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*In memoriam Konrad Cramer
(1933–2013)*

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Formal Freedom in Fichte's System of Ethics

Fichtes Darstellung der „Tätigkeit“ besteht aus drei Teilen: Im Zentrum steht (1) seine Darlegung dessen, was es heißt, ein moralisch Handelnder zu sein (einen freien Willen in dem Sinne zu haben, wie er für die Zuschreibung von Verantwortung und die Adressierung moralischer Imperative erforderlich ist); (2) die Darstellung des konstituierenden Zwecks des moralischen Handelns (worin die materiale Unabhängigkeit oder Selbstgenügsamkeit der Vernunft besteht); und schließlich (3) die Darstellung der Verbindung beider (d. h. warum ein moralisch Handelnder materiale Selbstgenügsamkeit zu seinem Zweck machen sollte). Im folgenden Beitrag präsentiere ich eine Interpretation des ersten dieser drei Teile: Fichtes Darstellung der für moralisches Handeln notwendigen psychischen Vermögen oder der, wie er sie nennt, „formalen Freiheit“.

I. Introduction

The chief interest in Fichte's account of moral agency lies, I believe, in the use to which he puts it in deriving a system of normative ethics and political philosophy in the *Foundations of Natural Right* (1797) and the *System of Ethics* (1798). Together these constitute a practical philosophy that is both recognizably Kantian in spirit and strikingly different from Kant's own in some of its chief substantive claims.

It is recognizably Kantian in its fundamental commitments about the relation between moral agency and moral norms. For Fichte, moral considerations always provide overriding reasons for action, and such reasons cannot fail to have (at least some) motivational force, and like Kant he bases those commitments on a more fundamental commitment to the autonomy of the free rational will: The free will is the source of its own norms, and morality is the constitutive end of free willing as such.

But Fichte's ethics is distinct from Kant's in deep and interesting ways. For example, whereas for Kant practical reason prescribes a procedural constraint (i.e., the categorical imperative test) on ends that are the product of prudential reasoning,¹ for Fichte practical reason directly prescribes a substantive end (i.e.,

¹ I rely here on a reading of Kant that is controversial. I defend this interpretation in other work; I presuppose it here because I must presuppose something in order to draw the (I hope, clarifying) contrasts between Kant and Fichte that I will draw throughout the paper. Briefly, I believe that Kant's texts best support an interpretation on which the highest moral principle is a formal constraint (GMS, p. 400; cf. KpV,

the material self-sufficiency of rational agency wherever it occurs) (SL, pp. 59–60, 144–5, 149, 152–3, 209, 211–12, 275). The guiding thought behind his doctrine of duties is a non-welfarist form of consequentialism. Further disagreements with Kant follow, both in the account of moral deliberation and in the account of the moral worth of actions.²

I believe that some of these changes are salutary, and that Fichte's ethical project should interest anyone disposed to think of ethics in a broadly Kantian way. His doctrine of duties is less tortured than Kant's at some of the places at which Kant's is most tortured (chiefly the accounts of duties of beneficence³ and self-improvement⁴). His account of the moral importance of scientific research and education, and a robust account of duties to future generations, go

pp. 21–29). We are obliged to embrace those among the ends offered by rational nature (collected under the categories happiness and perfection, or more generally humanity) that are embraceable given that and other formal constraints (MS, p. 395); one's own perfection and others' happiness are the most general categories of ends that survive that process (and so are obligatory ends) (Kant, MS, pp. 385–6). Some take Kant to present humanity as a substantive end in the second formulation of the categorical imperative in the Groundwork (and so deny that the highest moral principle is a formal one). On any reading Kant's account of obligatory ends will be distinct from Fichte's, both in their characterization and in their derivation. Some accounts of Kant will bring him closer to Fichte than others. But none of that affects the interpretation of Fichte I give here.

² To the recognizably Kantian requirement that the will of the agent be internally configured in the right way (cf. e.g., GMS, pp. 394, 397–9), Fichte adds a requirement that the action's actual consequences be such as to best promote the moral end (cf. SL, pp. 153–6).

³ For Fichte, beneficence aims at promoting others' material self-sufficiency (their capacity to pursue ends in general) rather than their happiness. Some proponents of ethics in a Kantian spirit are already closer to the Fichtean picture than Kant's own here, justifying the (Kantian) duty to promote happiness on the grounds that this is an indirect way of supporting the development and exercise of others' agency. So for instance Herman argues that we are to attend to the well-being of others “because and insofar as it is in and through the pursuit of happiness that persons create and sustain themselves as agents. [...] agency-related needs are the object of aid [...]” (Herman, 2007, p. 228); “it is by means of our effect on the happiness of others that we tend to affect their rational condition and abilities” (ibid., p. 267). Compare also the account of “true needs” in Herman, 1993, pp. 55–7.

⁴ Fichte's account of duties of self-improvement is quite straightforward, and these duties are exactly analogous to duties of beneficence. The problem with Kant's own account of duties of self-improvement is that her own perfection cannot be assumed to be an end any individual inevitably has, or else it would be ruled out as a duty by the same argument used to rule out the end of one's own happiness at MS, pp. 385–6; yet if it is only an end nature has for humans as a species (which is the view Kant seems to advance in the history essays – cf. e.g., “Idee zu einer allgemeinen Geschichte in weltbürgerlicher Absicht”, pp. 18–22 and Kant, “Muthmaßlicher Anfang der Menschengeschichte” pp. 115–121) then no contradiction in willing can be derived from its generalized rejection; and there appears to be no third option.

beyond anything one sees in Kant or the Kantian literature. Finally, Fichte has a stronger basis than Kant on which to argue that some measure of socio-economic equality is a requirement of right.⁵ On the whole Fichte's ethics seems to me a compelling way of working out what I take to be the core idea of the Kantian project: The idea that the fundamental moral value and the source of moral value is rational agency (and its exercise).⁶

We can divide Fichte's account of agency into three parts: the core account of what it is to be a moral agent (to have free will in the sense required to be morally responsible and an appropriate addressee of moral imperatives); the account of the constitutive end of moral agency (what reason's material independence or self-sufficiency amounts to); and the account of the connection between these two (that is, of why any moral agent must take material self-sufficiency as its end). What I would like to do in this paper is to present an interpretation of the first of these three parts: the core notion of moral agency, or what Fichte calls "formal freedom".

