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The Fate of Kantian Freedom: the Kant-Reinhold Controversy

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The Fate of Kantian Freedom: the Kant-Reinhold Controversy

by

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A dissertation submitted in partial fulfillment
of the requirements for the degree of
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ABSTRACT

This dissertation examines the relation of Kant's theory of free will to that of K.L. Reinhold. I argue that Reinhold's theory addresses several problems raised in the reception of Kant's practical philosophy, particularly the problem of accounting for free immoral acts. Focusing on Reinhold's account of free will as a condition for the conceivability of the moral law shows that the historical focus on Reinhold's break from Kant's own account and his alleged reliance on facts of consciousness obscures Reinhold's decidedly 'Kantian' argument. This approach provides a new foundation for free will and demonstrates the significance of Reinhold's practical philosophy as an attempted corrective to Kant.

Chapter 1 examines the influence of Rehberg, Ulrich, and Schmid on Kant's and Reinhold's respective theories of free will. Chapter 2 investigates the epistemic foundation of Reinhold's theory of free will and, contrary to the dominant view in scholarship, argues that his account is not based merely on facts of consciousness. Chapter 3 illuminates a tension between the phenomenology of moral agency and Kant's account of free agency. It is argued that while Kant talks about overcoming inclinations and adopting maxims by virtue of their lawful form, which would seemingly have to take place at the phenomenal level and be available to consciousness, Kant's account of free agency is restricted to the noumenal, which precludes availability to consciousness. Reinhold's theory of free will avoids this tension by positing consciousness of possible courses of action as a necessary condition for self-determination to one such action. Chapter 4 discusses the relation of Reinhold's theory of free will to Kant's *Religion*,

a text that Reinhold uses as a basis for his charge that Kant's theory is either "unintelligible" or "untenable." I argue that although Reinhold fundamentally misunderstands Kant's doctrine of supreme maxim adoption, Reinhold is correct in his assertion that Kant is committed to the thesis that the free spontaneity of the power of choice is a necessary condition for moral responsibility. Chapter 5 explicates the Kant-Reinhold Controversy to argue that given Kant's own commitment to the conditions for moral responsibility, Reinhold was ultimately correct that free will ought to be defined as choosing for or against the moral law.

INTRODUCTION

Karl Leonhard Reinhold is a pivotal figure in the history of philosophy who was not only largely responsible for the popularization of Immanuel Kant, but also greatly contributed to the development of German Idealism. Volumes I and II of his *Letters on the Kantian Philosophy* (*Briefe über die Kantische Philosophie*) were not volumes of correspondence, but rather a series of articles originally published in the *Teutsche Merkur*, a scholarly journal popular at the time. The first series of articles, published between 1786-1787, was instrumental in popularizing Kant's Critical Philosophy.¹ These first articles were then published as a single volume in 1790, followed by a second volume of subsequent articles published in 1792. Both volumes address such themes as morality, religion, free will, and the existence of God; however, the two volumes differ in their underlying motivation and in their significance to the history of philosophy. While writing the articles that comprise the first volume of the *Briefe*, Reinhold was very much a disciple of Kant. By the time he wrote the articles comprising the *Briefe II*, Reinhold had already published his *Versuch einer neuen Theorie des menschlichen Vorstellungsvermögen* (1789) and had begun to drift from his adherence to Kant. It is precisely this philosophical divergence that makes the *Briefe II* of particular interest.

Notwithstanding Reinhold's departure from Kant's philosophy in respect to its proper theoretical foundation, Reinhold's development in practical philosophy was largely motivated by reactions to Kant, most notably A.W. Rehberg, J.A.H. Ulrich, and C.C.E Schmid.

¹ See: Karl Ameriks, *Kant and the Fate of Autonomy*, 81ff.; Frederick Beiser, *The Fate of Reason*, 226ff.

In his *Versuch einer Moralphilosophie*, Schmid asserts, in what he takes to be the spirit of Kant's own theory of freedom, the doctrine of intelligible fatalism, i.e. that all acts are determined by intelligible causality. Acts with immediate determining grounds in sensible, temporal circumstances (*sinnliche Zeitumstände*) are ultimately grounded in an *intelligible Naturfatalismus*, "i.e. the assertion of the natural necessity of all acts of a rational being according to laws of causality of things in themselves."² In regard to morality, Schmid thought it was enough to believe that *Zeitumstände* cannot compel us to act irrationally (i.e. immorally) and that pure reason can provide a determining ground for moral acts through the moral law.³ Thus, both immoral acts and non-moral acts (acts with no moral significance) are grounded in an intelligible causality underlying objects of experience and moral acts are grounded in an intelligible causality underlying the agent as a thing in itself, i.e. moral acts are grounded in the intelligible causality of pure practical reason. This doctrine leaves no room for attributing moral responsibility to agents for immoral acts.⁴ Karl Leonhard Reinhold found this interpretation of Kantian freedom absolutely repugnant.

In the wake of Kant's *Groundwork of the Metaphysics of Morals* and *Critique of Practical Reason*, the late 1780s and early 1790s became a hotbed for debate over the proper conception of free will. The related problems of reconciling free will with determinism and developing a conception of free will robust enough to account for moral culpability for immoral acts figured prominently. Following Rehberg's review of the *Critique of Practical Reason*, a slew of 'Kantian' philosophers, including C.C.E Schmid, expounded what they took to be Kant's

² Schmid, C.C.E. *Versuch einer Moralphilosophie*. Jena, 1790. §257, p. 211

³ *ibid*, p. 198ff

⁴ To some extent this leaves no room for attributing moral responsibility to agents for any acts whatsoever insofar as the doctrine does not include an *Entscheidung* or *Wählen* on behalf of the agent whereby he would make the act his *own*, but rather the agent is simply a reed swept this way or that by the winds of intelligible causality of either objects as things in themselves or himself as a thing in itself.

theory of freedom.⁵ According to Reinhold, most of these authors take freedom to be nothing other than the independence of practical reason from sensible determining grounds (*LII* 185/267). While Reinhold admits that this certainly belongs to freedom of the will, it does not solely constitute it. By mistaking the self-activity of practical reason with an act of the will, i.e. by defining freedom only in terms of the self-legislation of practical reason and its independence from natural necessity, Reinhold thinks it is impossible for there to be free immoral acts (*LII* 185/267). Reinhold, at least in the *Briefe II*, does not identify these problems of ‘Kantian’ freedom with *Kant’s own theory of freedom*; rather, he takes these problems to be the result of mistaken exegesis on the part of Kant’s adherents. Thus, Reinhold writes that it is not Kant’s fault if his students have taken certain expressions, which Kant employed as mere expositions, to be definitions (*LII* 186/268–69). And so Reinhold takes it upon himself to re-present Kant’s theory of freedom, which, according to Reinhold, Kant had only gestured toward but not determinately formulated (*LII* 183/263).

Not only does the *Letters II* embody an original contribution to the question of free will and moral agency within the general framework of Kant’s Critical philosophy, it also served as a turning point in Kant and Reinhold’s relations, culminating in a dispute in 1797 on the nature of free will. As already mentioned, Reinhold at first took his theory of the will in the *Letters II* to be a re-presentation of Kant’s own theory, and thus not something distinct from the latter; however, in Kant’s Introduction to the *Metaphysics of Morals* (1797) Kant explicitly denies the very conception of free will that Reinhold put forth in the *Letters II* and again in *Contributions II*

⁵ See Abicht, J.H. *Ueber die Freyheit des Willens*; Ewald, J.L. *Ueber die Kantische Philosophie in Hinsicht auf gewisse Bedürfnisse unsers Zeitalters. Auch Briefe an Emma*. Bremen 1791, 33ff., 88ff.; Heydenreich, K.H. *Betrachtungen über die Philosophie der natürlichen Religion*. Bd. 2. Leipzig 1791; Jakob, L.H. *Grundriß der Erfahrungs-Seelenlehre*. Halle 1791; Kiesewetter, J.G.C.C. *Ueber den ersten Grundsatz der Moralphilosophie*; Kraus, C.J. *Rezension von Ulrichs Eleutheriologie*; Maimon, S. *Philosophisches Wörterbuch*; Snell, C.W. *Ueber Determinismus und moralische Freiheit*

(1794). Aghast, Reinhold vehemently replied to Kant's critique, the repercussions of which are still being felt in philosophical scholarship today.

The nature of free will and its relation to moral agency are still subjects of discourse, particularly within Kantian circles. The 12th International Kant Congress in 2015 was devoted to the relation between nature and freedom. Furthermore, in the 6 international Reinhold conferences that have taken place since 1998, Reinhold's theory of freedom and its relation to Kant have figured prominently.

This dissertation examines how these concerns shaped the development of Reinhold's theory of free will and Kant's presentation of free immoral action in *Religion within the Boundaries of Mere Reason* and investigates the Kant-Reinhold Controversy of 1797 where, seemingly at odds with his view in *Religion*, Kant flatly rejects Reinhold's definition of free will as choosing for or against the moral law.

I have chosen to bracket the issue of whether Kant's theory of free will as presented in the 1st *Critique*, the *Groundwork*, and the 2nd *Critique* was restricted to moral action. Admittedly, Kant often suggests that this is the case. Regardless, in *Religion* (1792) Kant unambiguously gives an account of free will that necessarily includes freedom to act immorally. Kant may have first presented a theory of free will such that only moral actions could be considered free and later revised this theory to include immoral action. Or perhaps Kant had maintained all along that immoral actions are freely performed and had first restricted merely his *discussion* of free will to its relation to moral action. Perhaps given the aim of the *Groundwork* to present the supreme principle of morality and the subject matter of the 2nd *Critique* to a supposed demonstration that pure reason is practical, Kant simply did not include discussion of free immoral action in his account. Although I am not sure how convincing I find this latter

possibility, it should be noted that Kant's lectures on moral philosophy from the 1770s show that he was committed to free immoral action prior to his Critical works:

However, all moral evil originates from freedom, for otherwise it would not be morally evil. However much nature predisposes us, evil actions nevertheless originate from freedom, and for that reason they can be imputed to us as vices.⁶

Woe is the opposite of wellbeing. Evil originates from freedom and thus comes entirely from us, but woe comes from nature!⁷

If we take Kant's lectures on ethics to be reliable evidence of his position at that time, then it would seem that Kant held that freedom is a necessary condition for moral evil in the 1770s as well as in 1792.⁸ Regardless of whether his Critical works of the 1780s constitute a change of doctrine or merely a change of the scope of presentation, it is clear from *Religion* that Kant's considered view is that moral evil must be the product of freedom. My chief concern is to examine Kant's theory of free will on the supposition that it is robust enough to encompass free immoral actions in relation to Reinhold's own theory. We will find that while both Kant and Reinhold are committed to freedom as a necessary condition for moral responsibility, their respective conceptions of freedom are quite distinct.

I have also chosen to bracket the issue of whether Kant's theory of free will encompasses action without moral significance. Reinhold's theory of free will is unequivocally restricted to actions with moral significance. Thus, every free act for Reinhold is moral or immoral. Because this dissertation is chiefly concerned with Kant's theory of free will in relation to Reinhold, I have opted to restrict my consideration of Kant's theory of free will as it relates to actions with moral significance. Accordingly, I am concerned with free will as it relates to the fulfillment or

⁶ Stark, Werner (ed.), *Vorlesung zur Moralphilosophie*, 98–9/125. See also *L-E/Collins* 27:295.

⁷ *ibid.* See also *L-E/Collins* 27:366.

⁸ Scholarly use of the 1770s lectures will be discussed in more detail in Chapter 3.

transgression of duty. Perhaps there are other morally relevant choices associated with agency; however, consideration will not be given to them.

Chapter 1

Context after the 2nd Critique: The Reception of Kant's Theory of Freedom

This chapter examines three philosophers who reacted to Kant's theory of free will in the late 1780s: August Wilhelm Rehberg, Johann August Heinrich Ulrich, and Christian Carl Erhard Schmid. These thinkers raised concerns about the relation between free will and moral agency, e.g. how a merely formal principle thought as the effect of a noumenal activity of pure reason can serve as a principle for action for phenomenal agents, and how free will, which seems to be necessarily tied to determination by the moral law, can pertain to immoral actions. These issues were of paramount importance to K.L Reinhold's development of his theory of free will, and can be seen as a catalyst for Kant's treatment of free immoral actions in *Religion within the Boundaries of Mere Reason* in 1792.

1.1 AUGUST WILHELM REHBERG

August Wilhelm Rehberg (1757–1836) was both a philosopher and a statesman.⁹ He is known for works such as *On the Relation of Metaphysics to Religion*, “On the Relation of Theory and Practice,” *Investigations on the French Revolution along with Critical Tidings from the Most*

⁹ For a general biographical discussion, see Heiner F. Klemme and Manfred Kuehn, *The Bloomsbury Dictionary*, 605–608.

Noteworthy Writings Published in France on that Topic, along with several influential reviews. We are interested solely in Rehberg's review of Kant's *Critique of Practical Reason*. It appeared in two parts, both on August 6th 1788 in the *Allgemeine Literatur-Zeitung* [ALZ]. This review is significant for its wide readership in general as well as its influence on other thinkers, including Kant himself. Christian Gottfried Schütz, editor of the ALZ, actually sent Kant a copy of the review on June 23rd, 1788 prior to its subsequent publication in August (C 10:541). Kant's 1791 essay "On the Miscarriage of All Philosophical Trials" can be seen in part as a response to Rehberg's claim that although the categorical imperative is indeed the formal principle of morality, it cannot serve as an incentive to moral action.¹⁰ Kant's footnote in the Introduction to the *Critique of the Power of Judgment* (CPJ 5:177) as well as his footnote in the Preface to the 1st edition of *Religion within the Boundaries of Mere Reason* can also be seen as a reaction to Rehberg.¹¹ Furthermore, Rehberg's review was cited directly by L.H. Jakob just one month after its publication in ALZ;¹² it was also cited by K.L. Reinhold in the Preface to his *Letters on the Kantian Philosophy Volume II* (LII 5/IX–X).

Rehberg begins his review with a recapitulation of the main ideas of the *Critique of Practical Reason*. He notes that the *Groundwork* proceeds analytically from the common concepts of morality to establish an ultimate practical principle capable of being cognized *a priori*, and that this practical law of reason leads to the idea of metaphysical freedom.¹³ These ideas are then carried out synthetically in the first part of the *Critique of Practical Reason*.¹⁴

¹⁰ di Giovanni, George and Allen Wood. "Translator's Introduction," 22–3

¹¹ di Giovanni, George and Allen Wood. "Editorial Notes." In *Religion and Rational Theology*, 456 n.2. For an extensive treatment of the influence of Rehberg's review on Kant's *Critique of the Power of Judgment* and *Religion within the Boundaries of Mere Reason* see Eberhard Günter Schulz, *Rehbergs Opposition gegen Kants Ethik*, 122–72.

¹² Jakob, L.H. "On Freedom," 19

¹³ Rehberg, A.W. "Rehberg Review," 345.

¹⁴ *ibid*

Rehberg repeats Kant's claims that because objects belong to the world of sense, a law of reason can contain no object and must therefore be formal.¹⁵ Accordingly, freedom of the will consists in independence from the sensible world and determination by the moral law: "a will determined by mere form is free, for metaphysical freedom consists in the complete independence of all laws of the sensible world. Such a free will can reciprocally be determined by nothing other than by the law, by virtue of its form."¹⁶ He goes on to take issue with Kant's table of the categories of freedom, specifically the category of modality. According to Kant, the categories of modality consist in "the *permitted* and the *forbidden*, *duty* and what is *contrary to duty*, and *perfect* and *imperfect duty*" (CPrR 5:66). According to Rehberg, the categories of modality should instead consist in "the permitted...and the forbidden, that which is in conformity to duty...and its opposite, and finally that which is holy...and that which is unholy."¹⁷ He holds that the division of perfect and imperfect duty should instead belong to the categories of quantity.¹⁸ Rehberg goes on to highlight the main points of the Dialectic and Doctrine of Method before making a fundamental objection to the 2nd Critique. It is to this objection that we now turn our attention.

Rehberg affirms Kant's claim that the moral law must be categorical and that necessity is to be found in pure reason alone.¹⁹ In this way, Rehberg affirms that the moral law is the *principium diiudicationis* of morality. However, Rehberg denies that the moral law can also serve as the *principium executionis*, i.e. Rehberg affirms that the moral law is the supreme normative principle of morality, but denies that this principle can actually serve as a principle for *acting* morally.²⁰ This denial is rooted in two related subordinate objections: first, that there is a

¹⁵ *ibid*

¹⁶ *ibid*, 345–6

¹⁷ Rehberg, A.W. "Rehberg Review," 347

¹⁸ *ibid*

¹⁹ *ibid*, 351

²⁰ Schulz, Eberhard Günter. *Rehberg's Opposition gegen Kants Ethik*, 11–12

fundamental disconnect between the phenomenal and noumenal self, and second, that the moral law itself cannot function as an incentive to morality through respect. Let us consider both of these constituent objections in turn.

Although we can conceive of pure reason (as noumenon) as the cause of the good, which would be the effect of reason, and can conceive of the synthetic connection of pure reason as cause through freedom, this is warranted only insofar as it “belongs to the domain of ideas.”²¹ But, per Rehberg, it is an altogether different question how this is supposed to connect to the sensible world and its reality. The demonstration that pure reason really is practical (and not just an empty object of thought) can only occur “directly as by means of consciousness of itself, as pure reason, as free will, and possessor of the absolute good.”²² But self-consciousness of pure reason is impossible and consciousness of free will would depend upon consciousness of pure reason.²³ The moral law can find no traction in the phenomenal world as a motivating principle for action and at the same time maintain its formal purity. George di Giovanni sums up Rehberg’s position: “precisely because the idea of the law transcends the entire realm of individual experiences, it explains the possibility of moral action without, however, being able to afford content to any particular act.”²⁴ Thus, we cannot be conscious of the moral law as such, because our phenomenal consciousness would pervert the purely formal and intelligible nature of the moral law. This disconnect between the phenomenal and the noumenal allegedly makes it impossible for us to demonstrate that pure reason really can be practical, and makes it impossible for the moral law to be the *principium executionis* of any particular moral act. In fact, Rehberg

²¹ *ibid*, 352

²² *ibid*

²³ *ibid*

²⁴ di Giovanni, George. “Rehberg, Reinhold und Schmid,” 106

takes the disconnect between the phenomenal and the noumenal to be problematic for transcendental idealism in general, and not just the domain of practical philosophy:

Concepts of the understanding and ideas of reason can be thought, and sensible sensation can be intuited, but how it happens that sensible sensation is subsumed by concepts of the understanding, how intelligences intuit sensible objects, thus how the world of ideas can be connected with the real world, and really be connected, that is a problem whose insolubility gives rise to the idea of an ultimate infinite original being in which the connection of the intelligible world and phenomenal world is grounded.²⁵

According to Rehberg, this disconnect leads to the idea of God. This line of thought reflects Rehberg's belief that metaphysics leads to Spinozism, a claim Rehberg had already made in 1787 in his *On the Relation of Metaphysics to Religion*.²⁶ For our purposes, we will bracket Rehberg's predilection for anti-metaphysics and turn to our treatment of Rehberg's second objection constituting his denial that the categorical imperative is the *principium executionis* of morality.

Rehberg is well aware that Kant's notion of respect functions as the bridge between the phenomenal and noumenal in moral agency. In his recapitulation of Kant's main claims, Rehberg notes that respect is "not an incentive to morality, but rather morality itself as incentive."²⁷ To be sure, this is a reference to Kant's claim that there is "no *antecedent* feeling in the subject that would be attuned to morality" (*CPrR* 5:75) and, more precisely, that "respect for the law is not the incentive to morality; instead it is morality itself subjectively considered as an incentive" (*CPrR* 5:76). Thus, Rehberg is aware that respect does not function in Kant's system as a sensible feeling that subsequently motivates one to act on the basis of the moral law; instead,

²⁵ Rehberg, A.W. "Rehberg's Review," 356

²⁶ For discussion of this point see George di Giovanni, *Freedom and Religion*, 125–36.

²⁷ Rehberg, A.W. "Rehberg's Review," 348

it functions as a unique rationally generated feeling that is the effect of the moral law itself as incentive. However, Rehberg simply denies that respect can have this function:

The thought that the law itself, but not pleasure in the law, must be the incentive of morality is itself enthusiasm [*Schwärmerey*]. For what else is it but enthusiasm? (that consists in the fiction of supersensible objects) when respect for the law is supposed to be a feeling and yet not a sensible sensation?²⁸

Thus, Rehberg rejects Kant's claim that sensible feeling is merely the condition but not the cause of the feeling of respect, which is "practically effected" (*CPrR* 5:75).²⁹ By rejecting the role of respect as the bridge between the phenomenal and the noumenal, Rehberg is thereby rejecting that the purely formal moral law can serve as the *principium executionis* for moral agents such as ourselves, whose conscious representations of possible courses of action are phenomenal.³⁰

1.2 JOHANN AUGUST HEINRICH ULRICH

²⁸ *ibid*, 355

²⁹ For a discussion of how Rehberg's objection misinterprets Kant see Schulz, *Rehbergs Opposition gegen Kants Ethik*, 18–23. Schulz claims that Rehberg holds Kant accountable for having to demonstrate via respect that pure reason is practical when Kant in fact already presupposes that pure reason is practical and then seeks to demonstrate, given this assumption, "in what way the moral law becomes the incentive" (*CPrR* 5:72). I do not wish to speak to the merit of Rehberg's objection. Nevertheless, it should be noted that Rehberg neglects to address anywhere in his review Kant's account of our awareness of the moral law as an *a priori* fact of reason.

³⁰ The role of respect as a link between the phenomenal and the noumenal will be discussed in more detail in Chapter 3. Rehberg maintained that because the merely formal moral law cannot explain particular actions that occur at the phenomenal level, these actions must instead be explained by principles established at the phenomenal level and that account for the satisfaction of sensible desires. On this point see George di Giovanni, *Freedom and Religion*, 130.

Johann August Heinrich Ulrich (1746–1813) was a prominent professor at Jena who was one of the first philosophers to lecture on Kant.³¹ Although Ulrich seemed to be a disciple of Kant,³² his 1785 *Institutiones logicae et metaphysicae* was so critical of Kant that it stands to reason that Ulrich’s ‘allegiance’ to Kant was only a stratagem in order to use Kant’s *Critique of Pure Reason* as a propaedeutic to his own neo-Leibnizian metaphysics.³³ Regardless of the status of Ulrich’s initial tenuous devotion to the Critical philosophy, Ulrich soon became an ardent enemy of Kant, constantly polemicizing against him in his lectures.³⁴ Ulrich went on to publish *Eleutheriology or On Freedom and Necessity* in 1788,³⁵ a work that challenges Kant’s theory of free will and its relation to morality. It is this work that is significant to our investigation. Before presenting the important claims in *Eleutheriology*, let us briefly explain the significance of the work as a whole.

Eleutheriology was generally influential in discussions on freedom and determinism at the time. Johann Friedrich Flatt used the text in his lectures in 1790, which were attended by the young G.W.F. Hegel.³⁶ More importantly, Kant himself sent his personal notes on the text to C.J. Krauss to use as the basis for the latter’s review of *Eleutheriology*.³⁷ Furthermore, Kant addresses Ulrich’s text in his letter to Reinhold on March 7, 1788, claiming that Ulrich “is not

³¹ For a discussion of Ulrich and his relation to the reception of Kant’s philosophy see Frederick Beiser, *The Fate of Reason*, 203–210.

³² So much so that Kant sent him one of the few gratis copies of the *Groundwork*. See Beiser, *The Fate of Reason*, 204.

³³ *ibid.*

³⁴ *ibid.*

³⁵ The text actually appeared in Fall 1787 for Ulrich’s Michaelmas lectures. It was subsequently published by Cröker in 1788. See Hans Vaihinger, “Ein bisher unbekannter Aufsatz,” 196. George di Giovanni mistakenly takes the publication to have been for Ulrich’s Michaelmas lectures of 1788. See di Giovanni, *Freedom and Religion*, 108. This confusion is understandable given that the 1788 Cröker edition contains the subtitle “For Use of the Lectures in the Michaelmas Holidays.”

³⁶ Falduto, Antonino. “Freedom and Obligation,” 174

³⁷ Hans Vaihinger was the first to discover Kant’s hand in Kraus’s review. See Vaihinger, “Ein bisher unbekannter Aufsatz.” The Kraus review is published in Volume VIII of the AA and Kant’s notes are published in Volume XXIII.

going to increase his following with his recent proclamation of a mechanistic theory of nature under the empty name of freedom, supported as it is by those old, familiar sophistries.”³⁸ Thus, already in 1788 Reinhold was aware of *Eleutheriology* and its tension with the Critical conception of free will and morality. As we shall see in Section 4 of the present chapter, Ulrich’s text would also have significant influence on Schmid’s *Attempt at a Moral Philosophy*. For now, let us present Ulrich’s primary claims in *Eleutheriology*, followed by the Kantian refutations found in the Kraus review.

Ulrich presents a doctrine of strict determinism and argues that determinism does not undermine morality. He grounds his determinism in an account of necessity. Ulrich maintains that there is physical as well as moral necessity. By the former, he understands: “by positing certain conditions something else is inevitably posited, and that under *absolutely identical conditions* the converse is not possible.”³⁹ By “moral necessity” Ulrich understands “the thought, or the cognition of our reason, that something *ought* to happen, even though it does not always really happen.”⁴⁰ According to Ulrich, even when the representation of the ought is efficacious such that it brings about volition, this too is an instance of natural necessity.⁴¹ By contrast, “chance” denotes “an arising, a becoming that has no determinative grounds, but when something occurred, the opposite could have occurred under absolutely identical circumstances.”⁴² Following his definitions of “necessity” and “chance,” Ulrich defines determinism as a doctrine of necessity, i.e. that everything that occurs, including our volitions,

³⁸ My modified translation of Arnulf Zweig’s translation in *Correspondence*, 277 (10:532). Zweig completely omits “*unter dem leeren Namen von Freiheit*” from his translation.

³⁹ Ulrich, J.A.H. *Eleutheriology*, 16

⁴⁰ *ibid.*

⁴¹ *ibid.*, 16–7

⁴² *ibid.*, 19

intentions, and decisions, has its determinative grounds and could not have been otherwise.⁴³ Indeterminism, on the other hand, “fancies that the human mind, or even any rational being, possesses the capacity to will or not to will under absolutely identical internal and external circumstances, in absolutely the same aggregate condition conceived as entirely unaltered, or even to be able to will the opposite of what he actually decides to do.”⁴⁴ Ulrich asserts that there is no middle path between these two perspectives, i.e. either a rational being has the ability to do otherwise in a given set of circumstances or not.⁴⁵ Having laid forth these fundamental concepts, Ulrich turns to a treatment of Kant’s theory of freedom.

Ulrich claims that Kant’s doctrine is not indeterministic insofar as with respect to appearances and man’s empirical character, which is the perspective from which the indeterminist proceeds, Kant is a determinist and denies freedom.⁴⁶ With respect to man’s intelligible character, Kant avoids natural necessity insofar as natural necessity involves determination by temporally preceding conditions, and the intelligible transcends temporal conditions; however, this does not entail that the intelligible character is not determined by other, non-temporal grounds, in which case the intelligible character would still be necessitated.⁴⁷

Furthermore, Ulrich draws a distinction between a capacity and the exercise of that capacity. Even if man’s intelligible character should have the capacity to initiate a state by itself (in such a way that is represented as non-temporal), the exercise of this capacity cannot be thought as independent of time-determination.⁴⁸ Ulrich paraphrases Kant’s claims in the 1st *Critique* that blameworthy action is to be imputed to the omission of reason such that, regardless

⁴³ *ibid*, 20

⁴⁴ *ibid*, 21

⁴⁵ *ibid*, 21–2

⁴⁶ *ibid*, 32

⁴⁷ *ibid*

⁴⁸ *ibid*, 34

of empirical circumstances, the agent ought to have determined his behavior otherwise.⁴⁹ In addition to the difficulty of reconciling the exercise of the intelligible capacity with its alleged non-temporality, the question arises why the capacity is exercised in certain actions and not others: “either something is present that on one occasion contains the ground of exercise and in another case contains the ground of omission, or not. In the first case [there is] necessity, in the second chance.”⁵⁰ Accordingly, in the first case there is determinism and in the second case there is a lack of sufficient reason to attribute the omission of reason in the blameworthy act to the agent.⁵¹

Ulrich also mounts an objection against the role of reason in agency with respect to conscious representations. Ulrich claims that Kant must have two aspects of reason in mind, an empirical and an intelligible aspect. All representation of reason and consciousness of reason’s demands including the thought of the ought must be attributed to empirical reason insofar as these representations presuppose arising and disappearing, and thus time-determination.⁵² Accordingly, these representations would only be the effects of the intelligible faculty of reason. Ulrich repeats his criticism that it is unclear how “immutable, intelligible reason,” which is supposed to be coterminous with all human actions in temporal circumstances and yet not itself in time, can “bring about such quite distinct effects in appearance at different times.”⁵³ In mock answer to this question, Ulrich speculates Kant’s reply:

“What does all that matter,” Kant will reply, “even if, as it is, it may be simply incomprehensible, this does not entail *impossibility*. It shall merely be a transcendental

⁴⁹ *ibid.* See A555/B583

⁵⁰ *ibid.*, 34

⁵¹ For discussions of this point see: Frederick Beiser, *The Fate of Reason*, 210; George di Giovanni, *Freedom and Religion*, 116.

⁵² Ulrich, J.A.H. *Eleutheriology*, 35

⁵³ *ibid.*, 35

hypothesis in polemical use. It is enough that there exist grounds that compel us to presuppose such a merely intelligible faculty, whose effects admittedly have a beginning, but whose causality itself does not have a beginning, and in which no alterations take place.”⁵⁴

Ulrich goes on to present his own account of moral freedom “the mutability of our volition by moral means,”⁵⁵ that is, “the *perfectibility* of our practical cognition in *extension* and *intension*, and by means of this also of our way of thinking, of our dispositions and decisions.”⁵⁶ For Ulrich, this conception of freedom is completely consistent with strict determinism and simply denotes the capacity of the will to progress toward moral perfection by means of representations of good and evil. However, we are not concerned with Ulrich’s neo-Leibnizian doctrine. Instead, let us turn to Kant’s own reply to Ulrich’s criticisms via the Kraus review of *Eleutheriology*.

The Kraus review begins with a presentation of the Kantian position that the distinction an agent makes between taking himself to be subject to natural laws and crediting to himself “a spontaneity independent of nature” is necessary and without this distinction, the agent would either have to renounce the “essence of morality” or the “use of the understanding” (RevUlrich 8:453). Insofar as both of these standpoints are necessary, the agent “becomes aware that he is in the presence of a mystery” and “the way in which nature and freedom are joined in him cannot be fathomed” (RevUlrich 8:453–4). To some extent, Ulrich’s conjecture at Kant’s response to his criticisms is not far off the mark. However, what is most significant, particularly for our own investigation, is the Kantian claim that morality is unintelligible without freedom.

