derivation cannot be a deduction in the legal sense, and because it is not concerned with tracing concepts to their origins, it also fails to qualify as a deduction in the broader non-legal sense.

Locke's mistake, Kant supposes, is that he fails to maintain a clear distinction between his "physiological derivation of the pure concepts of the understanding" and an "empirical deduction." Kant says: "The famous Locke . . . because he encountered the pure concepts of the understanding in experience also derived them from this experience" (A95/B127). That is to say, Locke mistook his own (in itself perfectly anodyne) account of the occasioning causes of the production of a Pure Concept of the Understanding, for an account of the experiences from which that concept was "abstracted"—in Locke's sense of this term.<sup>29</sup> It is because

<sup>26</sup> In his reply to Eberhard, "On a Discovery," Kant explains why he terms even a priori concepts "acquired": "The *Critique* admits absolutely no divinely implanted [*anerschaffene*] or innate [*angeborene*] representations. It regards them all, whether they belong to intuition or to concepts of the understanding, as *acquired*." He allows, however, that there is "an original acquisition (as the teachers of natural right formulate it)" which applies both to the forms of intuition and to the Categories, and whose ground is "innate." (See "On a Discovery According to which Any New Critique of Pure Reason Has Been Made Superfluous by an Earlier One," in Henry Allison, *The Kant-Eberhard Controversy* [Baltimore: Johns Hopkins University Press, 1973], 221–2.) Note, incidentally, Kant's explicit allusion to the legal analogy in connection with this rather peculiar notion of "acquisition."

<sup>27</sup> The idea of a Pure Concept of the Understanding being "acquired" by differentiating itself from the rest of the Understanding as a distinct sub-capacity seems to have developed out of the more Lockean account of Pure Concept acquisition given by Kant in the *Inaugural Dissertation* (see Ak. 3: 395).

<sup>28</sup> Kant conceives a "physiology" as a *psychological* project. "Physiology," he says, is "the consideration of the nature of reason: how reason generates concepts of the understanding in us. It is really a part of psychology" (*Metaphysik Mrongovius*, Ak. 29: 764, English translation in *The Cambridge Edition of the Works of Immanuel Kant, Lectures on Metaphysics*, Karl Ameriks and Steve Naragon, eds. and trans. [Cambridge: Cambridge University Press, 1997]).

<sup>29</sup> In what follows, I will use the term 'abstraction' in a loose way to mean "broadly Lockean accounts of empirical-concept acquisition." Accounts, that is to say, that make central the idea of attending to respects in which things resemble one another, while, in another sense, "abstracting" from their differences. Kant, who subscribes to a Lockean account of empirical concept acquisition (see *Vienna Logic*, Ak. 24: 904–5), uses the term primarily in this second, more narrow, sense (see *The Jäsche Logic*, §6).

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. A1x).

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 facti* is a necessary first step in the proof of the *quid juris*. Combining this conclusion with Henrich's historical observations about the nature of *Deduktionsschriften*, 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 us 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.<sup>30</sup> 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 rabble of common experience" (Aix). 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

<sup>30</sup> 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 parents were *legally* married, but, as we saw in §1, this is compatible with the circumstance being a *factum*.

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<sup>31</sup> 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 (A112). 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 reflexion. 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.<sup>32</sup>

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

<sup>31</sup> The Pure Concepts of the Understanding include the Categories—which Kant also terms "the predicaments" (A81/B107), but also certain concepts derivable from them such as action and force, which Kant terms "predicables" (A82/B108). 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."

<sup>32</sup> David Hume, *A Treatise of Human Nature*, David Fate Norton and Mary J. Norton, eds. (Oxford: Oxford University Press, 2000), bk. 1, pt. 3, §14.

"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.<sup>33</sup> 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. *Prolegomena*, 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.<sup>34</sup> In the *Critique* Kant draws attention to considerations supporting the a priority of various individual concepts,<sup>35</sup> 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 so 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).<sup>36</sup>

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<sup>37</sup> in another guise. They are these very functions "insofar 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-

<sup>33</sup> Kant's assumes a trichotomy of possible theories of the origin of a representation. A representation is either (1) "self-thought" a priori, (2) acquired from experience (by Lockean abstraction or Hume-style brain-generation), or (3) divinely implanted. He argues against the third alternative, which he terms a "preformation-system of pure reason," at B167.

<sup>34</sup> It is noteworthy that in the *Prolegomena* Kant describes Hume's problem as a question concerning the origin of the concept (*Prolegomena to Any Future Metaphysics that will be able to come forward as a science*, Gary Hatfield, trans. and ed., Ak. 4: 258), and that he shows himself to be aware of Hume's account of this origin as—as Kant puts it—the imagination's passing off "a subjective necessity (i.e., habit)" as "an objective necessity" (*ibid.*).