I will begin by presenting Fichte's general characterization of formal freedom, which has two main components (§ II). I will then examine what is involved in the second component and its conditions of possibility (§ III). I will conclude by examining some complications, and some consequences (positive or negative, depending on one's other commitments) of Fichte's view (§ IV).

II. Formal Freedom

The core notion of rational agency is something Fichte typically calls "formal freedom" (but often "freedom" unmodified). There are textual difficulties surrounding the term: in addition to using "formal freedom" to refer to moral agency, Fichte also uses it to refer to two further items. First, in both the *System of Ethics* and the *Foundations of Natural Right* (where this use predominates) he uses it to refer to a sphere of (mainly negative) protections on personal integrity and property. He argues that such protections are justified by the ways in which they further the exercise of free agency, but clearly what is at issue in formal freedom in this second sense is not a property of persons (free will) but a property of their situations (a set of action opportunities). Second, there are points in the *System of Ethics* (which I will discuss in § IV) at which Fichte appears to use the term "formal freedom" to refer to what is at most a com-

⁵ Pogge shows that Kant can mount at most a weak defense of egalitarian institutions (Pogge, 2002, pp. 153 ff.). Wood discusses Fichte's superiority on this score in chapter 11 of Wood, 2008.

⁶ Many moral philosophers who fall outside the "Kantian" rubric are sympathetic to a picture very like Fichte's. Sen's capabilities approach comes first to mind. See Sen, 1979, 1984, 1992, ch. 1–4, and 1999, ch. 1–4.

ponent of the core notion of moral agency as I will present it. I have chosen to use Fichte's term nonetheless, in part because it allows me to deal straightforwardly with the second textual difficulty; the use of "formal freedom" in these passages reflects a confusion that I would like to address head-on. But for now let me stipulate that where "formal freedom" occurs in this paper, it refers to moral agency (that is, free will in the sense required for an agent to be morally responsible and an appropriate addressee of moral imperatives).

Formal freedom, briefly stated, is the disposition to form intentions spontaneously on the basis of concepts of ends. To call it a disposition rather than a capacity or faculty is already to signal a departure from Kant. Fichte tells us that formal freedom is neither the activity of forming spontaneous intentions nor the mere capacity to do so, but the "tendency" to do so – a "tendency to determine itself absolutely, without any external impetus" (SL, p. 28; cf. 29, 30, 32, 37, 38).⁷ For Kant the free will is a sort of causality or, alternatively, a faculty, and Fichte's conception fits well only the first of these characterizations.

Fichte's claim that that formal freedom requires spontaneity – "an absolutely free, conscious transition from indeterminacy to determination" (SL, p. 158) that is not explicable as the outcome of any sort of natural causality (SL, pp. 134–6; cf. 112, 158–9, 182) – recalls Kant's claim that the free will would have to involve transcendental freedom, "a causality [...] through which something happens without the cause of [that something] being itself determined according to necessary laws by a further antecedent cause – that is, an absolute spontaneity of the cause to begin, of itself, a series of appearances that [then] proceeds according to natural laws" (KrV, A 446/B 474).⁸

Kant thought such spontaneity to be empirically unobservable (also introspectively); and he recognized that the claim that we have freedom in this sense is philosophically controversial. But he thought spontaneity required for moral responsibility, and he thought our possession of it demonstrable from a practical point of view.⁹

Like Kant, Fichte emphasizes the free will's independence of determination by natural causes: "Every link in a natural chain is predetermined, whether by the law of mechanism or that of organism. [...] But what will occur in the I [...] is not predetermined and simply undeterminable. There is no law according to which free self-determinations follow and can be predicted, because these depend upon the determination of the intelligence, but this latter is as such simply free, pure activity" (SL, p. 134).¹⁰ Fichte also agrees with Kant that only

⁷ All translations of Fichte are my own.

⁸ All translations of Kant are my own.

⁹ This is a condensed statement of a complex Kantian view that, moreover, evolved over time. For a more detailed discussion see Kosch, 2006 a, ch. 1.

¹⁰ Notice that natural causes are described as those operating according to the laws of "mechanism or organism". This points to a further disagreement with Kant (though

creatures displaying such independence are morally responsible, though his account of the connection between spontaneity and responsibility differs from Kant's. For Fichte, responsibility requires spontaneity, but only because responsibility requires thought, and spontaneity is one of the features that characterizes thought. (I will return to this difference in a moment.)

Because Fichte treats the transition from indeterminacy to (self-)determination as the object of introspective consciousness,¹¹ and because he treats the unpredictability of human behavior as (non-introspective) evidence that it involves some spontaneous causality, there is for him no special epistemological problem connected with it. He recognizes that the existence of such spontaneous causality is an object of philosophical controversy, but he sees that controversy as unsettled by argument because informed by two incompatible basic assumptions. Those already committed to the universality of mechanistic causality ("dogmatists") will explain away the phenomenological and observational facts as illusions (SL, p. 25), but that explanation will appeal only to those who already deny the existence of free will. Those not so committed will take the facts at face value, but they likewise have no argument that will convince the others. One's stance on the spontaneity question is, according to Fichte, the object of a radical choice of philosophical disposition (SL, p. 26; cf. EE, pp. 429 ff.).¹²

not one directly relevant to the account of free will). On Fichte's view organisms (even non-human ones) are not mechanistically determined; their behavior must instead be understood in terms of a drive toward organization (of which self-preservation is a part) expressing itself both in their internal articulation and in their interactions with the environment (SL, p. 121). Kant's position in the Critique of the Power of Judgment was that we cannot comprehend how organisms could be produced by mechanistic causality (see KU, pp. 362–84); Fichte's position in the *Sittenlehre* appears to be that the activity of organisms cannot be the product of mechanistic causality (SL, pp. 110–15). Perhaps under Schelling's influence, he thinks of three types of causality as operating alongside one another in the world of experience: mechanistic causal laws govern inorganic nature, teleological principles govern organic nature, and laws of rational reflection govern rational agents. Both of the latter (teleological and rational) are normative, rather than (purely) descriptive. Those governing rational beings are, in addition, conscious and self-imposed (SL, p. 125), their operation mediated through concepts of ends.