If one tries to regard morality in the same way we regard events conditioned by laws of nature, then this results “in a fatalism that does not allow the genuine concepts of obligation and

⁵⁴ *ibid*, 36

⁵⁵ *ibid*, 58

⁵⁶ *ibid*, 59

imputation to further exist” (RevUlrich 8:455). Indeed, the preclusion of obligation and moral imputation as a result of fatalism was seen in Schulz’s *Attempt at a Doctrine of Morals for all Human Beings* (RevUlrich 8:455).⁵⁷ Instead, one must regard moral agency as the manifestation of freedom: “*ought* presupposes *can*, and hence the ought that is independent of all that actually happens presupposes the can that is likewise independent of all that actually happens – or, moral obligation presupposes the original spontaneity that is really what has to be thought as *freedom*” (RevUlrich 8:455–6). As we shall see, the notion that freedom is a necessary condition for the intelligibility of the moral law figures prominently in Reinhold’s formulation of his own theory of free will (Chapter 2). Furthermore, the explicit argument from duty and moral imputability to freedom is crucial to Kant’s treatment of free immoral action in *Religion within the Boundaries of Mere Reason* (Chapter 4). For now, let us turn our attention to another key player in the discussion on free will preceding Reinhold’s *Letters II*, C.C.E. Schmid.

1.3 CARL CHRISTIAN ERHARD SCHMID

Carl Christian Erhard Schmid (1762–1812) was the teacher of Frederick von Hardenberg, aka Novalis, before becoming a professor at Jena in 1793.⁵⁸ Schmid is perhaps best known for his role in the early reception of the Critical philosophy and for his disputes with K.L. Reinhold and Johann Gottlieb Fichte. Schmid was critical of Reinhold’s theory of free will as well as his theoretical *Elementarphilosophie*. In fact, Schmid’s review of Reinhold’s *On the Foundation of Philosophical Knowledge* may have played a role in Reinhold’s ultimate renunciation of this

⁵⁷ See also Kant’s 1783 review of Schulz’s work (RevSchulz 8:10–14)

⁵⁸ Klemme, Heiner and Manfred Kuehn, *The Bloomsbury Dictionary*, 685

theoretical project.⁵⁹ Moreover, Reinhold specifically names Schmid in the title of a polemical 1793 essay against Schmid's position on free will.⁶⁰ However, we are not so much concerned with Schmid's dispute with Reinhold as with Schmid's doctrine of intelligible fatalism, his interpretation of Kantian free will, and their possible role in the development of Reinhold's theory of free will and Kant's position in *Religion*.

Schmid's first philosophical work, *Critique of Pure Reason in Outline along with a Lexicon for the Easier Use of the Kantian Writings* (1786), was significant in the reception of Kant's philosophy, which was often criticized as being abstruse. Schmid went on to publish another edition of the *Critique of Pure Reason in Outline* as a standalone text without the *Lexicon* in 1788. The *Lexicon* was reprinted in 1788, as well as in 1795 and 1798. Reinhold actually cites the 2nd edition of Schmid's *Lexicon* in the "Eighth Letter" of the *Letters on the Kantian Philosophy Volume II*, and argues against the definitions of will that Schmid presents. As we shall see, particularly in Chapter 5, Schmid's understanding of free action as moral action would come to be a crucial counterpoint to Reinhold's own position on free will. Also of significance to our investigation is Schmid's *Attempt at a Moral Philosophy*, originally published in 1790 and reprinted in 1792, 1795, and 1802. In this work, Schmid puts forth his doctrine of intelligible fatalism and attempts to reconcile Ulrich's determinism with Kantian freedom. The relation between Schmid and Reinhold has received attention in the scholarship on Reinhold's

⁵⁹ Goubet, Jean-François, "Der Streit zwischen Reinhold und Schmid über die Moral," 240.

⁶⁰ The essay was originally published under the title "On the Distinction between Involuntary Desire Modified by the Power of Thinking and Actual Volition, or between So-called not Moral and Moral Volition: to Professor C. Ch. E. Schmid" in *Philosophischen Journal für Moralität, Religion und Menschenwohl*. It was then reprinted in 1794 in the "Foundation of Ethics" part of Reinhold's *Contributions to the Correction of Previous Misunderstandings of Philosophers* under the title "On the Distinction between Volition and Desire with Respect to the Moral Law: to Professor Schmid in Jena." For the original 1793 bibliographic information I am indebted to Faustino Fabbianelli (ed.), *CII*, 357 n47.

theory of free will.⁶¹ The dominant view in the scholarship is that Schmid adopts the determinism presented in Ulrich's *Eleutheriology*. However, Paul Guyer has recently asserted that Schmid actually presents intelligible fatalism merely as a portrayal of Ulrich's view, which Schmid supposedly does not share.⁶² I will argue below that Guyer is mistaken. But Guyer's misunderstanding gives us occasion to examine Schmid's position more closely. After all, if Ulrich's position of thoroughgoing determinism rejects Kant's notion of noumenal freedom, and instead asserts "everywhere necessity,"⁶³ how can Schmid simultaneously advocate Ulrich's determinism and Kantian freedom? The scholarship up to now has noted *that* Schmid maintains these two positions; however, an examination of how Schmid attempts to reconcile comprehensive necessity (even at the noumenal level) with what he takes to be Kantian freedom is needed. Accordingly, we shall use this lacuna in the scholarship as a backdrop for presenting those aspects of Schmid's position on free will relevant to our investigation.

In his *Attempt at a Moral Philosophy* (1790), Schmid addresses what he calls "intelligible natural fatalism," or "the natural necessity of all actions of a rational being according to laws of the causality of things in themselves."⁶⁴ Guyer notes that Reinhold presents his theory of free will in opposition to Schmid's account of free will. According to Guyer, however, "Reinhold had not understood that he was on the same page as Schmid!"⁶⁵ Ironically, it is Guyer who has misunderstood Schmid. Nowhere in the 1790 edition of *Attempt at a Moral Philosophy* does Schmid reject intelligible fatalism. Instead, Schmid asserts: "*Determinism*, if it is conceived as a philosophy that denies any chance in nature and plainly rejects any explanation of an event from

⁶¹ See Martin Bondeli, "Willensfreiheit"; George di Giovanni, *Freedom and Religion in Kant and his Immediate Successors*, 122ff; Paul Guyer, "The Struggle for Freedom," 122; Jörg Noller, "Die praktische Vernunft ist kein Wille."

⁶² Guyer, Paul, "The Struggle for Freedom," 122–24

⁶³ Ulrich, J.A.H., *Eleutheriology*, 34

⁶⁴ Schmid, C.C.E., *Attempt at a Moral Philosophy* (1790), §257, 211

⁶⁵ Guyer, Paul, "The Struggle for Freedom," 124

chance, is the only true and sound philosophy, since to the contrary, *indeterminism*, or the claim of lawless effects in nature, renders any theoretical and practical use of reason impossible.”⁶⁶ To be sure, this definition of determinism offered by Schmid may only pertain to “nature,” i.e. the phenomenal world; however, he is explicit that he takes the doctrine of necessity to extend to things in themselves. In Section §255 Schmid asserts:

If we do not want to allow any (irrational) chance, then there remains nothing left but necessity, for there is absolutely no middle path between the two. Thus, something must be thought as present with the existence of reason that determines its efficacy on appearances and the particular degree of this efficacy in a given instance. This something is indeed not an appearance, since an appearance cannot determine a thing in itself. However, even if sensibility, as it is sensibly represented and cognized itself, cannot determine and restrict reason in itself, it by no means follows that what underlies sensibility and its appearances in itself is incapable of restricting reason’s effects in appearance. And, if we want to escape groundlessness i.e. theoretical irrationality in explaining immorality, then we must think this problematic thought assertorically.⁶⁷

Schmid actually titles this section “Yet everywhere necessity” as a tribute to Ulrich. Schmid even has a footnote in this section where he asserts: “this claim by the determinists, e.g. by Mr. Privy Councilor *Ulrich* in His *Eleutheriology* (Jena 1788) §9ff. has not been attacked or doubted by any reasonable person, let alone refuted.”⁶⁸ Schmid is taking up the issue raised by Ulrich of how it is to be explained that reason is sometimes efficacious in determining our actions and sometimes is not.⁶⁹ Because chance is irrational, we must presuppose that in those instances in which reason is not efficacious, “*it could not be efficacious,*”⁷⁰ as a result of something that is not itself appearance. Indeed, in the 1792 edition of *Attempt at a Moral Philosophy* Schmid is

⁶⁶ Schmid, C.C.E., *Attempt at a Moral Philosophy* (1790), §224, 187

⁶⁷ *ibid*, §255, 209

⁶⁸ *ibid*

⁶⁹ On this point, see also Jörg Noller, *Die Bestimmung des Willens*, 184 n420

⁷⁰ Schmid, C.C.E., *Attempt at a Moral Philosophy* (1790), §255, 209

explicit that intelligible fatalism is a necessary presupposition: “*intelligible fatalism...is a necessary thought of reason.*”⁷¹ In Guyer’s defense, Schmid is far from clear in presenting his position and does reject determinism *in a certain respect*. In fact, it is precisely the section in *Attempt at a Moral Philosophy* where Schmid rejects determinism in a qualified sense that Guyer cites as justification for his interpretation.

Guyer claims Schmid insisted that “to apply determinism to the ‘finite rational being, the human being,’ that is the *noumenal* self and its will, would be ‘indemonstrable,’ provable neither by an ‘analogy from experience’ nor from the ‘*logical principle of the ground*,’ thus that the noumenal self is free to choose to act on the moral law *or* ‘other (non-rational) powers.’”⁷² However, Guyer overlooks Schmid’s qualification of this determinism. Schmid does not claim that determinism, in general, cannot be applied to finite rational beings. Instead, Schmid claims:

a determinism that subjects the I (finite rational being, man) in every respect – thus, not merely as an appearance, but also as a *thing in itself* (which he normally does not distinguish) with respect to all of his actions, the rational and the animal, and with respect to everything that constitutes an action, according to the form (mode of action) as well as the matter, or according to the internal and external objects acted upon – to the necessary influence *of appearances in time* without qualification, and derives actions exclusively on this basis is...indemonstrable.⁷³

This passage serves as the main clause to which Schmid connects several bulleted points over three pages. Accordingly, Schmid claims that such a determinism is: “indemonstrable,” “inconsistent,” “practically detrimental,” (i.e. detrimental to practical philosophy), etc. Guyer mistakenly takes Schmid to be denying the application of determinism in general to the finite rational being, whereas Schmid is actually denying a determinism that subjects the finite rational

⁷¹ Schmid, C.C.E., *Attempt at a Moral Philosophy* (1792), §263, 397

⁷² Guyer, Paul, “The Struggle for Freedom,” 122. Guyer’s citations from Schmid are from *Attempt at a Moral Philosophie* (1790), §260, 220–23

⁷³ Schmid, C.C.E., *Attempt at a Moral Philosophy* (1790), §260, 220

being (construed both as appearance and thing in itself) to the necessary influence of appearances in time. It is this and only this specific conception of determinism that Schmid declares “indemonstrable,” “inconsistent,” etc.

Furthermore, contrary to Guyer’s claim, Schmid never held that the noumenal self is “free to choose to act on the moral law *or* ‘other (non-rational) powers.’” In fact, Schmid restricts free will to *moral acts*. In his 1788 *Lexicon* Schmid defines practical freedom in the negative sense as “independence of the power of choice from all empirical, all sensible inclinations and impulses” and in the positive sense as “dependence of the will upon reason, which determines it immediately, upon the pure moral law; autonomy of the will.”⁷⁴ To be sure, these definitions are consistent with Kant’s own formulations from the *Groundwork* and 2nd *Critique*, and do not necessarily entail that Schmid was committed to the restriction of freedom to moral acts. Schmid’s commitment to the restriction of freedom to moral acts is more strongly suggested in his definition of autonomy: “To act freely, automatically, and morally good are synonyms.”⁷⁵ Schmid is even more explicit about this commitment in the 1792 edition of *Attempt at a Moral Philosophy*, where he asserts: “The *actuality* of non-moral as well as immoral dispositions and actions (§229) directly proves their *possibility*. The possibility of non-moral and immoral actions cannot be sufficiently grounded in precisely that which grounds the possibility of moral dispositions and actions – thus it cannot be grounded in *moral freedom*, but rather in the lack of moral freedom.”⁷⁶ Schmid continues: “some include the *capacity to act*

⁷⁴ Schmid, C.C.E., *Lexicon*, 178–79

⁷⁵ *ibid*, 62. Following Gerold Prauss, Alessandro Lazzari, and Jörg Noller, I take “automatically” (*automatisch*) to be a typo for “autonomously” (*autonomisch*). See: Alessandro Lazzari, “Behandlung der Freiheitsthematik,” 203; Jörg Noller, *Die Bestimmung des Willens*, 185; Gerold Prauss, 85. As Noller remarks, this error is suggestive of a Freudian slip!

⁷⁶ Schmid, C.C.E. *Attempt at a Moral Philosophy* (1792), §249, 334. There is a terminological shift from the *Lexicon* of 1788 and *Attempt at a Moral Philosophy* (1790, and all subsequent editions). In *Attempt at a Moral Philosophy*, Schmid employs “practical freedom” the way that Kant employs “psychological” or

immorally in moral freedom. But this contradicts the concept of a moral capacity, and such a freedom would be a capacity to act in contradictorily opposed ways, which amounts to a contradiction.”⁷⁷ Precisely because Schmid does not include the capacity to act immorally in his conception of moral freedom, he asserts that he does not understand Kant in the 2nd *Critique* where he claims that in acting immorally, an agent is aware that at the time of the action he was free (and thus could have acted otherwise and is morally responsible for having acted immorally):

Likewise, I do not understand the passage from Kant’s *Critique of Practical Reason* p. 176 whatsoever, because I deem it necessary to assert that man is *never entirely in his right mind* at the time that he commits injustice, i.e. he does not have use of his moral freedom. Nevertheless, at that very moment he can possess practical or psychological freedom, and therefore act prudentially or skillfully. If he had been able to use moral freedom, if the influence of the pure will had extended to his sensibility up to that moment, then I do not doubt at all that he would have also acted morally.⁷⁸

Thus, Schmid restricts free will to moral acts and takes the efficacy of pure practical reason to be sufficient for determination of the will. Accordingly, immoral actions must be explained by the postulation of some intelligible hindrance to the efficacy of pure practical reason. Having refuted Guyer’s recent interpretation of Schmid, let us examine how Schmid attempts to

“comparative” freedom in the 2nd *Critique*. This type of freedom is completely consistent with phenomenal determinism. Thus, after 1790 “moral freedom” refers to the kind of practical agency that presupposes transcendental freedom.

⁷⁷ Schmid, C.C.E., *Attempt at a Moral Philosophy* (1792), §249, 335. Of course, Schmid makes the modal mistake of asserting that a *capacity* to act in contradictorily opposed ways entails a contradiction. There would only be a contradiction if this capacity entailed that an agent simultaneously act in contradictorily opposed ways.

⁷⁸ Schmid, C.C.E., *Attempt at a Moral Philosophy* (1792), §249, 336. Schmid is referring to p. 176 of the 1st edition of the *Critique of Practical Reason*: “A human being may use what art he will to paint some unlawful conduct he remembers as an unintentional fault, – as a mere oversight which one can never avoid altogether, and so as something in which he was carried away by the stream of natural necessity – and to declare himself innocent of it; he nevertheless finds that the advocate who speaks in his favor can by no means reduce to silence the prosecutor within him, if only he is aware that at the time he did this wrong he was in his senses, that is, had the use of his freedom.” (5:98)

reconcile a system of universal necessity with moral responsibility. After all, if immoral actions are the result of an external hindrance to the efficacy of pure reason, then how is the agent to be held culpable for failing to act according to the moral law? Contrary to what one might expect, Schmid is still committed to a notion of moral culpability for immoral actions.

I am not endorsing Schmid's position. However, in presenting his position, I will argue that it is at least more attractive than scholars such as George di Giovanni have intimated. Di Giovanni constructs a dichotomy of options open to Schmid given his commitment to Kant's conception of the moral law:

On the one hand, he can follow up on the implications of Kant's standpoint. In this case, a new world of meaning would open up for him, one in which the apparently mere physical component in the description of human behavior carries from the beginning a completely different meaning than it would have in purely theoretical discourse. The character of an action is defined first and foremost ideally, with reference to the law. This is a world where 'killings' are relevant only inasmuch as they are to be adjudicated as either 'manslaughters' or 'murders'...None of these characterizations are reducible to purely physical predicates...On the other hand, Schmid can revert to Ulrich's traditional conflation of physical and moral – that is, he can consider the law, however much now formally defined in Kantian style, as still the conscious by-product of a given particular nature...There is no doubt that Schmid opted for this second alternative – or, more precisely, since it is doubtful that he ever understood the possibility of the first, that he fell in line with it as if instinctively.⁷⁹

Thus, according to di Giovanni, Schmid can either enter into a “world of meaning” independent of physical descriptions, or accept Ulrich's system of thoroughgoing necessity. The first disjunct entails the irreducibility of the normative to physical descriptions. Hence di Giovanni's claim that “manslaughters” and “murders” cannot be reduced to “purely physical predicates.” The problem with di Giovanni's characterization is that he has created a false dichotomy.⁸⁰ A

⁷⁹ di Giovanni, George, *Freedom and Religion in Kant and His Immediate Successors*, 120

⁸⁰ Although di Giovanni does not give an explicitly logical description, it is clear that in presenting the two options he has in mind an exclusive disjunction.

commitment to the irrationality of chance does not exclude a commitment to the irreducibility of the normative to physical descriptions.⁸¹ In fact, Schmid relies on the practical/theoretical distinction in order to maintain his commitment to both. Schmid asserts:

Intelligible fatalism of nature... can provide no determining ground of these actions nor a principle of inactivity, since only what we are acquainted with can have a determining influence on our actions, whereas the limits that define rational activity are absolutely indeterminable for us. For morality it is enough to know or to believe that everything with which we are acquainted, and all temporal circumstances cannot force us to act irrationally, and hence cannot cut us off from the obligation of always making the moral law the rule and guideline of our actions, although, from a theoretical point of view, it cannot really be the determining rule of our actions at all.⁸²

Schmid's point, as obvious as it may seem, is that rational agency is to act on the basis of reasons. Thus, volition requires the representation of reasons on the basis of which we can act. Only "what we are acquainted with," i.e. representations of which we are conscious, can be considered determining grounds of our actions. From the practical standpoint, morality is secured by the fact that as rational agents nothing can force us to act irrationally. And so even if from the theoretical standpoint all events are ultimately grounded in a thoroughgoing determinism at the intelligible level, this determinism is inaccessible to us as agents (it is only a theoretical presupposition), and cannot infringe upon the way in which we conceive rational agency from the practical standpoint. Accordingly, I regard as unfounded di Giovanni's claim that Schmid never "understood the possibility" of the first disjunct, i.e. of carving out an account

⁸¹ It might be argued that the second disjunct already entails the reduction of the normative to the physical insofar as di Giovanni characterizes the second disjunct as "Ulrich's traditional conflation of physical and moral." On this reading, di Giovanni's disjunction would not be a false dichotomy. Instead, di Giovanni would have presented a straw man of Schmid's position. Regardless of *which* fallacy we attribute to di Giovanni, the point is that he mischaracterizes Schmid's position as incapable of reconciling thoroughgoing necessity with a commitment to the independence of the normative from reduction to physical descriptions.

⁸² Schmid, C.C.E., *Attempt at a Moral Philosophy*, §257, 211

of rational agency from the practical perspective that would be secured from reduction to his commitment to an ultimately deterministic state of affairs. Be that as it may, that Schmid is not guilty of di Giovanni's charge does not immunize his position from difficulties.

The main problem with Schmid's account of imputability is not so much due to his commitment to intelligible fatalism, but rather due to his claim that only moral actions are to be conceived as the result of the activity of pure reason, and therefore free. Schmid asserts that even though immoral actions do not stem from the efficacy of reason, but rather are due to other non-rational forces, reason still imputes to itself its omitted activity, because "reason is not acquainted with the obstacles of this self-activity...and therefore cannot take them into account."⁸³ Schmid goes on to say: "With regard to these concepts and the judgments of imputation, we suppose that, regardless of all circumstances, [the faculty of] reason of the rational being that erred could have had a higher degree of self-active efficacy. For nothing existing in time, nothing cognizable could have restricted the efficacy of reason."⁸⁴ Thus, Schmid's conception of imputability relies on the agent's ignorance of the underlying intelligible obstacles that hinder the efficacy of reason to determine the will. Of course, it does not follow that because nothing cognizable and existing in time could have restricted reason, that therefore it could have been efficacious. By his own admission, Schmid holds that when reason is inefficacious, "*it could not be efficacious.*"⁸⁵ Schmid has little recourse to rely on the practical/theoretical distinction, i.e. that from the practical standpoint we must suppose that in immoral action reason could have been more efficacious, because he maintains that immoral actions are not free. As we shall see in Chapters 4 and 5, Kant and Reinhold are committed to a

⁸³ Schmid, C.C.E., *Attempt at a Moral Philosophy* (1790), §252, 207

⁸⁴ *ibid*, §253, 207

⁸⁵ *ibid*, §255, 210

more robust libertarian account of free will as a condition for moral imputability. Reinhold in particular takes issue with Schmid's restriction of freedom to moral acts.

1.4 CONCLUSION

The reception of Kant's theory of free will was crucial to Reinhold's development of his own theory. Given that Kant never addressed free immoral actions in his Critical works until *Religion*, there is good reason to think that the philosophical discussion on free will in the 1780s prompted Kant to address this issue in 1792. We can sum up the contributions of the foregoing thinkers as follows. Rehberg questioned how Kant's merely formal moral law can serve as a principle for the performance of action for the sake of this supreme norm. Rehberg contended that such a *principium executionis* would have to be present to empirical consciousness and would therefore no longer maintain its purely formal status. Rehberg's position may have influenced Reinhold to conceive free will as a conscious choice to conform to or transgress the moral law. Ulrich criticized Kant's conception of "freedom" as only being able to avoid necessity by avoiding temporally determined necessity. According to Ulrich, this does not entail that freedom qua *causa noumena* is not ultimately subject to ineluctable necessity at the noumenal level. C.C.E Schmid, following Ulrich's doctrine of thoroughgoing determinism, interprets Kantian freedom a la intelligible fatalism. According to Schmid, freedom is restricted to moral action and consists in the self-activity of reason whereas immoral action is not free, but rather is to be conceived as due to a hindrance to the efficacy of reason. Reinhold would go on to argue against Schmid, claiming that such a conception of free will undermines moral

imputability and therewith, the intelligibility of the moral law. Indeed, as we will see in Chapter 2, Kant himself rejects free will as restricted to moral action in *Religion*.

Chapter 2

Freedom and Facts of Consciousness

K.L. Reinhold presents his conception of free will in his *Letters on the Kantian Philosophy Volume II (Letters II)*. According to Reinhold, we have two fundamental drives: the selfish drive, which expresses the demand of desire, and the unselfish drive, which expresses the demand of the moral law (*LII* 134–36/181–84). The will is the capacity to determine oneself for or against the demand of the unselfish drive viz. the satisfaction or non-satisfaction of the selfish drive (*LII* 135/183). That is, the will is the capacity to determine oneself for or against the moral law given the demand of desire. The two drives are connected in such a way that the demand of the unselfish drive, i.e. the demand of the moral law, always relates to the possible fulfillment of a given desire. For instance, Reinhold would interpret Kant’s false-promise example as follows. An individual is confronted with a desire to make a false promise (presumably for some advantage). This desire to make a false promise is the demand of the selfish drive and can either be satisfied or not satisfied. This same individual is also confronted with a feeling that he ought not make the false promise. This “moral feeling” is the demand of the unselfish drive, the expression of pure practical reason, viz. the moral law.⁸⁶ The agent can either heed the demand

⁸⁶ That moral duty announces itself in a given situation through a feeling is not dissimilar to Kant’s notion of respect, which he calls a “feeling” in the *Groundwork* (4:401n). On this point see Bondeli (*LII* 326 n41). Breazeale takes Reinhold’s doctrine of drives, particularly of the expression of the moral law being

of the moral law and not make the false promise, or transgress the moral law by making the false promise. The choice to act morally or immorally constitutes a decision (*Entschluss*)⁸⁷ executed by the power of choice (*Willkür*). This decision is independent of the two drives and is an instance of spontaneous self-determination.

Reinhold frequently claims that our knowledge of free will is simply a “fact of consciousness” (*Tatsache des Bewusstseins*). The secondary literature on Reinhold’s theory of free will has taken this phenomenological fact to be Reinhold’s epistemic foundation for free will. This is often considered a fatal flaw in Reinhold’s account. Faustino Fabbianelli claims that Reinhold had difficulty “extricating himself from a psychological conception of freedom, because his discussion remains grounded in mere facts of consciousness.”⁸⁸ Similarly, Günter Zöllner claims “with Reinhold, practical philosophy remains in the domain of facts of moral consciousness and of their logical-analytical explication within the scope of *moral psychology*,”⁸⁹ and that Reinhold proceeds in the phenomenological style of the popular philosophers, connecting empirical results with their theoretical penetration.⁹⁰ However, not all commentators take a disparaging stance on Reinhold’s seemingly psychologistic account of free will.⁹¹ Daniel Breazeale notes that Reinhold’s appeal to facts of consciousness can be seen as an anticipation of existentialist thinkers who take our phenomenal experience of free will to be

grounded in the unselfish drive via moral feeling, to be an attempt to bridge the phenomenal/noumenal gap found in Kant’s philosophy (“The Fate of Kantian Freedom,” 106).

⁸⁷ In the second volume of his *Contributions*, Reinhold employs “*Entscheidung*” instead of “*Entschluss*.”

⁸⁸ Fabbianelli, Faustino, “Die Theorie der Willensfreiheit,” 441. Fabbianelli goes on to assert that a critic could reject Reinhold’s defense of free will on the basis of its “psychologism,” and to question how it is possible to claim that man is free on the basis of one’s own individual consciousness (442).

⁸⁹ Zöllner, Günter, “Von Reinhold zu Kant,” 75. Breazeale rightly notes that Zöllner’s position entails that Reinhold’s account “is not a contribution to philosophy at all, but rather to empirical psychology” (“The Fate of Kantian Freedom,” 113).

⁹⁰ Zöllner, Günter, “Von Reinhold zu Kant,” 87

⁹¹ For a defense of Reinhold on this charge see Daniel Breazeale, “The Fate of Kantian Freedom,” 112–16.

fundamental to the human condition.⁹² To be sure, on the one hand there is something off-putting about making philosophical claims on the basis of facts of consciousness, and a serious worry that this practice amounts to making bald assertions. On the other hand, phenomenological approaches to certain philosophical issues, or to philosophy in general, should not be rejected out of hand. However, rather than weigh in on the *merits* of Reinhold's alleged grounding of our knowledge of free will in facts of consciousness, I contend that this is not the most charitable interpretation of Reinhold's argumentative strategy after all, or, better yet, that the appeal to facts of consciousness tells only half the story. I argue that while Reinhold indeed grounds our knowledge of free will in facts of consciousness (1), this fact is not a bald assertion grounded in empirical psychology, but rather, per Kant's *Critique of Practical Reason*, follows *a priori* from our indubitable consciousness of the moral law (2). Having assumed Kant's doctrine of the fact of reason, Reinhold then provides an argument for free will as a necessary condition for moral responsibility, and thereby, as a condition for the normative force of the moral law (3). Scholars up to now have failed to recognize the implicit argument for free will, specifically with respect to immoral actions, in Kant's *Religion within the Boundaries of Mere Reason*. Using the *Lectures on Ethics*, I demonstrate Kant's commitment to the biconditional relation between moral obligation and imputability in order to explicate this implicit argument, and show that this argumentative strategy parallels Reinhold's own argument implicit in the *Letters II* (4).

2.1 THE FACT OF FREEDOM

⁹² Breazeale, Daniel, "The Primacy of the Practical and the Freedom of the Will." Although he does not here use the term "existentialism," that Reinhold's account of free will would be well-received by "contemporary practitioners of phenomenology" is asserted by Breazeale in "The Fate of Kantian Freedom," 120–21.

Reinhold makes clear in “Letter Six” of his *Letters on the Kantian Philosophy Volume II* that his presentation of the fundamental concepts of ethics (including the concept of free will) is not based on metaphysics at all, but rather is based on the original and universal faculties of human cognition, which make themselves known through facts of consciousness (*LII* 133/180).

Reinhold even says that while his assertions would normally require arguments and proofs to be accepted by philosophers, his claims in “Letter Six” are neither argued for nor proven (*LII* 133/180). He considers himself justified in making these bald assertions insofar as this is a prerogative that “every philosophizing author has exercised on every occasion” (*LII* 133/180–81). Accordingly, Reinhold considers himself to be secure in these assertions insofar as no one will be able to deny Reinhold this prerogative without, at the same time, “compelling himself to eternal silence” (*LII* 133/181). In short, Reinhold’s position amounts to the proverbial declaration: “let he who has not made bald assertions cast the first stone.” He admonishes that whoever tries to refute his fundamental concepts will have a hard time when Reinhold denies the presuppositions underlying the attempted refutation (*LII* 133/181), i.e. “if you deny my assertions, then I’ll deny yours.” Reinhold at least promises a more precise argument for these assertions (*LII* 134/181), presumably to be derived from the first principle of his *Elementarphilosophie*. However, Reinhold abandoned the idea of deriving these practical results from a single first principle. Nevertheless, he did not abandon the assertions themselves. The fundamental concepts of ethics he presents in the *Letters II* (1792) are largely consistent with his “Foundation of Ethics” in *Contributions to the Correction of Previous Misunderstandings of Philosophers Volume II* (1794) as well as with his lectures from 1796 on the “Principles of Ethics and Natural Right.”⁹³ Without the redemption of his promissory note for a more explicit

⁹³ Bondeli, Martin, “Kommentar,” n157, 359. Whereas the “Sixth Letter” from *Letters II* contains a presentation of kinds of duty and right, e.g. perfect duty, imperfect duty, perfect right, imperfect right,

proof, Reinhold's justification for these assertions seems to be only a slightly more sophisticated formulation of the playground retort "I know you are but what am I." We shall see that already in the *Letters II*, there is an implicit argument for Reinhold's conception of free will. But first, we must examine Reinhold's presentation of free will as a fact of consciousness.