<sup>35</sup> As, for instance, at B6 he argues for the purity of origin of the concept of substance.

<sup>36</sup> For confirmation that Kant sees the table of judgements as concerned with establishing the origins of the Categorial concepts see the *Metaphysik Mrongovius* (Ak. 29: 801).

<sup>37</sup> 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 A81/B106.

cation satisfies him that these twelve concepts are primitive a priori Concepts of the Understanding. For Kant, then, the Metaphysical Deduction shows that there really *are* such representations as genuinely a priori Concepts of the Understanding.<sup>38</sup> It shows—pace Hume—that concepts such as cause, which purport to contain necessity among their marks, are indeed more than mere "fabrication[s] of the brain" (A91/B124, my translation). In terms of the legal metaphor, the argument of the Metaphysical Deduction provides the "birth certificate" that establishes the Categories' true ancestry. It shows that the Categories are what they purport to be, namely, concepts of noble stock. Concepts, that is to say, whose origins are untainted by empirical elements.<sup>39</sup>

In light of these observations I would propose that we conceive of the arguments of the Deduction chapter as intended to anticipate two kinds of potential challenge to the idea that the concepts we take to be Categories are capable of having instances within experience. The first challenge questions whether these concepts are representations with the right kind of pedigree to be capable of bearing genuine representational relations to items in the world: how do we know that they do not have the kind of psychological origins that would brand them illegitimate pseudo-concepts, in the style of Hume's concept of cause? The second challenge questions the ability of even genuinely a priori representations to have instances within space and time. Even if the Categories are in the mind legitimately, how do we know that they are capable of applying within, or having jurisdiction over, a particular domain? And if they *do* apply, what are the proper limits of their application?

To explain how Kant answers the second and third of these questions would be to provide a full interpretation of the heart of the Deduction of the Categories. I have no such ambitions in this essay, but I do hope to have outlined a plausible view of the broad structure of this argument. The argument divides into two parts, corresponding to the two challenges just described. The first part—the Metaphysical Deduction—addresses the threat posed by Hume's account of the origin of the idea of necessary connection: it aims to establish the *quaestio facti*. The second

<sup>38</sup> My talk at this stage of the Categories as "concepts" is supposed to share the neutrality of Kant's talk of the "usurped" notions of fortune and fate as "concepts" (A84/B117). To establish that the Categories really are genuine *concepts* it will be necessary to show that it is a (real) possibility that they should have instances. So this way of speaking is merely provisional.

<sup>39</sup> In emphasizing that the Metaphysical Deduction plays a part in justifying the Categories, I am going against a view, most baldly stated by Lewis White Beck, that this role of the Deduction is *merely* to identify the Categories prior to a justification of them. (See Lewis White Beck, *A Commentary on Kant's Critique of Practical Reason* [Chicago: University of Chicago Press, Medway Reprints, 1984], 110.) To insist on this point is not, however, to deny that establishing the a priority of the Categories is not the only task Kant assigns to the Metaphysical Deduction. The table of judgements, being the clue to the *discovery* of the Pure Concepts of the Understanding, is supposed to facilitate the principled *identification* of these concepts (A80–1/B106–7; cf. A67/B92). Kant cannot, therefore, be meaning to appeal to an isomorphism between the table of Categories and the table of judgements as evidence for his view that what it is to be a Category is just to be a function of judgement in its application to a manifold of sensibility. For such an argument would be possible only if Kant had a means of identifying the Categories independently of the Metaphysical Deduction, and that is manifestly not his view. How the Metaphysical Deduction can hope to combine the goal of identifying the categories with that of establishing their origins as a priori is therefore a vexed question—but one that lies beyond the scope of this paper.



is the argument of sections 15–26 of the Deduction chapter. It takes the *quaestio 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.<sup>40</sup>

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.<sup>41</sup>

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 commonest 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 first to establish and justify it, by proof of the purity of its origin, even in the judgement of this common reason [*gemeinen 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 disputation about its possibility and all consequences which may be drawn from it. (KprV, Ak. 5: 91, 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-

<sup>40</sup> It may sound odd that one deduction should be part of another, but this should not sound so odd if we recall that the Metaphysical Deduction is only a deduction in the sense of a *derivation*: it does not conclusively establish a question of validity.