¹¹ For instance, he describes "consciousness of my indeterminacy" as "condition of the consciousness of my self-determination by free activity" (SL, p. 137).

¹² Fichte is not committed, as Kant is, to the unknowable noumenal status of the free will, and so the Kantian caveat – that "that which, in relation to sensuous impulses, is entitled freedom may [...] in relation to higher and more remote operating causes, be nature again" (KrV, A 803/B 831) – is not required. It has been laid to rest in the foundations of his transcendental philosophy, in the rejection of the Kantian thing in itself, which does away with any worries about intelligible determinism (cf. SL, pp. 17, 135–36, 160–61 and Neuhouser, 1990, pp. 120 ff.).

The characterization of formal freedom as spontaneity is a negative one: naturalistic explanations of human behavior are incomplete, and even phenomenological, consciousness of spontaneity is consciousness of being non-determined (SL, p. 137). But Fichte denies that unpredictability in the action of a cause suffices for attributing formal freedom to it (SL, p. 33). Spontaneity cannot exhaust the content of formal freedom; there must be a positive characterization as well (SL, pp. 36–8).

Fichte's positive characterization of formal freedom as a self-determination "through concepts" or "through thinking" (SL, pp. 35–8, 112) recalls Kant's description of practical freedom, the "capacity, through representations of that which itself is more remotely useful or harmful, to overcome the impressions on our sensible faculty of desire", and thus to escape determination by them (KrV, A 802/B 830; cf. A 534/B 562).

Kant thought of practical freedom as an empirically observable property that normal human adults have and animals lack.¹³ He introduced it as a conception of freedom in principle compatible with determinism, and so philosophically uncontroversial. He also introduced it as the capacity that allows resistance to immediate inclination based on both moral and prudential reasons (KrV, A 802/B 830). His eventual conclusion that transcendental spontaneity is required for morally responsible agency made these claims inconsistent, since whatever is empirically observable must also be causally determined. This is surely one of the motivations for his later commitment to the inscrutability of moral character, and it rendered the project of giving an empirical account of how we can be morally motivated deeply problematic (KrV, A 551n/B 579n; cf. Rel., pp. 21n, 51).

The disposition to form representations of ends is, for Fichte as for Kant, what allows an agent to be motivated by something other than immediate inclination. Such ends can be moral, as when one "sets oneself an end that runs counter to all inclinations and is chosen nevertheless, from duty" (SL, p. 137). They can also be prudential: "I choose with full freedom of will, for I choose with consciousness of self-determination, [even in cases in which] I by no means sacrifice enjoyment to morality, but only to a different enjoyment" (SL, p. 162). Fichte even allows for a third kind of case with no Kantian correlate, that of a "heroic" character who is able to subordinate all other motivations to a blind and lawless (and so amoral) drive for self-sufficiency (SL, pp. 184–91).

Because Fichte lacked the Kantian commitments that would preclude empirical observation of a will to which spontaneous causality could be attributed,

¹³ He contrasts the animal will, "which cannot be determined otherwise than through sensuous impulses, that is, pathologically", with the human will, which is not determined only by that which "immediately affects the senses" but can sometimes determine itself through reason (KrV, A 802/B 830; cf. A 534/B 562).

he could treat the free will as the object of straightforward empirical investigation. We can (and the moral philosopher is obliged to) give an empirical account of what is required to form concepts of ends and to resist immediate inclination in order to act on moral, prudential, or even “heroic” considerations. Moral agency is a complex psychological characteristic, involving component capacities whose production and maintenance requires the right sort of interaction with the right sort of human and natural environment. It is in the account of these components, and of their material conditions of possibility, that the raw materials of Fichte’s doctrine of duties lie.

Although his commitment to spontaneity puts Fichte on the incompatibilist side of the free will debate, the resulting account reads very much like a compatibilist one. This is because his commitment to spontaneity is unlike that of the incompatibilist-on-the-street. For Fichte, responsibility is tied directly only to the disposition to form intentions based on concepts of ends, and spontaneity enters only because forming concepts of ends is an exercise of thought (and spontaneity is, for Fichte, the mark of the mental). An agent’s actions are determined by his reasons as he sees them (as we see in the account of moral evil, which I will discuss in § IV); spontaneity enters at the level of seeing (or, occasionally, creating) the reasons. Saying that the will is spontaneous is for him therefore compatible with giving a full empirical explanation of both moral and immoral motivation.

III. Reflection

The formation of concepts of ends of all kinds relies on what Fichte calls “reflection”. He uses this term to refer to two distinct capacities, interrelated but independently variable, which I will call minimal and evaluative reflection.

Reflection in the minimal sense involves taking oneself (especially one’s actions, motives, and the connections between them) as an object of consideration. Fichte distinguishes two forms of self-consciousness: the sort of immediate conscious awareness one has of what one is doing (or planning or wanting), and the reflective self-consciousness of oneself-as-doing-this (or as-intending-to-do-this or as-having-this-desire). Reflection in the minimal sense is just the second of these two forms of self-consciousness, and Fichte calls this sort of self-scrutiny by both names: sometimes “self-consciousness” (SL, pp. 23, 29, 77, 89, 107, 161, 221), sometimes “reflecting” or “reflection” (SL, pp. 30–43 passim, 57, 73, 100, 109, 112, 124–6, 130–40 passim, 144, 147, 178).