Reinhold asserts as facts of consciousness: "*First*, that in volition as well as in involuntary desire, that drive, which can be moved to action only by pleasure and displeasure, is active – *Second*, that in volition, in addition to that drive, *reason* is also active in a particular way" (*LII* 173/244). By asserting these facts, Reinhold takes himself to have established the basic structure of agency in general, and volition in particular. The first fact establishes that in any act (i.e. in both volition and involuntary desire) the selfish drive is active. As has already been mentioned above, the selfish drive expresses the demand of desire, i.e. the demand grounded in pleasure and displeasure. Acts that are grounded only in desire, are not volitions, but are instinctual and animal (*LII* 174/246). The second fact establishes that in volition, reason is active by means of expressing the demand of the moral law through the unselfish drive. Reinhold goes on to assert that it is also a fact of consciousness that in volition an act of decision takes place as "the special act of our *I* (the person in us)" (*LII* 173/244–45). Reinhold is careless in sometimes characterizing the act of decision as performed by the *I*, i.e. the person, and at other

right of compulsion, duty to compulsion, etc., the "Foundation of Ethics" from *Contributions II* does not address these concepts. Nevertheless there is significant overlap in the "Foundation of Ethics" with the "Sixth Letter," "Seventh Letter," and "Eighth Letter" from *Letters II*, specifically concerning the concepts of the will, free will, moral action, acts with no moral significance, etc. For the similarity between *Letters II* and *Contributions II*, see Faustino Fabbianelli's editorial notes within the "Foundation of Ethics" with references to corresponding passages in *Letters II* (Faustino Fabbianelli (ed.), *CII*). It should be noted that Reinhold abandons his employment of "selfish drive" and "unselfish drive" in *Contributions II*. However, this variance is merely terminological. Reinhold still maintains in *Contributions II* that freedom of the will consists in the satisfaction or non-satisfaction of a demand of desire (which in *Contributions II* he sometimes also refers to as the "drive to gratification") in light of the demand of the moral law. In the second edition (1793) of his *Versuch einer Kritik aller Offenbarung* Fichte criticizes Reinhold's use of "selfish" and "unselfish" drives (See Daniel Breazeale, "The Fate of Kantian Freedom," 100f.). Fichte's criticism may have prompted Reinhold's terminological shift.

times as performed by the power of choice. Reinhold does not hold that the decision is merely a rational activity of the I, which is then subsequently carried out by the power of choice. It is the power of choice that makes one of the occasioning grounds of the demands of the selfish and unselfish drives into a determining ground of volition (*LII* 191–92/279). It is this act that is the “genuine fact of freedom” (*LII* 192/279–80). We will see in Chapter 3 that Reinhold sometimes characterizes this activity as the activity of the I insofar as he holds that the act of decision, which is sufficient for volition, is necessarily a *conscious* self-determination. In this way, the power of choice is the self-determining capacity of the intentional subject. According to Reinhold, this free self-determination “is completely comprehensible to me from its effects, through which it emerges among the facts of consciousness, and to this extent it is no object of *faith*, but rather an object of the most real *knowledge* for me” (*LII* 194/284). The fact of freedom points to a basic faculty that is “therefore none the more incomprehensible than every other basic faculty of the mind, i.e. as sensibility, the understanding, and reason, which reveal themselves to consciousness only through their effects, but whose causes are incomprehensible insofar as they contain in themselves the ultimate supposed ground of their *modes of activity*” (*LII* 194/284). While it is undeniable that Reinhold does assert our knowledge of free will as a fact of consciousness, I argue that Reinhold accepts Kant’s claim in the 2nd *Critique* that our consciousness of free will follows directly from our consciousness of the moral law as a fact of reason. Reinhold then offers an implicit argument on the basis of moral responsibility in order to establish freedom to choose against the moral law. This argument becomes crucial in the Kant-Reinhold Controversy of 1797.

2.2 FREEDOM AND THE FACT OF REASON IN THE 2ND *CRITIQUE*

Reinhold asserts: “The *Kantian* works have only just prepared, and by no means delivered, the determinate concept that contains the logical character of the will” (LII 186/268). To be sure, Reinhold takes it to be his task to deliver this determinate concept, and in such a way that it builds on the path already prepared by Kant. More explicitly, Reinhold states: “the claim «that the concept of freedom first receives its reality through consciousness of the moral law» from the *Critique of Practical Reason* is incontestably true” (LII 190/276). Thus, Reinhold presupposes Kant’s “fact of reason” from the 2nd *Critique*:

Consciousness of this fundamental law may be called a fact of reason. (CPrR 5:31)

Moreover, the moral law is given, as it were, as a fact of pure reason of which we are a priori conscious and which is apodictically certain. (CPrR 5:47)

How does consciousness of the moral law give reality to the concept of freedom? In order to see the move from moral law to freedom that Reinhold takes over from Kant, it will be necessary to examine Kant’s own position in the 2nd *Critique*.

Consciousness of the moral law entails consciousness of that law as binding upon oneself insofar as the moral law is the “supreme principle of pure practical reason” (CPrR 5:39) and is “thought as objectively necessary only because it is to hold for everyone having reason and will” (CPrR 5:26). The moral law is the “sole principle that can *possibly* be fit for categorical imperatives” (CPrR 5:41), which are rules “indicated by an ‘ought,’ which expresses the objective necessitation to the action” (CPrR 5:20). Kant takes our consciousness of the moral law as supremely authoritative to lead “directly to the concept of freedom” (CPrR 5:29). It is not immediately clear how consciousness of the moral law is supposed to lead to the concept of

freedom. I take Kant to ground this move from the concept of the moral law to the concept of freedom in the implicit premise that ought implies can, as evidenced by his illustration that “experience also confirms this order of concepts in us” (5:30). The illustration is of a man pressed by his prince to give false testimony under threat of execution. If asked whether he could overcome his love of life and be put to death in order to fulfill his moral duty, “He would perhaps not venture to assert whether he would do it or not, but he must admit without hesitation that it would be possible for him. He judges, therefore, that he can do something because he is aware that he ought to do it and cognizes freedom within him” (*CPrR* 5:30). Paul Guyer has recently claimed that the move from consciousness of the moral law to the concept of freedom does *not* rely on “ought implies can.” Because “ought implies can” plays a significant role in Kant’s account of free will in *Religion within the Boundaries of Mere Reason*, it is worth investigating the role of this premise in the 2nd *Critique*. It will be argued in Section 3 that, similar to Reinhold, Kant presupposes the fact of reason in his argument for free will in *Religion*.

As evidence for his claim that Kant does not rely on “ought implies can” in the 2nd *Critique*, Guyer cites the following passage:

But how is consciousness of that moral law possible? We can become aware of pure practical laws just as we are aware of pure theoretical principles, by attending to the necessity with which reason prescribes them to us and to the setting aside of all empirical conditions to which reason directs us. The concept of a pure will arises from the first, as consciousness of a pure understanding arises from the latter. (*CPrR* 5:30)⁹⁴

Guyer claims that Kant’s reference to “ought implies can” is only made *after* his initial claim that awareness of pure practical laws leads directly to the concept of a pure will, just as awareness of pure theoretical principles leads to awareness of a pure understanding. Accordingly, Kant only

⁹⁴ See Paul Guyer, *The Virtues of Freedom*, 175.

makes use of “ought implies can” to show that “experience also confirms this order of concepts in us” (*CPrR* 5:30).⁹⁵ Guyer claims that awareness of the moral law leads to freedom insofar as Kant equates “pure practical reason with a pure will when he says that the consciousness of a pure will arises from the necessity of pure practical laws.”⁹⁶ Guyer’s interpretation is well suited to account for the passage cited above where Kant compares our inference to a pure will from practical laws to the inference to a pure understanding from pure theoretical principles. However, if this is indeed Kant’s position, it falls far short of showing how our consciousness of the moral law leads directly to the concept of freedom.

To be sure, our awareness of the purity of practical laws may lead to awareness of the purity of the faculty that *legislates* those laws, reason, but it by no means follows from this that we have the freedom to will on the basis of those laws.⁹⁷ It is only once “ought implies can” is presupposed that we can move from our awareness of pure practical laws to awareness of our capacity to act on those laws. A closer examination of Kant’s commitments to the nature of the moral law and his discussion of the fact of reason will be helpful in making sense of Kant’s line of thought. Kant of course held that if there is a moral law, then it must be a priori (and therefore universal and necessary). He also held: “All practical principles that presuppose an *object* (matter) of the faculty of desire as the determining ground of the will are, without exception, empirical and can furnish no practical laws” (5:21). Thus, only the lawgiving form of a maxim can constitute the determining ground of the will in moral volition. Indeed, it is because the moral law is formal, i.e. the “universal lawgiving form [of maxims]” (*CPrR* 5:28–9) that we “become immediately conscious” of that law “as soon as we draw up maxims for ourselves” (*CPrR* 5:29). Kant goes on to say that we become immediately conscious of the moral law

⁹⁵ See *ibid.*

⁹⁶ *ibid.*, 176.

⁹⁷ On this point see Henry Allison, *Kant’s Theory of Freedom*, 240.

“inasmuch as reason presents it as a determining ground not to be outweighed by any sensible conditions and indeed quite independent of them” (*CPrR* 5:29–30). Provided that the will is the “capacity to act *in accordance with the representation* of laws” (*G* 4:412),⁹⁸ the premise of “ought implies can” entails that insofar as we have a will and we are aware of the moral law, then we have the capacity to act according to the representation of the moral law independent of sensible conditions, i.e. then we are free.

Admittedly, Kant’s talk about free will often lends itself to Guyer’s interpretation that Kant equates the pure will with pure practical reason and that Kant takes himself to establish free will insofar as he has established the purity of reason in its spontaneous self-legislation of the moral law: “*independence*, however, is freedom in the *negative* sense, whereas this *lawgiving of its own* on the part of pure and, as such, practical reason is freedom in the *positive* sense” (*CPrR* 5:33). However, as we saw above, Kant consistently defines the will in both the *Groundwork* and the 2nd *Critique* as the capacity to determine itself on the basis of rules, or representations of laws. It would be a serious oversight on Kant’s part to hold that the will is a capacity for self-determination on the basis of the representation of laws, and then take a free will to be tantamount to the legislation of a law. We can, in part, attribute Kant’s ambiguity on this matter to the fact that he had not yet introduced the *Wille/Willkür* distinction that delineates the

⁹⁸ See also: “Now this principle of morality...is declared by reason to be at the same time a law for all rational beings insofar as they have a will, that is, the ability to determine their causality by the representation of rules” (*CPrR* 5:32). Of course, in the passage from the *Groundwork* Kant was being somewhat careless with his phrasing insofar as his considered position is not that the will is not a capacity for action, but rather a capacity to make a possible determining ground a determining ground of volition: “For it is a question only of the determining ground of volition in maxims of volition, whether it is empirical or whether it is a concept of pure reason (of its lawfulness in general), and how it can be the latter. Whether the causality of the will is adequate for the reality of the objects or not is left to the theoretical principles of reason to estimate, this being an investigation into the possibility of objects of volition, the intuition of which is accordingly no component of the practical problem. It is here a question only of the determination of the will and of the determining ground of its maxims as a free will, not of its result” (*CPrR* 5:45).

legislative and executive components of volition.⁹⁹ Furthermore, given “ought implies can,” the lawgiving of pure practical reason is sufficient for free will. Thus, Kant may have simply taken for granted that in establishing the former, he was also establishing the latter. Regardless, it is enough for our present purposes to acknowledge that in the *Critique of Practical Reason* Kant took the fact of reason of our consciousness of the moral law to lead directly to the concept of free will. We will see in the Section 2.4, following our examination of Reinhold’s argument that presupposes the fact of reason, that Kant took a similar path in *Religion within the Boundaries of Mere Reason*.

2.3 REINHOLD’S IMPLICIT ARGUMENT IN THE *LETTERS II*

In his “Eighth Letter” of the *Letters II*, Reinhold argues for the concept of free will, viz. the capacity for spontaneous self-determination for or against the moral law, from the premise that free will is a necessary condition for moral responsibility. His argument is imbedded in his response to the Schmidian conception of free will. Reinhold first notes that identifying free will solely with autonomy, i.e. reason’s self-legislation of the moral law and the capacity to act on its basis, entails the impossibility of free immoral acts (*LII* 185/267). However, as we saw in Chapter 1, Schmid explicitly admits that freedom of the will is restricted to moral acts. And so merely stating that a notion of free will restricted to moral acts precludes freedom for immoral acts is not sufficient to refute a Schmidian interpretation of Kantian free will. Reinhold needs to show that this conception of free will is inherently problematic. Reinhold concedes that at least

⁹⁹ As we will see in Chapter 5, Kant is guilty of the same ambiguity in the *Metaphysics of Morals*, which contains his most explicit formulation of the *Wille/Willkür* distinction. There I will argue, following Guyer, that Kant saw himself as constrained to define free will in terms of its *ratio cognoscendi*, the moral law.

Schmid is consistent enough to recognize that if free will is restricted to moral acts, then the ground of immoral acts must “be sought outside of the will in external obstacles” (*LII 200/296*). However, if the ground of immoral acts is posited in external obstacles, then the ground of moral acts would consist in the absence of such obstacles, i.e. “Moral acts would inevitably take place through a completely involuntary activity of practical reason *as long as there was no obstacle there*; and both moral and immoral acts would thus have to be attributed solely to the presence or absence of such an obstacle” (*LII 200/296–97*). Of course, Reinhold’s argument as it stands is rather underdeveloped. It only establishes that *if* we are morally responsible for our actions, then a conception of free will that is restricted to moral actions would undermine that moral responsibility insofar as immoral actions would be directly grounded in the presence of obstacles hindering the efficacy of pure practical reason and moral actions would ultimately be grounded in the absence of such obstacles. The argument is a nonstarter if the antecedent is not established, i.e. it must be established that we really are morally responsible for our actions. I contend that Reinhold’s underdeveloped argument must be read as already presupposing the results of the *Critique of Practical Reason*.

If we take Reinhold to presuppose that the fact of reason entails moral responsibility, then we can see Reinhold’s seeming underdeveloped argument is actually an extended argument. Thus, given that we are bound by the moral law, we are morally responsible for our actions. Suppose that we were only free to obey the moral law. Then moral responsibility would be undermined, because, as we saw in Reinhold’s treatment of Schmid, immoral actions would be grounded in obstacles preventing moral action, and moral action would in turn be grounded in the absence of those obstacles. If moral responsibility were undermined, then so too would our being bound by the moral law. Our consciousness of the moral law is a priori necessary

according to the fact of reason from the 2nd *Critique*. Therefore, the supposition that we are only free to obey the moral law contradicts our a priori consciousness of the moral law as binding upon us. The contradiction is lifted if we grant our freedom to transgress the moral law. In this way, Reinhold's conception of freedom as choosing for or against the moral law is established by accepting the result of the *Critique of Practical Reason* that we are free to obey the moral law, and then, given the premise that moral obligation entails moral responsibility, arguing by *reductio ad absurdum* that we must also be free to transgress the moral law.

Why should we accept the premise that moral obligation entails moral responsibility? Reinhold offers no argument for this claim. Given his admission that he has accepted the results of the *Critique of Practical Reason* and his attempt at a *reductio*, it is clear that he presupposes this premise. I contend that we may gain insight into Reinhold's line of thought by turning to Kant's *Religion within the Boundaries of Mere Reason*. Interestingly, Kant's claims in *Religion* lend themselves to a commitment to an implicit argument that is strikingly similar to Reinhold's. Kant also seems to hold that moral obligation entails moral responsibility. However, this premise is unargued in *Religion*. We find support for Kant's commitment to this premise in the *Lectures on Ethics*. Let us turn to Kant's claims in *Religion* and examine his implicit presuppositions.

2.4 KANT'S ARGUMENT FROM MORAL RESPONSIBILITY

To make sense of Kant's claims we will need to do some heavy interpretation. On the face of it, it looks like Kant does not make an argument in *Religion* for free will at all, but rather just makes a series of assertions. These assertions posit freedom as a necessary condition for moral

responsibility, or “imputability” (*Zurechnungsfähigkeit*).¹⁰⁰ Kant claims that the subjective ground of the exercise of freedom must “itself always be a deed of freedom (for otherwise the use or abuse of the human being’s power of choice [*Willkür*] with respect to the moral law could not be imputed to him, nor could the good or evil in him be called “moral”)” (*R* 6:21). With respect to the disposition that serves as the ground of the adoption of particular maxims, Kant claims: “This disposition, too, however, must be adopted through the free power of choice, for otherwise it could not be imputed” (6:25). For our present purposes, we will bracket an examination of what Kant means by the ground of the adoption of particular maxims.¹⁰¹ Our chief concern is Kant’s claims that a deed must be free, i.e. an act of the free power of choice [*Willkür*], otherwise it could not be imputed to the agent. Thus, freedom is a necessary condition for moral imputability.¹⁰² We can set up the relation as a conditional: if an action is morally imputable, then it was performed freely. Kant’s argument is underdeveloped and he seems to think that these claims are sufficient to establish freedom, particularly with respect to immoral actions. Obviously, the argument is woefully incomplete if the antecedent is not established. Like Reinhold, Kant seems to presuppose that moral obligation entails moral responsibility.

¹⁰⁰ Kant uses the related forms of “imputation (*Zurechnung*)” and “can be imputed (*zugerechnet werden kann*)” more frequently than “imputability (*Zurechnungsfähigkeit*).” Interestingly, “*Zurechnungsfähigkeit*” has a juridical meaning still today of “accountability,” i.e. the capacity of a defendant to stand trial or be held accountable in a court of law. The relation to moral *Zurechnungsfähigkeit* is not to be overlooked, i.e. the capacity to be held accountable for one’s actions under the moral law. I most frequently employ the English “imputability,” because I take it to be more precise than “imputation.” “Imputation” denotes the act of imputing whereas “imputability” denotes the quality of being able to be imputed. Our concern is to examine the conditions for an act to be able to be imputed to an agent, i.e. the conditions for an act to be imputable.

¹⁰¹ This taken up in Chapters 3 and 4.

¹⁰² Kant’s position on freedom and imputability is also found in the 2nd *Critique* where Kant claims that without transcendental freedom, “no moral law is possible and no imputation in accordance with it” (*CPrR* 5:97). Here we have two claims: (1) without transcendental freedom, no moral law is possible; and (2) without transcendental freedom, no imputation is possible. The move from without transcendental freedom ($\sim Q$), therefore no moral law ($\sim P$) is clearly an instance of modus tollens, as is, *mutatis mutandis*, the move from no transcendental freedom therefore no imputation. We will see more clearly below how Kant conceives the relation between freedom, moral obligation, and imputability.

Unfortunately, Kant does not expound on this assumption in any of the critical works. However, several passages in the *Metaphysics of Morals* and the *Lectures on Ethics* support our reading.

2.4.1 Obligation, Imputability, and Freedom

In the *Metaphysics of Morals* Kant asserts: “An action is a *deed* insofar as it comes under obligatory laws and hence insofar as the subject, in doing it, is considered in terms of the freedom of his choice. By such an action the agent is regarded as the *author* of its effect, and this, together with the action itself, can be *imputed* to him, if one is previously acquainted with the law by virtue of which an obligation rests on these” (*MM* 6:223).¹⁰³ The “hence” in the first sentence suggests the conditional:

A: If an action comes under obligatory laws, then the action is to be considered [in terms of] a free choice.

The second sentence literally forms a conjunction, i.e. an agent can be regarded as the author of such an action and the action can be imputed to the agent; however, I take Kant to be suggesting a conditional:

B: If the agent is regarded as the author, then the action can be imputed to him.

¹⁰³ “*That heißt eine Handlung, sofern sie unter Gesetzen der Verbindlichkeit steht, folglich auch sofern das Subject in derselben nach der Freiheit seiner Willkür betrachtet wird. Der Handelnde wird durch einen solchen Act als Urheber der Wirkung betrachtet, und diese zusammt der Handlung selbst können ihm zugerechnet werden, wenn man vorher das Gesetz kennt, kraft welches auf ihnen eine Verbindlichkeit ruht.*” It is unclear whether “*man*” in the last clause refers to “*der Handelnde*” or to one who would be able to impute the agent.

I take the content of the antecedent of the second conditional (an agent is regarded as the author) to be tantamount to the content of the consequent of the first conditional (an action is to be considered a free choice). On this reading, by hypothetical syllogism it follows:

C: If an action comes under obligatory laws, i.e. moral laws, then the action can be imputed to the agent.

Another passage from *Metaphysics of Morals* is significant: “A person is a subject whose actions can be imputed to him. Moral personality is therefore nothing other than the freedom of a rational being under moral laws (whereas psychological personality is merely the ability to be conscious of one’s identity in different conditions of one’s existence)” (*MM* 6:223).¹⁰⁴ This passage is difficult to unpack. Kant’s use of “therefore” (*also*) clearly indicates that he takes the fact that a person is a subject whose actions can be imputed to him to somehow entail something about freedom and being bound by moral laws, but it is not clear how this relation is to be cashed out. An examination of passages from the *Lectures on Ethics* are useful in making sense of Kant’s position on the relation between freedom, moral responsibility (or imputability), and moral obligation.

Lectures on Ethics were not written by Kant himself but were written by students on the basis of his lectures. Of course, Kant’s published works must take precedence over the *Lectures* for reasons of reliability and accuracy. Our use of the *Lectures* is unproblematic insofar as we use them here as a supplement to elucidate passages in Kant’s published writing rather than as the basis for a divergent reading. We will see in the next section (2.4.2) how Kant’s apparent

¹⁰⁴ “Person ist dasjenige Subject, dessen Handlungen einer Zurechnung fähig sind. Die moralische Persönlichkeit ist also nichts anders, als die Freiheit eines vernünftigen Wesens unter moralischen Gesetzen (die psychologische aber bloß das Vermögen, sich der Identität seiner selbst in den verschiedenen Zuständen seines Daseins bewußt zu werden). . . .”

treatment of freedom, imputability, and obligation correspond with his position on free immoral action in *Religion*. Here we draw chiefly from the notes written by Johann Friedrich Vigilantius. These notes are well suited to our investigation insofar as they were based on lectures that began in the same year in which *Religion* was published (1793).¹⁰⁵ Vigilantius was a lawyer and good friend of Kant;¹⁰⁶ thus, given his intellectual capabilities evidenced by his profession and his close relation to Kant, we have every reason to think that his notes of Kant's lectures are generally accurate. Let us turn to the relevant passages:

- 1) *Freedom of the will as such* is the accountability, or mode of human action that can be imputed to the agent, and *morals* is the name for the use of freedom according to laws of reason. (*L-E/Vigilantius* 27:480)
- 2) All actions can be regarded either as occurrences in nature, or under the condition that we have a certain obligation to them, and only in the latter case can they be accounted to us. An occurrence in nature is the determination of things insofar as they follow in time according to laws of nature, in which case, that is, the actions follow each other from moment to moment...If, on the other hand, there is an obligation to the action, it can be imputed. For this to happen, however, it is requisite that somebody can be regarded as the originator of the action, i.e. as its complete first cause. (*L-E/Vigilantius* 27:503)
- 3) Now the object of imputation is determined under the following considerations: (I) nothing can be imputed, save what is subject to laws, and in respect of which we are obligated *ad aliquid ommittendum vel commitendum*. For only an action that rests on freedom is imputable, and freedom itself is nothing more than the capacity to be held accountable (*receptivitas imputationis*). Hence the *factum* is also called *actio libertatis*, in contrast to an *eventus* that was due to an *actio physica*. (*L-E/Vigilantius* 27:564)

It is not immediately clear from Passage (1) what Kant means when he says that freedom is the mode of human action that can be imputed. And it is not immediately clear what Kant is claiming in Passage (2). In Passage (2) Kant again asserts that imputability is a necessary condition for obligation, i.e. if an action is obligatory, then it is imputable. But it is not clear

¹⁰⁵ See Paul Guyer, *Virtues of Freedom*, 160 n19.

¹⁰⁶ Schneewind, J.B., "Introduction" to *L-E*, xviii.

how he conceives the relation of freedom to obligation and imputability when he then states that “for this to happen, however, it is requisite that somebody can be regarded as the originator of the action.” The third passage from *Lectures on Ethics* is helpful in elucidating this relation.

Passage (3) from *Lectures on Ethics* suggests the following conditional:

If an action can be imputed, then it is subject to laws [of obligation].

Given our treatment of the *Metaphysics of Morals* and proposition **C**, it follows that Kant conceives the relation between imputability and obligation to be a biconditional:

An action can be imputed iff it falls under obligatory laws.

Having established this biconditional, we can derive the following conditional by hypothetical syllogism given proposition **A**:

If an action is imputable, then the action is to be considered a free choice.

This conditional along with proposition **B** forms the following biconditional:

An action is imputable iff it is considered a free choice.

Lastly, with this biconditional we can derive:

An action is considered free iff it falls under obligatory laws.

Thus, Kant conceives a tripartite reciprocal relation between imputability, obligation, and freedom. On the basis of this tripartite relation, the passage from *Metaphysics of Morals* as well as passages (1) and (2) from the *Lectures on Ethics* become coherent. Bearing this tripartite relation in mind, let us turn back to *Religion* to flesh out Kant's implicit argument.

2.4.2 Kant's Implicit Argument in *Religion*

While Guyer denied Kant's reliance on the principle that "ought implies can" in establishing free will in the *Critique of Practical Reason*, he argues that Kant does rely on the principle to establish free will in *Religion*:

He [Kant] just assumes the binding force of the moral law and appeals exclusively to the principle that ought implies can for assurance of the possibility of choosing good even if we have previously chosen evil as well as for the danger of once again choosing evil even if we have already chosen to convert from evil to good – which this principle allows because of course "ought implies can" does not imply that "ought implies does."¹⁰⁷

Although Guyer does not mention the relation between Kant's assumption of the binding force of the moral law and the fact of reason of the 2nd *Critique*, it would be rather uncharitable to Kant to interpret this assumption as an arbitrary development when it can readily be accounted for as a consistent premise in Kant's critical works after 1788.¹⁰⁸ Furthermore, Kant explicitly describes

¹⁰⁷ Paul Guyer, *The Virtues of Freedom*, 183

¹⁰⁸ One may object that the fact of reason itself is a bald assumption of the binding force of the moral law. Be that as it may, the matter at hand is not to defend Kant's doctrine of the fact of reason, but rather to show that his commitment to the same is part of his argumentative strategy in both the *Critique of Practical Reason* as well as in *Religion*.

the move from moral obligation to free will as an inference from our consciousness of the moral law to our capacity to obey that law, given that ought implies can:

We can quickly be convinced that the concept of the freedom of the power of choice does not precede in us the consciousness of the moral law but is only inferred from the determinability of our power of choice through this law as unconditional command. We have only to ask whether we are certainly and immediately conscious of a faculty enabling us to overcome, by firm resolve, every incentive to transgression, however great...Everybody must admit that *he does not* know whether, were such a situation to arise, he would not waver in his resolve. Yet duty equally commands him unconditionally: he *ought* to remain true to his resolve; and from this he rightly *concludes* that he must also *be able* to do it, and that his power of choice is therefore free. (R 6:49)¹⁰⁹

To be sure, this passage from *Religion*, which establishes our freedom to act on the basis of the moral law from our consciousness of the binding force of that law, lends credence to our interpretation of the *Critique of Practical Reason* as appealing to “ought implies can.” Of course, “ought implies can” is not sufficient to establish freedom to act *against* the moral law. In the passage from Guyer cited above, he only claims that because “ought implies can” does not entail “ought implies does,” that there is room for choosing evil.¹¹⁰ However, Guyer then seems to claim that freedom of immoral actions is somehow established by “ought implies can”:

¹⁰⁹ In the quotation, it is not immediately clear what “determinability of our power of choice through this law as unconditional command” (*Bestimmbarkeit unserer Willkür durch dieses [Gesetz], als unbedingtes Gebot*) means. I contend that Kant must mean something akin to the ability of the power of choice to be attuned to the command of the moral law. By virtue of this attunement, or the ability of the power of choice to be responsive to the command of the moral law, we can infer our freedom to be able to do what duty commands. Kant cannot mean “determinability” in the sense of “the ability/capacity to be determined” in a causal sense. This would be tantamount to saying that by virtue of the power of choice being determined [to action] by the moral law, we can infer that the power of choice can act on the basis of the moral law. This would, of course, be completely circular. On Kant’s various employments of “determination” and “determinability” see Joshua Rayman, *Kant on Sublimity and Morality*, 57ff.

¹¹⁰ See Paul Guyer, *The Virtues of Freedom*, 183

he [Kant] simply asserts that the command of the moral law “resounds unabated in our souls” without attempting to derive it from anything at all, and then derives the actuality of our freedom to fulfill this demand from the principle that we must be able to fulfill our duty, which is also asserted without any argument at all. Since he does not derive the command of morality from anything at all, it is not derived from any conception of the pure rationality of the noumenal self or will that would make the moral law the causal law of the noumenal will, **so that will is free to choose evil as well as good. And since “ought implies can” does not imply “ought implies does,” as far as that principle is concerned the noumenal self is free to choose evil as well as good.**¹¹¹ [my emphasis]

Guyer seems to conflate the logical possibility of acting freely against the moral law with the establishment that a free will can actually do so. At best, in his account of Kant’s conception of free will in *Religion*, Guyer has simply disregarded Kant’s attempted justification of the most salient feature of that conception, namely the freedom to choose to act immorally. At worst, Guyer has mistakenly thought that because freedom to choose evil does not contradict the principle that “ought implies can,” therefore we are free to choose evil. Using our results from the examination of Kant’s *Lectures on Ethics*, let us look at what Kant must have presupposed if he is not to be guilty of a complete *non sequitur* in *Religion*.

From our examination of the *Lectures on Ethics*, we arrived at the following three premises:

We are morally responsible for our actions iff those actions fall under obligatory laws.

We are morally responsible for our actions iff we perform them freely.

Actions fall under obligatory laws iff we perform them freely.

It will be necessary to introduce the following premise:

¹¹¹ *ibid*

We are morally responsible for actions iff we are morally responsible for morally good and morally evil actions.

That Kant is committed to this premise is supported by the following passage:

The human being must make or have made *himself* into whatever he is or should become in a moral sense, good or evil. These two [characters] must be an effect of his free power of choice, **for otherwise they could not be imputed to him and, consequently, he could be neither *morally* good nor evil.** (R 6:44) [my emphasis]

Thus, both good and evil must be imputable or neither good nor evil are imputable.

Furthermore, that moral responsibility must entail responsibility for both good and evil follows from our biconditional: “We are morally responsible for actions iff they fall under obligatory laws.” Immoral actions fall under obligatory laws just as much as moral actions. To be sure, it is precisely because immoral actions fall under obligatory laws that they are immoral in the first place. Given the fact of reason from the 2nd Critique that establishes our being bound by the moral law, we are morally responsible for those actions that fall under that law. Furthermore, those actions must be performed by our free choice (otherwise we could not be imputed to us). Therefore, we are free to perform both moral and immoral actions.