<sup>41</sup> *Critique of Practical Reason*; hereafter "KprV," Ak. 5: 141. English translation in *The Cambridge Edition of the Works of Immanuel Kant, Practical Philosophy*, Mary J. Gregor, ed. (Cambridge: Cambridge University Press, 1996).

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.<sup>42</sup>

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.<sup>43</sup> The phrase "*gleichsam als ein Faktum*" does not signal caution, as Lewis White Beck suggests,<sup>44</sup> but rather figuration:<sup>45</sup> 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.<sup>46</sup> 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 judgement 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<sup>47</sup> 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

<sup>42</sup> 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" (*Moravian ethics lectures*, Ak. 29: 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).

<sup>43</sup> Cf. *Collins ethics lectures*, Ak. 27: 274–5.

<sup>44</sup> Beck, *op. cit.*, 166, n. 10.

<sup>45</sup> Compare Kant's use of the qualification "as it were" in the overtly figurative passage, A704/B732, quoted in §1.

<sup>46</sup> Cf. KprV, Ak. 5: 30 and 5: 42. For a fuller discussion of this argument, and of the kind of freedom it demonstrates, see Henry Allison, *Kant's Theory of Freedom* (Cambridge: Cambridge University Press, 1990), ch. 13.

<sup>47</sup> 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 *factum*, 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 awareness of them, so the *factum* 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.<sup>48</sup>

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 pangs of it, which is not in fact the case" (*Collins ethics 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. (KprV, Ak. 5: 91–2)

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:

<sup>48</sup> Cf. KprV, 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., 529).

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. (KprV, 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.<sup>49</sup> 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."<sup>50</sup> 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 defeasible, 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.<sup>51</sup>

Here would be good place to discuss an alternative interpretation the Fact of Reason that has been suggested recently by Paul Franks.<sup>52</sup> 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. 5: 31) (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

<sup>49</sup> KprV, Ak. 5: 75. For an illuminating discussion of the place of moral feeling in Kant's theory of the will, see Peter Railton, "Kant meets Aristotle where Reason meets Appetite," in *Argument and Analysis: Proceedings of the 4th International Congress of the GAP*, Carlos Ulises Moulines and Karl-Georg Niebergall, eds. (Paderborn: Mentis Verlag, 2000).

<sup>50</sup> KprV, 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 (KprV, Ak. 5: 55).

<sup>51</sup> 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 *facta*.

<sup>52</sup> Paul Franks, "Freedom, Tatsache and Tathandlung in the Development of Fichte's Jena Wissenschaftslehre," *Archiv für Geschichte der Philosophie* (1997): 79.

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 will 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 Franks'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 submission . . . 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 human 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: 426). 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 agnosticism about whether, as a matter of fact, we ever *act* 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 what 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<sup>53</sup>—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."<sup>54</sup> 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<sup>55</sup> 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.<sup>56</sup>

<sup>53</sup> Kant speaks of common Reason's "rightful claim to . . . freedom of will" (my emphasis) in the *Groundwork of the Metaphysics of Morals* (Ak. 4: 457; English translation in Gregor, op. cit., 103).

<sup>54</sup> 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. S. Haldane 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. 1), along with further references to philosophers who share Hegel's allegedly dim view of the Fact.

<sup>55</sup> Kant says too many different things about the Fact to make the goal of an all-encompassing reading realistic. He identifies the Fact of Reason with the moral law (KprV, Ak. 5: 47), autonomy in the moral law (KprV, Ak. 5: 42), our consciousness of the moral law (KprV, Ak. 5: 31), our consciousness of freedom (KprV, Ak. 5: 42), and the categorical imperative (*The Metaphysics of Morals*, Ak. 6: 252 and *Opus Postumum*, Ak. 21: 21). And he terms a "res facti" the fact "that the law is in us and actually the highest" (*Vorarbeiten zu Die Metaphysik der Sitten*, Ak. 23: 378). I believe my reading can cope with all of these characterizations except, perhaps, the one that identifies the Fact of Reason with our consciousness of freedom. I am inclined to think that at KprV, Ak. 5: 42 Kant means to stress that (our knowledge of) the Fact is *tantamount* to knowledge of freedom, rather than strictly (numerically) identical with it, for his first thought is that the former is "inseparably connected with" the latter, which carries the implicature that the two are not, in the strictest sense, identical. However, since Kant elsewhere describes freedom, if not as "the Fact of Reason," then at least as "a fact" (*Critique of Judgement*, §91), this issue remains subject to debate. (In assembling these passages I have drawn freely upon Beck's scholarship [op. cit., 166, n. 10], and in his *Studies in the Philosophy of Kant* [Indianapolis, IN: Bobbs-Merrill, 1965], 209.)

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