At several points Fichte seems to claim that what becomes an object of reflection in the minimal sense comes, just in virtue of that, under the agent’s control (SL, pp. 125, 135, 140–1, 178–80). But I do not think we can take these statements at face value. Reflective consciousness of some motive or capacity or deliberative pattern in oneself is surely necessary, but just as surely not suffi-

cient, for controlling or correcting for it. We should read Fichte instead as claiming that, assuming that the other components of agency are in place, reflective consciousness suffices for control. As an example of what I take him to have in mind, take the case of an otherwise normal adult whose decisions are influenced by an unconscious bias. If at some point she becomes aware of having it (i.e., if the bias becomes the object of reflective self-consciousness), she thereby acquires responsibility for decisions influenced by it.¹⁴

As such cases demonstrate, reflection in this minimal sense admits of degrees: a person can be more or less reflective by taking more or less of her conduct, intentions, or motivational set as objects of consideration. Fichte describes spontaneous expansions of reflective self-consciousness, but his claim (to which I will return) that the level of moral cultivation possible for an individual depends on her social milieu (SL, p. 184) surely relies in part on the observation that many such expansions are the result of prompting by other agents.

Fichte also calls “reflection” an activity that clearly goes beyond reflective self-consciousness to encompass rational evaluation of the consistency of one’s set of motivations, intentions, and beliefs about matters of fact (SL, pp. 111–131 passim, 159, 162, 165–72 passim, 185, 187, 191–2). Reflection in this evaluative sense requires minimal reflection, in that evaluating the appropriateness of actions, motives, and their connections requires having them in view in the first place. But evaluative reflection also involves beliefs about how the world is and might be made to be (i.e., beliefs about facts, general causal laws, and one’s own causal capabilities); it also involves the application of a criterion of consistency to the conjunction of these beliefs and one’s motivations and intentions. It involves, in other words, practical reasoning.¹⁵

Fichte’s account of practical reasoning differs strikingly from Kant’s. For Kant, moral reasoning involves the application of a procedural constraint (consistency with universal legislation in a kingdom of ends) to the pursuit of an end (one’s own happiness) that is essentially agent-relative and that sets individual interests in opposition to one another. The technical-practical reasoning that produces the maxims upon which the categorical imperative test operates is purely calculative (i.e., means-ends or part-whole) reasoning aimed at ends subsidiary to the overarching end of happiness. For Fichte, by contrast, moral reasoning consists of the same maximizing calculative reasoning that, for Kant,

¹⁴ This should not be taken to suggest that Fichte is insensitive to the possibility of culpable ignorance (see, e.g., SL, p. 192).

¹⁵ We see this in Fichte’s account of the origin of evaluative reflection. Rational beings have a drive toward independence, toward “absolute self-determination to activity of activity’s sake” (SL, p. 131) rooted in “reason’s tendency to determine itself purely through itself” (SL, p. 130). Reflection, Fichte tells us, is a manifestation of this higher drive and it is reflection in this broader evaluative sense that he has in mind (SL, pp. 130–1).

characterizes the prudential case only. It is distinguished only by the fact that its end is the specifically moral end (i.e., reason's material independence or self-sufficiency).¹⁶ There is no additional step corresponding to the categorical imperative test because the moral end is agent-neutral from the outset and so cannot lead to the sort of collective self-undermining for which the categorical imperative test provides a corrective.

That he denies the existence of any substantive deontological principles is what I take Fichte to be saying when he says that morality determines practical deliberation (when it does) only by setting the end (SL, p. 166). The question for practical deliberation is what, for an agent in a determinate situation, progress toward this end requires – and the process of finding an answer to that question is just what it would be in any instance of theoretical reasoning.¹⁷ This set of facts explains what would otherwise be a quite mysterious claim on Fichte's part: that all the reasoning involved in practical deliberation is "theoretical". What he means is that practical reasoning consists wholly in the sort of reasoning Kant calls "technical-practical" and sorts under the theoretical part of cognition.¹⁸ In fact Fichte's assimilation of this sort of reasoning to Kantian reflecting judgment probably explains why he uses the term "reflection" to describe it (cf. KU, pp. 179 ff.; cf. AA 20, pp. 211 ff.). It is clear that Fichte means to signal his departure from Kant's account of practical reasoning in these passages.

Fichte thinks that all instances of practical reasoning aim at material independence or self-sufficiency in some sense, and that they differ only in how that end is conceived. Because rational beings are also natural beings, the end makes

¹⁶ Fichte defines the specifically moral end at SL, pp. 39–57 passim, 59–60, 144–5, 149, 152.

¹⁷ Fichte describes the phenomenology this way: the agent lets his theoretical faculties go their way until they hit upon something that produces a feeling of "cool approval" – a feeling just like the one that accompanies the discovery of the correct answer to any theoretical question, except that in this case we call the result "right" rather than "true" (SL, p. 167). Fichte does not say how we should understand the instrumental principle, which is usually thought of as a principle of practical, not theoretical, reason. But Kant's view of this is cloudy too: in the *Groundwork*, for instance, he calls it an analytic principle of practical reason; but the technical-practical reasoning he sorts under the theoretical part of cognition in the *Critique of the Power of Judgment* surely relies on it.

¹⁸ "All technical-practical rules (i.e., those of art and skill in general, and also of prudence, as a skill in having influence over human beings and their will), insofar as their principles rest on concepts, must be counted only as corollaries of theoretical philosophy. For they concern only the possibility of things according to concepts of nature, to which belong not only the means that can be found in nature, but even the will (as a faculty of desire, and so a natural faculty), insofar as it can be determined through natural incentives according to those rules" (KU, p. 172; cf. KU, p. 175 and AA 20, pp. 200–01; MS, pp. 217–18; and GMS, pp. 416 ff.).

itself felt as a drive.¹⁹ Any organized product of nature has a drive to keep its parts together in something like the order in which they are already – a drive to self-preservation – out of which many subsidiary drives follow, including those that are strictly required for flourishing, but also including an inclination to pursue enjoyment for its own sake.²⁰ This "natural drive" is a configuration of a basic drive to self-determination, and since we are organized products of nature we have it.