2.5 CONCLUSION

Of course, the reader may not be convinced by Kant’s apparent argument. The argument in the 2nd Critique secures freedom to act morally. Reinhold assumes this argument and the fact of reason in the *Letters II*. Reinhold then expands on this argument by appealing to moral imputability and attempting to show by *reductio ad absurdum* that the capacity to freely act

immorally is a necessary condition for the intelligibility of the moral law. Interestingly, in *Religion* and the *Vigilantius* lectures Kant also appeals to imputability in order to secure freedom to act immorally. However, instead of arguing by *reductio ad absurdum* like Reinhold, Kant seems to rely on three biconditionals: freedom if, and only if, moral obligation; imputability if, and only if, moral obligation; and freedom if, and only if imputability. The biconditional assumptions are clearly doing a lot of heavy lifting. Although argument itself does not technically beg the question, the premises are simply asserted and so the (lack of) sub-arguments for those premises could be said to beg the question. However, our investigation is not concerned with the merit of Kant's argument, but rather with the strategy, namely of establishing freedom for immoral actions by appealing to moral responsibility. As we saw in Section 2.2, this was Reinhold's general strategy as well. Although Reinhold certainly thought that the reality of freedom was something that could be recognized as a fact by even the most common understanding, he is not guilty, as he has often been accused, of grounding knowledge of free will in mere empirical facts of consciousness. Instead, Reinhold assumes the results of the *Critique of Practical Reason*, and argues by *reductio ad absurdum* that we must be free to choose immoral actions. We will see in Chapter 5 that in his "Some Remarks" essay, Reinhold conceives his argumentative strategy to parallel that of Kant's in *Religion*.

Chapter 3

The Fate of the Faculty of Desire:

Kant and Reinhold on the Will and the Moral Worth of Actions

Kant's transcendental turn enabled him to break with the traditional conception of the will as rational desire. The transcendental turn made room for the possibility of transcendental freedom and the postulation of pure practical reason as a possible determining ground of the will through the moral law. As we saw in Chapter 2, K.L. Reinhold was convinced that an interpretation of Kant's theory of free will following that of C.C.E Schmid would abolish moral responsibility for freely willed immoral acts.¹¹² Consequently, Reinhold put forth a theory of free will in the spirit of Kant's own theory, albeit with a stronger emphasis on an agent's capacity for choice, *Willkür*. While scholarship has engaged with the relation between Kant's and Reinhold's respective theories of free will in the Kant-Reinhold Controversy of 1797, little work has examined the role of consciousness in these thinkers' accounts of free will.¹¹³ I argue that while Kant's account of the will is a significant revision of the traditional rationalist conception of the will as the faculty of desire, his commitment to transcendental idealism precludes a conception of free will that

¹¹² See Section 2.3. See also *LII* 200/296f.

¹¹³ The Kant-Reinhold Controversy refers to the dispute between Kant and Reinhold on the correct formulation of the concept of free will. For discussion of this controversy, see: Henry Allison, *Kant's Theory of Freedom*, 133–36; Manfred Baum, "Kants Replik auf Reinhold"; Martin Bondeli, "Freiheit"; Martin Bondeli, "Einleitung," in Karl Leonhard Reinhold, *LII*; Martin Bondeli, "Willensfreiheit"; Martin Bondeli, "Einleitung," in Karl Leonhard Reinhold, *VS II*; Martin Bondeli, "Freiheit, Gewissen und Gesetz"; Daniel Breazeale, "The Fate of Kantian Freedom"; Paul Guyer, "The Struggle for Freedom."

allows for a conception of free agency constituted by spontaneous adoption of particular maxims. The spontaneous adoption of particular maxims requires an intentional act of self-determination performed by an intentional subject, i.e. a conscious intentional act, and his account of free will only permits an act of self-determination performed by intelligible *Willkür*.¹¹⁴ I argue further that Reinhold's theory of free will is able to account for just such an act.

This chapter uses the relation of the will to the faculty of desire as a backdrop because it is precisely this relation that served as the occasion for fundamental developments in the conception of the will for both Kant and Reinhold. Part 1 examines the traditional conception of the will as the faculty of desire (3.1.1), Kant's conception of free will in the 1770s as evidenced by the Kaehler manuscript (3.1.2), and Kant's revision of the traditional conception in light of transcendental idealism (3.1.3). In Part 2 an interpretation of Kant's account of free agency that includes agents consciously incorporating incentives into their particular maxims is considered (3.2.1), and it is argued that this conflicts with Kant's account of free will as dictated by the constraints of transcendental idealism insofar as a transcendently free act is by definition

¹¹⁴ Here I employ "intentional" in two senses, which are connected with respect to the possibility of moral action for both Kant and Reinhold. By "intentional subject," I mean intentional(ity) in the sense of the aboutness or referential nature of certain mental states. Thus, an intentional subject is the subject of mental states, or representations, that are *about* something, or that at least purport to be about something. By "intentional act," I mean intentional in the sense of an intended or purposive act, i.e. an act that involves the deliberate (and of course rational) setting of an end to be accomplished through the act. Perhaps the best analogue of "intentional" in Kant and Reinhold would be "*willkürlich*." This could also be rendered as "voluntary" (see Guyer's translations of *willkürlich* in the Cambridge edition of the *Critique of the Power of Judgment* at 5:264; 322; 431, et al) or "willful" (see Gregor's translation of *Metaphysics of Morals* at 6:208). It must be noted that Kant sometimes employs "*willkürlich*" as "arbitrary" whereas Reinhold rarely uses "*willkürlich*" in this way, but rather almost always has in mind that which pertains to *Willkür*, the power of choice, literally the *Kür* (choice, vote, decision) of the *Wille* (will). See *LII* 206/307–8). However, as we will see in the present chapter, Kant and Reinhold's conceptions of free *Willkür* are not commensurate insofar as Reinhold conceives free *Willkür* as a capacity to choose between particular occasioning grounds as possible courses of action, whereas Kant conceives free *Willkür* as a noumenal capacity that is precluded by the constraints of transcendental idealism from choosing between particular maxims. Although Kant typically uses "*willkürlich*" as pertaining to sensible *Willkür* (which is phenomenally determined), I avoid the potential confusion by simply using the contemporary English "intentional."

noumenal and cannot be performed by an intentional subject under the bounds of inner sense (3.2.2). Part 3 shows that Reinhold takes his conception of the will as independent from *both* practical reason and the faculty of desire to be essential to his postulation of a constituent intentional act of self-determination in any volition (3.3.1), and that Reinhold takes this intentional act performed by an intentional subject to be a necessary condition for action with moral significance (3.3.2). Part 4 examines two objections to Reinhold's conception of the intentional subject qua "person": Prauss' objection that the inconsistency in Reinhold's account of the person undermines his account of free will (3.4.1) and Zöller's objection that Reinhold's account of free will is guilty of the homunculus fallacy (3.4.2).

3.1 KANT'S REVISION OF THE TRADITIONAL CONCEPTION OF THE WILL AS THE FACULTY OF DESIRE

3.1.1 The Traditional Conception

Kant inherits the general framework of what I call the traditional conception of the will as the faculty of desire. This conception was espoused by the rationalist, neo-Leibnizians Christian Wolff and Alexander Gottlieb Baumgarten. On the faculty of desire, Baumgarten writes:

If I endeavor or make an effort to produce some perception, i.e. if I determine the power of my soul, or myself, to produce some perception, I DESIRE. The opposite of what I desire, I AVERT. Therefore I have a faculty of desiring and averting (§216), that is, a FACULTY OF DESIRE (will, more broadly speaking, cf. §690). My very endeavors, or efforts, or determinations of my powers, are the DESIRES (appetites) of my desiring, and the AVERSIONS of my averting. (*BM* 240)

According to this conception, desires are not merely inert intentional mental states, but rather have moving force to incite action. "Desire" signifies both an intended object—or rather,

“perception” of an object—to be realized as well as the endeavor to bring this realization about.¹¹⁵ Desire is grounded in pleasure, i.e. an object is desired insofar as it is represented as pleasing (*BM* 240).¹¹⁶ In a given desire, the intention to realize an object is grounded in an incentive, which is the “impelling cause” of the desire (*BM* 241). There are two types of incentives corresponding to the two components of the faculty of desire, the lower faculty of desire and the upper faculty of desire. The lower faculty is associated with sensible desires, while the upper faculty is associated with reason. Incentives for action are either stimuli or motives (*BM* 247). Stimuli are incentives of the lower faculty of desire (*BM* 244–45). Motives are incentives of the upper faculty of desire (*BM* 247). Thus, pleasure is the basis of representations (either sensible or rational) that serve as impelling causes to endeavor to realize an object through action. According to this conception, the will proper is equivalent to rational desire, i.e. to action grounded in the upper faculty of desire.¹¹⁷

The traditional conception of volition includes a faculty of choice (*arbitrium*) whereby the agent consciously determines himself according to his preference (*BM* 253). Baumgarten differentiates between sensitive choice as “sensitively desiring and averting according to one’s own preference” and free choice as “the faculty of willing or refusing according to one’s own preference” (*BM* 255). Accordingly, a substance with choice can either have sensitive choice, pure freedom, or freedom mixed with sensitive choice.¹¹⁸ As Reinhold notes, this conception of

¹¹⁵ Baumgarten and Wolff inherit the Leibnizian conception of perception as a representation in which a multiplicity is expressed in a unity. On Leibniz’s account of perception see Robert Brandom, “Leibniz and Degrees of Perception.”

¹¹⁶ Thus, the object of desire to be realized is a perception that is in some way pleasing.

¹¹⁷ According to Wolff, “Dicitur autem appetitus rationalis *Voluntas*” (*Psychologia empirica*, §880; WoGW II/5, 663) as cited in Martin Bondeli, *LII* 371 n212. According to Baumgarten, “Appetitus rationalis est volitio” (*Metaphysica*, §690) as cited in Martin Bondeli, *LII* 371 n212.

¹¹⁸ Ibid. Note the parallel in *Metaphysics of Morals*: “That choice which can be determined by *pure reason* is called free choice. That which can be determined only by *inclination* (sensible impulse, *stimulus*) would be animal choice (*arbitrium brutum*). Human choice, however, is a choice that can

the will is completely consistent with determinism (*LII*, 184–85/264–66). Indeed, Wolff and Baumgarten adopt Leibniz’s deterministic conception of “freedom.”¹¹⁹ Wolff defines freedom as “the faculty of spontaneously choosing that which pleases it from many possible things, when it is not determined by essence toward any of these” (*WPE* §941). Spontaneity, as it is employed here, is completely consistent with determinism. All actions, insofar as they are determined by a principle intrinsic to the agent, are spontaneous, whereas an “action” necessitated by an external principle is not an action properly speaking, but rather a suffering (*BM* 251–52). According to Baumgarten, a spontaneous action is “an action depending on a sufficient principle that is inside the agent” (*BM* 251).¹²⁰ In fact, insofar as all the actions of the soul are spontaneous and “something that alters itself is called an AUTOMATON, then the soul will be an automaton” (*BM* 251). Accordingly, spontaneity in this traditional sense is completely consistent with determinism insofar as actions that proceed from an internal chain of representations could be considered both spontaneous (proceeding from an internal principle) and causally determined by the chain of representations. Thus, the exercise of freedom, or spontaneous choice, amounts to choosing that which pleases the agent on the basis of the agent’s internal representations of that which is desirable when this choice “is not determined by essence,” that is, when this choice is not absolutely, or logically, necessary, but nevertheless hypothetically necessary given the state of affairs of this world (or any given possible world under consideration). In the next section, we will see that Kant himself was committed to this traditional conception of the will in the *Nova*

indeed be *affected* but not *determined* by impulses, and is therefore of itself (apart from an acquired proficiency of reason) not pure but can still be determined to actions by pure will” (*MM* 6:213).

¹¹⁹ According to Leibniz, an act is “free” if it is not absolutely (as opposed to hypothetically) necessitated. Thus, free acts are still determined within a given possible world. See: G.W. Leibniz, “On Freedom and Possibility,” in Roger Ariew and Daniel Garber (eds), *G.W. Leibniz: Philosophical Essays*, 19–23; G.W. Leibniz “On Freedom,” in *ibid*, 94–98; G.W. Leibniz, “Letter to Coste, On Human Freedom,” in *ibid*, 193–96.

¹²⁰ According to Wolff, “actions are called *spontaneous* insofar as the agent determines these through a principle intrinsic to oneself” (*WPE* §933), as cited in *BM* 251.

Dilucidatio. Already in the 1770s Kant had rejected this conception in favor of a more robust sense of “undetermined” freedom; however, this intermediary position was replaced by Kant’s Critical conception of freedom as grounded in transcendental idealism.

3.1.2 Kant’s Pre-Critical Conception

In his 1755 *Nova Dilucidatio*, Kant affirmed the traditional conception of the will and argued against the “freedom of indifference” espoused by Crusius. In that work, Kant recapitulates Crusius’ objection that a conception of free will grounded in the principle of sufficient reason undermines morality. According to Crusius, if all events can ultimately be traced back to a first state causally sufficient for the series of events, then an agent cannot be held morally responsible for what he could not have failed to do: “responsibility for the misdeeds committed does not fall on me, for, bound as I was by the connected series of grounds which have determined each other from the very beginning of the world, I could not have failed to have done whatever I did do” (*ND* 1:401). Instead of the Leibnizian compatibilist notion of freedom, Crusius maintains a libertarian notion of free will that includes the freedom to do otherwise:

I should think that if you eliminate everything which is in the nature of a connected series of reciprocally determining grounds occurring in a fixed order, and if you admit that in any free action whatever a person finds himself in a state of indifference relative to both alternatives, and if that person, even though all the grounds which you have imagined as determining the will in a particular direction have been posited, is nonetheless able to choose one thing over another, no matter what – if all that is conceded, then I should finally admit that the act had been freely performed. (*ND* 1:402)

Accordingly, Crusius holds that freedom to do otherwise is a necessary condition for moral responsibility.

Kant concedes to Crusius that the distinction between absolute and hypothetical necessity does not change the fact that a given event in the causal chain is fully determined (*ND* 1:399f). After all, that the opposite of an event is logically possible does nothing to undermine the determination of that event in reality, i.e. the event is still determined by the initial state pertaining to the possible world to which it belongs. Despite Kant's concession of this point, he still maintains that our actions are free in a morally relevant sense:

So, too, in the case of the free actions of human beings: in so far as they are regarded as determinate, their opposites are indeed excluded; they are not, however, excluded by grounds which are posited as existing outside the desires and spontaneous inclinations of the subject, as if the agent were compelled to perform his actions against his will, so to speak, and as a result of a certain ineluctable necessity. On the contrary, it is in the very inclination of his volitions and desires, in so far as that inclination readily yields to the blandishments of his representations, that his actions are determined by a fixed law and in a connection which is most certain but also free. (*ND* 1:400)

Kant's position here hinges on a conception of freedom defined by action according to an inner principle. This is precisely what differentiates the free actions of humans, which are determined by inner motives, from the "physic-mechanical" actions of animals, which are merely responses to external stimuli (*ND* 1:400). Thus, freedom is not a question of whether, but *whence* an action is determined: from an external determining ground or from a motive internal to the agent. Thus, because the determination of all events according to causal laws is consistent with our actions arising from an internal principle, then freedom and determinism are not contradictory.

Kant also takes on the traditional conception of spontaneity: "For spontaneity is action which issues from *an inner principle*" (*ND* 1:402). Furthermore, like the traditional conception, Kant defines freedom as action issuing from an inner principle in accordance with one's preference: "When this spontaneity is determined in conformity with the representation of what is best it is called freedom" (*ND* 1:402). Lastly, like the traditional conception of free will,

Kant's account of free agency in the *Nova Dilucidatio* entails that the agent acts consciously: "To act freely is to act in conformity with one's desire and to do so, indeed, with consciousness" (ND 1:403). Because an agent consciously performs free acts according to motives stemming from his own desires, "it is clearly apparent that the evils have to be attributed to the sinners themselves" (ND 1:405). Of course, Kant would later reject this conception of free will, likening it to the freedom of a turnspit. Before turning to Kant's Critical conception of the will, it will be useful to examine Kant's account from the 1770s where he already rejects the deterministic traditional conception, but still maintains that consciousness is a necessary condition for free agency.

Our source for Kant's position on the free will in the 1770s is the Kaehler manuscript. The Kaehler manuscript are notes on Kant's lectures on moral philosophy. The manuscript date written on the manuscript is 1777 and so the notes must be based on lectures from Summer 1777 or earlier. It is thought to be based on the lectures from the Winter Semester of 1773/1774 or 1774/1775.¹²¹ The Kaehler manuscript serves as the basis for twelve other manuscripts, including: Brauer, Kutzner, parts of Mrongovius, Collins, and Brandt.¹²² While it will always remain an open question how accurate the manuscript corresponds to Kant's oral delivery of the lecture (Kant did not prepare a written manuscript for his lectures), the complex structure of the manuscript and several stylistic elements idiosyncratic to Kant indicate that he is indeed the speaker behind the text.¹²³ The proliferation of the manuscript also gives credence to its accuracy. Given that the Kaehler manuscript served as the basis for manuscripts of Kant's lectures on moral philosophy for some 15 years, it stands to reason that the content of the

¹²¹ See Werner Stark (ed.), *Immanuel Kant: Vorlesung zur Moralphilosophie*, 392–404.

¹²² *ibid*

¹²³ *ibid*, 396–99. For example, the idiosyncratic "es frägt sich" or "frägt man" appears frequently throughout the text.

manuscript coincides with what Kant said during his lectures, that is to say, if the manuscript was not accurate, it would not have continued to be used by subsequent students.

There are two aspects in Kant's conception of free will in the 1770s significant to our investigation: (1) Kant rejects the deterministic conception of free will that he had espoused in the *Nova Dilucidatio* and (2) he maintains the role of consciousness in free agency. Let us examine these aspects of Kant's conception in the Kaehler manuscript.

Kant posits a conception of free will that includes complete causal independence, i.e. absolute spontaneity: "No free acts are determined by nature nor by any law; thus freedom is a terrifying thing, because [free] acts are not determined at all."¹²⁴ Thus, while Kant takes all animal acts to be determined, human actions, insofar as they are free, are not determined at all:

All animal acts are regular, for they take place according to rules that are subjectively necessitated. In the entirety of non-free nature we find an inner, subjectively necessitating *principium*, whereby all acts in the entirety of non-free nature take place according to a rule. Now if I take freedom in the case of humans, then there is no subjectively necessitating *principium* of the regularity of acts. If there were, then there would not be freedom.¹²⁵

Furthermore, Kant takes this freedom as a necessary condition for the moral significance of actions: "However, all moral evil arises from freedom, for otherwise it would not be morally evil. However much nature predisposes us thereto, evil acts nevertheless arise from freedom, and for that reason they are also attributed to us as vices."¹²⁶ Aside from exemplifying Kant's shift from the traditional conception of the will in the *Nova Dilucidatio* to an incompatibilist

¹²⁴ Werner Stark (ed.), *Immanuel Kant: Vorlesung zur Moralphilosophie*, 31/35. Cf. *L-E/Collins* 27:258. Here Kant employs "determined" (*bestimmt*) in a causal sense. Below in Section 3.2.1 we will discuss other possible employments of "determination" and its derivative forms. Also, the parallel of Kant's description of freedom as "terrifying" (*schrecklich*) with existentialist characterizations of the unsettling nature of freedom is interesting to say the least.

¹²⁵ *ibid*, 177/222. Cf. *L-E/Collins* 27:344.

¹²⁶ *ibid*, 98–9/125. Cf. *L-E/Collins* 27:295

conception of free will necessary for moral significance, this passage is also illuminating as a precursor to Kant's later position in *Religion* that free will is a necessary condition for moral imputability.

Kant asserts awareness of one's motive as a condition for free agency in his discussion of imputability:

The degrees of imputation depend upon the degrees of freedom. The subjective conditions of freedom are: the capacity to act, and further, that one knows what belongs thereto, that one knows the motive and the object of the act. In the absence of these subjective grounds, no imputation takes place.¹²⁷

Guyer uses the Collins' analogue of this passage as support for his argument that Kant's conception of imputability is based on an empirical, and not transcendental, notion of freedom.¹²⁸ Guyer claims that Kant's position on the kind of freedom that pertains to the imputability of others is therefore consistent with determinism. This line of thought is rather misguided. As we saw above, Kant explicitly maintains in the 1770s lectures that free acts are *not* determined: "free acts are not determined at all." It is not clear what degrees of freedom could signify if not degrees of determinism, i.e. the less an act is free the more it is determined. I concede to Guyer that the "conditions of freedom," or perhaps more accurately, the conditions for the performance of a free act, namely the capacity to act and knowledge of the motive and end of the act, are empirically determined; nevertheless, one need not accept that free actions themselves are determined. A closer examination of these conditions will elucidate this point.

The second of the conditions, namely that one knows the motive and object of the act, is most significant for our purposes. In this case, I take knowing the motive and object of one's act

¹²⁷ *ibid*, 93/116. Cf. *L-E/Collins* 27:291.

¹²⁸ Paul Guyer, *Virtues of Freedom*, 149ff.

to be tantamount to being *conscious of* one's motive and the object of the act.¹²⁹ Thus, consciousness of one's motive and intended object of action is a necessary condition for the exercise of freedom. This is further supported by the subsequent sentences in the 1770s lectures where Kant asserts that we cannot impute acts committed in a state of drunkenness. Kant clearly has *modus tollens* in mind when he states: "in the absence of these subjective conditions [of freedom], no imputation takes place." Accordingly, if an act is imputable, then it is free.¹³⁰ Because a drunk person is not in a state of mind in which he can be considered to be conscious of the motive and object of his action, his act cannot be considered free, and for this reason, is not imputable to him.

Referring back to Guyer's claim that because an agent's capacity to perform an action and an agent's cognitive state are empirical facts and therefore determined, it follows that freedom is also determined, we can accept that the subjective conditions for the exercise of freedom may be determined while still maintaining that free actions are not causally determined. Thus, it may be determined whether Jones cognitive state allows for the exercise of freedom; however, once this condition is satisfied, we may conceive of Jones' act as independent of causal determination. Admittedly, it is indeed the case that the empirical state of affairs conditions the possibility of the exercise of freedom. Be that as it may, this fact alone is not inconsistent with then conceiving the action as free once these conditions are satisfied. Of course, there may be other concerns with this conception of freedom. To be sure, Kant offers no clue in the 1770s lectures as to how empirical causality is to be reconciled with freedom independent of determinism, especially since this conception of free agency occurs at what Kant would later

¹²⁹ In fact, the Cambridge translation of the relevant passage from Collins reads: "...that we are aware of the motivating ground and the object of the action" (*L-E/Collins* 27:291).

¹³⁰ Literally, the conditional would be "if an act is imputable, then the subjective conditions of freedom are present." I take the spirit of the claim to be "if an act is imputable, then it is free." After all, in the absence of the conditions of freedom, then there is no freedom.

consider the phenomenal level. This concern surely contributed to Kant's Critical conception of freedom as noumenal and thus entirely independent of phenomenal determinism.

3.1.3 Kant's Transcendental Turn

Although Kant adopts the general framework of the lower and upper faculties of desire, he breaks with the traditional conception insofar as he divorces any admixture of sensible determining grounds from volitional acts associated with the upper faculty of desire:

All material practical rules put the determining ground of the will in the lower faculty of desire, and were there no merely formal laws of the will sufficient to determine it, then neither could any higher faculty of desire be admitted. (CPrR 5:22)

Either there is no higher faculty of desire at all or else *pure reason* must be practical of itself and alone, that is, it must be able to determine the will by the mere form of a practical rule without presupposing any feeling and hence without any representation of the agreeable or disagreeable as the matter of the faculty of desire. (CPrR 5:24)

Thus, according to Kant, only the merely formal law of pure practical reason, i.e. the moral law, can be a determining ground of the upper faculty of desire.¹³¹ Kant criticizes the traditional conception for positing pleasure as the determination of the upper faculty of desire, despite the fact that it involves a rational representation of pleasure:

It is surprising that men, otherwise acute, believe they can find a distinction between the lower and higher faculty of desire according to whether the representations that are connected with the feeling of pleasure have their origin in the sense or in the understanding. For when one inquires about the determining grounds of desire and puts them in agreeableness expected from something or other, it does not matter at all where the representation of this pleasing object comes from but only how much it pleases. (CPrR 5:23–24)

¹³¹ For a discussion of this point in the context of a thoroughgoing account of Kant's faculties of the mind see Antonino Falduto, *The Faculties of the Human Mind*, 146–49.

Regardless of where the representation connected with the feeling of pleasure comes from, if the determining ground of the faculty of desire presupposes pleasure, then the determining ground is connected to the lower faculty of desire, is empirical, and is therefore determined by natural necessity.

Independence from natural necessity establishes the negative aspect of freedom for Kant.¹³² He associates the positive aspect of freedom with the lawgiving of pure reason insofar as this can be practical, i.e. insofar as the moral law as the formal law that demands conformity to the standard of universal lawgiving can be a determining ground of the will.¹³³ Furthermore, Kant rejects the traditional conception of spontaneity and likens this notion of freedom to “that which a projectile accomplishes when it is in free motion, in which case one uses the word ‘freedom’ because while it is in flight it is not impelled from without; or as we also call the motion of a clock a free motion because it moves the hands itself, which therefore do not need to be pushed externally” (*CPrR* 5:96). Kant deems this kind of freedom “comparative” and “psychological” freedom, which is still subject to natural necessity, regardless of whether it stems from an “internal chain of representations” (*CPrR* 5:96). A being with this kind of freedom is an *automaton spiritual* (*CPrR* 5:97). And such a notion of freedom is “nothing better than the freedom of a turnspit, which, when once it is wound up, also accomplishes its movements of itself” (*CPrR* 5:97). Instead of the traditional conception of spontaneity as merely operating according to an internal principle, Kant posits a conception of spontaneity as an uncaused cause.¹³⁴ An act of spontaneity is an act of transcendental freedom, which is defined as “the capacity to begin a state from itself” (*CPR* A533/B561).

¹³² See *CPrR* 5:33; *MM* 6:213.

¹³³ See *CPrR* 5:33; *MM* 6:214.

¹³⁴ See *CPR* A446/B474; A533/B561.

According to Kant, without transcendental freedom the moral law and imputability in accordance with it are impossible (*CPrR* 5:97). Indeed, it is precisely Kant's transcendental turn that enables him (in his eyes) to salvage morality from the determinism of the traditional conception of the will. Kant distinguishes objects as they are in themselves from objects of experience as they appear to us, i.e. objects subject to *a priori* epistemic conditions. Similarly, by drawing a distinction between the agent as an appearance and as a thing in itself, between causality as applicable to appearances under temporal conditions and noumenal causality, Kant is able to maintain both the mechanistic natural necessity of the empirical world and a robust notion of spontaneity as uncaused cause valid for *noumena*.¹³⁵

3.2 UPSHOT OF THE TRANSCENDENTAL TURN: PRECLUSION OF THE INTENTIONAL SUBJECT OF INTENTIONAL ACTION

While Kant is committed to the claim that transcendental freedom is a necessary condition for moral action and he has made room for the possibility of transcendently free acts through his modification of the traditional conception of the will as the faculty of desire, this modification ultimately precludes the kind of free agency that takes place at the level of agents choosing particular courses of actions. I take for granted that there must be an executive component of the will whereby the agent determines himself to a given course of action as opposed to some other possible course of action.¹³⁶ For otherwise, "acts" would have to be regarded as "random

¹³⁵ See *CPR* A531/B559–A559/B587; *CPrR* 5:98.

¹³⁶ That Kant saw the need to distinguish between the executive and legislative components of the will is evidenced by the *Wille/Willkür* distinction in *Metaphysics of Morals*. On this point see Henry Allison, *Kant's Theory of Freedom*, 129.

happenings” or as completely causally determined.¹³⁷ As we shall see, the nature of this executive component of the will is the source of the tension between Kant’s and Reinhold’s accounts of moral agency and their accounts of free agency. Kant’s account of moral agency requires an intentional subject to adopt particular maxims; however the constraints of transcendental idealism preclude this adoption from being constitutive for free agency as such. Instead, freedom is presupposed as an activity of noumenal *Willkür* inaccessible to consciousness. Choosing a particular course of action via particular maxim adoption, which occurs at the phenomenal level and is therefore causally determined, is supposed to be the effect of the free choice that occurs at the noumenal level.

3.2.1 Consciousness of the Moral Law as Condition for Moral Action

Kant’s account of the possibility of the moral worth of an action—namely acting for the sake of the moral law—requires recognition of the moral law as binding upon us. Given that the moral law demands that one act on particular maxims that conform to universal lawgiving and given that this kind of maxim adoption occurs at the phenomenal level, one might think that self-determination to action for the sake of the moral law must be performed by an intentional subject. As we will see, Kant’s commitment to transcendental idealism precludes this. I examine two interpretations of Kant’s account of respect as the incentive to moral action in order to bring to light the tension between the kind of self-determination that would be required for a robust conception of free will that comprises spontaneous adoption of particular maxims and Kant’s own account of free self-determination dictated by his commitment to transcendental idealism.

¹³⁷ Henry Allison, “Morality and Freedom,” 404.

To be sure, from the standpoint of our common sense philosophical intuitions, it seems obvious that moral agency must be able to be available to consciousness. Kant defines the will as “the capacity to act *in accordance with the representation of laws*” (G 4:412) and asserts that “nothing other than the *representation of the law* in itself, *which can occur only in a rational being*, insofar as it and not the hoped-for effect is the determining ground of the will, can constitute the preeminent good we call moral” (G 4:401). Furthermore, Kant asserts: “in the case of what is to be morally good it is not enough that it *conform* with the moral law but it must also be done *for the sake of the law*” (G 4:390). Acting “for the sake of” something implies acting on the basis of reasons. It seems obvious that in order for an agent to act on the basis of a representation of a law, or to act on the basis of reasons, the agent must be able to consciously represent the law and make the representation a determining ground for action. After all, it seems a basic requirement of rational agency that the agent take himself to be acting on the basis of some reason, i.e. that the agent be able to be conscious of the representation on the basis of which we can call such agency rational.

The moral law requires that agents “*act only in accordance with that maxim through which you can at the same time will that it become a universal law*” (G 4:421). The moral law commands that agents *ought* to act on maxims that can be universalized, and insofar as ought implies can, it follows that agents *can* act on maxims that can be universalized. A maxim, as a “subjective principle of volition” (G 4:401), is “a rule that the agent himself makes his principle on subjective grounds” (MM 6:225). It is clear throughout all of Kant’s practical works that adopting particular maxims as subjective principles for volition is an activity available to

consciousness.¹³⁸ To be sure, it is because we can consciously represent maxims as subjective principles for possible volition that we can thereby test their fitness for universality. This basic fact of particular maxims, namely their representability to consciousness, underlies all of Kant's examples of moral agency.¹³⁹ Kant claims that we become "immediately conscious" of the moral law "as soon as we draw up maxims of the will for ourselves" (*CPrR* 5:29). That is, it is only in drawing up particular maxims, of which we are conscious, that we become immediately conscious of the ought that demands adoption of those maxims in conformity with universal lawgiving. Given Kant's commitment to the thesis that ought implies can, if the moral law is not a mere chimera, then it must be possible for the agent to fulfill this law. Indeed, it is precisely on the basis of the connection between the normative demand of the moral law and our necessary capacity to fulfill it that Kant claims that our consciousness of the moral law "leads directly to the concept of freedom" (*CPrR* 5:30). Given that the moral law demands "that subjective principles of actions, that is, maxims, must always be so adopted that they can also hold as objective, that is, hold universally as principles" (*G* 4:449), and that the adoption of maxims must be available to consciousness, it would seem that the fulfillment of this demand also be something available to consciousness. Otherwise, the moral law would be demanding something that requires consciousness (namely, adoption of maxims in conformity with universal lawgiving) that at the same time cannot be consciously performed.

Accordingly, one might have thought that Kant's explicit account of the moral worth of actions would go as follows. Kant claims that only acts performed *from* duty (as opposed to

¹³⁸ The one maxim that cannot be available to consciousness is the supreme maxim introduced in *Religion within the Boundaries of Mere Reason*. This supreme maxim serves as the ground for all particular maxim adoption, and, as we shall see in the next section, is adopted by intelligible *Willkür*.

¹³⁹ See, for instance, the four examples in the *Groundwork* of perfect and imperfect duties (*G* 4:421–4:423) and Kant's general remark in the *Critique of Practical Reason*: "When the maxim on which I intend to give testimony is tested by practical reason, I always consider what it would be if it were to hold as a universal law of nature" (*CPrR* 5:44).

merely *in accordance with* duty) have moral worth (*G* 4:398). Kant defines respect as “consciousness of the *subordination* of my will to a law without the mediation of other influences on my sense” (*G* 4:402). Thus, one would might thought that *consciousness* of the subordination of our will to the moral law is a necessary condition for the moral worth of actions that conform to that law. To act morally would be to act for the sake of the moral law by virtue of our consciousness of the subordination of our will to that law. Because actions can have moral worth only by virtue of our consciousness of the moral law, i.e. only through the representation of the moral law by an intentional subject, it would follow that self-determination to action on the basis of that representation must also be performed by an intentional subject. To be sure, a conscious act of self-determination on the basis of our consciousness of the subordination of our will to the moral law would be precisely what must distinguish an act *from duty* from an act merely *in conformity with* duty. Such a reading of Kant’s account of respect can find support not only in Section I of the *Groundwork*, where Kant proceeds from common rational to philosophic moral cognition, but also in the *Critique of Practical Reason*.¹⁴⁰

In Chapter III of the 2nd *Critique*, Kant treats the incentives of pure practical reason. Kant asserts: “What is essential to any moral worth of actions is *that the moral law determine the will immediately*” (*CPrR* 5:71). Of course, this does not mean that reason’s self-legislation of the

¹⁴⁰ For discussion of the role of respect in moral action see: Paul Guyer, *Kant and the Experience of Freedom*, 356–68; Paul Guyer, *The Virtues of Freedom*, 235–59; Guyer argues that respect is the phenomenal effect of the noumenal determination of the will; Richard R. McCarty, “Kantian Moral Motivation”; Iain P.D. Morrison, *Kant and the Role of Pleasure in Moral Action*, 135–41; Josefine Nauckhoff, “Incentives and Interests in Kant’s Moral Psychology”; Joshua Rayman, *Kant on Sublimity and Morality*, 51–92. McCarty and Nauckhoff argue that respect, as a motive for acting morally, is dependent upon feeling (as opposed to what McCarty calls the “intellectualist view”). Morrison embeds action based on respect in an account of agency valid for both moral and non-moral action. Rayman argues that the sublime is the mode of aesthetic judgment that grounds the determinability of the moral law by generating the feeling of respect: “only the sublime exhibits this power aesthetically, generates the feeling of respect for the moral law and moves us to act against all natural inclinations and solely according to the rational law” (*Kant on Sublimit and Morality*, 63).

moral law is automatically sufficient for moral action; this would only be true of a holy will.¹⁴¹

In moral action, the incentive, or the subjective determining ground of the will, must be the same as the objective determining ground, i.e. the moral law. That is to say, in moral action, the moral law must itself be an incentive. Indeed, the task of Chapter III is to show “in what way the moral law becomes the incentive” (*CPrR* 5:72). Kant is explicit that respect is precisely this incentive: “Respect for the moral law is therefore the sole and also the undoubted moral incentive” (*CPrR* 5:78). Just as in the *Groundwork*, Kant characterizes respect as a feeling “produced solely by reason” (*CPrR* 5:76) in the 2nd *Critique* as well. Thus, although this feeling presupposes sensibility insofar as sensibility is the condition of its possibility, the feeling is not “pathologically effected,” but rather is “*practically effected*” (*CPrR* 5:75) and “known a priori” (*CPrR* 5:79).¹⁴² Furthermore, as in the *Groundwork*, Kant’s characterization of respect in the 2nd *Critique* entails consciousness of the authority of the moral law:

Recognition of the moral law is, however, consciousness of an activity of practical reason from objective grounds... Therefore respect for the moral law must be regarded as... the incentive to compliance with the law. (*CPrR* 5:79)

The consciousness of a *free* submission of the will to the law, yet as combined with an unavoidable constraint put on all inclinations though only by one’s own reason, is respect for the law. (*CPrR* 5:80)

Thus, as in the *Groundwork*, Kant’s conception of respect in the *Critique of Practical Reason* is a special feeling produced by reason that entails consciousness of the subordination, or submission, of our will to the supreme authority of the moral law. Moral action, i.e. action not

¹⁴¹ On this point, see Larry Herrera, “Kant on Moral *Triebfeder*,” 399.

¹⁴² By “pathological” Kant means “dependent on sensibility.” On this point see Mary J. Gregor’s editorial note in the Cambridge translation of the *Critique of Practical Reason* on p. 153 (5:19). Gregor’s elucidation is slightly misleading in this context insofar as respect is indeed dependent upon sensibility but is not sensibly effected or produced. Thus, in this case we might simply read “pathologically effected” as “sensibly effected.”

merely in conformity with duty but *from duty*, “requires of the action *objective* accord with the law but requires of the maxim of the action *subjective* respect for the law, as the sole way of determining the will by the law” (CPrR 5:81).

Given Kant’s characterization of the moral law as something of which we become conscious as a result of our consciousness of particular maxims, and given the implicit requirement that fulfillment of the moral law be performed by an intentional subject insofar as the moral law demands something that itself requires consciousness (namely, the adoption of particular maxims by virtue of their universalizability), one might have thought that Kant’s account of respect as an incentive to moral action would play a role in the (presumably free) self-determination of the agent to the moral law. Josefine Nauckhoff offers an interpretation where respect, as the effect of our recognition of the moral law, is an incentive that must be incorporated into an agent’s particular maxims. That is, in the adoption of particular maxims, the agent chooses to act for the sake of the moral law (by incorporating the incentive of respect into his maxim) or to act for the sake of some other end (by incorporating an incentive grounded in self-love into his maxim). Nauckhoff’s interpretation is motivated by the need to provide an account of (freely) acting for the sake of the moral law consistent with the kind of agential activity that accords with our phenomenological experience of moral agency, namely the adoption of particular maxims by virtue of their lawful form:

If we are to be held accountable for our actions, and indeed for our moral character, we need freedom of the will: “Man *himself* must make or have made himself into whatever, in a moral sense, he is or is to be become. Either condition must be an effect of his free choice; for otherwise he could not be held responsible for it and could therefore be *morally* neither good nor evil” (R:44). Freedom must then be defined in terms of something we can be held accountable *for*; and that, according to Kant, is our capacity to adopt maxims, *i.e.* intentions which take the form of personal “policies” of action. The

adoption of maxims thus presupposes freedom of the will, or the ability to choose and do otherwise.¹⁴³

As justification for her interpretation, Nauckhoff refers to the passage in Kant's *Religion* that serves as the basis of what Henry Allison calls the Incorporation Thesis: "freedom of the power of choice has the characteristic, entirely peculiar to it, that it cannot be determined to action through any incentive *except so far as the human being has incorporated it into his maxim*" (*R* 6:23–4).¹⁴⁴ Nauckhoff's interpretation is also admirable for its treatment of passages where Kant talks about respect as the effect of an "immediate determination of the will by means of the [moral] law" (*G* 4:401).¹⁴⁵

When Kant says that the feeling of respect is only possible "through a preceding (objective) determination of the will," it seems as if Kant is making a causal claim. That is, the will is determined immediately by the moral law (presumably at the noumenal level), and respect is simply the effect of this noumenal determination. To circumvent such a reading, Nauckhoff refers to Kant's distinction in his *Lectures on Ethics* between objective and subjective determining grounds:

We first have to take up two points here: (1) The principle of appraisal of obligation, and (2) the principle of its performance or execution. Guideline and incentive [*Triebfeder*]¹⁴⁶ have here to be distinguished. The guideline is the principle of appraisal, and the incentive [*Triebfeder*] that of carrying-out the obligation...If the question is: What is morally good or not?, that is the principle of appraisal, whereby I judge the goodness or depravity of actions. But if the question is: What moves me to live according to this law?, that is the principle of incentive [*Triebfeder*]. The appraisal of the action is the objective ground, but not yet the subjective ground. That which impels me to do the thing, of which

¹⁴³ Josefine Nauckhoff, "Incentives and Interests in Kant's Moral Psychology," 45.

¹⁴⁴ See *ibid.*, 46.

¹⁴⁵ See also *CPrR* 5:71, 72, 78, 80.

¹⁴⁶ I follow Guyer in substituting "incentive" for Heath's translation of *Triebfeder* as "motive" so as to be consistent with the Gregor translations of the *Groundwork* and the *Critique of Practical Reason*. See Paul Guyer, *The Virtues of Freedom*, 238 n5.

understanding tells me that I ought to do it, is the *motiva subjective moventia*. The supreme principle of all moral judgment lies in the understanding; the supreme principle of the moral impulse to do this thing lies in the heart. This incentive is the moral feeling. Such a principle of incentive [*Triebfeder*] cannot be confused with the principle of judgment. The latter is the norm, and the principle of impulsion is the incentive [*Triebfeder*]. (*L-E/Collins* 27:275–75)

Nauckhoff takes Kant to presuppose this distinction in the *Groundwork* and the 2nd *Critique*.

Accordingly, when Kant talks about the determination of the will, he is talking about the objective determining ground and simply means that the moral law serves “as an absolute standard of obligation”¹⁴⁷ and “determines the will directly and objectively only as an incontestable standard of *judgment*.”¹⁴⁸ Indeed, this coincides with Kant’s occasional

qualification of the objective determination of the will as pertaining to judgment: “the moral law determines the will objectively and immediately in the judgment of reason” (*CPrR* 5:78).¹⁴⁹

Thus, per Nauckhoff, the effect of what Kant called the “judgment of appraisal” in the *Lectures on Ethics*, and what he called the “objective determination of the will” in the 2nd *Critique*, is “the feeling of respect, which is the impetus for choosing and acting on dutiful maxims.”¹⁵⁰ This reading of “determination” is also advocated by Joshua Rayman in his *Kant on Sublimity and Morality*.¹⁵¹

The problem with Nauckhoff’s interpretation is that she conflates Kant’s accounts of the power of choice. The passage Nauckhoff cites as the basis of Allison’s Incorporation Thesis is

¹⁴⁷ Josefine Nauckhoff, “Incentives and Interests in Kant’s Moral Psychology,” 49

¹⁴⁸ *ibid.*, 50.

¹⁴⁹ On this point, see *ibid.*

¹⁵⁰ *ibid.*

¹⁵¹ Nauckhoff’s interpretation of “determination” is generally consistent with Rayman’s 5th sense of “determination,” namely: “the act of commanding the will to act according to laws of reason (autonomy) or nature (heteronomy)” (*Kant on Sublimity and Morality*, 59). There is a slight terminological discrepancy insofar as Rayman refers to “objective determination” as pertaining to heteronomy, i.e. the will’s being determined by an *object* (*G* 4:458), whereas Nauckhoff, Kant in the 1770s lectures (*L-E/Collins* 27:255), and Kant in the 2nd *Critique* (5:80) employ “objective determination” as determination by the moral law.

situated in Kant's account of intelligible *Willkür*'s supreme maxim adoption. Such an account of the "absolute spontaneity of the power of choice (of freedom)" (R 6:24) cannot be attributed to the incorporation of incentives into particular maxims insofar as the adoption of particular maxims is a conscious activity of the phenomenal agent and so can only be attributed to that agent's sensible *Willkür*. This is precisely why Paul Guyer resists such an interpretation of respect playing a role in the free self-determination of the agent to "abide by the moral law, which must be a noumenal 'event'."¹⁵² Guyer offers an interpretation where respect plays a role in the "phenomenal etiology of morally worthy action."¹⁵³ According to Guyer, the noumenal determination of the will effects a feeling of respect, which is an empirical feeling, and it is only through such a feeling that "a flesh-and-blood human being [can] be impelled to [moral] action."¹⁵⁴ Whereas Nauckhoff took the "determination of the will" to signify the judgment of the authority of the moral law, Guyer takes this to be the "noumenal *determination* of the will, as a power of choice (*Willkür*), to make the moral law its fundamental maxim."¹⁵⁵ Thus, on Guyer's view, the free act of self-determination to abide by the moral law is a noumenal act of intelligible *Willkür*, which produces an empirical feeling of respect that plays a causal role in moving the agent to action in a way consistent with natural necessity. This is not to say, however, that Guyer rejects the notion that the will must first be commanded by the moral law such that the will is subordinated to the supreme normative authority of the moral law. Guyer accepts this aspect of volition, and then thinks that, additionally, it must also be the case that *Willkür*'s act of incorporating the moral law into its maxim must also be noumenal. And so there is a terminological discrepancy between Nauckhoff and Guyer insofar as Nauckhoff uses

¹⁵² Paul Guyer, *Virtues of Freedom*, 239.

¹⁵³ *ibid*, 236.

¹⁵⁴ *Ibid*, 239.

¹⁵⁵ *ibid*, 237. See also *ibid*, 246: "the feeling of respect would be an effect of the noumenal determination to make the moral law one's fundamental maxim."

“determination” to refer to the will being made susceptible to acting on the moral law by means of the representation of the law as supremely authoritative whereas Guyer uses “determination” in a causal sense. There is substantive discrepancy insofar between these scholars insofar as Nauckhoff thinks that the self-determination of the will in light of this recognition of the authority of the moral law occurs at the level of consciousness, whereas Guyer holds that this activity must be noumenal, producing an effect that plays a causal role at the phenomenal level.

Nauckhoff’s and Guyer’s interpretations of respect illustrate the tension between the kind of self-determination performed by agents who can consciously choose to act *for the sake of* the moral law and the kind of self-determination permissible in Kant’s critical framework.

Nauckhoff’s interpretation provides a robust account of moral agency, but is inconsistent with Kant’s metaphysical commitments, which require him to posit the executive function of volition in the noumenal. Guyer’s interpretation is consistent with Kant’s metaphysical commitments, but results in all of our choices consciously performed at the phenomenal level having already been causally determined as the effect of a supposed free choice by a noumenal *Willkür*. Let us more closely examine Kant’s commitment to this intelligible capacity for self-determination, free *Willkür*.

3.2.2 No Room for the Intentional Subject to Perform the Act of Self-determination

Despite Kant’s frequent claims that we can overcome our inclinations and determine ourselves in accordance with the moral law, there seems to be no faculty for such self-determination in Kant’s account that would be consistent with his requirements for free agency. That is, to “overcome” inclination by choosing to act morally presupposes that the agent can be subject to the demand of

inclination and nevertheless choose to act independently of this demand.¹⁵⁶ The first time Kant really gestures toward such a capacity for rational self-determination is in *Religion within the Boundaries of Mere Reason*. In this work Kant argues that only that which is our own deed is morally imputable (R 6:31). He also claims in *Religion* that an incentive (be it an incentive to act on the basis of inclination or on the basis of the moral law) can only determine free *Willkür* insofar as *Willkür* has incorporated the incentive into its maxim (R 6:23–24). Accordingly, like Nauckhoff, one might have thought that the subject himself through *Willkür*, or the power of choice, adopts a maxim as a determining ground for action either out of recognition of the authority of the moral law or for the sake of pleasure, broadly construed. However, Kant’s account precludes such a role of the intentional subject. In *Religion*, the act of *Willkür* is intelligible. As Henry Allison notes, “it can be thought but not experienced.”¹⁵⁷ In *Metaphysics of Morals* Kant claims that free *Willkür* is a “supersensible object” that cannot be made understandable through appearances (MM 6:226). Furthermore, Kant differentiates between an intentional subject, which he calls “psychological personality” and defines as “the ability to be conscious of one’s identity in different conditions,” and “moral personality” or “the freedom of a rational being under moral laws” (MM 6:223). This “moral personality” must pertain to the rational being qua noumenon insofar as Kant’s account of inner sense entails phenomenal determinism.

¹⁵⁶ See, for example, *CPrR* 5:30: “Suppose someone asserts of his lustful inclination that, when the desired object and the opportunity are present, it is quite irresistible to him; ask him whether, if a gallows were erected in front of the house where he finds this opportunity and he would be hanged on it immediately after gratifying his lust, he would not then control his inclination. One need not conjecture very long what he would reply. But ask him whether, if his prince demanded, on pain of the same immediate execution, that he give false testimony against an honorable man whom the prince would like to destroy under a plausible pretext, he would consider it possible to overcome his love of life, however great it may be.” See also *CPrR* 5:84.

¹⁵⁷ Henry Allison, *Kant’s Theory of Freedom*, 5. It is clear that Allison does not employ “experience” in the Kantian technical sense (*Erfahrung*), but rather in the everyday sense of something that is available to an intentional subject via consciousness (*Erlebnis*).

Kant thinks that all appearances under temporal conditions—including the self as we are conscious of it through inner sense, i.e. empirical apperception—are subject to natural necessity.¹⁵⁸ Furthermore, Kant holds that all representations are subject to inner sense:

Wherever our representations may arise, whether through the influence of external things or as the effect of inner causes, whether they have originated *a priori* or empirically as appearances – as modifications of the mind they nevertheless belong to inner sense, and as such all of our cognitions are in the end subjected to the formal condition of inner sense, namely time, as that in which they must all be ordered, connected, and brought into relations. (*CPR* A98–9)

A free intentional act performed by an intentional subject is not possible in Kant’s framework precisely because the intentional subject is bound by inner sense. For this reason, Kant posits the free activity of *Willkür* as intelligible, or “supersensible.”¹⁵⁹ I am not arguing that intelligible *Willkür* qua noumenon, or rather the noumenal self connected to noumenal *Willkür*, has no consciousness of any kind. The noumenal self would presumably have to be conscious in some way of the representation of the moral law in order to incorporate that law into its maxim. However, we have no access to noumenal consciousness, should it even exist.¹⁶⁰ In fact, the notion that the noumenal self has its own consciousness and ‘mental states’ on the basis of which it freely acts and then supposedly effects our phenomenal character raises serious concerns about the identity of the finite rational being who is supposed to be both sensible and intelligible, not

¹⁵⁸ See *G* 4:451; *CPrR* 5:97, 114; *CPR* A107.

¹⁵⁹ Kant also has a conception of sensible *Willkür*. However, sensible *Willkür* cannot be considered free insofar as it is an appearance. Kant maintains that intelligible *Willkür* can be considered free. The freedom of intelligible *Willkür* cannot be outright asserted (this would be a category mistake), but rather must be defined in relation to the moral law. See *MM* 6:226–27.

¹⁶⁰ This is why, despite Kant’s confusing tendency to refer to transcendental apperception as a “self-consciousness,” he insists that it is only a formal condition of the unity of our representations in one consciousness (*CPR* B132ff) and an “empty representation I” (*CPR* A346/B404). Furthermore, Kant claims that “in the synthetic original unity of apperception, I am conscious of myself not as I appear to myself, nor **as** I am in myself, but only **that** I am” (*CPR* B157) and that [transcendental] apperception is “nothing more than a feeling of an existence” (*Prol* 4:334).

completely bifurcated into each the phenomenal and the noumenal. At the same time, neither can we simply regard the noumenal as the “space of reasons” such that incorporation of incentives into maxims is taken to be a rational and therefore noumenal process:

While the fact that adherence to a certain principle *justifies* or *excludes* action on a certain incentive may not itself be a temporal fact, the fact that a particular agent *holds* a certain principle and *has justified* or *excluded* action on a given incentive on the basis of holding this principle is just as temporal a fact as the fact that a certain desire occurs in the agent.¹⁶¹

Thus, all of *our* mental states are necessarily bound by inner sense, and are for that reason subject to empirical causality, regardless of whether our representations are connected such that the relations of justification are non-temporal. If there our noumenal selves have consciousness, it is not the same as the consciousness we experience insofar as 1) our consciousness is bounded by inner sense and therefore temporal and 2) noumena are necessarily non-temporal.

Consequently, freedom amounts to intelligible self-determination that is not available to our consciousness and therefore cannot be performed by the intentional subject.¹⁶² This preclusion of the intentional subject in moral action undermines the kind of intentional self-determination that agents such as ourselves take ourselves to perform. If the free self-determination to a particular course of action can only be performed by intelligible *Willkür*, then

¹⁶¹ Guyer, Paul. “Review of *Kant’s Theory of Freedom* by Henry E. Allison,” 106.

¹⁶² It should be noted that I have been employing “intentional subject” as the subject of representations or mental states for phenomenal selves. It might be logically possible that a different kind of intentional subject unbounded by time might accompany representations for the noumenal self. Taking this into account, the footnoted sentence would read: “Consequently, freedom amounts to intelligible self-determination performed by noumenal *Willkür* that might include an intentional subject as the subject of the representations on the basis of which noumenal *Willkür* determines itself, but that is not available to our consciousness, which is necessarily bound by inner sense, and therefore cannot be performed by the intentional subject of our phenomenal mental states.” For the sake of brevity, I have chosen to employ “intentional subject” with respect to the representations that are available to our consciousness.

there is a fundamental disconnect between our consciousness of the moral law as necessarily binding upon us, and our capacity to obey that law by virtue of this consciousness.

3.3 THE WILL IS NOT THE FACULTY OF DESIRE: REINHOLD'S ACCOUNT OF THE INTENTIONALITY OF INTENTIONAL ACTION

K.L. Reinhold's theory of free will has received considerable attention in recent years.¹⁶³ While Reinhold's divorcing of the will from practical reason has been well documented, the independence of the will from the faculty of desire has received less attention.¹⁶⁴ According to

¹⁶³ See: Henry Allison, *Kant's Theory of Freedom*, 133–36; Karl Ameriks, "Ambiguities in the Will"; Manfred Baum, "Kants Replik auf Reinhold"; Martin Bondeli, "Freiheit"; Martin Bondeli, "Einleitung," in Karl Leonhard Reinhold, *LII*; Martin Bondeli, "Willensfreiheit"; Martin Bondeli, "Einleitung," in Karl Leonhard Reinhold, *VS II*; Martin Bondeli, "Freiheit, Gewissen und Gesetz"; Daniel Breazeale, "The Fate of Kantian Freedom"; George di Giovanni, "Rehberg, Reinhold, und C.C.E. Schmid"; Faustino Fabbianelli, "Die Theorie der Willensfreiheit"; Faustino Fabbianelli, "Gefühllose Freiheit"; Michael Gerten, "Begehren, Vernunft und Freier Wille"; Jean-François Goubet, "Der Streit"; Paul Guyer, "The Struggle for Freedom"; Wolfgang Kersting, "Sittliche Erkenntnis"; Alessandro Lazzari, "Behandlung der Freiheitsthematik"; Alessandro Lazzari, *Das Eine*; Karianne J. Marx, *The Usefulness of the Kantian Philosophy*, 236–94; Karianne J. Marx, "Free Will as a Mediation"; Jörg Noller, "Die Praktische Vernunft ist kein Wille"; Jörg Noller, *Die Bestimmung des Willens*, 206–35; Claude Piché, "Fichtes Auseinandersetzung mit Reinhold"; Gerold Prauss, *Kant über Freiheit als Autonomie*, 84–92; Sabine Röhr, "Auf der Suche"; Jürgen Stolzenberg, "Schellings Reinhold-Kritik"; Alexander von Schönborn, "K.L. Reinholds letzte Erörterung"; Alexander von Schönborn, "Intelligibler Fatalismus"; Günter Zöllner, "Von Reinhold zu Kant."

¹⁶⁴ For a discussion of Reinhold's account of the faculty of desire see: Michael Gerten, "Begehren, Vernunft, und Freier Wille"; Silvan Imhof, "Die Theorie des Begehungsvermögens"; Alessandro Lazzari, *Das Eine*, 117–55. Gerten discusses desire in Reinhold's conception of free will from *Versuch einer Neuen Theorie des Menschlichen Vorstellungsvermögen* (1789) as manifested in the sensible selfish drive, noting that Reinhold's conception of free will from *Briefe über die Kantische Philosophie Zweyter Band* includes independence from both practical reason as well as the lower faculty of desire. According to Imhof, although Reinhold fails to present a new theory of the faculty of desire after *Versuch*, this failure does not indicate an abandonment of the value of such a project, but rather indicates a mere failure to complete it. Lazzari provides a thorough account of Reinhold's theory of the faculty of desire in *Versuch* and argues that the obscurities in Reinhold's attempted derivation of the will in the "Grundlinien der Theorie des Begehungsvermögen" is the result of Reinhold hastily writing Book III of *Versuch*. While these works present important aspects of Reinhold's conception of the faculty of desire, none of them highlights the significance of Reinhold's divorce of the will from the faculty of desire in Reinhold's perceived evasion of the results of Schmid's interpretation of the Critical philosophy and, ultimately, in Reinhold's own dispute with Kant in the Kant-Reinhold Controversy of 1797.

Reinhold's account of the will, the independence of the will from the faculty of desire, as well as from practical reason, is a necessary condition for consciousness of possible courses of action as occasioning grounds (*veranlassende Gründe*), to which the intentional subject can determine himself through an intentional act of choice. For Reinhold, this self-determination by the intentional subject is a necessary condition for moral agency.

3.3.1 Reinhold's Account of the Will and the Break with the Faculty of Desire

Although the secondary literature on Reinhold's theory of free will has made note of the role of the self, or what Reinhold calls the "person," in the intentional act of decision to satisfy or not satisfy the demand of the faculty of desire given the demand of the moral law, most commentators have overlooked the fact that the demand of the faculty of desire (by providing the matter) along with the demand of practical reason (by providing the formal constraint of lawfulness) are necessary conditions for the person to be aware of his capacity for self-determination, i.e. to be aware of his freedom in a given situation.

Reinhold considers the will's reciprocal independence from *both* practical reason and the faculty of desire to be a condition for the possibility of the agent's awareness of his capacity for free self-determination. The person is subject to two opposing laws to which he can conform: the natural law of desire and the moral law. According to Reinhold, the awareness of these two opposing laws is a necessary condition for awareness of the capacity to determine himself in conformity with one or the other: "The person can become conscious of the capacity to determine himself only insofar as he is conscious of the capacity to determine himself according to two different laws, and consequently insofar as he is conscious of these different laws themselves" (*LII* 190/276). This consciousness for self-determination enables the intentional

subject to perform an act of decision (*Entscheidung* or *Entschluss*) via *Willkür* to choose to act for or against the moral law.¹⁶⁵

3.3.2 Self-determination of the Person qua Intentional Subject

While Kant unwittingly presupposes an intentional act performed by an intentional subject as a condition for the possibility of the moral worth of an action, Reinhold is explicit about this requirement. Reinhold claims that volition comprises an intentional act of decision “as the special act of our *I* (the person in us), and particularly as that act, through which we indeed neither establish nor abolish the *demand* of desire, but can grant or deny the *satisfaction* of the same” (*LII* 173/245). He calls this act of decision a “free self-determination” (*LII* 140/189). For Reinhold, every act of volition is both a free act and a moral act. Insofar as every act of volition has moral significance and every act of volition necessarily includes a constituent free act of decision by an intentional subject to choose to satisfy or not satisfy the demand of desire (as it relates to the demand of the moral law), it follows that for Reinhold the intentional act of self-determination by an intentional subject is a necessary condition for the possibility of the moral worth of an act.¹⁶⁶

¹⁶⁵ Reinhold’s position that the act of decision to obey the moral law must be performed by the intentional subject may be indicative of his sympathy with Rehberg’s criticism (discussed in Chapter 1) that it is not clear in Kant’s account how the purely formal moral law could function as a *principium executionis* for moral agents such as ourselves.

¹⁶⁶ For Reinhold, the will (*Wille*) is a generic term for the faculty of volition. This faculty includes a constituent power of choice (*Willkür*). An act of volition in general is the self-determination of an agent to the satisfaction or non-satisfaction of a demand of the selfish drive, i.e. a demand of desire, in light of the demand of the unselfish drive, i.e. the demand of the moral law expressed by practical reason. Every such act includes a constituent act of decision whereby an intentional subject by means of *Willkür* makes one of these demands, which Reinhold describes as occasioning, or prompting, grounds (*veranlassende Gründe*), into a determining ground (*bestimmenden Grund*) of volition. Accordingly, Reinhold defines the freedom of the will (*Wille*) in the negative sense as independence from both the selfish and unselfish drives and freedom of the will in the positive sense as *Willkür*, or “the capacity to determine itself to one of the two demands” (*LII* 206/307). A brief clarification of Reinhold’s *Wille/Willkür* distinction is in order to guard against a few misinterpretations. First, Reinhold’s employment of the terms is not the same

Admittedly, Reinhold's account of the free self-determination of the person qua intentional subject raises questions with respect to how this free act is supposed to be reconciled with natural necessity. To be sure, although it led to a tension between his account of free will and the conditions for moral agency, it was precisely Kant's commitment to transcendental idealism that enabled him to posit transcendental freedom independent of natural necessity. Given that Reinhold rejects the postulation of free *Willkür* as a noumenal faculty and instead posits the free act of self-determination in an intentional subject, which for Kant would be bound by inner sense and a mere appearance subject to natural necessity, how is this intentional subject to be characterized with respect to Kant's phenomenal/noumenal distinction? Reinhold's answer to this question may seem unsatisfactory insofar as he simply claims that the subject is a being that is both intelligible and sensible:

Moreover, it never occurred to me to define the freedom of man as an *intelligible* being. I am concerned only with freedom of the *human will*; for me *man* is neither an *intelligible being* nor a *sensible being*, but rather *both at the same time*; and I only consider him free *because* and *insofar as* he is both at the same time, while Kant appears to consider him free only to the extent that he is an intelligible being. The *subject* of the transcendental faculties is simultaneously the subject of the empirical faculties if those faculties are to be not *transcendent*, but rather *transcendental*—that is, if they are to apply *a priori* to the empirical. (“SR” 150–51/393)

as Kant's later distinction first made explicit in 1797, according to which *Wille* is the legislative component of volition synonymous with practical reason and *Willkür* is the executive component of volition (*MM* 6:213–14). For a discussion of Kant's employment of this distinction see Henry Allison, *Kant's Theory of Freedom*, 129–32. Second, Reinhold's distinction is in part grounded in a difference in standpoint. *Wille* designates the general faculty of volition of an individual and is referred to from the standpoint of examining an individual's actions and the moral worth of those actions. *Willkür* designates the capacity of an intentional subject to perform an act of decision to make a possible *Handlungsweise* a determining ground of a volitional act. *Willkür* is thus referred to from the standpoint of examining the activities that comprise an act of volition, e.g. the activity of the selfish drive of expressing the demand of desire, the activity of the unselfish drive (i.e. practical reason) expressing the demand of the moral law, and the activity of *Willkür* in making an occasioning ground into a determining ground of volition.