But rational and reflective beings are not constrained to the prompts of this natural drive. The basic drive to self-determination also has a pure form: what Fichte calls the "pure" drive (by which he seems to mean a drive to self-determination in a completely abstract and indeterminate form). The pure and the natural drives are united at the empirical level in what he calls the "ethical" or "mixed" drive (SL, pp. 151–2). Unlike the natural drive, the ethical drive is neutral with respect to person and time: it is directed not to the agent's independence in particular, but to the independence of rational will in general, and counsel sacrifices now for greater gains later. Unlike the pure drive, the ethical drive has concrete content, determined by the specific needs and capacities of a natural rational being in specific material and cultural circumstances and with a specific degree of reflective cultivation (and it is all of these together that dictate what progress toward self-sufficiency or independence will mean in a given case).

Like many, Fichte found the tension between moral and prudential considerations to have been too starkly drawn by Kant, and he emphasizes that there is no fundamental conflict between the pure drive and the natural drive (though of course there can be local conflicts). He also emphasizes the fine-grainedness of any given instance of practical reasoning.²¹ This is not to deny the universal validity of the results of such reasoning, when they are correct. Anyone relevantly similarly situated should come to the same conclusion, and everyone should be able in principle to recognize the correctness of the conclusion. But the conclusion is universalizable when and because it is correct; its universalizability is not what makes it correct to begin with. Fichte emphasizes his

¹⁹ Fichte's drive-based moral psychology is a matter of some interest in its own right. I will constrain my discussion of it to what I need for my purposes here. For more discussion, see, e.g., Rohs, 1991 a; Rohs, 1991 b, pp. 104 ff.; and Wood, forthcoming.

²⁰ The natural drive is discussed at SL, pp. 115 ff.; organization at SL, pp. 122–3; pleasure at SL, p. 129.

²¹ "The moral law, in relation to empirical human beings, has a determinate starting point (the determinate limitation in which the individual finds himself); it has a determinate (if never reachable) goal (absolute freedom from all limitation); and a completely determinate way through which it leads (the order of nature). Therefore for every determinate individual in a given situation there is something determinate that is required by duty – and this is what we can say the moral law demands in its application to [him]" (SL, p. 166).

disagreement with Kant here by explicitly demoting universalizability to heuristic rather than constitutive status.²²

Calculative reasoning involves not only an end, but also beliefs about general causal laws and particular facts about an action situation, and an awareness of one's own status as a causally efficacious being.²³ In discussing cognitive attitudes and their role in practical reasoning, as he does at length in the second part of the *System of Ethics*, Fichte calls "Erkenntnisse" what I have just called "beliefs". Of course Fichte's German lacked a term corresponding to "belief" as now used in English-language philosophy; "Erkenntnis" is, for him, the default term for empirical belief. Still, we might sensibly ask: for Fichte, is an agent deliberately rational to the extent that she operates correctly with the beliefs that she has, or does the truth of those beliefs also matter for her practical rationality? Not much about the wider project hangs on the answer to this question,²⁴ but I think a case can be made for the second alternative, and thus for the inclusion of some degree of theoretical knowledge among the conditions required for formal freedom.²⁵ And in fact Fichte often seems committed to theoretical

²² SL, pp. 233–4. Fichte sounds at this point like later consequentialists (e.g., Mill, Hare, Kagan, Parfit) who have sought in a similar way to bridge the apparent gap between consequentialist views and Kant's.

²³ Beliefs about the nature of things are a condition of the possibility of setting ends that concern those things (SL, p. 103), and awareness of one's causal efficacy is a condition of the possibility of awareness of oneself as willing (SL, pp. 89–92). Fichte argues in § 1 of the *Foundations of Natural Right* that awareness of one's own causal efficacy is a condition of the possibility of self-consciousness (GN, pp. 17 ff.; cf. Neuhauser, 2001). What seems less controversial is that forming a conscious intention requires seeing the will as a causal force, and Fichte argues that for any given individual that is an empirical realization.

²⁴ In particular, the answer to this question will not matter for that part of Fichte's ethical theory that concerns our duties to produce certain true beliefs, and refrain from producing false beliefs, in others. Those duties can be justified so long as Fichte is allowed the (reasonable) assumption that any deliberating agent has an interest, qua deliberating agent, in true relevant beliefs. Acquisition of these can be an end partially constitutive of rational deliberation even if having them is not itself a part of the concept of practical rationality.

²⁵ Uncontroversially, there are epistemic conditions on moral responsibility: If I didn't know the gun was loaded (and it is not a case of culpable ignorance) I really can offer that as an excuse. To drive a wedge between conditions for responsibility and conditions for free will here requires an argument. But such an argument might not be so easy to make since, also uncontroversially, functional cognitive limitations (e.g., processing problems of sufficient severity) do undermine free will. We would need a justification for treating cognitive limitations that are not functional differently from functional limitations. But it is not clear what that would be. It seems clear that sufficiently deep ignorance (of the sort one might have, for example, in a social situation in a very foreign cultural milieu) can result in an inability to intend anything that would be remotely appropriate by one's own lights. It is not clear that we should say in those situations that the agent is free in forming intentions so long as she has some beliefs to operate with, however outrageously inappropriate those beliefs may be.

knowledge being essential not just for the freedom to do what one chooses, but for the capacity to choose freely to begin with (see, e.g., SL, pp. 66–75).

Fichte endorses a version of the distinction between basic and non-basic actions – in his terminology, things done by "immediate" and "mediated" causality (SL, pp. 98–9). The set of points at which one's will has immediate causal efficacy is one's body (in what is obviously a technical sense of that term).²⁶ All mediated causal efficacy is mediated through one's body; some is further mediated through interactions between external objects (as when one does something by setting some process in motion). An agent can intend to exercise mediated causal efficacy only by employing an understanding of the physical nature of and laws governing her body and the things on which it acts (SL, pp. 68, 70, 103, 109, 166–72 *passim*). At minimum, she needs to know what in her environment is contingent and so in principle alterable (SL, pp. 68–9). She also needs a determinate conception of her causal powers, and so a way of distinguishing between what she has herself brought about and what has simply happened (SL, p. 70). The more complex the projects she engages in, the more detailed the instrumental reasoning she engages in, and the more she needs to know about the physical world. This is why Fichte thinks some degree of causal knowledge of nature precedes reflection and, so, formal freedom. All drive-based behavior requires knowledge, and before one is a moral agent one is an effective causal agent (SL, pp. 101–110 *passim*).