It is difficult enough to establish the metaphysical implications of the phenomenal/noumenal distinction for Kant, let alone a reappropriation of that distinction which may not be consistent with its original use.¹⁶⁷ Indeed, it is likely that Reinhold was not committed to transcendental idealism when he made the remark about the subject being simultaneously intelligible and sensible.¹⁶⁸ Nevertheless, Reinhold maintains a consistent doctrine of free will from 1792–97. This doctrine is proposed from the standpoint of practical philosophy and stands on its own independent of Reinhold’s systematic transitions in theoretical philosophy. Reinhold’s prioritization of the practical in his account of free will is what offers insight into his gnomic expression that the subject of freedom is neither sensible nor intelligible, but rather both at the same time.

In his “Attempt at a New Presentation of the Fundamental Concepts and Principles of Ethics and Natural Right” from the *Letters II*, Reinhold asserts that his presentation of the concepts and principles of ethics and natural right, which includes a presentation of his theory of free will, is a mere presentation that will be completed by a future and more precise *explication* (*LII* 134/181). Reinhold had planned on eventually deriving the results of his practical philosophical endeavors from a self-evident first principle grounding a philosophical system that would encompass both theoretical and practical philosophy.¹⁶⁹ While he never got around to completing this derivation before he abandoned the project of his philosophical system, the *Elementarphilosophie*, he consistently maintained that the results of his practical endeavors were independent from theoretical concerns. Thus, Reinhold was thoroughly perplexed when Fichte accused him of not taking natural necessity into account in his doctrine of freedom, responding

¹⁶⁷ For a survey of recent literature on the phenomenal/noumenal distinction and the nature of things in themselves see Dennis Schulting, “Kant’s Idealism: The Current Debate.”

¹⁶⁸ By 1797 Reinhold had already developed and abandoned his *Elementarphilosophie*, and subsequently declared himself a disciple of Fichte.

¹⁶⁹ See Daniel Breazeale, “The Fate of Kantian Freedom,” 96–97.

that he had remained silent on that point precisely because such questions belong not to practical philosophy, but to metaphysics.¹⁷⁰ Taking as our cue Reinhold's position that the results of practical philosophical inquiry cannot justifiably be burdened with the task of having to provide determinate solutions to theoretical concerns, we might interpret Reinhold's stance on the metaphysical status of the will, viz. its sensible or intelligible nature, to be outside the scope of practical philosophy. Given that the necessity of self-determination by an intentional subject for moral agency is discovered from the standpoint of practical philosophy, a theoretical understanding of this process may be unknowable for us. Thus, while Kant too takes beings such as ourselves to have both sensible and intelligible natures, he attempts to maintain this distinction in his practical philosophy so as to be consistent with his theoretical commitments. Reinhold's view can be seen as an expression of a strong commitment to the practical/theoretical distinction and the contention that practical philosophical investigation need not be beholden to metaphysics.

I do not wish to claim here that Reinhold's theory of free will is ultimately correct. Nor do I wish to make the general claim in philosophy of action that intentional acts presuppose a conscious intentional subject to perform them.¹⁷¹ I have merely argued that 1) given Kant's own framework, the moral law loses its binding force without an intentional subject to perform an intentional act of choice, and 2) Reinhold's conception of free will accounts for such an intentional act performed by an intentional subject. I would like to respond to two objections

¹⁷⁰ This was Reinhold's reaction as reported by his student Herman Coch in a letter to his fellow student Johann Smidt, 6/8 December, 1793 (*Fichte in Gespräch*, 24, as cited in Daniel Breazeale, "The Fate of Kantian Freedom," 115).

¹⁷¹ That conscious self-determination is a necessary condition for rational agency is central to McDowell's distinction between responsiveness to reasons and responsiveness to reasons as such. See John McDowell, *Having the World in View*, 128–29.

against Reinhold's assertion that an intentional subject, which Reinhold dubs "the person," determines himself to a given course of action through an intentional act of choice.¹⁷²

3.4 REFUTATION OF THE OBJECTIONS CONCERNING REINHOLD'S CONCEPTION OF THE INTENTIONAL SUBJECT

Reinhold's conception of the person qua intentional subject has come under fire recently from several commentators, most notably Gerold Prauss and Günter Zöllner. Given the significance of this conception for not only Reinhold's account of free will but also the present work whose aim is to suggest a development of Kant's theory of free will that is more successful than Kant's own theory in meeting the criteria for moral agency, it is incumbent upon us to consider these objections. Prauss questions the intelligibility of Reinhold's account of self-determination given that Reinhold's employment of "person" is inconsistent. Prauss' objection can be dealt with rather swiftly. It is not my intention to create a straw man. Given the stature of Prauss as a Kant scholar and his connection to scholarship on Kant and Reinhold on free will, it is important to consider Prauss' objection despite its shallow import.¹⁷³ Zöllner raises concerns that Reinhold's account of the person as the locus of decision in intentional action is guilty of the homunculus fallacy. Although Reinhold's account need not necessarily lead to an infinite regress, there are concerns connected to his postulation of a "person in us" that performs the self-determining act of decision.

¹⁷² For a defense of Reinhold's theory of free will against other recent objections see Daniel Breazeale, "The Fate of Kantian Freedom."

¹⁷³ For a discussion of Prauss with respect to Kant and Reinhold on free will see: Henry Allison, *Kant's Theory of Freedom*, 134–35; Karl Ameriks, "Ambiguities in the Will," 76; Jörg Noller, *Die Bestimmung des Willens*, 37, 208; and Günter Zöllner, "Von Reinhold zu Kant," 86.

3.4.1 The Ambiguity of the Person

Gerold Prauss argues that Reinhold's conception of free will is untenable because his account of the unity of the subject, or the person, falls asunder.¹⁷⁴ According to Prauss, Reinhold sometimes identifies the "person qua person" (*Person als Person*) as the necessary self-activity of practical reason, and sometimes identifies the person as the will and its free self-determination.¹⁷⁵ This is supposedly irreconcilably problematic insofar as it is precisely the *distinction* between the will and practical reason (and, as we have seen, the will and the faculty of desire) that is so fundamental to Reinhold's account. The contradiction between these notions of "person" and the consequent breakdown of the distinction between will and practical reason, which is essential to Reinhold's theory of free will, allegedly amounts to the breakdown of Reinhold's entire account of the will. Prauss is correct that Reinhold sometimes conflates two conceptions of "person."¹⁷⁶ However, he is incorrect in properly identifying the conflation. While Prauss claims that Reinhold identifies the person with (1) the will and its freedom of self-determination, and (2) the self-activity of practical reason, only the former is correct. Rather than identifying the person with the self-activity of practical reason, Reinhold's second conception of person is a generic notion for the individual and all his constituent faculties. Nevertheless, I contend that this equivocation is not ultimately problematic and that Prauss has thrown the baby out with the bathwater.

¹⁷⁴ Gerold Prauss, *Kant über Freiheit als Autonomie*, 90.

¹⁷⁵ *Ibid.*

¹⁷⁶ In particular, Prauss cites Reinhold, *LII* 54–55/69. Interestingly, the passage from *LII* Prauss cites as being contradictory is not even problematic. Reinhold refers to the pure self-activity of the person with respect to pure practical reason's legislation of the moral law and a few lines later refers to the "act of the person" through which he determines himself to the satisfaction or non-satisfaction of a demand of the faculty of desire. Even if Reinhold is using "person" in the same sense in both passages, there is nothing contradictory in discussing various activities that occur in or involve the "person," broadly construed as the individual, e.g. the self-legislation of the moral law and the act of self-determination in volition. Regardless, there are many other passages where Reinhold does employ "person" in distinct senses.

Reinhold's lack of consistency in his use of the term "person" does not necessarily undermine the claim that in any act of volition, there must be a constituent intentional act of decision whereby the intentional subject determines itself to a particular course of action. There are numerous passages where Reinhold employs "person" as the self, i.e. the intentional subject.¹⁷⁷ There are indeed other passages where he seems to employ "person" not merely as the intentional subject, but rather as a general term for the individual.¹⁷⁸ In the latter usage, "person" is as an aggregate term for all of the individual's faculties, including those whose activities are not intentional acts of the self-conscious subject, but rather sub-conscious activities, the effects of which are presented *to* the intentional self.¹⁷⁹ The inconsistency in these two uses is not necessarily indicative of a doctrinal contradiction. It simply does not follow from terminological carelessness that Reinhold's entire account of free will falls apart. Indeed, there is no substantive difficulty in quickly resolving this apparent semantic oversight. There is no contradiction in maintaining a conception of an individual as the aggregate of his constituent faculties while also maintaining a conception of an intentional subject. Giving one or the other a different name would alleviate this superficial inconsistency. In this way, it is clear that in drawing attention to Reinhold's conflation of terms, Prauss has conflated a terminological inconsistency with a doctrinal contradiction.

3.4.2 The Homunculus Fallacy and the "Person in Us"

¹⁷⁷ See Reinhold, *LII* 136/184; 137/185; 139/187; 139/188; 140/189; 144/197; 151/207; 153/210; 154/211; 156/215; 157/215; 157/216, et al.

¹⁷⁸ See Reinhold, *LII* 54/69; 134/182; 135/183; 137/185; 138/186; 140/189; 141/191; 148/201; 148/203; 149/203; 151/207; 153/210; 164/116; 175/248; 176/251, et al.

¹⁷⁹ Reinhold considers the activities of the faculty of desire and practical reason to be *for* the person qua intentional subject: "The *demands* of desire and the *demand* of practical reason are interrelated insofar as in volition both are directed at the person as the subject of freedom" (Reinhold, *CII* 168). He also considers these activities to be involuntary (Reinhold, *LII* 134/182).

Günter Zöllner claims that Reinhold's account of the will is guilty of smuggling a homunculus into his theory of subjectivity.¹⁸⁰ The suspicion is that Reinhold's installation of a faculty of choice (*Willkür*) in the individual responsible for choosing to act for or against the moral law is tantamount to the homunculus fallacy, viz. an infinite regress of "little men" postulated as a locus of decision in an individual. Daniel Breazeale argues that Zöllner's concern is really based on the "*incomprehensibility* of a radically free choice on Reinhold's account."¹⁸¹ I concur with Breazeale's analysis. It is precisely Reinhold's claim that the ground of a free act is freedom itself (*LII* 193/282), i.e. that freedom is its own ground, that has led some commentators to accuse Reinhold of positing a *groundless* freedom.¹⁸² The suspicion that Reinhold's account of free will amounts to an infinite regress of free acts of decision made by homunculi within us may be the vestige of the reluctance to accept at face value Reinhold's assertion that freedom itself is simply its own self-contained ground. Although there is no need to posit an infinite regress given that Reinhold postulates the free act as a first cause, some of Reinhold's characterizations of the "person" resemble the postulation of a homunculus. While Zöllner does not refer to any specific passages, a textual analysis is certainly worthwhile given the centrality of the person in Reinhold's account of free agency and the potential problems they pose.

As I already had occasion to cite, Reinhold refers to the act of decision as "the special act of our *I* (the person in us)" (*LII* 173/245). This language of a "person in us" might well raise

¹⁸⁰ Günter Zöllner, "Von Reinhold zu Kant," 82. For a reiteration of this charge see Jörg Noller, *Die Bestimmung des Willens*, 234.

¹⁸¹ Daniel Breazeale, "The Fate of Kantian Freedom," 108–9.

¹⁸² See: Jörg Noller, *Die Bestimmung des Willens*, 234; Wolfgang Kersting, "Sittliche Erkenntnis," 109–10. Interestingly, Noller cites several passages where Reinhold himself repudiates this accusation and claims instead that for him freedom is a first cause (*erste Ursache*) and therefore cannot have an external ground. As Breazeale notes, to say that a free act is "groundless" and to say that it is "grounded in freedom itself" are not necessarily equivalent and this distinction was employed by Fichte in his *System of Ethics* ("The Fate of Kantian Freedom," 110). F.H. Jacobi claimed as early as 1789 that the absolute self-activity of freedom is not necessarily groundless freedom (*Über die Lehre des Spinoza*, XXXVI–XXXVII). On this point see Martin Bondeli, *LII* 382 n252.

concerns that Reinhold's account of the will is guilty of the homunculus fallacy. If in each of us, there is a "person" performing an act of decision, there is a worry that within the "person in us" is another person making the act of decision, ad infinitum. I admit that Reinhold may be guilty of this charge. Nevertheless, the difficulty is removed on a charitable interpretation of what Reinhold might mean by "the special act of our I." The problem is resolved if by "the I" and "the person in us," we take Reinhold not to assign metaphysical significance, but rather to assert a necessary condition for the intentional act of self-determination, namely that it be consciously performed. On this reading, the "person in us" is no metaphysical postulation; rather, it merely designates the intentional subject as a necessary condition for self-determination. To be sure, this is the interpretation of Reinhold's account of free will I have been trying to defend here.

3.5 CONCLUSION

I have argued that although Kant rejects determination of the upper faculty of desire by pleasure and establishes through the transcendental turn the possibility of this determination by pure practical reason, viz. the moral law, there remains a serious worry that his framework of transcendental idealism leaves no room for an intentional subject to perform an intentional act of choice to determine himself to a given course of action. On Kant's account, the intentional self, as an appearance, is determined by natural necessity. Thus, only the person considered as a thing in itself and the intelligible capacity for choice, i.e. intelligible *Willkür*, can perform the act of self-determination that Kant himself affirms is a necessary condition for moral imputability. The result, however, is a fundamental disconnect between our awareness of the moral law, as the

ratio cognoscendi of our freedom, and our free capacity to obey or transgress that law on the basis of that awareness.

Reinhold's account of the will is able to alleviate this tension. His theory of free will stipulates that an intentional act of self-determination performed by an intentional subject is a necessary condition for the possibility of the moral worth of an action. In this way, Reinhold preserves the relation between our awareness of the moral law as binding upon us, our awareness of the *veranlassende Gründe* to obey or transgress that law, and our awareness of our freedom to determine ourselves accordingly.

Chapter 4

Reinhold's Theory of Free Will in Relation to Kant's *Religion*

Following the publication of Kant's *Groundwork of the Metaphysics of Morals* and *Critique of Practical Reason*, the issues of how Kantian freedom is to be reconciled with phenomenal determinism and how Kant's theory of freedom is to account for free immoral acts were widely debated.¹⁸³ Although not considered a canonical work of Kant's practical philosophy, his *Religion within the Boundaries of Mere Reason* is significant in regard to his theory of free will and his account of moral responsibility for immoral acts. It is in *Religion* that Kant first introduces the *Wille/Willkür* distinction he more fully develops in *Metaphysics of Morals*,¹⁸⁴ and first explicitly discusses free will with respect to immoral acts. Although one might be tempted to interpret Kant's treatment of free *Willkür* in *Religion* as pertaining only to his rational religion and thus as distinct from his considered view of free will, such an interpretation neglects the historical context of *Religion*, viz. the debates concerning Kantian free will and the possibility of free immoral acts. As we saw in Ch. 1, J.A.H. Ulrich claimed in his *Eleutheriology* that Kant

¹⁸³ For works preceding Kant's *Religion* see: J.H. Abicht, "Über die Freyheit des Willens"; K.H. Heydenreich, "Über die moralische Freiheit"; L.H. Jakob, "Über die Freiheit des Willens"; J.G.K.C. Kiesewetter, *Über den ersten Grundsatz der Moralphilosophie*; C.C.E. Schmid, *Versuch einer Moralphilosophie*; C.W. Snell, *Über Determinismus und moralische Freiheit*; J.A.H. Ulrich, *Eleutherologie: oder über Freyheit und Nothwendigkeit*.

¹⁸⁴ Although Kant discusses practical freedom in connection with free *Willkür* in the *Critique of Pure Reason* (A801/B829–A802/B830), his use of "*Willkür*" is a translation of the Latin "*arbitrium*" employed by Christian Wolff and Alexander Baumgarten rather than an instance of Kant's later distinction between the executive and legislative functions of the will.

only avoids natural necessity insofar as natural necessity involves determination by temporally preceding conditions, and the intelligible transcends temporal conditions; however, Ulrich notes that this does not entail that the intelligible character is not determined by other, non-temporal grounds, in which case the intelligible character would still be necessitated.¹⁸⁵ We also saw in Ch. 1 that in his *Versuch einer Moralphilosophie*, C.C.E. Schmid offered an interpretation of Kantian free will as pertaining only to moral acts.¹⁸⁶ Thus, Kant's account of free *Willkür* in *Religion* can, at least in part, be seen as a response to his contemporaries and an attempt to establish moral responsibility for free immoral acts.

The relation between K.L. Reinhold's theory of free will to Kant's account of free *Willkür* in *Religion* is multifaceted. In 1792 Reinhold also emphasized the possibility of free immoral action in his own theory of free will presented in the *Letters on the Kantian Philosophy Volume II*. Part One of Kant's *Religion* was first published as an essay, "The Radical Evil in Human Nature," in April 1792 and was first sent to the *Berlinische Monatsschrift* by the end of February 1792.¹⁸⁷ Thus, Kant could not have been influenced by Reinhold's *Letters II*, which was published in October of 1792. However, Reinhold's letters that address free will were written between the publication of Kant's essay on evil and October 1792. And so it is theoretically possible that Reinhold could have been influenced by Kant with respect to the relation between free will and moral responsibility. It is more probable, however, that Kant and Reinhold independently developed some common features in their theories as a result of the philosophical discussion at that time. Personal correspondence from Reinhold to Jens Bagessen

¹⁸⁵ J.A.H. Ulrich, *Eleutheriologie*, 32

¹⁸⁶ C.C.E. Schmid, *Versuch einer Moralphilosophie*, 189f. In the 1792 edition of *Versuch einer Moralphilosophie*, Schmid is more explicit about this point: "some include the *capacity to act immorally* in *moral freedom*. But this contradicts the concept of a moral capacity, and such a freedom would be a capacity to act in contradictorily opposed ways, which amounts to a contradiction" (335). For this latter reference I am indebted to Martin Bondeli, "Einleitung zu den *Briefen II*," 376 n226.

¹⁸⁷ See Paul Guyer, "The Struggle for Freedom," 123

from March 1792, one month before the appearance of Kant’s essay, suggests the independence of Reinhold’s developments on this matter: “I distance myself entirely from Kant and the Kantians concerning the concept of the will, which I regard as neither the causality of reason nor the capacity to act according to represented laws, etc. but rather as a capacity of the person, equally independent of reason and sensibility, to determine himself.”¹⁸⁸ In 1797 Reinhold cites Kant’s *Religion* as a justification of his own theory of free will in his essay “Some Remarks.” Reinhold claims that his concept of freedom is transcendental and, like Kant’s concept of morally evil action in *Religion*, derived from our awareness of the moral law itself, from the categorical imperative alone (“SR” 150–51/392–93). Furthermore, Reinhold claims that it is precisely in relation to Kant’s *Religion* that Kant’s elucidations on the faculty of desire, the will, the power of choice, and freedom found in the introduction to the *Metaphysics of Morals* are either “unintelligible” or “untenable” (“SR 141/365–66).

While the debate between Kant and Reinhold on free will has received some attention in recent scholarship¹⁸⁹ and the relation between Reinhold’s theory of free will and Kant’s remarks in *Religion* have been investigated by several scholars, an in-depth analysis of the relation of Reinhold’s theory to Kant’s *Religion* is needed. Accordingly, the present investigation will bracket the Kant-Reinhold Controversy of 1797, and focus on Reinhold’s theory of free will in relation to Kant’s conception of free *Willkür* in *Religion*.

This chapter argues that while both Kant and Reinhold are committed to the claim that free agency, viz. the free adoption of a maxim as a determining ground for action, is a necessary condition for moral responsibility (4.1), Kant’s conception of this free maxim adoption is limited

¹⁸⁸ *Aus Jens Bagessen’s Briefwechsel mit Karl Leonhard Reinhold, Erster Teil*, 168. I am indebted to Jörg Noller for this reference. See Jörg Noller, *Die Bestimmung des Willens*, 208–209 for this reference.

¹⁸⁹ See: Manfred Baum, “Kants Replik auf Reinhold”; Martin Bondeli, “Freiheit, Gewissen und Gesetz”; Martin Bondeli, “Freiheit im Anschluss an Kant”; Günter Zöllner, “Von Reinhold zu Kant.”

to a 2nd order intelligible act (4.2). It is argued further that while Reinhold's conception of free agency as pertaining to 1st order acts is better able to accommodate a robust notion of moral responsibility, Reinhold fails to recognize this fundamental difference in his review of Kant's *Religion* (4.3). Lastly, it is argued that Kant faces a difficulty regarding his conception of the ground of free self-determination whereas Reinhold's conception of the ground of freedom as a *Selbstgrund* faces no such difficulty (4.4).

4.1 THE RESPONSIBILITY THESIS

Kant and Reinhold hold that free will, specifically the free activity of *Willkür* in choosing a given course of action, is a necessary condition for moral responsibility. Furthermore, both of these thinkers understand this freedom in such a way that the agent could have acted otherwise.

According to Kant, only that of which we are the author can be attributed to us: "nothing is, however, morally (i.e. imputably) evil but that which is our own deed" (R 6:31). Indeed, the subjective ground of the exercise of freedom must "itself always be a deed of freedom (for otherwise the use or abuse of the human being's power of choice with respect to the moral law could not be imputed to him, nor could the good or evil in him be called 'moral')" (R 6:21). More specifically, the subjective ground of freedom must be a "rule that the power of choice itself produces for the exercise of its freedom, i.e. in a maxim" (R 6:21). Support for Kant's commitment to a libertarian notion of free will as including the capacity to do otherwise can be found in the *Critique of Practical Reason* as well as *Religion*:

a rational being can now rightly say of every unlawful action he performed that he could have omitted it even though as appearance it is sufficiently determined in the past. (*CPrR* 5:98)

For whatever his previous behavior may have been, whatever the natural causes influencing him, whether they are inside or outside him, his action is yet free and not determined through any of these causes; hence the action can and must always be judged as an *original* exercise of his power of choice. He should have refrained from it, whatever his temporal circumstances and entanglements; for through no cause in the world can he cease to be a free agent. (*R* 6:41)¹⁹⁰

Thus, Kant holds that *Willkür*'s free adoption of a maxim, such that this free activity could have been omitted, is a necessary condition for moral imputability. I will henceforth refer to the thesis that an agent can only be held morally responsible for those acts that follow from the free adoption of a maxim by *Willkür* as the Responsibility Thesis (RT).

Reinhold also claims that free will is a necessary condition for moral responsibility insofar as the moral law is inconceivable without the presupposition of freedom:

Freedom, which announces itself to us *through* the law and which is *presupposed* by the concept of the law, as the *moral law*, [and] which can be assumed only for the sake of the law, cannot be *comprehended* from the law, but must be thought, for otherwise the law necessary through itself would not be conceivable as the moral law. (“SR” 149–50/390)

Reinhold's conception of freedom, which for him necessarily includes the free activity of *Willkür* to decide for or against the demand of the moral law, simply entails that an agent could do otherwise. His theory of free will is such that *Willkür* is completely independent of determination by natural necessity as well as by the demand of the moral law. (*LII* 188/272) It simply follows from the independent self-activity of *Willkür* that in choosing for the moral law, it could have equally chosen against, and vice versa. Moreover, Reinhold asserts that moral

¹⁹⁰ The translation has been modified, replacing “him” for “them” in “whatever the natural causes influencing him,” in conformity with the German “*ihm*.”

responsibility for a given act is connected to this aspect of freedom, viz. capacity to do otherwise. In the “Tenth Letter” of his *Letters on the Kantian Philosophy Volume II*, Reinhold asserts that in spite of the subterfuge that “he was not *able to act otherwise*,” even the vicious man, in being aware of his freedom, is aware that “he *ought to have acted otherwise*” (*LII* 234–35/357).

In the following it will be shown that despite this shared commitment to RT, Kant’s and Reinhold’s respective positions on the precise relation of this activity of *Willkür* to moral responsibility are quite distinct.

4.2 KANT’S DOCTRINE OF SUPREME MAXIM ADOPTION

One of Kant’s aims in *Religion* is to account for the possibility of moral evil. Because moral evil must be able to be imputed to humans (otherwise we could not be morally responsible for being evil), the ground of evil must be represented as freely adopted (per RT). Accordingly, Kant postulates a freely adopted supreme maxim that serves as the ground of the possibility of evil in human beings insofar as it is the ground of the adoption of all particular maxims (*R* 6:25). As partly sensible, partly intelligible beings, our will is subject to both sensible and intelligible incentives, i.e. self-love and the moral law (*G* 4:412–13). Neither incentive can be fully removed and so both incentives must be incorporated in the supreme maxim. The incorporation of these incentives in the supreme maxim consists in a hierarchical ranking of the incentives that concerns not the material of the supreme maxim, but rather the form, whereby one of the incentives is made the supreme condition of the other (*R* 6:36). For Kant, the free act of *Willkür* to adopt the supreme maxim is an intelligible act “posited as antecedent to every use of freedom

given in experience” (R 6:22). The act is necessarily intelligible, i.e. noumenal, because phenomenal acts and events are governed by natural necessity. Although Kant does not explicitly use this terminology, the supreme maxim functions as a second-order maxim that conditions all first-order maxims.¹⁹¹

The supreme maxim is a second-order maxim insofar as it is a higher order principle that serves as the ground of the adoption of particular, first-order maxims. Whereas the second-order maxim is a formal prioritization of the incentive to self-love over the incentive to morality, or vice versa, first-order maxims are particular maxims whose adoption is morally evaluable on the basis of the second-order maxim.¹⁹² First-order, particular maxims are the subjective principles for action that we consciously represent to ourselves in moral agency. It is important to note that this first-order/second-order distinction pertains to volition and the moral evaluation of volitional acts, and not to the relation of particular maxims to the moral law as the supreme principle of morality. That is, one could regard the moral law as a higher order principle on the basis of which particular maxims have moral worth as obligatory or impermissible. While this may well be true, the doctrine of supreme maxim adoption in *Religion* takes for granted the results of the *Groundwork* and is instead concerned with giving an account of a freely adopted hierarchical ranking of the incentives to morality and self-love, which conditions the moral evaluability of the *adoption* of first-order maxims (and not the moral worth of the maxims themselves, viz. their fitness for universalizability).

According to Kant, the subordination of the moral incentive to the incentive to self-love constitutes the propensity to evil, which is immanent in humanity, i.e. radical. This propensity to

¹⁹¹ See also: Pablo Muchnik, *Kant's Theory of Evil*, 88; Jörg Noller, *Die Bestimmung des Willens*, 197. Henry Allison describes the supreme maxim as a maxim “of the highest order” (*Kant's Theory of Freedom*, 141;151).

¹⁹² For a discussion of this point see Jörg Noller, *Die Bestimmung des Willens*, 191–97.

evil, i.e. the subordination of the moral law to self-love in a supreme maxim, “corrupts the ground of all maxims” (*R* 6:37). As a result, moral acts are impossible until one undergoes a reversal of the order of these incentives in the supreme maxim. Given that all first order maxims are conditioned by the second order subordination of the moral law to self-love, and that this subordination “makes the incentives of self-love and their inclinations the condition of compliance with the moral law,” (*R* 6:36) it follows that until such a reversal, all first order acts are heteronomous. Because only those acts that are performed out of duty, i.e. out of respect for the moral law, have moral worth, and because such acts are precluded by the propensity to evil, it follows that a reversal of the order of incentives established in the supreme maxim is a necessary condition for the possibility of moral action. Indeed, Kant notes that the individual may perform acts that are externally consistent with the moral law; however, such acts are not performed out of respect for the law, i.e. from duty alone, but rather out of satisfaction of the incentive to self-love (*R* 6:36–7). According to Kant, the possibility of being not just legally good, but rather morally good, can only be effected through a revolution in the order of incentives in his supreme maxim (*R* 6:47–8). This revolution consists in a “single and unalterable decision” (*R* 6:47–8). However, this ‘decision’ is not one that the agent consciously performs.¹⁹³ Kant asserts: “Assurance of this [revolution] cannot of course be attained by the human being naturally, neither via immediate consciousness nor via the evidence of the life he has hitherto led, for the depths of his own heart (the subjective first ground of his maxims) are to him inscrutable” (*R* 6:51). While this passage may seem to only suggest that assurance, and not consciousness, of this revolution are precluded from the human being, examination of the last clause of the passage

¹⁹³ See also Henry Allison, *Kant’s Theory of Freedom*, 153. I put “decision” in scare quotes because, as was mentioned in Chapter 3, the notion of a decision (where this decision is taken to be an instance of rational agency) that precludes the possibility of conscious representation is suspect, if not downright incoherent.

cited directly above suggests that this is not the case. The revolution is inaccessible to us because the subjective first ground of our maxims, i.e. the supreme maxim that grounds all of our particular maxims, is inscrutable to us. This reading is also confirmed when Kant first introduces the doctrine of supreme maxim adoption: “Whenever we therefore say, “The human being is by nature good,” or, “He is by nature evil,” this only means that he holds within himself a first ground (**to us inscrutable**) for the adoption of good or evil (unlawful) maxim” [my emphasis] (*R* 6:21). Furthermore, Kant claims that the disposition brought about my adopting a supreme maxim to either subordinate the incentive of self-love to that of the moral law, or vice versa, “has not been earned in time” (*R* 6:25). Thus, assurance of the revolution cannot be attained by us because, as we saw in Chapter 3, it is an intelligible act of noumenal *Willkür*, which, as noumenal, can never be accessible to our consciousness which is bound by inner sense.

4.3 REINHOLD’S REVIEW OF KANT’S *RELIGION*

While for Kant a revolution in the order of incentives prioritized by the adoption of the supreme maxim is the condition for the possibility of moral acts, Reinhold’s theory of free will as presented in the *Letters II* has no place for a second order maxim that conditions all first order acts. Reinhold defines free will as “the capacity of the individual, to determine himself *according to or contrary to* the demand of the unselfish drive with respect to the satisfaction or non-satisfaction of the selfish drive” (*LII* 185/137). The selfish drive expresses the demand of desire (or in expressly Kantian terms the demand of self-love and the associated inclinations), and the unselfish drive expresses the demand of the moral law. Every act of volition satisfies or does not satisfy the selfish drive given the demand of the unselfish drive, i.e. every act of volition

is either in accordance with or contrary to the moral law, is either a moral or immoral act.¹⁹⁴

Thus, according to Reinhold every free first-order act of volition is a moral or immoral act.

As mentioned above, according to Kant the prioritization of incentives is incorporated into a supreme second-order maxim. However, for Reinhold such a prioritization takes place not in a second-order volitional act, but rather in every first-order volition:

There are then two distinct impulses, two equally involuntary demands opposed to one another present in him that can only be united through the person himself, only through his freedom, and only insofar as through the person, the one is subordinated to the other or vice versa, the demand of the selfish [drive] is fulfilled at the expense of the unselfish [drive] or vice versa. (*LII* 197–98/291)

According to Reinhold, every act of volition subordinates the incentive of self-love to the incentive of the moral law or vice versa. A second-order subordination of these incentives that conditions all first-order acts would undermine the utter freedom of self-determination of each act that is the hallmark of Reinhold's theory of free will. Interestingly enough, Reinhold supports such a second-order supreme maxim adoption in his 1794 review of Kant's *Religion*.

Reinhold begins his review with a discussion of the concept of the moral law in relation to those moments that immediately concern the entire content of Kant's doctrine of religion.¹⁹⁵ According to Reinhold, the concept of the moral law as presented in the *Critique of Practical Reason* must be presupposed in order to understand the doctrine of religion. In his preliminary discussion, Reinhold repeats his own definitions of free will as the capacity "to determine oneself, either through the moral law or contrary to it through pleasure or displeasure, to the satisfaction or non-satisfaction of a desire, or what is the same: *to act morally good or morally evil*" (*CII* 189/303–55). He explains further that "one will have to find everything in the

¹⁹⁴ See: *LII* 137/185; 191/278; 193/281.

¹⁹⁵ See *CII* 187/300–2

following presentation either *unintelligible* or *absurd*' (CII 190/305–6) if this conception of freedom is not presupposed. Ironically, it is precisely *because of* this presupposition that Reinhold's advocacy of Kant's doctrine of radical evil is inconsistent.

In Part 1 of the review on the origin of moral evil, Reinhold writes:

Freedom of the human will, to whose nature belongs the inseparable unification of the capacity of the person to determine himself through the law – and the capacity to determine himself contrary to the law through pleasure or displeasure, takes on the property and designation of a *propensity* to the extent it exercises only one of these two capacities and lets the other rest. (CII 191/306–8)

Reinhold's characterization of propensity (*Hang*) is predicated upon the supposition that in any first-order act of volition only one of the capacities to obey or transgress the moral law is exercised. This characterization of propensity is not consistent with Kant's, which is brought about by a second-order act of volition. Reinhold is seemingly unaware of this discrepancy. He affirms Kant's various expressions of the human propensity to evil as "ground of the possibility of evil" (CII 191/306–8), which must consist in an evil maxim "that functions as the ground of all other evil maxims, as a universal evil maxim under which particular evil maxims are contained" (CII 194/311–14). Thus, Reinhold advocates Kant's claim that particular evil maxims stand under and are conditioned by the second-order supreme maxim. Furthermore, Reinhold advocates Kant's claims that the propensity to evil consists in making pleasure and displeasure the condition for fulfillment of the moral law and that a revolution, viz. a reversal of the priority of incentives incorporated into the supreme maxim is a necessary condition to be not merely legally good, but morally good. Of course, this is irreconcilable with Reinhold's doctrine of free will presented in the *Letters II*, according to which the satisfaction of the selfish drive

with respect to the unselfish drive is not conditioned by a supreme second-order maxim, but rather is a free self-determination present in every first-order volitional act.

It is not surprising that as late as 1793 Reinhold wrote to Jens Baggesen that he did not fully understand Kant's doctrine of radical evil:

Despite having now repeatedly thoroughly studied the work on radical evil, it nevertheless remains essentially incomprehensible to me, above all because I cannot conceive any other ground of a maxim than freedom itself, and I therefore fear Kant has gotten himself into an investigation – in order to elevate dogmatic Christianity to moral Christianity without sacrificing dogma – that is impossible according to his own principles: namely, [investigation] of the ground of free acts, which can have no ground except freedom itself. However, I still hope to learn to understand him better even on this issue.¹⁹⁶

Even if Reinhold later learned to understand Kant better, he apparently was not able to recognize how Kant's account of free *Willkür* with respect to his doctrine of radical evil relates to Reinhold's own theory of free will. The letter to Baggesen provides a good opportunity to shed light on a fundamental systematic difference in these thinkers' respective accounts of free will, namely the difference in their respective conception of the ground of a free act.

4.4 THE GROUND OF FREEDOM

In the *Groundwork of the Metaphysics of Morals*, Kant claims:

Since the concept of causality brings with it that of laws in accordance with which, by something that we call a cause, something else, namely an effect, must be posited, so freedom, although it is not a property of the will in accordance with natural laws, is not for that reason lawless but must instead be a causality in accordance with immutable laws but of a special kind; for otherwise a free will would be an absurdity. (*G* 4:446)

¹⁹⁶ Aus Jens Bagesens Briefwechsel, *Erster Teil*, p. 249, Reinhold an Bagesen Februar 1793

A lawless free will would be an absurdity, because such a will would be “a cause operating without any law at all...and this is a contradiction” (R 6:35). According to Kant, it is inherent to the concept of causality that every cause must have a law of its causality (CPR A539/B567). Kant asserts further: “In respect of what happens, one can think of causality in only two ways: either according to nature or from freedom” (A532/B560). Because the causality of freedom is intelligible causality, the moral law is the sole possible law that could be the law of the causality of freedom. Indeed, herein consists the problem for Kant.

There is no lawful rule according to which *Willkür* would adopt the supreme maxim constituting the propensity to evil. Kant attempts to hide this problem behind the inscrutability of a first ground for the free adoption of the supreme maxim:

That the first subjective ground of the adoption of moral maxims is inscrutable can be seen provisionally from this: Since the adoption is free, its ground (e.g. why I have adopted an evil maxim and not a good one instead) must not be sought in any incentive of nature, but always again in a maxim; and, since any such maxim must have its ground as well, yet apart from a maxim no *determining ground* of the free power of choice ought to, or can, be adduced, we are endlessly referred back in the series of subjective determining grounds, without ever being able to come to the first ground. (R 6:21)

Kant claims that we must presuppose this first inscrutable ground, for otherwise evil in man would not be imputable (per RT). The first ground of evil is inexplicable to us, because we cannot have any cognition of it, i.e. the adoption of a first maxim cannot be explained insofar as it leads to an infinite regress. We may nevertheless presuppose a first ground, because the infinite series does not stand under temporal conditions, as in the solution to the Third Antinomy in the *Critique of Pure Reason*. However, it is not immediately clear why Kant claims that any given maxim must have a ground that is also a maxim. Given that the free act of *Willkür* to

adopt a supreme maxim is already intelligible, it is not subject to empirical causality and there is no need to posit an infinite regress of grounds. Although on an epistemological reading the first ground is a presupposition for moral agency, there is a difference between representing a first ground and representing an infinite regress of grounds that, out of convenience, is regarded as a first ground. There is a serious worry that the latter cannot satisfy RT. This tension is alleviated if one removes the premise that the ground of *Willkür*'s adoption of a maxim must itself be a maxim. Kant's requirement that a cause operate according to a law should only pertain to the concept of causality as applicable to possible experience, not to noumenal causality. In fact, in the *Critique of Pure Reason* Kant characterizes transcendental freedom as "the capacity to begin a state from itself" (*CPR* A533/B561).¹⁹⁷ Thus, there is no contradiction in maintaining that empirical causes must operate according to laws and that an intelligible cause, even though it can never be cognized by us, may be represented as absolutely spontaneous.

Similarly, if the causality of freedom must operate according to a law, there is no law adequate for the adoption of the supreme maxim constituting the propensity to evil. Kant confuses the inscrutability of a first ground with the impossibility of a first evil maxim adopted by *Willkür*:

The rational origin, however, of this disharmony in our power of choice with respect to the way it incorporates lower incentives in its maxims and makes them supreme, i.e. this propensity to evil, remains inexplicable to us, for, since it must itself be imputed to us, this supreme ground of all maxims must in turn require the adoption of an evil maxim. Evil can have originated only from moral evil (not just from the limitations of our nature); yet the original predisposition (which none other than the human being himself could have corrupted, if this corruption is to be imputed to him) is a predisposition to the good; there is no conceivable ground for us, therefore, from which moral evil could first have come in us. (*R* 6:43)

¹⁹⁷ My modified translation of "das Vermögen, einen Zustand von selbst anzufangen."

In this second quotation, this first ground of evil is inconceivable (*unbegreiflich*) to us not only in the sense that it is not able to be conceived by us, rather, it is *impossible* for two reasons. First, if the original predisposition in us is a predisposition to the good, and evil can only originate from evil, then the perversion of the predisposition to the good would be impossible. In fact, the proposition that evil can only originate from evil leads to an infinite regress by itself. Second, if the act of adoption of the supreme maxim must operate according to a law, there is no possible law commensurate to such an act. As an instance of intelligible causality, the law of this causality would have to be intelligible itself. But as Kant argues in the *Groundwork*, the only possible intelligible law is the moral law since it is purely formal. It is impossible that the moral law function as the law of causality for the adoption of a supreme evil maxim. Just like the general issue of a first ground addressed above, these problems are resolved if one permits an absolutely spontaneous first ground. Once this is granted, one can do away with the claim that evil must originate from evil. Instead, evil can be represented as originating in a first free act. Furthermore, there is no need for a law commensurate to the first free act of adopting evil. Instead, the first free act does not operate according to a law, but is a self-activity beginning from itself.

Due to Kant's claim that every causality must operate according to a law, and his claim that the law of natural necessity or the moral law are the only laws suitable to the will's activity, he had difficulty responding to his contemporaries regarding the inability of his theory to account for free immoral acts. Kant had no recourse to appeal to a rule grounding the free adoption of a supreme immoral maxim. For this reason, he attempted to hide this impossibility in mere inscrutability and inconceivability. The only way to maintain Kant's account of free *Willkür* and RT is to abandon his claim that the causality of freedom must operate according to a law.

Reinhold's theory of freedom already includes the absolute spontaneity required for moral responsibility.

For Reinhold, the ground of a free act is freedom itself, i.e. freedom is the self-contained ground (*Selbstgrund*) of its own activity (*LII* 193/282). Of course, this claim is not uncontroversial. The issues of whether such a representation of free will is tantamount to freedom of chance, and how such a representation of free will is to be reconciled with natural necessity have been problematized.¹⁹⁸ These are serious concerns. However, the intelligibility of a self-contained first ground of self-determination is beyond the scope of the present work. We have merely shown that such a spontaneous first ground is a necessary presupposition for moral responsibility (per RT). Whether this doctrine faces other difficulties is another matter. For now we can say that because this free act is represented as intelligible, it is not immediately obvious that it must operate according to a law, as do events under temporal circumstances.

4.5 CONCLUSION

Both Kant and Reinhold made developments to their theories of free will around 1792 as a response to interpretations of Kantian freedom.¹⁹⁹ Both thinkers emphasized free will as a necessary condition for moral responsibility. While both Kant and Reinhold are committed to RT, they have different accounts of the free self-determination required for moral responsibility.

¹⁹⁸ Salomon Maimon accused Reinhold of reducing free will to a freedom of chance (*Freiheit des Zufalls*). On this point, see *Streifereien im Gebiete der Philosophie*. Gesammelte Werke. Bd. IV, 257 [235] as cited in Martin Bondeli (ed.), *LII*, n.251, 381. Fichte accused Reinhold of not taking natural necessity into his account of free will. See *Fichte in Gespräch*, 24, as cited in Daniel Breazeale, "The Fate of Kantian Freedom," 115.

¹⁹⁹ I bracket the issue of whether Kant's account of free *Willkür* is a revision of his theory of free will or merely an elucidation of a position he already held. For the former interpretation see Michelle Kosch, *Freedom and Reason in Kant, Schelling, and Kierkegaard*, and Samuel Loncar, "Converting the Kantian Self." For the latter interpretation see Paul Guyer, "The Struggle for Freedom."

Kant conceives this freedom as the adoption of a second-order maxim. Reinhold's theory of free will pertains to first-order acts, i.e. the acts that follow from the conscious choice of the agent, and not a noumenal act of supreme maxim adoption that in turn conditions the adoption of first-order maxims. However, as evidenced by Reinhold's review of Kant's *Religion*, Reinhold was seemingly unaware of this fundamental difference between the two theories. There is also a tension between these thinkers' respective conceptions of the ground of free self-determination. For Reinhold, this ground is a *Selbstgrund* of absolute spontaneity. Kant seems to face a tension within his own account of free will on this score insofar as he takes transcendental freedom to be a cause beginning from itself, but also rejects what he considers lawless causality.

Bracketing these differences, we saw in Chapter 2 that both Kant and Reinhold are committed to the freedom of immoral actions as a necessary condition for moral imputability. Let us now turn to the Kant-Reinhold Controversy of 1797 where, to Reinhold's astonishment, Kant denied that free will could be defined as choosing against the moral law.

Chapter 5

Reinhold's Reply to Kant

In the Introduction to the Doctrine of Right of the *Metaphysics of Morals*, Kant denies that free will can be defined as choosing for or against the moral law (*MM*, 6:226). This denial may have been directed toward Reinhold.²⁰⁰ Reinhold took the passage to be directed toward him and just two months later, responded vehemently in his 1797 essay, “Some Remarks,” reasserting his claim that free will must be defined as choosing for or against the moral law and claiming that Kant’s position is either incomprehensible or untenable (“SR” 141). Henry Allison and Manfred Baum have attempted to vindicate Kant from Reinhold’s criticisms.²⁰¹ Both Allison and Baum hold that free will necessarily involves the capacity to spontaneously adopt maxims; however, both deny that the capacity to spontaneously adopt maxims contrary to the moral law is a necessary feature of the concept of free will. In this chapter, I argue that given this assumption of the spontaneity of maxim adoption, Allison and Baum overlook the necessity of this capacity for moral culpability. Following our examination of Reinhold’s implicit argument in Chapter 2, I argue that the capacity to choose against the moral law is a condition for the intelligibility of

²⁰⁰ See Henry Allison, *Kant's Theory of Freedom*, 133; Manfred Baum, “Positive und Negative Freiheit bei Kant,” 48; Manfred Baum, “Kants Replik auf Reinhold,” 159; Manfred Baum, “Prior Concepts of the *Metaphysics of Morals*,” 128–29. The denial that free will can be defined as choosing for or against the moral law may well have been directed primarily at Christian August Crusius and Karl Heinrich Heydenreich (Martin Bondeli, “Einleitung” to *Auswahl Vermischter Schriften Zweyter Band*, XXXVI).

²⁰¹ See Henry Allison, *Kant's Theory of Freedom*, 144–47; Manfred Baum, “Kants Replik auf Reinhold.”

the moral law as an *a priori* fact of reason. It will be shown on the basis of Kant's own account of definitions that, contrary to the dominant view in the scholarship, Kant should have conceded to Reinhold that free will be defined as choosing for or against the moral law.

This is philosophically significant in that Kant's own definition of free will undermines the possibility of moral agency. The Reinholdian deduction of free will from analysis of the conditions for the intelligibility of our awareness of the moral law secures the concept of freedom, which Kant famously declared the "*keystone* of the whole structure of a system of pure reason" (*CPrR*: 5:4). This work is historically significant in that we can finally resolve a controversy that was the culmination of seething debate on the correct conception of free will throughout the 1780s and 1790s.²⁰²

I first present Kant's claims in the *Metaphysics of Morals* that free will cannot be defined as choosing for or against the moral law, along with a consideration of Allison and Baum's interpretations. Next, I utilize Reinhold's reply to Kant to show that such choice is indeed a necessary feature of the concept of free will insofar as it is a necessary condition for the intelligibility of our awareness of the moral law as an *a priori* fact of reason. Lastly, I respond to the objection that the capacity to adopt maxims contrary to the moral law is conceptually subordinate to the capacity to adopt maxims on the basis of the moral law, and for that reason does not belong among the necessary features of the concept of free will, given Kant's account of definitions.²⁰³

²⁰² See J.H. Abicht, "Über die Freyheit des Willens"; Leonard Creuzer, *Skeptische Betrachtungen über die Freiheit des Willens*; Fichte, "Rezension von Creuzers *Skeptische Betrachtungen über die Freiheit des Willens*"; A.L.C. Heydenreich, *Über Freiheit und Determinismus und ihre Vereinigung*; C.C.E. Schmid, *Versuch einer Moralphilosophie*; J.C. Schwab, "Über die zweierlei Ich und den Begriff der Freiheit in der Kantischen Moral"; C.W. Snell, *Über Determinismus und moralische Freiheit*; J.A.H. Ulrich, *Eleutheriologie*.

²⁰³ I follow Kant's own language in *Metaphysics of Morals* in using "definition" and "concept" of free will more or less interchangeably (see *MM* 6:226–27). As we shall see in Section II of this work, for

5.1 KANT'S ACCOUNT OF FREE WILL IN *METAPHYSICS OF MORALS*

5.1.1 Kant's Claims

In the Introduction to *Metaphysics of Morals*, Kant introduces the *Wille/Willkür* distinction in an attempt to remove the ambiguity between the legislative and the executive functions of the will.²⁰⁴ He designates *Wille* as the lawgiving function of the will, which he identifies with pure practical reason, and designates *Willkür* as the executive function of the will. Kant denies that the legislative function of *Wille* can be considered free, reserving instead the notion of freedom for the executive function of *Willkür*.²⁰⁵ Kant defines free *Willkür* as “independence from being *determined* by sensible impulses; this is the negative concept of freedom. The positive concept of freedom is that of the ability of pure reason to be of itself practical” (*MM*, 6:213–4). While this positive concept of freedom seems to pertain solely to reason, and thus to *Wille*, it actually pertains to *Willkür*. Pure reason is practical if and only if pure reason can be a possible determining ground of the will. If free will is not to be conceived as the mere activity of reason, which would be tantamount to the intelligible fatalism of C.C.E Schmid, then legislation of the moral law must be accompanied by an executive component of the will to make the moral law a determining ground for action.²⁰⁶ Indeed, this requirement underlies Kant's account of *Willkür*

Kant a definition is simply an exhaustive and precise concept. And so the correct concept of free will, i.e. the concept exhaustively and precisely determined, is tantamount to the definition of free will.

²⁰⁴ For clarity, I will refer to the German in discussing *Wille* and *Willkür*. For translation issues on this distinction see: Henry Allison, *Kant's Theory of Freedom*, 129; and Ralph Meerbote, “*Wille* and *Willkür* in Kant's Theory of Action.”

²⁰⁵ In the *Vorarbeiten*, Kant does assert that *Wille* is free “in another way because it is lawgiving and not obeying” (23:248). The point is that although *Wille* is constrained to self-legislate the moral law, this legislation is spontaneous and independent of natural necessity. On this point see: Manfred Baum, “Prior Concepts of the *Metaphysics of Morals*,” 129–30; and Henry Allison, *Kant's Theory of Freedom*, 131–32.

²⁰⁶ See also Henry Allison, *Kant's Theory of Freedom*, 240.

in *Religion* as well as his more explicit distinction between *Wille* and *Willkür* in *MM*. The ability of pure reason to be practical is tantamount to the capacity of *Willkür* to make the moral law a determining ground for action.²⁰⁷ The moral law of itself has no matter (*Materie*), but rather is completely formal. Thus, *Willkür* cannot simply adopt the moral law as a determining ground. To make the moral law a determining ground for action is to adopt a maxim on the basis of the moral law, i.e. to adopt a maxim on the basis of that maxim's conformity to the formal condition of universal lawgiving. And so while Kant's definitions are "hardly models of philosophical lucidity,"²⁰⁸ we can see that Kant's positive concept of freedom amounts to the capacity of *Willkür* to spontaneously adopt maxims on the basis of the moral law. Or, rather, following the results of our examination of *Religion*, the positive concept of freedom amounts to the capacity of *Willkür* to spontaneously adopt a supreme maxim that incorporates the incentive of the moral law as superior to the incentive of self-love. In what follows, I will presuppose this difference between Kant and Reinhold, namely that Kant's account of the spontaneous adoption of a maxim is an intelligible act of noumenal *Willkür* to adopt a supreme maxim that serves as the ground of the adoption of particular maxims, and that Reinhold's account of spontaneous maxim adoption takes place at the phenomenal level and pertains to particular maxims themselves. Our

²⁰⁷ Allison also holds that the positive concept of the freedom of *Willkür* is tantamount to *Willkür*'s "capacity to act on the basis of the dictates of pure reason or, equivalently, pure *Wille*" (*Kant's Theory of Freedom*, 132). Allison takes Kant's published definition – "the ability of pure reason to be of itself practical" – to be a mistake. This very well may be the case. Although there is not room to fully motivate the argument in this work, I think there is reason to hold that Kant's wording of the definition of the positive concept of freedom in terms of reason instead of *Willkür* is intentional. Because we are warranted use of the concept of free will only from the practical standpoint, Kant may have felt obliged to define free will only in terms of conceptual features directly connected to the moral law. To define freedom outside of this connection would be to define freedom theoretically, which is not permitted given that freedom is only a problematic idea from the theoretical standpoint. Consequently, freedom must be defined in its direct relation to the moral law as its *ratio cognoscendi*. In this way, Kant takes the epistemological connection between the moral law and freedom to be indispensable to the definition of the latter. This explains why Kant continually defines the positive concept of free will directly in relation to the moral law, even when this seems to obfuscate the executive function of the will.

²⁰⁸ Henry Allison, *Kant's Theory of Freedom*, 135

investigation concerns whether, this difference aside, Kant's and Reinhold's commitment to free immoral actions commits them to a concept of free *Willkür* that includes choosing against the moral law as a necessary feature.

Kant and Reinhold are in agreement on the negative concept of freedom, i.e. independence from sensible determination. The matter at hand is the proper concept of freedom in the positive sense. Through exegesis of Kant's claims in the *Metaphysics of Morals*, we have established that the positive concept of freedom consists at least in the capacity to spontaneously adopt maxims on the basis of the moral law. If it can be established that the capacity to spontaneously adopt maxims contrary to the moral law is a necessary feature of the concept of free will, then we would be left with a positive concept that consists in the capacity of *Willkür* to spontaneously adopt maxims on the basis of the moral law or contrary to the moral law. Obviously, *which* determining ground *Willkür* makes the basis of its maxim adoption, namely the moral law or inclination, must be the result an intentional act, i.e. a choice, for otherwise it would be completely coincidental whether we acted in accordance with or contrary to the moral law. Furthermore, intentionality is a necessary condition for acting morally, i.e. acting from duty (as opposed to merely acting in conformity with duty). Thus, the positive concept of freedom as the capacity to spontaneously adopt maxims on the basis of the moral law or contrary to the moral law is tantamount to choosing for or against the moral law. Consequently, our investigation will be focused on whether the capacity to spontaneously adopt maxims contrary to the moral law is a necessary feature of the concept of free will.

Kant goes on to argue that freedom of *Willkür* cannot be defined as the ability to choose for or against the moral law, giving two primary reasons: 1) we cannot present freedom in this way as "a positive property," i.e. we cannot "present *theoretically* freedom as a *noumenon*"; and

2) choosing against the moral law is not a necessary feature of the concept of free will and that we do choose against the moral law is instead derived from experience (*MM*, 6:226–7). In Section 5.2 of this chapter, where it is argued that the capacity to spontaneously adopt maxims contrary to the moral law is a necessary feature of the concept of free will, it will be shown that the ability to choose for or against the moral law is not to present freedom theoretically as a noumenon, but rather respects Kant’s theoretical/practical distinction. It is not obvious why the capacity to choose against the moral law must be derived from experience and why it cannot be considered a necessary feature of the concept of free will. Allison and Baum offer different accounts to justify Kant’s exclusion of this capacity from the concept of free will even though both accounts assume that *Willkür* has the capacity to spontaneously adopt maxims on the basis of as well as contrary to the moral law. Both accounts thus argue that although this capacity is a feature of *Willkür*, it is not a necessary feature of the *concept* of *Willkür*.

5.1.2 Allison’s Interpretation

Allison maintains that the spontaneity of *Willkür* is a necessary condition for rational agency: “the intentional actions of a rational agent are never “*merely*” the causal consequences of the agent’s antecedent psychological state (or any other antecedent conditions for that matter) but require, as necessary condition, an act of spontaneity.”²⁰⁹ This thesis will henceforth be referred to as the Spontaneity Thesis.²¹⁰ I follow Guyer in his characterization of Allison’s thesis as:

the act of adopting a principle, whether moral or not, as well as that of incorporating a desire into one’s ends on the basis of such a principle, cannot be understood as a

²⁰⁹ Henry Allison, *Kant’s Theory of Freedom*, 5. See also: *ibid*, 45, 63–5; Henry Allison, *Idealism and Freedom*, 124–28.

²¹⁰ Although Allison calls this thesis the Incorporation Thesis, I follow Guyer in referring to it as the Spontaneity Thesis, because I wish to emphasize the spontaneity of *Willkür*.

deterministic effect of some antecedent cause but can only be understood as a manifestation of transcendental freedom.²¹¹

Thus, *Willkür*'s adoption of a maxim cannot be seen as the result of empirical determinism, but rather must be an act of transcendental freedom, which is "the capacity to begin a state from itself" (CPR A533/B561).²¹² That an act of spontaneity is an act of transcendental freedom simply follows from Kant's conceptions of the terms. Kant characterizes "spontaneity" as a causality "through which something happens without its cause being further determined by another previous cause" (CPR A446/B474) and "to act from itself, without needing to be preceded by any other cause that in turn determines it to action according to the law of causal connection" (CPR A533/B561).

In *Kant's Theory of Freedom*, Allison summarizes Reinhold's assertion from "Some Remarks" that free will is to be conceived either as the mere self-activity of reason or as the capacity of the person for self-determination on the basis of or contrary to the moral law.²¹³ According to Reinhold, if the former conception is granted, then free immoral action is impossible. If the latter conception is granted, then Reinhold's own conception is correct. Allison subsequently refutes this charge by referring to the Spontaneity Thesis. According to Allison, Kant does not deny that *Willkür* has the capacity to spontaneously adopt maxims for both autonomous and heteronomous acts, but merely denies that the capacity to adopt maxims contrary to the moral law "be included in the *definition* of freedom."²¹⁴

Allison affirms Kant's position that the capacity to choose for or against the moral law cannot be a universal criterion, i.e. a necessary conceptual feature, for distinguishing free *Willkür*

²¹¹ Paul Guyer, "Review of Henry Allison, *Kant's Theory of Freedom*," 101–02

²¹² My modified translation of "*das Vermögen, einen Zustand von selbst anzufangen.*"

²¹³ Henry Allison, *Kant's Theory of Freedom*, 134

²¹⁴ *ibid*, 135

from animal *Willkür*. According to Allison, while the latter indeed cannot choose to act against the moral law, this is only because it also cannot choose to obey the law.²¹⁵ As such, only beings with freedom to follow the moral law can have the freedom to disobey it:

Only a being with freedom, positively construed as the capacity for self-determination on the basis of rational grounds (the capacity to act according to the conception of law), can be meaningfully conceived to have a corresponding capacity to deviate from the dictates of reason. In a word, only a being with freedom, positively construed, can be regarded as capable of misusing that freedom. Nevertheless, deviation from the law constitutes a misuse of such freedom rather [sic] the absence of it because, as we have seen repeatedly, even our heteronomous actions involve the spontaneity of *Willkür*.²¹⁶

It is not clear what Allison is claiming with respect to Reinhold's critique. If Allison is merely showing that the capacity to act on the basis of the moral law is the "universal criterion" (*MM* 6:227) for distinguishing free *Willkür* from *arbitrium brutum*, then he has not thereby demonstrated that the capacity to spontaneously adopt maxims contrary to the moral law does not belong to the definition of free will. There could be other reasons for needing to include this capacity in the definition of free will outside of its relation to *arbitrium brutum*. Indeed, in 5.2 of this chapter I argue that this capacity is a necessary feature of the concept of free will insofar as it is a condition for the intelligibility of our awareness of the moral law.

If Allison is drawing upon the Spontaneity Thesis to claim that the capacity to deviate from the moral law is a misuse of the same capacity exercised in obeying the moral law, then it is unclear why Allison would only consider the capacity to spontaneously adopt maxims on the basis of the moral law a necessary feature of the definition of free will. Per the Spontaneity Thesis, Allison considers *Willkür*'s capacity to adopt maxims (both on the basis of and contrary to the moral law) a necessary condition for rational agency, and yet he only considers the

²¹⁵ *ibid*, 135–36

²¹⁶ *ibid*, 136

capacity to spontaneously adopt maxims on the basis of the moral law a necessary feature of the concept of free will. Given that the Spontaneity Thesis entails that all instances of rational agency are instances of free volition (insofar as the spontaneous adoption of maxims is a manifestation of transcendental freedom), it is odd that Allison would consider the capacity to spontaneously adopt maxims contrary to the moral law a necessary property of free will but not a necessary conceptual feature of its definition. Perhaps Allison takes the capacity to spontaneously adopt maxims contrary to the moral law to be subordinate to the capacity to spontaneously adopt maxims on the basis of the moral law, making only the latter a necessary feature of the definition of free will. This position will be treated in Section 5.3.

5.1.3 Baum's Interpretation

Like Allison, Baum is committed to the Spontaneity Thesis and is explicit in stating that *Willkür* is independent of determination by *Wille* and that *Willkür's* adoption of maxims both for and against the moral law is spontaneous.²¹⁷ He claims that *Willkür's* choosing against the moral law cannot be considered a necessary feature of the concept of free will because that choice is always contingent:

Such a choice (*Wahl*) is an act of spontaneous choice (*Willkür*), which experience shows happens, but which does not belong in a definition (cf. MS 6:226.32-36) of the freedom of the faculty of choice (*Willkür*), since it cannot belong to the necessary properties of free choice (*Willkür*) as such. For nothing would prevent the faculty of choice (*Willkür*) in its free choice (*Wahl*) from always taking up the maxims that conform to law and making them its own... Thus the decision for a maxim contrary to law remains also a merely contingent if also frequent special case of choosing (*Wahl*) by the faculty of choice (*Willkür*), which should in no way be cited among the necessary and enduring features that are united in the definition of the concept of free choice (*Willkür*).²¹⁸

²¹⁷ See: Manfred Baum, "Kant's Replik auf Reinhold," 158ff; Manfred Baum, "Prior Concepts of the Metaphysics of Morals," 132ff.

²¹⁸ Manfred Baum, "Prior Concepts of the Metaphysics of Morals," 134

In this way, Baum confirms Kant's claim that although *Willkür* may choose against the moral law, such a capacity does not necessarily belong to the concept of free *Willkür*.

Baum is correct that any given instance of *Willkür*'s choosing against the moral law is contingent; however, he mistakenly conflates the contingency of any given instance of *Willkür*'s choosing with the *necessity of Willkür's capacity to choose*. It simply does not follow from the contingency of any *instance* of choosing that the *capacity to choose* be contingent.²¹⁹ If it turns out that the capacity to choose against the moral law can only be derived from experience, then it admittedly can only be established *a posteriori* and thus contingently. Following Reinhold and our treatment of his position in Chapter 2, I argue in the next section that this capacity is necessary and can be derived *a priori*.