This cognitive requirement for moral agency, and the dialectical interaction between knowledge and control of one's environment, will play a key role both in Fichte's political philosophy (as part of his justification for property rights) (GN, pp. 113–19) and in his ethics (as the justification for duties of truth-telling (SL, pp. 282–8, 290), truth-seeking (SL, p. 291), and collective support for a specialized class whose vocation is basic research (SL, p. 344)). It is in this cognitive requirement, and the use Fichte makes of it, that much of the very considerable interest in Fichte's ethics and political theory lies.

Like minimal reflection, evaluative reflection comes in degrees that vary based in part on social conditions. It relies on the demands made by others (e.g., the demand for consensus in cases of disagreement, which Fichte thinks we all must make and to which he thinks we all must submit) (SL, pp. 233–53 *passim*). It also relies on the example offered by others (and setting an example of morality is itself one of our moral duties, both in general (SL, pp. 313–25) and for those occupying the particular social roles of parent (SL, p. 338), and religious leader (SL, pp. 204, 352)).

²⁶ The set of points at which the will has immediate causality may be smaller (paralysis) or greater (some prostheses) than the set corresponding to the body in the ordinary biological sense.

Reflection has two further prerequisites that are not themselves components of it. About both it is clear that Fichte considers them necessary for moral agency. And about both I will have more to say in § IV, so I will describe them only briefly here. The first prerequisite is psychological. Fichte thinks that one cannot form an intention without some degree of deliberative effort, and so without the capacity for applying it one is not a moral agent. Since errors in practical reasoning result in part from a lack of such effort, I will discuss it at greater length in treating Fichte's account of moral evil in the next section. The second prerequisite is social. Fichte thinks that individuals become aware of their own capacity for free efficacy only as a result of interaction with other agents who make demands of them (GN, pp. 30–40).²⁷ From this Fichte concludes that if there are to be free agents at all, there must be more than one (GN, p. 39). I will discuss this claim further in treating the origin of reflective consciousness in the next section. The inclusion of evaluative reflection, and thus of some degree of deliberative rationality, as a component of formal freedom looks fairly uncontroversial. The capacity to refrain from what one's currently strongest inclination demands is contingent on having other, often temporally distant, ends whose fulfillment requires refraining from acting on this inclination. It is hard to see how we could have such ends without the exercise of evaluative reflection. And this also seems the best way to make sense of the many points at which Fichte seems to equate rationality and freedom.²⁸ But my characterization does raise three problems (one textual and two philosophical), to which I now turn.

IV. Three Complications

On occasion, Fichte describes reflection as a product of formal freedom. For an arbitrary instance of reflection this is not a problem for my account, since these are (or at least can be) formally free actions (and so themselves rely on prior instances of reflection). The textual problem arises in a passage in which Fichte describes the first awakening of reflective agency (SL, p. 179).²⁹

The passage contains one of two apparently distinct stories that Fichte tells about the awakening of reflective agency. On the first, told in § 3 of the Foundations of Natural Right, an individual comes to self-awareness as a formally free being (that is, as a being able to form concepts of ends and able to choose in one

²⁷ The argument is reiterated at SL, p. 178.

²⁸ E.g.: "I posit myself as rational, therefore as free" (GN, p. 8). One can of course read this and other passages as asserting only that freedom is a necessary condition of rationality, or only that rationality is a sufficient condition of freedom.

²⁹ There are other troublesome passages. For example Fichte writes at SL, pp. 161–62 that one's awareness of one's capacity for formal freedom is what makes putting off fulfillment of immediate desires possible, and therefore makes reflection possible.

among many possible ways, GN, pp. 19–20) only as a result of norm-invoking non-coercive interaction with another agent: a "summons".³⁰ The summoner recognizes in the summoned the potentiality of free agency,³¹ and makes a demand upon the individual, "calling upon it to exercise its efficacy" (GN, p. 33). The summons is accompanied by the offer of a sphere of free activity. A set of action possibilities that is given, pre-formed, to the agent, who needs only to grasp one of them (GN, p. 41). What the summons conveys, then, is both a demand to exercise causal efficacy in accordance with a normative claim, and information about the action possibilities available and what they mean. It permits the appearance, at the same time, of some rudimentary reflective self-consciousness, some rudimentary practical reasoning, and a rudimentary form of end-oriented spontaneous action. The aim is to explain how a first free action – one taken without sophisticated reflective capacities already in place – is possible, and thereby to describe part of the actual moral development of children.³²

On this first account of the awakening of reflective agency, a moral agent comes to be only by "being determined to be self-determining" by another moral agent (GN, p. 33). There are parts of the System of Ethics in which it appears we are being told the same story, and Fichte even refers the reader to the Foundations account (SL, p. 218). But there is also another story that appears in the System of Ethics, and this second account is the locus of the textual problem (SL, pp. 177 ff.). In it, Fichte describes a pre-reflective individual who acts "with freedom, indeed, in the formal sense of the word, but without consciousness of this its freedom" (SL, p. 178). He tells us that such a pre-reflective individual is free for an intelligence outside him, but "for himself – if he were anything for himself – is just an animal" (SL, p. 178).³³ And he tells us that such an individual's first reflection takes place in these circumstances as a purely spontaneous act, "through absolute freedom" (SL, p. 179). This agent is described as exercising the capacity for reflection for the first time as a result of an exercise of formal freedom.

This second story appears incompatible both with the summons account and with the account I have given of formal freedom. To make it compatible with the first, we might take it as a partial description of a situation that in fact involves a

³⁰ Fichte's idea of a summons is much discussed in the literature. A few examples (there are many more): Neuhausser, 2000; Honneth, 2001; Rohs, 1991 b, pp. 86 ff.; and Darwall, 2006, pp. 20 ff., 252 ff., et passim.

³¹ The summoner recognizes the potentiality of free agency by the shape of the agent's body (GN, pp. 75–81).

³² "The summons to free self-activity is what is called upbringing. All individuals must be brought up to be human beings, and would not become human beings otherwise" (GN, p. 39).