5.2 REINHOLD'S REPLY TO KANT

In his *Letters on the Kantian Philosophy Volume II (Letters II)*, Reinhold develops a theory of free will in order to correct what he took to be the mistaken interpretations of Kant's theory by some of his followers.²²⁰ By defining free will only in terms of the self-legislation of practical reason and its independence from natural necessity, Reinhold thinks these interpretations preclude free immoral acts (*LII* 185/267). By separating the will from practical reason and

²¹⁹ On this point see Paul Guyer, "The Struggle for Freedom," 135

²²⁰ For discussion on the development of Reinhold's theory of free will, see: Martin Bondeli, "Einleitung: *Briefe IP*"; Martin Bondeli, "Zu Reinholds Auffassung von Willensfreiheit in den *Briefen II*"; Faustino Fabbianelli, "Die Theorie der Willensfreiheit in den *Briefe über die Kantische Philosophie*"; Michael Gerten, "Begehren, Vernunft und freier Wille"; Alessandro Lazzari, "K.L. Reinholds Behandlung der Freiheitsthematik zwischen 1789 und 1792"; Alessandro Lazzari, *Das Eine was der Menschheit Noth ist*; Jörg Noller, "Die Praktische Vernunft ist kein Wille"; Jörg Noller, *Die Bestimmung des Willens*.

defining free volition as self-determination for or against the moral law, Reinhold believes to have secured the concept of freedom of the will from those interpretations that abolished moral culpability, i.e. from C.C.E Schmid's interpretation. Reinhold had sent Kant a copy of the *Briefe II* and requested Kant's judgment on the same, particularly in regard to his theory of the will and freedom.²²¹ In Kant's reply, he assured Reinhold that he agreed with his principles of natural right for the most part, but was conspicuously silent concerning Reinhold's account of free will.²²² Thus, Reinhold may have felt that Kant's denial in the Introduction to *Metaphysics of Morals* that free will can be defined as choosing for or against the moral law was a belated and perfidious answer to his original 1793 request for Kant's commentary.²²³

In his 1797 essay, "Some Remarks," Reinhold defends his view of freedom as consisting in choosing for or against the moral law, and repudiates Kant's charge that such a definition would derive the concept of free will from experience. Instead, Reinhold claims that his definition is transcendental ("SR" 150–51/393).²²⁴ Reinhold maintains that his concept is derived from the moral law (just like Kant's concept of moral evil from *Religion within the Boundaries of Mere Reason*):

My concept of freedom as a capacity to act according to or contrary to (not *whatever kind of law* of reason, but rather) the *moral law*, consequently [the capacity] to act not *legally* or *illegally*, but rather *morally good* and *morally evil* is absolutely not derived from *experience*, deduced from *appearances*, nor drawn from *illegal* acts. Like the concept of *morally evil* action, which *Religion within the Boundaries of Mere Reason* puts forth according to (as it puts it) the *mere law of freedom*, my concept of freedom is derived

²²¹ Martin Bondeli, "Einleitung: *Vermischter Schriften II*, XXXV. See Reinhold to Kant, 21 January 1793 (11:410)

²²² Martin Bondeli, "Einleitung: *Vermischter Schriften II*, XXXV. See Kant to Reinhold, 28 March 1794 (11: 494). Kant offers his old age as an excuse for why he could not give an assessment of Reinhold's work.

²²³ On this point see Martin Bondeli, "Einleitung: *Vermischter Schriften II*, XXXVII.

²²⁴ See also Martin Bondeli, "Einleitung: *Vermischter Schriften II*," LXIX

simply from awareness of the moral law itself, from the *categorical imperative* alone (“SR” 150/392–93).

Reinhold’s concept of freedom is derived from the moral law insofar as it must be assumed as a necessary condition for the conceivability of the moral law:

Incomprehensible freedom is...that freedom which announces itself *through* the law and which is *presupposed* by the concept of the law as the *moral law*, which can be assumed only for the sake of the law, cannot be *comprehended* from the law, but must be thought, for otherwise the law necessary through itself qua moral law would not be conceivable (“SR” 149–50/390).²²⁵

Thus, according to Reinhold the concept of freedom announces itself through the moral law as a necessary assumption for the latter’s conceivability. Insofar as the concept of freedom is derived as a necessary condition for the conceivability of the moral law, of which we are *a priori* conscious as a fact of reason, the concept of freedom is obtained *a priori* and transcendently as a condition for the possibility of consciousness of the moral law. Reinhold’s position in “Some Remarks” demonstrates his reliance on the argument elucidated in Chapter 2 as his considered position. Here he makes no appeal to facts of consciousness and instead takes himself to be making roughly the same argument as Kant in *Religion*, namely arguing for freedom as a necessary condition for morality.

Admittedly, Reinhold’s position in “Some Remarks” is not completely fair to Kant. As Bondeli notes, Reinhold accuses Kant of defining the will merely as the self-activity of reason, a charge that is more aptly attributed to C.C.E Schmid.²²⁶ Reinhold characterizes Kant’s position

²²⁵ By “incomprehensible freedom” Reinhold simply means that we cannot theoretically conceive how this freedom is possible. It is, instead, something that we must posit as a result of our awareness of the moral law.

²²⁶ See Martin Bondeli, “Einleitung: *Vermischter Schriften II*,” LXIX

as claiming that acts are free only insofar as they obey the moral law, thereby precluding the possibility of free immoral acts and, according to Reinhold, turning the moral law into a mere law of nature (“SR” 144f/375f). Nevertheless, Reinhold’s point that choosing for or against the moral law is a necessary condition for the conceivability of the moral law still stands and we can construct an argument in the spirit of Reinhold’s claim.

The argument hinges on the claim that the Spontaneity Thesis is a necessary condition for moral responsibility. Let us in turn call this the Responsibility Thesis. In order to demonstrate that Kant ought to have considered the capacity to spontaneously adopt maxims contrary to the moral law a necessary feature of the concept of free will, it is necessary to show that Kant is committed to the Responsibility Thesis. In fairness to our unwitting interlocutors, Allison and Baum, it is also necessary to show their commitment to the thesis. While we have already established Kant’s commitment to this thesis in Chapter 4, let us briefly review this commitment as a backdrop for showing Allison and Baum’s commitment to the same. Moreover, insofar as Kant, Allison, and Baum hold that the capacity of *Willkür* to spontaneously adopt maxims contrary to the moral law is a property of *Willkür*, but not a necessary feature of its concept, it will be necessary to briefly address Kant’s account of concepts and definitions.

5.2.1 The Responsibility Thesis Revisited

Kant’s commitment to the Responsibility Thesis is clear and is established by the following three passages from *Religion within the Bounds of Mere Reason*:

This subjective ground [of the exercise of freedom] must, in turn, itself always be a deed of freedom (for otherwise the use or abuse of the human being’s *Willkür* with respect to the moral law could not be imputed to him, nor could the good or evil in him be called “moral”). Hence the ground of evil cannot lie in any object *determining Willkür* through

inclination, not in any natural impulses, but only in a rule that *Willkür* itself produces for the exercise of its freedom (*R*: 6:21).

Nothing is morally (i.e. imputably) evil but that which is our own deed (*R*: 6:31).²²⁷

The human being must make or have made *himself* into whatever he is or should become in a moral sense, good or evil. These two [characters] must be an effect of his free *Willkür*, for otherwise they could not be imputed to him and, consequently, he could be neither *morally* good nor evil (*R*, 6:44)

Thus, the activity of *Willkür*, viz. its spontaneous adoption of maxims, is a necessary condition for moral responsibility.

Allison and Baum are also incontrovertibly committed to the Responsibility Thesis.²²⁸

Allison claims that in order for an act to be attributed to an agent, “the action must be regarded as something the agent “does” of itself, as opposed to being the result of something “done” to the agent.”²²⁹ As we have seen, Allison takes the Spontaneity Thesis to be a necessary condition for agency. Given that agency is a necessary condition for imputability, it follows that the Spontaneity Thesis is a necessary condition for imputability, which is tantamount to the Responsibility Thesis. Baum uses the Responsibility Thesis as grounds for accepting the Spontaneity Thesis:

This deviation from law, though – be it from the subjective (the maxim), or from the objective law of pure practical reason for the adoption of maxims by choice – cannot be explained as its action ‘according to a law of nature’ (VAMS 23:248.27, trans K.S.), since it then would be unambiguously determined by this law of nature, the maxim

²²⁷ This particular passage admittedly only establishes that Kant is committed to the claim that we are only morally culpable for immoral acts that are our own deed, i.e. that are freely carried out. This is, however, certainly the more controversial point that needs to be established. No one, to my knowledge, has ever claimed that Kant was not committed to freedom as a necessary condition for moral responsibility for moral acts.

²²⁸ I take the ability to attribute an act to an agent and the ability to impute an act to an agent as synonymous, and both as synonymous with being able to hold an agent responsible for an act.

²²⁹ Henry Allison, *Kant’s Theory of Freedom*, 28

contrary to law would thus be predetermined and so one could not attribute it to choice itself. It is also for this reason that deviation from the law in choice (*Wahl*) of maxims by the faculty of choice (*Willkür*) must remain inexplicable.²³⁰

Thus, because the adoption of maxims and accordant courses of action determined by laws of nature would undermine the imputability of acts to *Willkür*, this capacity must be spontaneous.

5.2.2 Kant on Concepts and Definitions²³¹

For Kant, a concept is a set of marks, or necessary features, that serve as a rule for “ordering different representations under a common one” (*CPR* A68/B93).²³² Without proffering a particular interpretation of Kant’s account of concepts and their role in judgment and perceptual apprehension of objects of experience, it is sufficient for our purposes to recognize that the set of constituent conceptual features serve as a general rule to subsume those particular representations that share those features and are thus instantiations of the concept whose features they share.²³³

A definition is an exhaustive concept (*CPR* A727/B756), i.e. a concept that “is sufficiently distinct and precise” (*Log* 9: 140). A concept can be made completely distinct by making all of its marks clear and can be made precise by not having too many marks, i.e. superfluous marks (*Log* 9: 142). The marks, or constituent conceptual features, must be “*necessary*, and hence not added through experience” (*Log* 9: 145). Thus, the definition of free

²³⁰ Manfred Baum, “Prior Concepts of the Metaphysics of Morals,” 132. See also Manfred Baum, “Kants Replik auf Reinhold,” 158.

²³¹ On Kant’s account of definition I was directed by footnote 8 of the Cambridge Edition of Kant’s *Critique of Pure Reason* (751–52) to various sections of the Cambridge Edition *Lectures on Logic*.

²³² See also: *CPR* A106, B377; *Log*, 9:91. For a discussion of Kant’s account of concepts see Henry Allison, *Kant’s Transcendental Idealism*, 78–82.

²³³ On Kant’s account of the employment of concepts outside of judgment, see Thomas Land, “No Other Use than in Judgment?”

will must be an exhaustive elucidation of only those necessary features sufficient to distinguish it.²³⁴ Kant claims that these necessary features cannot be subordinate to one another, i.e. they cannot be contained in one another, for otherwise the subordinate feature is superfluous (*L-Log/Blomberg* 24: 264). Should it turn out that the capacity to spontaneously adopt maxims contrary to the moral law be parasitic on the capacity to spontaneously adopt maxims on the basis of the moral law, then there would be good reason to exclude the former capacity from the definition of free *Willkür*. This point is, in part, raised by Baum and is addressed in Section 3 of this work.

Paul Guyer has recently claimed that Kant's remarks in *Metaphysics of Morals* concern Kant's position on the *definition* of free will. Guyer claims that Kant is conceiving free will as a real definition, which must include its *ratio cognoscendi*.²³⁵ This explains why Kant restricts the definition to our capacity to act for the sake of the moral law. However, given the Spontaneity Thesis, if it turns out that the capacity to act contrary to the moral law is not analytically contained in the capacity to obey it, then Kant has provided an incomplete concept.

5.2.3 The Reinholdian Argument

The Spontaneity Thesis establishes that *Willkür* can spontaneously adopt maxims both for and against the moral law. Our exegesis of Kant's claims in *Metaphysics of Morals* established that

²³⁴ Some of Kant's statements in the *Critique of Pure Reason* conflict with his account in *Logic* and the *Lectures on Logic*. Kant claims that *a priori* concepts cannot be defined because we can never be certain that the concept has been exhaustively developed (*CPR* A 728/B 757). Nevertheless, Kant claims in *Logic* that in matters of moral philosophy, real definitions must be sought, i.e. definitions whose inner determinations are sufficient for distinguishing the object (9:143–44). Thus, even if Kant's considered view is that we can never have fully certain definitions of *a priori* concepts, we should nonetheless strive for them in matters of moral philosophical inquiry. Given that freedom is the *ratio essendi* of the moral law, the concept of free will certainly qualifies as such a concept. Furthermore, Kant himself refers to the "definition" of free will in *Metaphysics of Morals* (6:226–27).

²³⁵ Paul Guyer, "The Struggle for Freedom," 136

the positive concept of free will is tantamount to the capacity of *Willkür* to spontaneously adopt maxims on the basis of the moral law (and this is consistent with our interlocutors Allison and Baum). The question is whether the capacity to spontaneously adopt maxims contrary to the law is a necessary feature of the concept of *Willkür*. Here it will be argued that the capacity to spontaneously adopt maxims contrary to the moral law is a necessary feature of this concept, and therefore belongs in the definition of free will.

In the *Critique of Practical Reason* Kant asserts that we are *a priori* conscious of the moral law as a fact of reason (*CPrR* 5:31; 47; 55).²³⁶ Our awareness of the moral law is an awareness of that law *as* the supreme principle of morality, and therefore an awareness that the moral law is binding upon us. As binding, awareness of the moral law commands what *ought* to be done (or not done), and when its command is not heeded we are capable of awareness that it *ought to have been*, i.e. in the case of transgression of the moral law we can be aware that we ought to have obeyed it, that we could have obeyed it, and that we are responsible for having not obeyed it.²³⁷ Thus, awareness of the moral law entails awareness that it is binding upon us, which in turn entails an awareness that we are morally responsible for our acts.²³⁸

Because our awareness of the moral law as a fact of reason is *a priori* and therefore necessary (*CPrR* 5:47), the concept of free will cannot make the moral law unintelligible.²³⁹ If

²³⁶ See Henry Allison, *Kant's Theory of Freedom*, 230–39.

²³⁷ “He who has *lost* at play can indeed be *chagrined* with himself and his imprudence; but if he is conscious of having *cheated* at play (although he has gained by it), he must *despise* himself as soon as he compares himself with the moral law... There is in the idea of our practical reason something further that accompanies the transgression of the moral law, namely its *deserving punishment*” (*CPrR* 5:32).

²³⁸ This is certainly suggested by the following passage from the 2nd *Critique*: “One need only analyze the judgment that people pass on 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” (*CPrR* 5:32).

²³⁹ For discussion of the moral law as a fact of reason see Henry Allison, *Kant's Theory of Freedom*, 230–39.

moral responsibility is to be intelligible, then so too must moral culpability for immoral acts. Per the Responsibility Thesis, the capacity to spontaneously adopt maxims contrary to the moral law is a necessary condition for moral culpability, and therefore a necessary condition for moral responsibility in general. To preclude *Willkür*'s capacity to spontaneously adopt maxims contrary to the moral law from free will would preclude the possibility of moral culpability, which would undermine moral responsibility and with it the intelligibility of the moral law as a fact of reason. Admittedly, defining free will only in terms of the capacity to spontaneously adopt maxims on the basis of the moral law does not necessarily preclude the capacity to spontaneously adopt maxims contrary to the moral law; however neither does the former capacity necessarily entail the latter. Given Kant's account of definitions as an exhaustively determined concept, a definition of free will that omits the capacity to spontaneously adopt maxims contrary to the moral law, while not inherently contradictory, is indistinct insofar as it omits a necessary feature of the object to which it is supposed to refer. Such a definition does not exclusively distinguish free will for a being (such as ourselves) who is not always determined by the representation of the good. Instead, such a definition may also refer to a perfectly good, or holy will, which is "determined only through the representation of the good" (*G* 4:414). Therefore, in order to have a definition of free will that is "sufficiently distinct and precise" (*Log* 9:140), we must include *Willkür*'s capacity to spontaneously adopt maxims contrary to the moral law among the necessary features of the concept of the same.

Furthermore, this necessary conceptual feature is not merely gleaned from experience, but rather is derived *a priori* through analysis of the necessary conditions for moral responsibility given our awareness of the moral law as a fact of reason. Whereas Kant seemed to think that positing the spontaneity of *Willkür* outright would be to make a theoretical claim about the

nature of the will (*MM*: 6:226), our derivation of the spontaneity of *Willkür* from analysis of the necessary conditions for moral responsibility given our awareness of the moral law as a fact of reason was gleaned from the practical standpoint. Thus, including choosing against the moral law in the concept of free will is consistent with Kant's apparent insistence that the definition must include its *ratio cognoscendi*. That is, the moral law is the *ratio cognoscendi* of the capacity to adopt maxims pertaining to morally relevant actions, be those actions moral or immoral. The capacity to adopt maxims with moral significance analytically contains the capacity to adopt maxims for the sake of the moral law and the capacity to adopt maxims contrary to the moral law (such that the agent is aware that the adoption of such a maxim is a transgression). The former capacity does not analytically entail the latter. Therefore, the definition of free will cannot be restricted to the former capacity, but rather must be defined by the generic capacity analytically containing both constituent capacities. And this is precisely Reinhold's concept of free will.

It is no surprise then that Reinhold was thoroughly vexed by Kant's claims in *Metaphysics of Morals*. Rather than baldly assert theoretically a property of the will, there is evidence throughout 1792–97 that Reinhold took his definition of free will to be grounded in the practical perspective. The Reinholdian definition of free will as the capacity to choose for or against the moral law is practical insofar as it is justified only on the basis that the moral law presents itself as binding upon us as a possible determining ground for action, and on the basis that this concept of freedom is a necessary condition for the intelligibility of the moral law. In "Letter Eight" of the *Briefe II* Reinhold claims:

In this respect, *philosophizing reason* completely comprehends through precise explication of the various faculties of the mind active in volition *that* the will is free, but

not how this freedom is possible, and this is something philosophizing reason must leave at that (*LII* 193/283).

Thus, we cannot explain how freedom is possible from a theoretical perspective; however, from the practical perspective, *that* we are free is something philosophizing reason understands and must leave at that.²⁴⁰

Furthermore, in 1794, Hermann Coch, a student of Reinhold's in Jena, described Reinhold's own position to a fellow student: "Reinhold says the conceivability of the possibility of freedom is merely an object of faith, but real freedom, without which the moral law cannot be conceived at all, is however an object of knowledge."²⁴¹ Disregarding the epistemic concerns surrounding the knowledge claim, it is clear that Reinhold respects Kant's theoretical/practical division. From the theoretical perspective, the possibility of freedom is merely an object of faith; however, from the practical perspective, real freedom, as it is announced through the moral law, is an object of 'knowledge' for Reinhold, which Kant sometimes refers to as practical cognition in the *Critique of Practical Reason*.²⁴² Moreover, the passage reveals that here Reinhold also held the transcendental position on free will that he explicitly espouses in "Some Remarks." The fact that the relative clause 'without which the moral law cannot be conceived at all' qualifies 'real freedom' suggests that this is significant to Reinhold's justification for calling freedom an object of 'knowledge'. That is to say, it is because freedom is a necessary condition for the

²⁴⁰ From the theoretical standpoint, all that can be established is that transcendental freedom, qua intelligible causality, is not inherently contradictory with natural necessity. See *CPR* A532/B560–A558/B586).

²⁴¹ Erich Fuchs (ed.), *Fichte im Gespräch*, 31–2 [my translation].

²⁴² For Kant's employment of "practical cognition," see *Critique of Practical Reason* (5:20, 31, 57, 103)

conceivability of the moral law – where that law can only be understood with a workable notion of moral culpability in place – that it is therefore justified as ‘knowledge,’ or practical cognition.

5.3 OBJECTION TO THE FOREGOING

It could be objected that although the capacity to spontaneously adopt maxims contrary to the moral law is indeed necessary, it is a feature that is conceptually subordinate to the capacity to spontaneously adopt maxims on the basis of the moral law. Given Kant’s claim that necessary conceptual features cannot be subordinate to each other, it would follow that the capacity to spontaneously adopt maxims contrary to the moral law should not be included among the necessary features of the definition of free will. Baum seems to raise this objection (though he is not entirely clear on the matter), and it is possibly what Allison has in mind when he claims that “only a being with freedom, positively construed as the capacity for self-determination on the basis of rational grounds (the capacity to act according to the conception of law), can be meaningfully conceived to have a corresponding capacity to deviate from the dictates of reason.”²⁴³

Baum asserts that *Willkür* stands under the law of pure practical reason.²⁴⁴ He claims that the absolute spontaneity of self-legislation of the moral law by *Wille* is logically prior to the limited spontaneity of *Willkür* to adopt maxims in light of the law given by *Wille*.²⁴⁵ Accordingly, so the reasoning seems to go, our awareness of the moral law makes possible our capacity to spontaneously adopt maxims on the basis of that law. The capacity to spontaneously adopt maxims contrary to the moral law would therefore be dependent upon the capacity to adopt

²⁴³ Henry Allison, *Kant’s Theory of Freedom*, 136

²⁴⁴ Manfred Baum, “Prior Concepts of the Metaphysics of Morals,” 134

²⁴⁵ *ibid*

maxims on the basis of the moral law, which, according to Kant's account of definitions, would preclude the former capacity from being a necessary feature of the definition of free will.

Yet this line of thought only establishes that our *awareness* of our capacity to spontaneously adopt maxims on the basis of the moral law comes before our *awareness* of our capacity to spontaneously adopt maxims contrary to the moral law. Thus, the capacity to spontaneously adopt maxims on the basis of the moral law precedes the capacity to adopt maxims contrary to the moral law in the order of knowing. This does not, however, entail that the former capacity is prior in the order of being. As per the Spontaneity Thesis, neither capacity is subordinate to the other, but rather both are manifestations of *Willkür*'s capacity to spontaneously adopt *all* maxims as a condition for rational agency. Thus, both capacities are necessary as constituent capacities of the freedom of *Willkür* to spontaneously adopt maxims both on the basis of and contrary to the moral law, without which, our awareness of the moral law as an *a priori* necessary fact of reason is no longer intelligible.

5.4 CONCLUSION

This chapter attempts to demonstrate, contrary to recent commentators, that Reinhold had a point worth supporting in his dispute with Kant over free will, namely, that the concept of freedom must consist in choosing for or against the moral law. I argue that given Allison and Baum's assumptions of *Willkür*'s spontaneity to adopt maxims both on the basis of and contrary to the moral law, their justifications for Kant's restriction of the conceptual bounds of the definition of free will are invalid. Given the Responsibility Thesis, the Reinholdian argument shows that the conceptual feature of choosing against the moral law is not derived from experience, but rather is

justified *a priori* as a necessary condition for the intelligibility of our awareness of the moral law as a fact of reason. Reinhold's deduction of free will from analysis of the conditions for the intelligibility of the moral law is grounded in the practical perspective and thus vindicates Reinhold of Kant's charge that such a definition is to present freedom theoretically as a noumenon. Given Kant's account of definitions, to omit the capacity to choose against the moral law would result in an indistinct definition that obfuscates awareness of the moral law. Only when the executive function of the will to spontaneously adopt maxims on the basis of and contrary to the moral law is properly delineated can the moral law be intelligible as a possible determining ground for action. Only then can pure reason be shown to be practical and the concept of freedom serve as the keystone to the Critical philosophy.

Conclusion

Focusing on Reinhold's line of reasoning for his conception of free will shows, contrary to the dominant view in the scholarship, that his argument for free will is not merely a bald assertion of a psychologistic fact, but rather takes seriously the conditions for moral imputability and the intelligibility of the moral law. Chapter 1 sets the historical stage for (1) the presentation of Reinhold's theory and the disambiguation of his argument from the prevailing view in the scholarship and (2) the new elucidation (if not outright revision) of Kant's own theory of free will in *Religion within the Boundaries of Mere Reason*. Rehberg's criticism that Kant's merely formal moral law cannot serve as the *principium executionis* of moral agency may have contributed to Reinhold positing free agency as pertaining directly to particular acts. Reinhold responded to Ulrich's and Schmid's deterministic philosophies by declaring such views as entailing the abolishment of morality. Indeed, Kant's formulation of free *Willkür* in *Religion* as choosing a fundamental maxim constituting the agent's moral disposition (*Gesinnung*) as a ground for the adoption of particular maxims can be seen as a response to Ulrich and Schmid who interpret Kant's theory of free will as tantamount to the efficacy of pure reason. In Chapter 1 we also had occasion to clarify some misunderstandings concerning Schmid's doctrine of intelligible fatalism and his position concerning the (attempted) reconciliation of thoroughgoing necessity, freedom, and moral responsibility.

Having considered some of the most significant influences on Reinhold's development of his theory and Kant's new presentation of his theory in *Religion*, in Chapter 2 we examined these developments as they relate to moral imputability. In this chapter we had occasion to shed new light on Reinhold's argumentative strategy as attempting to ground free will in its relation to morality as a necessary condition for the same. We saw that Reinhold presupposes the results of Kant's *Critique of Practical Reason* and accepts his argument for free will from "ought implies can." However, Reinhold takes Kant's formulation to be incomplete. Reinhold supplements the 2nd *Critique* by arguing for freedom to act immorally as a necessary condition for moral imputability, and therewith, as a necessary condition for morality as such. We also saw that while Kant took himself to establish freedom to act morally by appeal to the premise that "ought implies can" and asserting our *a priori* consciousness of the authority of the moral law as a fact of reason, he employed a different strategy to establish freedom to act immorally by appealing to the conditions for imputability. Both premises of the 2nd *Critique* argument are asserted without argument and the biconditional premises between freedom, moral obligation, and imputability presupposed in *Religion* and put forth in the 1793/94 lectures on moral philosophy according to the *Vigilantius* notes are also presented without argument. While the philosopher who is not convinced of the *a priori* status of the moral law as supremely authoritative may not be convinced by Kant's arguments, this dissertation has been concerned with the explication of Kant's reasoning and not the evaluation of its persuasive power.

While Chapter 2 brings to light the common thread in Kant's and Reinhold's conceptions of free will and its relation to moral imputability, Chapter 3 examines the role of consciousness and the relation of the will to the faculty of desire as a backdrop to illustrate the disparity between these conceptions. We saw that Kant maintained a direct role for consciousness in free

agency in his Leibnizian conception of free will in the *Nova Dilucidatio* as well as in his pre-Critical conception of free will presented in his lectures on moral philosophy in the 1770s as evidenced by the Kaehler manuscript. The metaphysical commitments of Kant's transcendental turn required him to posit freedom as noumenal. This move precluded the role of consciousness in free agency that had previously featured in Kant's conception of free will. While Kant's Critical conception of free will consisted in the activity of a noumenal faculty of choice that serves as the supposed ground of our phenomenally determined selves, Reinhold posited free will as constituted by a choice performed by the *Person*, or intentional subject, to determine oneself for or against the moral law.

Chapter 4 more closely examines the nature of the noumenal capacity for choice, *Willkür*, that Kant posits in his theory of free will. We saw that the noumenal free act of *Willkür* serves as the ground for particular maxim adoption. Interestingly, it seems Reinhold was not aware of the disparity in the scope between his own theory and that of Kant's. Reinhold certainly became aware of the contrast between the two accounts of free will when he read the Introduction to Kant's *Metaphysics of Morals*, instigating the Kant-Reinhold Controversy of 1797.

Chapter 5 examines the Kant-Reinhold Controversy. It was argued that, following the results of Chapter 2 that established freedom to act immorally as necessary to morality, Kant should have included this capacity in his concept of free will. It is odd that he did not, considering Kant himself affirmed the necessity of free immoral action for morality in *Religion*. At any rate, given Kant's position in *Religion* and his account of definitions as including those necessary features that cannot be derived from other marks, it seems clear that even if Kant did not accept the metaphysical presuppositions (or lack thereof) of Reinhold's theory, he ought to

have considered freedom to transgress the moral law as a necessary feature of the concept of free will.

Reinhold's theory is not without its problems. Most notably, Reinhold has no apparent way to reconcile freedom with natural necessity. To be sure, the need to provide a solution for this problem contributed to Kant's Critical conception of free will as noumenal. In this way, Kant could maintain determinism at the phenomenal level and also claim that our actions are free by appealing to a noumenal activity independent of the temporally determined causal series of the phenomenal world. Kant's ingenuity in seeking a solution to the tension between freedom and determinism is not to be overlooked. At the same time, it is unfair to reject Reinhold's theory as inferior because he does not provide such a solution. Reinhold's theory lends itself to a meta-level reevaluation of the relation of theoretical and practical reason. On such a view, theoretical concerns are not superior to practical concerns. Thus, it would not be the case that a tension between theoretical and practical reason, between freedom and determinism, should be arbitrated by ultimately conceding the authority of theoretical reason. That is to say, because on a loosely Kantian view the causal necessity of temporal events is ultimately attributable to the epistemic conditions of cognition that we bring to bear on experience, we might simply say that our cognitive faculties are such that we are constrained to understand mere events as causally connected. Similarly, given our *a priori* awareness of the moral law as a fact of reason, we are constrained to conceive our *actions*, or at least our morally significant actions, as *free*. This is not to say that we are merely under the illusion that our actions are free but that they are really determined. Such a line of thought gives priority to a physical description of the world as ultimately authoritative. In this way, Reinhold's position lends itself to the idea that the normative cannot be reduced to the physical. This position is not dissimilar to the 'Kantian'

inspired position of Donald Davidson's anomalous monism. Perhaps contemporary naturalists would do well to take a page from Reinhold's book. Furthermore, Reinhold's position can be seen as a meta-level commitment to the significance of our lived experience, a commitment that would become popular among existentialists and phenomenologists. In this way, while Reinhold's theory of free will might be bemoaned by adherents to the questionably unpleasant metaphysics of Leibniz and Kant, it might be equally praised by philosophers more sympathetic to the special status of consciousness in human experience. As Reinhold would have it, it is not some other-worldly noumenal self that deserves praise and blame for my actions, but *me*, the I that *chooses* a particular course of action. With respect to how this is possible, perhaps we can only say "es kömmt lediglich drauf an, so absurd das auch sey!"

NOTES ON TRANSLATIONS

All translations of Kant's works refer to the *Cambridge Edition of the Works of Immanuel Kant*. Passages from the *Critique of Pure Reason* are cited according to the first (A) and second (B) editions respectively. Passages from Kant's other works are cited according to the volume and pagination of the *Akademie Ausgabe* (29 vols., Berlin: De Gruyter, 1900–). Translations of J.A.H. Ulrich and C.C.E. Schmid are co-translated by myself and Jörg Noller and taken from the volume under contract with Cambridge University Press, *Kant's Early Critics on Freedom of the Will*. All other translations are my own.

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