³³ By hypothesis he is not anything "for himself" because not self-conscious.

second agent and a summons; or we might take it to be a replacement of Fichte's earlier answer to the question of who the first summoner might have been (*viz.*, God) (GN, pp. 39–40) with one in which reflection is something that just happens inexplicably and thereafter reproduces itself in the way described in Foundations § 3. But neither move would make this passage compatible with the account I have given of formal freedom: It seems clear that Fichte here uses “formal freedom” to refer to spontaneity alone.

I see no way to resolve this problem without sacrificing some part of the text. At this point we have already been told that spontaneity alone is not sufficient for formal freedom, which requires intentional action determined by the representation of an end. The representation of an end requires reflection, as does awareness of multiple possibilities and choice among them. And Fichte affirms these claims in this very passage: the pre-reflective individual is still in the grip of the unmodified natural drive, does not have a multiplicity of action possibilities, and is not a free intelligence (SL, p. 179).

Fichte's main concern in this passage is to emphasize that the actualization of the potential for reflection is not naturalistically explicable, but is something that must occur through spontaneity (SL, pp. 178–9; cf. SL, p. 132), and that even where it occurs in response to some external stimulus (like a summons) it is not caused by that stimulus (SL, p. 179; cf. SL, p. 125). We have already seen that reflection, since it involves thinking, involves spontaneity. But that does not entail that the first occurrence of reflection is itself the result of moral agency in the sense required for responsibility. And so, although Fichte uses “formal freedom” in this passage to describe what only spontaneity is, this should not lead us to conclude that for him spontaneity and formal freedom are equivalent.

So much for the textual problem. The second problem with taking evaluative reflection as partially constitutive of formal freedom is this: on Fichte's account, reflection (its domain, sophistication, procedural completeness) varies across the set of normal human adults. If reflection is a component of formal freedom, it follows that formal freedom will also vary. And if formal freedom is that in virtue of which we are morally responsible, then responsibility for action will, it seems, come in degrees.

There is no textual problem here, because this is in fact what Fichte wants to say. Every rational agent has, *qua* rational agent, the same capacity for formal freedom, but not every rational agent has developed that capacity to the same degree. This commitment is implicit in the discussion of the developmental psychology of freedom (SL, pp. 177 ff.), where Fichte distinguishes between the rational being “considered primordially”, which has “everything that belongs to a rational being entire and without lack” and empirical individuals, who fall short of this ideal of agency to varying degrees (SL, pp. 177–8). What accounts for much of the variability, as we have seen, is variation in the agent's environment. There are some social and cultural circumstances in which agents' freedom

is more highly cultivated, and in these circumstances agents are both more fully responsible for their actions and also able to become morally better than they could in other circumstances. “Through upbringing in the broadest sense – that is, through the general influence of society upon us – we are first cultivated in the use of our freedom. [...] If society were better, we would be too, even without individual merit. The possibility of individual merit is not thereby annulled; it simply begins at a higher level” (SL, p. 184). Not only does Fichte admit the possibility of degrees of responsibility varying with degrees of development in an agent's reflective capacities (SL, pp. 137, 178, 180); he also acknowledges duties arising out of the imperative to protect or promote other agents' “formal freedom” (where “formal freedom” seems to have the agency sense).³⁴

In the end I find this consequence of Fichte's account unproblematic. It coincides with many ordinary intuitions: we often seem willing to admit a spectrum of degrees of moral responsibility among normal adults. It is also a feature of compatibilist accounts of free will that cash that notion out in terms of psychological capacities, and for the same reasons. I raise it as a problem only because it is a departure from the Kantian view, and does come with a cost that the Kantian view does not have. Kant accepted that an agent's circumstances can mitigate her responsibility for some actions; but he seemed committed to denying that moral agency itself can come in degrees.³⁵ He had good reason for that. If formal freedom is that in virtue of which we have a value beyond price – as for both Kant and Fichte it is – then to admit that it comes in degrees is to give up something of the fundamental Kantian equality of moral agents as such. Some might find that consequence hard to accept.³⁶

³⁴ These are not only episodic (refraining from actions – like deception – that might undermine responsibility for a single decision (SL, p. 283)); they are also more global (e.g., contributing to others' knowledge (SL, pp. 282–3, 290–91) or providing moral example and inspiration (SL, pp. 317–25)). And there are parallel self-regarding duties, appropriately describable as duties to increase the degree to which one can be responsible for what one does, by putting more energy into practical reflection (SL, pp. 155, 178, 180–85), correcting it by exposing it to criticism from other agents (SL, pp. 234–53 *passim*), and increasing the quantity and quality of one's theoretical knowledge (SL, p. 282).

³⁵ For Kant's allowance of degrees of responsibility for individual actions, based on the circumstances of those actions, see, e.g., MS, p. 228. But Kant held that moral responsibility as an agent-characteristic is either absent or entire; there is no room in Kant's picture for an individual who, in a global sense, is a partially-responsible agent.

³⁶ The cost is tied not simply to this account of formal freedom, but to Fichte's more general project of grounding political and moral duties in conditions of the possibility of agency. Fichte's argument for the moral importance of external limitations is what allows him to, e.g., give a more compelling account of intelligible property, and of the value of equality in its distribution, than any available to Kant. But Fichte's argument has, inevitably, this drawback as its flip side. (One can acknowledge the problem for Kant, while maintaining that the cost of Fichte's solution is too high. For a view like this see Shell, 1986, p. 156.)

The third problem is this: the inclusion of evaluative reflection (and so some degree of practical rationality) in the core notion of moral agency, coupled with Fichte's conviction that our (true) all-things-considered reasons are always our moral reasons, raises the worry that actions deficient in moral worth precisely thereby will be deficient in formal freedom. If that is true, then either we will be morally responsible only for morally correct actions, or the worse our actions are, the less we will be responsible for them (assuming what I think is correct, that both formal freedom and moral responsibility admit of degrees).

Again there is no textual problem here, since Fichte accepts this consequence. We see this in his account of moral error. He claims that agents always act on the best reasons they are aware of having, and since he agrees with Kant that moral reasons are the best reasons there are, he claims that agents always act on their moral duty to the extent that they are aware of it. It is "simply impossible and contradictory that someone might with distinct consciousness of what his duty is at the moment of action consciously decide not to do his duty" (SL, p. 191). What is possible – indeed, common – is that an agent's consciousness of his duty becomes obscured (SL, p. 192), or he acts without sufficient reflection, never acquiring an adequate consciousness of his duty in a given situation to begin with. Morally wrong actions are explicable, then, only by failures of practical reflection.

The characteristic failure of reflection is incompleteness, and the source of such failure, Fichte claims, is laziness about engaging fully in the process of practical deliberation that leads to conviction (SL, pp. 192–4, 199). This is why I have said that we should take deliberative energy or effort (where by that I mean simply the opposite of deliberative laziness) to be a precondition of formal freedom: the process Fichte describes as leading to error in moral reasoning must be identical to whatever process leads to error in any practical reasoning, because the sort of reasoning required is the same regardless of whether the end is the moral one or something short of that. If more deliberative effort results in more adequate (i.e., extensive, coherent) reflection, then such effort must also result in more formal freedom.

This means that the application of a determinate degree of effort to a given instance of deliberation cannot itself be an act of formal freedom on that very occasion. An agent can be blameworthy for her own degree of deliberative sloth only to the extent that it is the result of some past action of hers. But that action itself would be pro tanto irrational for that reason, and so have its source in a failure of practical deliberation, and so in deliberative laziness. The point is never reached at which an agent's level of deliberative energy is up to her. She is not fully responsible for her own immoral actions, but neither is she morally responsible for her own lack of moral responsibility.

This is exactly what Fichte tells us in discussing moral error: reflective laziness is not the result of a conscious policy; there is no maxim of letting consciousness of duty become obscured (SL, p. 193). It is, rather, the expression

in us of a natural principle of inertia (SL, p. 199). We all start out thoughtless, as children, and are prone to revert to thoughtlessness out of habit. Virtue, by contrast, cannot become a habit.³⁷ And vice is typically not a state from which one can extract oneself on one's own.³⁸ The vicious are capable of the greater effort that virtue would require, but unaware of that capacity and incapable of spurring themselves to exercise it; the awareness of that capacity and the impetus to exercise it is the result of other agents' prodding.³⁹

Fichte presents the section of the System of Ethics in which he discusses moral error as an account of radical evil in the Kantian sense (SL, pp. 198–9). That is a mischaracterization. On Fichte's account, vice is never chosen; it is the result of persistence in or reversion to the natural default state of unreflective behavior, in a social milieu in which it is possible to do better. Responsibility varies, then, with moral success: one is responsible for virtue to the extent that it is a result of the exercise of formal freedom, but one is not in the same way responsible for vice. Once again this is a consequence that might, depending on other commitments, be hard to accept.⁴⁰

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³⁷ "Practice and vigilance, standing guard over oneself must be continual; no one is certain of his morality even for a moment without continual strenuous effort" (SL, p. 193; cf. SL, pp. 199–204).

³⁸ The text is not clearly univocal here: there are points at which Fichte does seem to want to say one can spontaneously free oneself from thoughtlessness (e.g., at SL, p. 193).

³⁹ People have to "grasp themselves in their contemptibility" and become disgusted, and this is one of the functions of positive religion (SL, pp. 204–5).

⁴⁰ This problem of the relation between formal freedom and morality is a descendant of a similar problem in Kant. I treat its Kantian form in Kosch, 2006a and its Fichtean form in Kosch, 2006b.

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Sebastian Schwenzfeuer

Der ontologische Begriff der Freiheit. Über eine systematische Voraussetzung von Schellings *Freiheitsschrift*

Schelling’s Essay on human freedom is based on different tenets developed in his philosophy of nature and identity. He assumes e.g. human freedom as a specification of a general, ontological freedom. Against Kant he defines philosophy as a science of the thing in itself that demonstrates freedom as the basis of all being. The paper investigates the possibility of Schelling’s project and draws a line from his Essay back to the transcendental philosophy of Kant and Fichte and his own philosophy of absolute identity.

Schelling setzt sich in seinen *Philosophischen Untersuchungen über das Wesen der menschlichen Freiheit* (1809) zum Ziel, den Begriff menschlicher Freiheit erstmals vor dem Hintergrund seiner Naturphilosophie zu explizieren. Wie er in der Vorrede zu dem Sammelband seiner Schriften, in dem die sogenannte *Freiheitsschrift* (als einzig neuer Text) erstmals veröffentlicht wurde,¹ festhält, gibt er damit zuerst den ideellen Teil seines Systems, abgerechnet die kurze 1804 veröffentlichte Abhandlung *Philosophie und Religion*, die er in einem für ihn seltenen Moment selbstkritischer Beurteilung als „undeutlich“ (SW VII, S. 334) desavouiert. Gegen seine Gegner wie gleichermaßen gegen seine philosophischen Anhänger verwahrt er sich der Meinung, er habe zu den Themen der „Freiheit des Willens, Gut und Bö, Persönlichkeit usw.“ (SW VII, S. 334) bereits thetisch Stellung bezogen. Die Abhandlung von 1809 verspricht vor diesem Hintergrund ein gewichtiges Wort in Sachen menschlicher Freiheit und die Rezeptionsgeschichte hat Schellings Text auf ihre Weise als einen Grundlagentext idealistischen Denkens erwiesen.²

Im Folgenden soll *eine* entscheidende systematische Voraussetzung des schellingschen Freiheitskonzeptes analysiert werden. Der kurze Text ist, nicht zuletzt als (vermeintlich) ideeller Teil eines Gesamtsystems äußerst voraussetzungsreich, und schon im Vorfeld sind hier gewichtige Prämissen investiert, ohne deren Verständnis der Ansatz der *Freiheitsschrift* insgesamt unverständlich bleiben muss. Insbesondere die naturphilosophischen Hintergrundannahmen der Ausführungen sind nur durch einige Bemühungen einsichtig zu machen.

¹ Vgl. SW VII, 333–335.

² Vgl. Hühn, 2010.